

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.851 of 2014

JUDGMENT

The appellants, who are defendants 4, 5 and 7 in O.S.No.328 of 2003 on the file of the Junior Civil Judge, Nalgonda, filed this appeal against the judgment and decree dated 31.07.2014 in Appeal Suit No.51 of 2008 on the file of the Principal District Judge, Nalgonda, to the extent of recording findings with regard to the possession while dismissing the appeal.

2. For the sake of convenience, the parties hereinafter are referred to as arrayed in the suit.

3. Heard both sides and perused the record.

4. Learned counsel for the appellants would contend that the following substantial questions do arise for consideration:-

1) Whether the learned Appellate Court is justified in recording findings with regard to the possession of the appellants/defendants stating that "Therefore, neither the plaintiffs nor the defendants are in possession and enjoyment of the suit schedule property as on the date of filing of the suit", while dismissing the appeal filed by the respondents 1 to 11/plaintiffs without there being any independent evidence to that extent.

2) Whether the learned appellate Court is justified in recording findings in a suit for injunction between parties stating that the alleged purchasers of the plots are in possession of the suit even though they are not parties to the proceedings.

5. Learned counsel for the appellants/defendants 4, 5 and 7 contended that the lower appellate Court had erroneously recorded that the defendants are not in possession of the suit schedule property and that the judgment passed by the lower appellate Court to the limited extent is perverse and ultimately, prayed to set aside the same. 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.

6. The plaintiffs filed the above suit for perpetual injunction restraining the defendants from interfering with their peaceful possession of the suit schedule property. The trial

Court, by judgment dated 31.05.2008 dismissed the suit. Aggrieved by the same, the plaintiffs filed the first appeal. The appellate Court vide the impugned judgment and decree, had recorded its finding that neither the plaintiffs nor the defendants are in possession and enjoyment of the suit schedule property and therefore, the question of interference by the defendants with the possession of the plaintiffs does not arise and accordingly, dismissed the appeal confirming the judgment passed by the trial Court in the suit.

7. As seen from the entire record, defendants 4, 5 and 7, who are the appellants herein, did not file a single document to show their possession or title over the suit schedule property. Having elaborately dealt with the contentions of both the parties, the lower appellate Court was pleased to record a finding that neither the plaintiffs nor the defendants are in possession and enjoyment of the suit schedule property as on the date of filing of the suit and hence, the question of interference of the defendants with the possession of the plaintiffs as alleged over the suit schedule property does not arise. The finding with the regard to the possession of the plaintiffs or defendants over the suit schedule property is only a factual issue and it has been answered by both the Courts below. The factual issues are not amenable to the jurisdiction of this Court under Section 100 C.P.C. Both the Courts below have appreciated the oral and documentary evidence. The substantial questions raised in this second appeal are only with regard to possession over suit schedule land. These questions are already answered against

the appellant and respondents, the same cannot be raised in second appeal.

8. Under these circumstances, no question of law much less substantial question of law arises in the second appeal for determination. The appeal is devoid of merit and it is liable to be dismissed.

9. In the result, the appeal is dismissed.

Miscellaneous petitions, if any, pending shall stand closed.

No costs.

Date : 11.10.2018
ssp

Dr. SHAMEEM AKTHER, J

