

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

SECOND APPEAL No. 154 of 2019

JUDGMENT:

The respondent-plaintiff filed O.S.No.35 of 2012 in the Court of the Principal Junior Civil Judge, Gadwal, for the relief of perpetual injunction restraining the appellant-defendant from interfering with his peaceful possession and enjoyment over the suit schedule property. He claimed right over the suit schedule property through Ex.A.1-Registered Will Deed, dated 15.03.1993.

The trial Court after considering the evidence on record, particularly Ex.A.1, categorically found that the respondent is in possession of the suit schedule property and thereby, decreed the above said suit. Aggrieved by the same, the appellant filed A.S.No.17 of 2015 in the Court of III Additional District Judge, Gadwal. While dealing with the contention of the appellant that Ex.A.1 was not proved as per the provisions of the Indian Evidence Act (for short 'the Act'), the lower appellate Court observed that in a suit for injunction, what is required to be considered is possession and the respondent proved his possession and there is nothing contra to come to a different conclusion and dismissed the appeal suit.

Learned counsel for the appellant would submit that Ex.A.1 cannot be said to be proved as per the provisions of the Act as in the judgment of the Court below, there was no discussion with respect to Ex.A.1 in the examination of witnesses. He would further submit that

the observations made in the judgments may be put against the appellant in the partition suit, being O.S.No.137 of 2013 on the file of the Senior Civil Judge, Gadwal. He would also submit that the entries in the revenue records which came into existence on account of the mutation of the property in the name of the respondent are only on account of Ex.A.1. Therefore, he prays for consideration of the matter in view of the substantial questions of law raised in the second appeal.

Having considered the above submissions, having regard to the fact that the suit for injunction simplicitor came to be decreed by the trial Court after finding categorically that the respondent was in possession of the suit schedule property and the said finding stands confirmed by the lower appellate Court, based on the evidence, as the findings of both the Courts below are concurrent, there being no question raised with regard to the perversity of finding of fact in the second appeal and there being no material before this Court to come to a different conclusion with respect to the possession, the second appeal does not deserve consideration. However, the grievance of the appellant with respect to the findings recorded by the Courts below with respect to Ex.A.1 as well as possession needs to be clarified, particularly, considering the fact that O.S.No.137 of 2013 for partition is pending.

From a perusal of the judgments of the Courts below, it is clear that there is no discussion with regard to the validity or otherwise of Ex.A.1 as required under law, as rightly contended by

the learned counsel for the appellant. However, the observations made in the judgments of the Courts below with respect to Ex.A.1 shall not be treated as conclusive, as admittedly, the issue with respect to Ex.A.1 is under consideration in O.S.No.137 of 2013. Further, in respect of the entries in the revenue records are concerned, admittedly, the land was agricultural land and the mutation said to have been made with regard to the ownership might have been made based on the acquisition of title through Ex.A.1. So far as possession is concerned, it is required to be recorded from year to year. These aspects were not questioned either before the trial Court or before the lower appellate Court. In view of the same, the findings recorded by the Courts below with respect to the possession have become final.

Subject to the above, the second appeal is dismissed.

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

CHALLA KODANDA RAM, J

Dt:26.07.2019

Note: Issue cc in one week.
kdl