

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

SECOND APPEAL No.1370 OF 2018

JUDGMENT:

The present Second Appeal, under Section 100 of the Code of Civil Procedure, is filed by the appellants/appellants/defendants challenging the judgment dated 25.06.2018 in A.S.No.3 of 2017 passed by the Senior Civil Judge, Shadnagar confirming the judgment dated 31.08.2017 in O.S.No.173 of 2006 passed by the Principal Junior Civil Judge, Shadnagar.

2. The petitioners are defendants and the respondent is the plaintiff.

3. The respondent/plaintiff – Pulipati Pushpamma filed suit for grant of perpetual injunction to restrain the defendants from interfering with the possession and enjoyment of the property in Survey No.70/AA admeasuring Ac.0.08 gts and Survey No.71/AA admeasuring Ac.1.36 gts situated at Nagulapally Village, Farooqnagar Mandal, Mahabubnagar District.

4. The respondent/plaintiff claimed ownership while having purchased through registered sale deed No.5514/02, dated 07.12.2002 from the 1st defendant/1st petitioner, through his General Power of Attorney holder Pulipati Pandu S/o Bakkaiah and since then she is in possession and enjoyment of the property and obtained pattadar passbook. When the appellants trying to interfere with the property on 11.06.2006 and on 16.06.2006, the respondent approached the Court for grant of perpetual injunction.

5. The appellants/defendants filed written statement before the Court below contending that the 1st defendant never executed any

agreement of sale-cum-GPA in favour of the respondent and the same is created one. Therefore, the respondent/plaintiff has no right or interest in the property and that the respondent is not entitled to claim any perpetual injunction while claiming that he is in possession and enjoyment of the property and prayed to dismiss the suit.

6. Based on the pleadings, the Court below framed the following issues:

- 1) Whether the plaintiff is in possession and enjoyment of the suit land as on the date of suit?
- 2) Whether the plaintiff is entitled for the relief of perpetual injunction as sought for?
- 3) To what relief?

7. During trial, on behalf of the plaintiff, P.Ws.1 to 3 were examined and marked Exs.A-1 to A-8. On behalf of the defendants D.Ws.1 to 3 were examined and marked Exs.B-1 to B-19.

8. Upon hearing argument of both counsel, the Court below recorded specific finding and granted perpetual injunction in favour of the respondent/plaintiff.

9, Aggrieved by the decree and judgment, the appellants/defendants preferred A.S.No.3 of 2017 before the Senior Civil Judge, Shadnagar and the same was ended in dismissal confirming the decree and judgment passed by the Court below, recording fact finding about the possession and enjoyment of the property by the respondent/plaintiff and the petitioners' interference with the possession and enjoyment of the property.

10. The present second appeal is filed raising several contentions with reference to the evidence and validity of General Power of

Attorney and that the General Power of Attorney-cum-agreement of sale dated 25.06.2001 was only a money transaction between the principal and the agent and it does not confer any right on the General Power of Attorney holder to execute a sale deed in favour of the respondent, thereby General Power of Attorney itself is invalid. The respondent/plaintiff is not entitled to claim any perpetual injunction and requested to set aside the concurrent fact findings recorded by the Courts below.

11. At the stage of admission, learned counsel for the appellants reiterated the grounds urged in the appeal while contending that the appellants obtained certain documents and produced as additional evidence along with the appeal and if those documents are taken into consideration, the respondent/plaintiff was not in possession of the property at the stage of admission.

12. In a suit for perpetual injunction, the Court is required to record specific finding whether the plaintiff is in possession and enjoyment of the property and whether the defendants infringed or invaded the legal right or obligation of the plaintiff by their act as required under Section 38 of the Specific Relief Act. When the Court recorded such fact findings as to the possession and attempted to invade or infringe the legal right of the plaintiff in the second appeal, no substantial question of law would arise, in view of the limited scope of trial, in a suit for perpetual injunction and therefore, none of the substantial questions arises and they are only substantial questions of fact, when the concurrent findings were recorded by the Courts below, unless the judgment is vitiated by perversity this Court cannot interfere with the concurrent fact finding. I find no perversity in the decree and judgment passed by

the Courts below warranting interference in exercise of power under Section 100 C.P.C. Therefore, I find no grounds to interfere with the concurrent findings recorded by the Courts below. However, the appellants are at liberty to claim appropriate relief in appropriate proceedings, if they are advised.

13. In the result, the second appeal is dismissed at the stage of admission. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending shall stand closed.

M. SATYANARAYANA MURTHY, J

30.11.2018

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