

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.1204 of 2017

JUDGMENT:

This second appeal is filed by the first defendant under Section 100 of Civil Procedure Code challenging the judgment and decree dated 06.07.2017 in A.S.No.09 of 2008 on the file of the Court of II Additional District Judge, Kadapa at Proddatur, wherein and whereby the decree and judgment dated 22.11.2006 in O.S.No.24 of 2002 on the file of the Court of Senior Civil Judge, Proddatur, Kadapa District, decreeing the suit filed by the plaintiff seeking the relief of declaration and mandatory injunction in respect of suit schedule property, was confirmed.

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

3. The facts leading to filing of the second appeal are briefly as follows:

The plaintiff is the absolute owner of an extent of Ac.0.43 cents out of Ac.14.23 cents in Sy.No.663 of Yerraguntla village, which is shown as ABCDE in the plaint plan. The total extent of Ac.14.23 cents is shown as A B C L M N K J H G P Q in the plaint plan. Out of total extent of Ac.14.23 cents, the plaintiff succeeded Ac.4.10 cents from his ancestors. The first defendant was having landed property on the east of the suit schedule

property. The first defendant converted his land into plots and sold the same to defendants 2 to 7 under different sale deeds. The first defendant owned an extent of Ac.6.44 cents only, whereas, he is claiming an extent of Ac.7.44 cents. The defendants encroached the land of the plaintiff and made constructions. Hence, the plaintiff is constrained to file the suit for declaration and mandatory injunction.

4. The first defendant filed written statement denying all the averments made in the plaint *inter alia* contending that his father got an extent of Ac.7.44 cents from his ancestors. The father of the first defendant executed a relinquishment deed on 14.05.1959 in favour of the first defendant to an extent of Ac.7.44 cents. The first defendant mortgaged an extent of Ac.1.44 cents to APSFC. The vendees of this defendant perfected their title by way of adverse possession. The plaintiff filed the suit with out any right what so ever over the suit schedule property.

5. Defendants 3 and 6 filed separate written statement contending that they purchased the property from first defendant on 11.12.1997 and ever since they have been in possession and enjoyment of the said property. Defendants 4 and 5 filed a memo adopting the written statement filed by the first defendant. Defendants 2 and 7 remained exparte.

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

1. Whether the plaint plan is true and correct?
2. Whether the plaintiff is entitled for declaration of his title in respect of plaint schedule property as prayed for?
3. Whether the plaintiff is entitled for permanent injunction against the defendants?
4. Whether the plaintiff is entitled to seek mandatory injunction against the defendants?
5. Whether the plaintiff is entitled to seek possession of alleged encroached portion shown in plaint plan?
6. To what relief?

7. Before the trial Court, on behalf of the plaintiff, P.Ws.1 to 4 were examined and Exs.A1 to A19 were marked. On behalf of the defendants, D.Ws.1 to 5 were examined, Exs.B1 to B7 and C1 to C3 were marked.

8. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the plaintiff is the owner of an extent of Ac.0.43 cents in Sy.No.663 of Yerraguntla village and decreed the suit. The trial Court also granted mandatory injunction directing the defendants 2 to 7 to remove the constructions made by them in the suit schedule property. Feeling aggrieved by the judgment and decree of the trial Court dated 22.11.2006 in O.S.No.24 of 2002, the first defendant preferred A.S.No.9 of 2008 on the file of the Court of II Additional District Judge, Kadapa at Proddatur. The first appellate Court after reappraising the oral, documentary evidence and other material available on record, without being influenced by the findings recorded by the trial Court, arrived at a conclusion that the

plaintiff is entitled to the relief of declaration and mandatory injunction and consequently dismissed the appeal by confirming the decree and judgment of the trial Court. Hence, the present second appeal.

9. Heard Sri P.Veera Reddy, learned Senior counsel representing Sri V.Nitesh, learned counsel for the appellant, Sri G. Rama Sarma, learned counsel for the first respondent and perused the material on record.

10. Learned counsel for the appellant strenuously submitted that the findings recorded by the courts below are perverse, therefore, it is a fit case to allow the appeal. He further submitted that the trial Court granted the relief of declaration in favour of the plaintiff basing on the sole ground that the first defendant failed to prove that he is the owner of an extent of Ac.7.44 cents in Sy.No.663 of Yerraguntla village, which is not permissible under law. He further submitted that the courts below granted the relief of declaration in favour of the plaintiff basing on assumptions and presumptions.

11. Sri G. Rama Sarma, learned counsel appearing for the first respondent strenuously submitted that both Courts concurrently held that the first respondent is entitled for the relief of declaration and mandatory injunction basing on the oral and documentary evidence available on record. He further submitted that there is no question of law much less substantial question of law in this appeal, therefore, it is liable to be dismissed at admission stage.

12. The substantial question of law urged by the learned counsel for the appellant is:

“Whether the findings recorded by the Courts below are perverse?”

13. It is a settled principle of law that in a suit for declaration the plaintiff may succeed or fail basing on the strength and weaknesses of his own case. It is needless to say the Court cannot grant the relief of declaration in favour of the plaintiff basing on the latches or lacunae, if any, on the part of the defendants. Suffice it to say, in a suit for declaration the plaintiff has to establish his case by preponderance of probabilities. Let me consider the facts of the case on hand in the light of the above legal principle.

