

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

SECOND APPEAL No. 230 OF 2014

JUDGMENT:

1. The Second Appeal is filed by the unsuccessful plaintiff against the judgment and decree dated 20.12.2013 in Appeal Suit No.194 of 2012 on the file of the I Additional Senior Civil Judge, Kakinada, whereby the judgment and decree dated 27.01.2011 in Original Suit No.1184 of 2005 on the file of the Principal Junior Civil Judge, Kakinada dismissing the suit filed for declaration of title over the plaint schedule property, ejection of defendants from it and for mandatory injunction directing the defendants to remove existing constructions therein, were confirmed.

2. The appellant herein is the plaintiff, and the respondent herein is the defendant, in the suit. For better appreciation of facts, the parties are hereinafter referred to, as they are arrayed in the trial court.

3. The Second Appeal is sought to be admitted on the following substantial questions of law.

“a) Can the trial court and the lower appellate court adjudicate upon the suit without looking into the documents which were marked on behalf of the appellant herein when the documents clinchingly and categorically establishes the extent of land and the boundaries of the disputed land can give a perverse finding or not ?

b) Can the Trial court and the lower appellate court fasten burden on the appellant when the respondents though have pleaded the title, without examining any of the witnesses to prove their case with regard to the title is concerned purely basing on the exhibit B3 the patta issued by the M.R.O. when it is being disputed by the appellant about its validity ?

c) Can the trial court and the lower appellate court come to a conclusion without there being any proof with regard to the exhibit B3 patta alleged to have been issued by the then M.R.O. and can decide the title of the defendants when the issuance of patta itself is disputed and sham ?

d) Can the then M.R.O. issue the exhibit B3, when the land claimed by the defendants falls in the Gramakantam land and if not so can the defendants claim title purely basing on the exhibit B3 ?”

4. To adjudicate the *lis*, it is necessary to refer to admitted and disputed facts.

(a) The deceased original plaintiff Palika Chandra Rao filed the suit stating that he purchased 200 square yards of vacant site with a thatched house existing therein by way of a registered sale deed dated 13.06.1972 from one Beera Veeranna and others, subsequently removed the thatched hut, constructed tiled house in an extent of 150 square yards leaving 50 square yards of site on northern side, which was assigned Door No.3-84, and had been paying property tax for it. Before adjudication of the Original Suit, original plaintiff died. The appellant herein, who is his son, became owner of the suit schedule property by virtue of Will dated 18.07.2006

executed by his father. It is further case of the plaintiffs that there used to be a pathway on the northern side of the plaint schedule property and the Grampanchayat laid cement road over it, and that there used to be a thatched fencing on northern side of the house of plaintiffs, which fell down due to rains. Taking advantage of the same, the defendants, who have no manner of right over the suit schedule property, occupied the same and laid foundation therein. Hence, the suit for declaration of title, recovery of possession and mandatory injunction to remove the construction in the suit schedule property.

(b) The defendants filed written statement denying plaint averments and contending that the plaintiffs have no manner of right over the suit schedule property and the said site was assigned in favour of one late Kakara Apparao who is father of defendants 1 and 3 and husband of defendant No.2, and who was Ex-service man, under patta by the Government and his name was mutated in the panchayat records. After his death, the property was transferred in the name of defendant no.1. When defendant No.1 left to Hyderabad to eke out his livelihood, the plaintiff filed the present suit to grab the property. Hence, it is prayed to dismiss the suit.

5. Basing on the above pleadings, the trial Court settled the following issues for trial.

- 1) Whether the plaintiff is entitled for declaration that the plaintiff is the absolute owner of the plaint schedule property by virtue of a regd. Sale deed dated 13.6.1972, as prayed for ?
- 2) Whether the plaintiff is entitled for delivery of vacant possession of 50 square yards of site situated towards north of the plaint schedule property after ejecting the defendants and their men as prayed for ?
- 3) Whether the plaintiff is entitled for mandatory injunction directing the defendants to remove the existing construction in the 50 square yards of vacant site towards north of the plaint schedule property, as prayed for ?
- 4) Whether the tax receipts filed by the plaintiff are not valid and do not belong to the plaintiff or the plaint schedule property as contended by the defendant ?
- 5) Whether the panchayat laid cement road towards north of the plaint schedule property is not correct ?
- 6) To what relief ?

6. During trial, on behalf of the plaintiffs, P.Ws.1 to 3 were examined and Exs.A1 to A3 were got marked, and on behalf of defendants, D.Ws.1 to 3 were examined and Exs.B1 to B8 were got marked. Ex.C1-Commissioner report along with plan was also marked.

