

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

SECOND APPEAL No.204 of 2019

JUDGMENT:

The facts, which are not in dispute, are that originally, plaintiff is the owner of land to an extent of Acs.6.02 guntas in Survey No.1/AA, and later, out of the said land, she sold an extent of Acs.5.00 guntas of land to the defendants, who in turn converted and developed the same into house-sites. On the ground that the defendants were encroaching into the remaining extent of Ac.1.02 guntas of land, she filed O.S.No.82 of 2010 seeking perpetual injunction. The trial Court after taking into consideration the evidence adduced decreed the suit. On appeal, the lower appellate Court confirmed the same. Hence, the defendants filed this Second Appeal.

Learned counsel for the appellants/defendants would submit that the Courts below erred in appreciating the document dated 06.02.1998, which is said to be an undertaking given by the respondent/plaintiff in favour of the appellants, in proper prospective, as according to the said document, possession of the property was admitted to be with the appellants. He would further submit that Exs.A.3 to A.10 - pahanies relate to the land to an extent of Acs.6.02 guntas notwithstanding the undisputed and

admitted fact that Acs.5.00 of land was already sold to the appellants, who in turn, converted and developed the same into house-sites and that as per Exs.A.3 to A.10, it was shown to be an agricultural land, as such, they could not have been relied upon for the purpose of coming to the conclusion with respect to the possession thereof. He would also submit that there is interpretation of the document dated 06.02.1998, which is styled as an undertaking, under which, the land to an extent of Ac.0.16 guntas with specific boundaries was sold in favour of the appellants for valuable consideration. Elaborating on the same, by placing reliance on the judgment of the Apex Court in **Narbada Devi Gupta v. Birendra Kumar Jaiswal and another**¹, the learned counsel would urge that contents of the document dated 06.02.1998 need not be independently proved inasmuch as signature thereon was admitted. However, as per the said document, the appellants are in possession and this aspect further gets support from the very fact that the respondent herself sought demarcation of the land by approaching the revenue authorities, as evident from Ex.A.14 – memo dated 15.06.2009 issued by the authorities of the Survey and Boundaries Department. The learned counsel would also place reliance on the judgment of the

¹ (2003) 8 Supreme Court Cases 745

Hon'ble Supreme Court in **Uma Pandey v. Munna Pandey**² to support his contention that when there is a dispute with regard to the interpretation of a document, the same would constitute a substantial question of law. Passionately, he pleads that in those circumstances, this Second Appeal deserves to be admitted and considered.

On the other hand, learned counsel, who is on caveat, appearing for the respondent, would assert that Ex.D.1 is only the signature of the plaintiff on the alleged document dated 06.02.1998 and not the document *per se*. Elaborating on the same, he would submit that the alleged document is styled as an undertaking and is purported to pass on title, right and possession to the appellants and that it was not part of the record as no evidence was tendered by the defendants in regard to the same. It is only to the extent of the respondent's signature on the document dated 06.02.1998, the cross-examination was conducted and the respondent admitted with respect to her signature only. He would further submit that if the alleged document is purported to be treated as a sale deed, it is required to be adequately stamped and that no property rights would pass on in favour of the appellants as the alleged document was neither independently stamped nor registered. He would also

² 2018 SCC OnLine SC 340

submit that the Courts below by taking into consideration the evidence adduced with respect to the possession and there being no dispute with respect to the title of the respondent, had rightly decreed the suit and as both the Courts below have concurrently found that the appellants had no right or title over the subject land, rightly granted injunction and the same does not call for interference by this Court and that there is no question of law, much less, substantial question of law, arising for consideration in the Second Appeal, as contended by the learned counsel for the appellants.

Having considered the respective submissions, in the case on hand, the crucial aspect that is required to be considered is validity or otherwise of Ex.D.1 – signature on the alleged document dated 06.02.1998. There is no dispute that the said document was not tendered by the appellants along with the written statement nor there was any mention in the written statement in respect thereto. For the first time, the said document was sought to be brought on record by confronting the respondent during the cross-examination that too with respect to the signature. In other words, as the document was never the part of evidence or record, the question of considering the same never arose. The contents of the said document were neither proved nor

put to test before the Courts below. However, the judgment of the Apex Court in **Uma Pandey (2 supra)** relied on by the learned counsel for the appellants in support of his contention that when there is a dispute with regard to interpretation of the alleged document, the same would constitute a substantial question of law, does not merit consideration, as there is no document in the case on hand to be interpreted. Likewise, so far as the judgment of the Apex Court in **Narbada Devi Gupta (1 supra)** is concerned, the same is distinguishable on facts as in the said judgment, the documents, which were doubted by the trial Court, were accepted by the lower appellate Court for the documents were on record, and as a matter of fact, the defendants therein had filed the same and marked as exhibits during trial of the case, unlike in the present case. In the circumstances, the observations made in the said judgment do not in any way help the case of the appellants before this Court.

Further, both the Courts below found that the respondent has title and possession with respect to the total extent of the land. In the circumstances, the fact remains that extent of the land sold by the respondent to the appellants is only Acs.5.00 guntas, which in turn was converted and developed into house-sites by the appellants, and Ac.1.02 guntas still remains as an agricultural

land. Merely because necessary changes were not adopted by the appellants by approaching the authorities that the said land has become non-agricultural land, it does not disprove the assertion of the respondent that an extent of Ac.1.02 guntas remained as an agricultural land. Further, reliability of Exs.A.3 to A.10 coupled with the fact that title over the subject land had clearly vested in the respondent supports the case of the respondent in all respects.

Viewed from any angle, there is no question of law, much less any substantial question of law, arising for consideration in the Second Appeal.

Accordingly, the Second Appeal is dismissed.

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

CHALLA KODANDA RAM, J

19th JULY, 2019.

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