14. The plaintiff filed the suit seeking the relief of declaration to an extent of Ac.0.43 cents in Sy.No.663 of Yerraguntla village. As per the averments made in the plaint, the father of the plaintiff got an extent of Ac.6.10 cents in Sy.No.663 of Yerraguntla village under a partition deed dated 21.01.1970, Ex.A12. The oral testimony of P.W.1 coupled with Ex.A12 reveals that the plaintiff's father got an extent of Ac.4.10 cents in Sy.No.663 of Yerraguntla village in the family partition. The plaintiff succeeded the suit schedule property along with some other property from his father. It is not the case of the first defendant either the plaintiff's father or the plaintiff is not having any land in Sy.No.663 of Yerraguntla village. As seen from the testimony of P.W.1, the first defendant was having an

extent of Ac.6.44 cents on the east of the suit schedule property. The oral testimony of P.W.1 is supported by the testimony of P.Ws.2 and 3. P.W.4 is the advocate commissioner. The stand taken by the plaintiff is supported by oral testimony of advocate commissioner and Exs.C1 to C3. The oral testimony of P.W.1 and P.W.4 coupled with Exs.C1 to C3 supports the stand of the plaintiff that defendants 2 to 7 have encroached the suit schedule property. The oral testimony of D.Ws.1 to 5 coupled with Exs.A6 to A10, and Exs.B1 to B4 clearly reveals that first defendant executed sale deeds in favour of defendants 2 to 7 and others to an extent of Ac.6.44 cents in Sy.No.663 of Yerraguntla village.

15. The material placed before the Court clearly reveals that the father of the first defendant got an extent of Ac.6.44 cents only. A perusal of Ex.B5 reveals that the father of the first defendant executed a relinquishment deed in favour of the first defendant to an extent of Ac.7.44 cents. When the first defendant's father got an extent of Ac.6.44 cents, how he executed Ex.B5 relinquishment deed to an extent of Ac.7.44 cents is the crucial question to be considered by the Court. Except the self-served testimony of D.W.1, there is no other documentary evidence to establish the stand of the first defendant. Both courts disbelieved Ex.B5 by taking into consideration the documentary evidence available on record.

16. Even as per the testimony of D.W.1 he sold an extent of Ac.6.44 cents in favour of defendants 2 to 7. As per the

testimony of D.W.1, by the time of filing of the suit he was not in possession of an extent of Ac.6.44 cents in Sy.No.663 of Yerraguntla village. The first defendant failed to establish that he is having Ac.1.00 in Sy.No.663 apart from Ac.6.44 cents sold by him to the other defendants.

17. On the other hand, the oral and documentary evidence produced by the plaintiff clinchingly establishes that he succeeded an extent of Ac.4.10 cents in Sy.No.663 of Yerraguntla village. The suit schedule property is the part and parcel of Ac.4.10 cents. By examining P.Ws.1 to 4 and by marking Exs.A1 to A19, the plaintiff clearly establishes that he is the absolute owner of the suit schedule property. The trial Court made an observation that the first defendant was responsible for encroachment of the suit schedule property by defendants 2 to 7.

18. Defendants 2 and 7 remained ex parte before the trial Court. D2 to D7 did not file appeal challenging the decree and judgment dated 22.11.2006 in O.S.No.24 of 2002 on the file of the Court of Senior Civil Judge, Proddatur. The first defendant alone filed A.S.No.9 of 2008. Defendants 2 to 7 did not choose to file second appeal challenging the decree and judgment dated 06.07.2017 in A.S.No.9 of 2008 on the file of the Court of II Additional District Judge, Kadapa at Proddatur. If the plaintiff files execution petition (EP), the affected parties are defendants 2 to 7. For one reason or other, D2 to D7 who are the affected parties have not preferred either the first appeal or the second

appeal. The first defendant is no way affected with the decree and judgment of the trial Court or appellate Court as admittedly he was not in possession of the suit schedule property as on the date of filing of the suit. This Court is unable to understand how the first defendant alone preferred the first appeal and this second appeal. The Court shall not lose sight of these aspects.

19. If the findings of the Courts below are based on no evidence or on the evidence, which is not legally admissible, then such findings can be termed as perverse. As rightly pointed out by the learned counsel for the appellant, if the findings recorded by the Courts below are perverse, certainly this Court can interfere with the same while exercising the jurisdiction under Section 100 CPC. In the instant case, the plaintiff established his right and title over the suit schedule property by adducing oral and documentary evidence. The findings recorded by the trial Court are based on evidence much less legally admissible evidence. Both Courts have assigned cogent and valid reasons to its findings. To put it in a different way, the findings recorded by the trial Court and first appellate Court are based on legal and logical conclusions. The first appellate Court on re-appreciating the oral and documentary evidence afresh arrived at a conclusion that the plaintiff is entitled for the relief of declaration and mandatory injunction. It is needless to say that this Court shall not lightly interfere with the concurrent finding of fact recorded by the Courts below. First appellate Court is the final court so far as finding of fact is concerned. Viewed from any angle, I am unable to accept

the contention of the learned counsel for the appellant that the findings recorded by the Courts below are perverse. A perusal of the record clinchingly establishes that neither the trial Court nor the first appellate Court has granted the relief of declaration and mandatory injunction in favour of the plaintiff basing on the latches and lacunae on the part of the first defendant. On the other hand, the plaintiff himself established his right and title over the suit schedule property. There is no question of law much less substantial question of law in this appeal and the same is liable to be dismissed.

20. In the result, the second appeal is dismissed without costs at the stage of admission. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

16th January 2018
Rns

T.SUNIL CHOWDARY, J

