

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.585 OF 2000

JUDGMENT:

This appeal, under Section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C'), is filed by the appellant/plaintiff aggrieved by the judgment and decree, dated 01.04.2000, rendered in A.S.No.305 of 1996 on the file of II Additional Chief Judge, City Civil Court, Hyderabad.

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

3. In spite of service of notice, there is no representation for the respondent/defendant.

4. Appellant herein is the plaintiff, whereas the respondent herein is the defendant in the Original Suit.

5. For the sake of convenience, the parties hereinafter are referred to as arrayed in the Original Suit before the trial Court.

6. The averments in the plaint are that the plaintiff is the absolute owner and possessor of the plaint schedule property, which is a house bearing No.3-2-844/1 admeasuring 33.94 square yards, situated at Motilal Nehru Nagar, Kachiguda, Hyderabad. Originally the subject property belongs to her husband K.Rajaiah, who gifted the same to her under a registered settlement deed, dated 19.07.1991, and ever since she became the owner of the subject property. The said

property is situated in a slum area and slum certificate was also issued to that effect by the authorities concerned.

The defendant is younger brother of husband of the plaintiff. On 10.03.1988, the defendant requested the plaintiff and her husband to permit him to stay in a room of their house on rent till he secures an accommodation. The defendant permanently occupied the said property with a *mala fide* intention. The plaintiff got issued a legal notice to the defendant calling upon him to vacate the room. The defendant sent reply notice with all false allegations stating that he is residing in house bearing No.3-2-844/1/A, which belongs to him and that he is not residing in the house bearing No.3-2-844/1. The defendant has no title over the subject property. Hence, the plaintiff filed the aforesaid Suit for declaration of title, recovery of possession from the defendant and for costs.

7. The defendant filed written statement denying the plaintiff's title over the subject property. It is stated that the plaintiff and her husband have colluded together and brought into existence the collusive registered gift deed to claim the subject property. It is also submitted that one Lingaiah and Kistaiah are the sons of Bala Lingaiah. They are brothers of mother of K.Rajaiah and the defendant. To eke-out their livelihood, they came to Hyderabad and being rickshaw pullers erected huts on the government land and stayed therein for

several years. The hut of Lingaiah was given House No.3-2-844/1/A, whereas the hut of Kistaiah was given House No.3-2-844/1. The mother of K. Rajaiah/husband of the plaintiff and the defendant, along with her children, came to Hyderabad and stayed with her brothers Lingaiah and Kistaiah. Kistaiah had given his daughter i.e., the plaintiff to K.Rajaiah and also a portion of the house bearing No.3-2-844/1, consists of one room which was in his occupation, and now in occupation of the plaintiff and her husband. Lingaiah sold his house bearing No.3-2-844/1/A to the defendant on 13.11.1989 for a consideration of Rs.800/- and since then he has been in possession and enjoyment of the said house as absolute owner. The defendant admitted the receipt of notices issued on behalf of the plaintiff. It is also stated that the plaintiff and her husband, having kept quiet for several years, filed the present Suit with false allegations to grab the subject property.

8. Based on the above pleadings, the trial Court settled the following issues:

“1. Whether the plaintiff is entitled for declaration and possession of the suit house?

2. Whether the defendant is exclusive owner and possessor of the suit premises?

3. Relief to what extent?”

9. During trial, on behalf of the plaintiff, PWs.1 to 4 were examined and got marked Exs.A1 to A6. On behalf of the

defendant, DWs.1 and 2 were examined and Exs.B1 to B13 were marked.

10. The trial Court, after considering the oral and documentary evidence available on record, by judgment and decree, dated 15.10.1996, decreed the suit of the plaintiff and directed the defendant to deliver possession of the room, in which he is staying, within a period of one month from the date of that Judgment, failing which the plaintiff is at liberty to get the same through the process of Court.

11. Aggrieved by the said judgment and decree, the defendant preferred A.S.No.305 of 1996 before the II Additional Chief Judge, City Civil Court, Hyderabad.

12. The first appellate Court, after hearing both sides, framed the following points for determination:

“1. Whether the respondent/ plaintiff is entitled for declaration of her title to the suit property and for possession of the same?

2. To what relief?”

13. The first appellate Court, having examined the oral and documentary evidence, allowed the appeal setting aside the judgment and decree, dated 15.10.1996 passed in O.S.No.4958 of 1992 by the VII Assistant Judge, City Civil Court, Hyderabad.

Aggrieved by the same, the present appeal is filed by the plaintiff.

