

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.1215 of 2013

JUDGMENT:

This appeal is filed by the second plaintiff, under section 100 CPC, assailing the judgment and decree dated 30.07.2012 passed in A.S.No.41 of 2007 on the file of IV Additional District Court, Tanuku, wherein whereby the decree and judgment dated 22.03.2007 passed in O.S.No.295 of 2000 on the file of Principal Junior Civil Judge Court, Tanuku, dismissing the suit filed by the plaintiff for perpetual injunction, was confirmed.

2. Heard the learned counsel for the appellant and perused the record.

3. For the sake of convenience, the parties will be hereinafter referred to as they were arrayed before the trial Court to avoid confusion.

4. The facts leading to filing of the second appeal are briefly as follows: It is the case of the plaintiffs that the first plaintiff is the wife and second plaintiff is the daughter of late Musalaiah, who purchased the suit schedule property under two registered sale deeds dated 26.12.1963 and 29.03.1962. Musalaiah died in the year 1982. Plaintiffs 1 and 2 have been in possession and enjoyment of the suit schedule property after the death of late Musalaiah. The second plaintiff has been residing in Bhimavaram along with her husband. While so, on 16.06.2000, the defendant without any right what so ever made an attempt to occupy the suit schedule property. Having no other alternative, the plaintiffs filed the suit seeking perpetual injunction in respect of suit schedule property.

5. The defendant filed a written statement denying all the averments made in the plaint *inter alia* contending that the suit schedule property an extent of 491 square yards with a thatched house belongs to late Musalaiah. On 15.09.1976, late Musalaiah along with his foster son Chinthapalli Satyanarayana executed a settlement deed in favour of the defendant to an extent of 221 square yards, which is part and parcel of suit schedule property. Plaintiffs 1 and 2 and Chinthapalli Satyanarayana sold remaining 270 square yards and executed an agreement of sale in favour of the defendant after receiving an amount of Rs.2,800/- on 15.01.1982. The defendant has been in possession and enjoyment of the entire suit schedule property. The plaintiffs never in possession and enjoyment of the suit schedule property. Hence, the suit is liable to be dismissed.

6. Basing on the above pleadings, the trial Court framed the following issues:

1. Whether the plaintiffs are entitled to permanent injunction as prayed for?
2. To what relief?

7. Before the trial Court, on behalf of the plaintiffs, P.Ws.1 and 2 were examined and Exs.A1 to A4 were marked. On behalf of the defendant, D.Ws.1 to 3 were examined and Exs.B1 to B3 were marked.

8. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the plaintiffs failed to prove that they are in possession and enjoyment of the property as on the date of filing of the suit, consequently, dismissed the suit. Feeling aggrieved by the judgment and decree of

the trial Court, the second plaintiff preferred A.S.No.41 of 2007 on the file of IV Additional District Court, Tanuku. The learned District Judge after reappraising the oral and documentary evidence available on record independently, arrived at a conclusion that the plaintiffs failed to prove that they have been in possession and enjoyment of the suit schedule property, more particularly, as on the date of filing of the suit and dismissed the appeal. Hence, the unsuccessful second plaintiff preferred the second appeal.

9. The substantial question of law urged by the learned counsel for the appellant is as follows:

1. Whether the trial Court has not considered the recitals of Exs.A1 to A3?
2. Whether the findings recorded by the Courts below are perverse?

Point Nos.1 and 2:

10. Point Nos.1 and 2 are intertwined with each other; hence, this Court is inclined to address both the points simultaneously in order to avoid recapitulation of facts and evidence.