7. The trial Court, upon appreciation of the evidence on record, dismissed the suit with costs. Challenging the judgment and decree of the trial Court, the 2nd plaintiff preferred A.S. No.194 of 2012 on the file of the I Additional Senior Civil Judge, Kakinada. Vide the impugned judgment and decree, the first appellate court dismissed the appeal

confirming the judgment and decree of the trial Court. Challenging the same, the present Second Appeal has been preferred by the 2nd plaintiff.

8. Heard the learned counsel for the appellant, the learned counsel for the respondents and perused the record.

9. Learned counsel for the appellant would contend that deceased 1st plaintiff (who is father of the appellant) purchased an extent of 200 square yards of site in Gollaprolu, hamlet of Ramanayyapeta of Kakinada, under Ex.A1-registered sale deed dated 13.06.1972, and out of the said extent, 50 square yards was illegally occupied by the defendants; that the vendors of the deceased 1st plaintiff also acquired the said extent of 200 square yards of land under a registered sale deed in their favour; that both the courts below erred in negating the claim of the plaintiffs, and that the findings of both the courts below have not appreciated the evidence on record in proper perspective and arrived at, perverse findings, and ultimately, prayed to admit the Second Appeal.

10. On the other hand, learned counsel for the respondents would contend that the defendants are the owners and possessors of the suit schedule property and they have documents to substantiate their claim; that both the courts below held that the plaintiffs were unsuccessful in proving

title and possession over the suit schedule property, and the conclusions reached by both the courts below are based on the evidence on record; that there is no cause of action for the suit and there is no title to the plaintiffs to consider their request; that all factual aspects are involved in the matter and there are no grounds to disturb the concurrent findings arrived at, by both the courts below on factual aspects; that there is no substantial question of law to admit the Second Appeal, and ultimately dismiss the Second Appeal at the stage of admission.

11. In view of the submissions made by both the parties, the point that arises for consideration is whether any substantial question does arise for admission of the Second Appeal ?

12. There cannot be any dispute that, under the amended Section 100 C.P.C., a party aggrieved by the decree passed by the first appellate court has no absolute right of appeal. He can neither challenge the decree on a question of fact or on a question of law. The second appeal lies only where the High Court is satisfied that the case involves a substantial question of law. The word 'substantial' as qualifying 'question of law', means and conveys of having substance, essential, real, of sound worth, important, considerable, fairly arguable. A substantial question of law should directly and substantially affect the rights of the parties. A question of law can be said

to be substantial between the parties if the decision in appeal turns one way or the other on the particular view of law. But, if the question does not affect the decision, it cannot be said to be substantial question between the parties. Recording a finding without any evidence on record; disregard or non-consideration of relevant or admissible evidence; taking into consideration irrelevant or inadmissible evidence; perverse finding- are some of the questions, which involve substantial questions of law.

13. It is the plaintiffs who approached the court seeking an relief of declaration of title and other ancillary reliefs. Therefore, burden heavily lies on them to establish their title over the suit schedule property by letting in cogent evidence. On a perusal of the judgments of both the courts below, it is clear that both the courts elaborately discussed the evidence of P.Ws.1 to 3 and the recitals in Exs.A.1 to A.3, and the evidence of D.Ws.1 to 3 and recitals in Exs.B1 to B8. Case of plaintiffs rests on Ex.A1-sale deed. Both the courts below held that there is no mention of survey number, etc. in Ex.A1. Except Ex.A1, plaintiffs have not filed any title document or any documents of their vendor over the disputed land. Therefore, both the courts below declined the grant the equitable relief of declaration of title and other relief of mandatory injunction directing the defendants to remove their existing constructions in the subject 50 square yard of land

and delivery of possession in favour of the plaintiffs. These findings are based on the evidence. Both the courts below categorically held that the burden is on the plaintiffs to prove title to the disputed property and they failed to do so. The proposed substantial questions of law in the grounds of appeal are only on factual aspects. Both the Courts below analysed the entire evidence on record and gave concurrent findings on the factual aspects. None of the findings is shown to be perverse. The findings are based on record and there is no infirmity. There are no grounds to take a different view. Under these circumstances, no question of law, much less substantial question of law, as contended by the appellant/plaintiff to deal with under Section 100 of the Code of Civil Procedure, 1908 comes up for determination so as to admit the Second Appeal. Therefore, there are no grounds to admit the Second Appeal. The Second Appeal is devoid of merit and is liable to be dismissed.

14. In the result, the Second Appeal is dismissed at the stage of admission. No costs.

Miscellaneous Petitions pending, if any, in the Second Appeal shall stand closed.

18.07.2018
DRK

(Dr.SA, J.)

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