14. There cannot be any dispute that, under the amended Section 100 of C.P.C., a party aggrieved by the decree passed by the first appellate Court has no absolute right of appeal. He can neither challenge the decree on a question of fact or on a question of law. The second appeal lies only where the High Court is satisfied that the case involves a substantial question of law. The word 'substantial' as qualifying 'question of law', means and conveys of having substance, essential, real, of sound worth, important, considerable, fairly arguable. A substantial question of law should directly and substantially affect the rights of the parties. A question of law can be said to be substantial between the parties, if the decision in appeal turns one way or the other on the particular view of law. But, if the question does not affect the decision, it cannot be said to be substantial question between the parties. Recording a finding without any evidence on record; disregard or non-consideration of relevant or admissible evidence; taking into consideration irrelevant or inadmissible evidence; perverse finding – are some of the questions, which involve substantial questions of law.

15. Learned counsel for the appellant/plaintiff would contend that the appellant/plaintiff has title to the suit schedule property; that the respondent/defendant was allowed to stay in the property; that without there being any justification, the first

appellate Court denied the title and possession of the appellant/plaintiff over the disputed property; that the substantial question relates to Ex.A.1 in this case; that the first appellate Court disbelieved Ex.A.1, registered sale deed, dated 19.07.1991, and set aside the judgment and decree, dated 15.10.1996, in O.S.No.4958 of 1992 passed by the VII Assistant Judge, City Civil Court, Hyderabad, and ultimately prayed to set aside the impugned judgment and decree and restore the judgment and decree of the trial Court.

16. Admittedly, the present suit is filed for declaration of title in respect of the suit schedule property and recovery of possession. Ex.A.1 is a registered sale deed to substantiate the title and lawful possession of the appellant/plaintiff over the suit schedule property. Ex.A.1 is in between the husband of the appellant/plaintiff and the appellant/plaintiff only. The other documents filed on behalf of the appellant/plaintiff are Ex.A.2-Slum Certificate, Ex.A.3-copy of legal notice, dated 24.09.1991, Ex.A.4-copy of reply notice, dated 10.10.1991, Ex.A.5-letter, dated 03.10.1994 issued by the Assistant Commissioner, Circle 3, MCH and Ex.A.6-xerox copy of Judgment in O.S.No.1524/72 on the file of VII Assistant Judge, City Civil Court, Hyderabad.

17. As seen from Ex.A.6, the dispute in between the parties therein was not determined and suit was dismissed. In the said judgment, it is held that the appellant/plaintiff failed to produce the sale deed, under which her father-in-law's father had

purchased the said site. It is also the case of the appellant/plaintiff that she owned lands and thereafter purchased the disputed property along with some other adjoining properties. There is no single document to substantiate the same. After death of her father-in-law, her husband acquired the same. Thereafter, the same was bequeathed to the appellant/plaintiff herein. But, there is no single document to establish the title as set up by the appellant/plaintiff. Ex.A.1 is a registered sale deed in between the appellant/plaintiff and her husband. Even there are no revenue records from the municipality concerned to show the possession of the appellant/plaintiff or her predecessor-in-title at any point of time. Further, there is no certificate showing the ownership of the appellant/plaintiff and her husband etc. The flow of title, as contended by the appellant/plaintiff, has not been established. Ex.A.1 is not at all helpful to the appellant/plaintiff to establish her ownership over the property. The first appellate Court had appreciated all the facts and circumstances in a right perspective.

18. Moreover, the questions sought to be raised in this appeal as substantial questions of law are pure questions of fact, which cannot be dealt with in this appeal filed under Section 100 of C.P.C. Where the first appellate court, being the last Court of facts, is shown to have exercised its discretion in a judicial manner, it cannot be termed to be an error, either of law or of

procedure, requiring interference in a Second Appeal. The findings of the first appellate Court are not perverse. There is nothing to take a different view. The first appellate Court has neither overlooked the admissible evidence nor acted upon inadmissible evidence. After careful examination of the pleadings, evidence and the contentions, this Court finds that no question of law, much less substantial question of law, is involved in this Second Appeal. The appeal is devoid of merit and is liable to be dismissed.

19. Accordingly, the Second Appeal is dismissed confirming the judgment and decree, dated 01.04.2000, rendered in A.S.No.305 of 1996 on the file of II Additional Chief Judge, City Civil Court, Hyderabad. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

Dr. SHAMEEM AKTHER, J

APRIL 22, 2019
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THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER



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Date:22.04.2019

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