

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

SECOND APPEAL No. 155 of 2019

JUDGMENT:

This Second Appeal is filed challenging the judgment and decree dated 08.02.2019 passed by the learned Principal District Judge, Khammam, in A.S.No.21 of 2017 reversing the judgment and decree dated 31.08.2016 passed by the learned Senior Civil Judge, Khammam, in O.S.No.259 of 2009.

Appellant is the defendant in O.S.No.259 of 2009 filed by the respondent/plaintiff.

The parties are hereinafter referred to as arrayed in the suit.

The plaintiff filed O.S.No.259 of 2009 for grant of permanent injunction against the defendant from interfering with the suit schedule property.

It is the case of the plaintiff that the defendant executed Ex.A.3 - registered Agreement of sale-cum-General Power of Attorney dated 13.03.2001 in favour of one Gadaparthi Prabhakar Rao with respect to the suit schedule property and also delivered possession and that the said Prabhakar Rao executed Ex.A.2 - sale deed dated 15.06.2001 in favour of the plaintiff. The trial Court after taking into consideration the plea raised by

the defendant that the aforesaid AGPA was executed under duress and coercion dismissed the suit vide judgment and decree dated 31.08.2016. Aggrieved by the said judgment, the plaintiff filed A.S.No.21 of 2017 and the lower appellate Court having considered the fact that undue importance was given by the trial Court to the factum of title in the suit filed for injunction simplicitor and that there is a recital in AGPA as well as sale deed with respect to delivery of possession, decreed the suit while reversing the judgment of the trial Court.

Heard the learned counsel for the appellant as well as the learned counsel for the respondent.

There is no dispute that the suit came to be filed for injunction simplicitor, as such, the question with regard to the title at best is only required to be considered in a peripheral manner. In the trial Court, the factum of there being a sale deed executed in exercise of the powers granted by the defendant in AGPA dated 13.03.2001 in favour of GPA holder is also admitted. The defendant had pleaded in the written statement that he is in possession of the suit property, but, there is no evidence brought before the trial Court to prove the same. The trial Court did not advert to and record a finding that even in the face of the documents, Exs.A.2 and A.3, wherein the possession has been

delivered in favour of the plaintiff and her predecessor, who was holding the Agreement of sale-cum-GPA, actual physical possession was with the defendant. The lower appellate Court on appreciation of the evidence had taken into consideration Exs.A.2 and A.3 and rightly decreed the suit.

This Court can take note of the fact that AGPA is dated 13.03.2001 and the sale deed is dated 15.06.2001 and even as on date, there is no challenge to the same asserting that the said documents are void or voidable. In the circumstances and taking into consideration the fact that in the cases of open land, possession follows title, and in the absence of there being any contra evidence that has been brought on record by the defendant, this Court is of the opinion that the suit has been rightly decreed by the lower appellate Court in favour of the plaintiff. As the entire case turns on appreciation of evidence on record, there is no question of law that is required to be considered by this Court in this Second Appeal.

Accordingly, the Second Appeal is dismissed. However, it is made clear that dismissal of the Second Appeal shall not be construed as this Court in the facts of the present case has expressed any opinion with respect to the rights of the parties particularly, the right of the defendant to challenge the

documents, Exs.A.2 and A.3, in appropriate proceedings subject to the law.

Miscellaneous applications, if any pending, shall also stand dismissed.

CHALLA KODANDA RAM, J

17th JULY, 2019.

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