11. The following admitted facts can be culled out from the pleadings. The first plaintiff is wife and the second plaintiff is the daughter of late Musalaiah, who purchased the suit schedule property under registered sale deeds, Ex.A1, A2 and A3 dated 29.03.1962, 26.12.1963 and 26.12.1963 respectively. During pendency of the suit, the first plaintiff died. During pendency of the suit, the second plaintiff sold part of the property in favour of K.V.Satyanarayana, P.W.2. The suit schedule property is an extent of Ac.0.07½ cents situated in Bokkavaripalem village, Penumantra Mandal of West Godavari District. The plaint schedule property consisting of three

items. As seen from the testimony of P.W.1, late Musalaiah has been in possession and enjoyment of the suit schedule property from the date of purchase till his death, thereafter, she has been in possession and enjoyment of the same. The defendant has taken a specific plea in the written statement that late Musalaiah and his foster son Chinthapalli Satyanarayana executed a settlement deed in his favour on 15.09.1976. Ex.B1 is the settlement deed. The defendant has taken a specific plea in the written statement that the plaintiffs and the foster son of late Musalaiah executed an agreement of sale Ex.B3 on 15.01.1982 in his favour. The plaintiffs have not filed rejoinder denying these two documents.

12. As per the testimony of P.W.1, the first plaintiff sold an extent of Ac.0.06 cents. In the cross-examination of P.W.1, it is admitted that she sold an extent of Ac.0.06 cents in favour of P.W.2. Even as per the testimony of P.W.2 remaining extent of site is only Ac.0.01½ cents. If the recitals of Ex.B1 are taken into consideration, late Musalaiah executed a settlement deed in favour of the defendant in respect of the suit schedule property. As per the recitals of Ex.B3, first plaintiff and the foster son of Musalaiah executed an agreement of sale in favour of the defendant on 15.01.1982 for an extent of 270 square yards and delivered possession of part of the suit schedule property. For one reason or the other, P.W.2 did not choose to produce the sale deed. Any sale deed executed during pendency of a suit is not legally enforceable.

13. A person, who seeks an equitable relief, has to approach the Court with clean hands. The plaintiffs are very much aware of Ex.B3 and B1 prior to filing of the suit. For the reasons best known, the

plaintiffs did not disclose about the existence of Exs.B3 and B1. This itself indicates that the plaintiffs have not approached the Court with clean hands. If the recitals of Exs.B1 and B3 are taken into consideration, the plaintiffs were never in possession of the suit schedule property, i.e. an extent of Ac.0.07½ cents. As per the testimony of P.W.1, there is a thatched house bearing Door No.2-31 in the suit schedule property. The plaintiffs have not filed any document to prove that they have been in possession and enjoyment of the thatched house. Ex.A4 is subsequent to filing of the suit, therefore, much weight cannot be attached to it.

14. On the other hand, the tax receipt filed by the defendant Ex.B2 indicates that the defendant has been paying the tax to the Gram Panchayat in respect of the thatched house bearing door No.2-31. As seen from the testimony of D.W.2, the plaintiff and her foster son executed an agreement of sale Ex.B2 in favour of the defendant. All these facts clearly reveal that the plaintiffs have not approached the Court with clean hands. Absolutely, there is no material on record to establish that the plaintiffs have been in possession and enjoyment of the suit schedule property, more particularly, as on the date of filing of the suit. The trial Court after considering the oral and documentary evidence arrived at a conclusion that the plaintiffs failed to prove that they are in possession and enjoyment of the suit schedule property as on the date of filing of the suit. The appellate Court also after reappraising the oral and documentary evidence available on record afresh, arrived at a conclusion that the plaintiffs failed to prove that they are in possession and enjoyment of the suit schedule property as on the date of filing of the suit.

15. Whether the plaintiffs are in possession and enjoyment of the schedule property is purely a question of fact. The first appellate Court is the fact finding final Court. This Court shall not lightly interfere with the concurrent finding of fact recorded by the Courts below. The findings recorded by the Courts below are based on evidence much less legally admissible evidence. The trial Court as well as the first appellate Court rightly considered the recitals of Exs.A1 to A4 in the light of the provisions of Indian Evidence Act. I am fully endorsing with the findings recorded by the Courts below. Therefore, I am unable to accede to the contention of the learned counsel for the appellant that the findings recorded by the Courts below are perverse.

16. Having regard to the facts and circumstances of the case, there is no question of law much less substantial question of law involved in this appeal. Hence, the appeal is liable to be dismissed.

17. Accordingly, the Second Appeal is dismissed at the stage of admission. There shall be no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

06.11.2018

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