

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.372 of 2019

JUDGMENT:

This Second Appeal, under Section 100 of the Code of Civil Procedure, 1908, is filed by the appellant/defendant No.2, challenging the decree and judgment, dated 28.10.2019, passed in A.S.No.5 of 2017, by the Senior Civil Judge, Shadnagar, whereby, the decree and judgment, dated 28.02.2017, passed in O.S.No.236 of 2006, by the Principal Junior Civil Judge, Shadnagar, was confirmed.

2. Heard the learned counsel for the appellant/defendant No.2 and perused the record.

3. The appellant herein is the defendant No.2, the respondent No.1 herein is the plaintiff and the respondent No.2 herein is the defendant No.1 before the trial Court. The respondent No.2 herein/defendant No.1 died and as such, the suit against her is abated. The parties are hereinafter referred to, as per their array before the trial Court.

4. The plaintiff filed a suit for perpetual injunction restraining the defendants from interfering with his peaceful possession and enjoyment over the suit schedule property, i.e., land admeasuring Acs.1.35 guntas in survey No.420/A situated in the limits of Veerlapally Village, Kothur Mandal, Mahabubnagar District, contending as follows:

“The defendant No.1 is the natural mother of the defendant No.2. The defendants are the vendors of the plaintiff. The plaintiff is the absolute owner and possessor of the land admeasuring Acs.1.35 guntas in survey No.420/A situated in the limits of Veerlapally Village, Kothur Mandal, Mahabubnagar District, bounded by EAST: Jagannath Oil Mill, WEST: Land of Laxma Reddy, NORTH: Land of G.Venkataiah (defendant no.2) and SOUTH: Land of Ramdev Reddy. The plaintiff purchased the suit land from the defendant No.1 under a registered sale deed bearing document No.2522/2002, dated 27.05.2002, for valid consideration and got its physical possession on the same day. The defendant No.2 signed as a witness to the said sale deed. Ever since the date of purchase, the plaintiff is in possession and enjoyment of the suit land. The defendant No.2 is having his land on the northern side of the suit land. The market value of the land in the location of suit land increased abnormally in recent days. Taking advantage of the same, the defendants started interfering with peaceful possession and enjoyment of the plaintiff over the suit land. The defendant No.2, taking advantage of his land adjoining to the suit land, is frequently trying to encroach into the suit land. The plaintiff many times respectfully advised the defendants to avoid such illegal acts, but in vain. On 22.8.2006, when the plaintiff came to the suit land, the defendants tried to encroach the suit land from its northern side, but the plaintiff could resist the same. Hence he is constrained to file the present suit.

5. The defendants filed written statement contending as follows:

“The plaintiff has purchased the suit land from the defendant No.1 under a registered sale deed, vide document No.2522/2002, dated 27.05.2002. The plaintiff was not put in physical possession of the same. So far, the plaintiff has not taken the physical possession of the suit land as per the boundaries shown in the registered sale deed. The defendant No.2 is the absolute owner and possessor of the land in an extent of four acres in Survey No.420, having purchased the same from its original owner K.Ananthaxmi Devi through a registered sale deed bearing document No.680/1978, for a valid sale consideration. The defendant No.2 is in possession and enjoyment of the said land since the date of purchase. The said land is bounded by EAST: Survey No.418, WEST: Survey No.421, NORTH: land of vendor and SOUTH: Survey No.423/1. The suit land is situated on the Northern side of the land of the defendant No.2. The plaintiff is trying to occupy the land of the defendant No.2 with wrong boundaries. The plaintiff has not identified his land under the registered sale deed and did not take possession of the same as per the boundaries of the sale deed. The plaintiff has filed the present suit without coming into physical possession of the suit land. The plaintiff has not filed any panchanama showing that he is in possession of the suit land as per the boundaries shown thereon. The plaintiff has filed the present suit by suppressing the real facts. The plaintiff is trying to occupy the land of the defendant No.2 under the guise of the

wrong boundaries. The plaintiff has not approached the Court with clean hands. The plaintiff is not entitled for the equitable relief of injunction against the defendants. There is no cause of action to file the present suit. The plaintiff cannot seek injunction against the defendants. The defendants never interfered with the suit land. When the plaintiff is not in possession and enjoyment of the suit land, he has no *locus standi* to seek injunction against the adjacent land owners. The plaintiff has to prove his possession and enjoyment as on the date of filing of the suit. The plaintiff has not filed any panchanama, through which he was put in possession of the suit land and he has not filed any Cultivation Certificate from the Mandal Revenue Office, showing that as on the date of filing of the suit, he is in possession of the suit land and raised crops therein. Thus, the plaintiff has failed to prove his possession and enjoyment over the suit land as on the date of filing of the suit. The defendants never threatened the plaintiff with dire consequences. The suit is liable to be dismissed.

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

1. Whether the plaintiff is in possession and enjoyment of the suit land as on the date of the Suit?
2. Whether the plaintiff is entitled for relief of perpetual injunction?
3. To what relief?

7. On behalf of the plaintiff, P.Ws.1 and 2 were examined and Exs.A.1 to A.9 were marked. On behalf of the defendants,

the D.Ws.1 and 2 were examined and Exs.B.1 to B.16 were marked.

8. On merits, the trial Court decreed the suit with costs, granting perpetual injunction in favour of the plaintiff, restraining the defendant No.2 from interfering with the peaceful possession and enjoyment of the plaintiff over the suit land.

9. Aggrieved by the said decision of the trial Court, the appellant/defendant No.2 preferred appeal in A.S.No.5 of 2017 before the first appellate Court. The first appellate Court, after re-appreciating the entire evidence on record, dismissed the appeal by confirming the judgment and decree of the trial Court. Aggrieved by the same, the appellant/defendant No.2 preferred this Second Appeal.

10. The Second Appeal is sought to be admitted on the following substantial questions of law:

- A. Whether the plaintiff is entitled for grant of perpetual injunction without proving his possession and enjoyment as on the date of institution of the suit?
- B. Whether the judgments of the Courts below are valid when the plaintiff himself did not identify his land under the Ex.A.1 and not came into possession as per the boundaries of the sale deed?
- C. Whether the plaintiff who is not in possession of the suit land, has locus standi to seek injunction against the adjacent land owners?

11. 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.

12. The learned counsel for the appellant/defendant No.2 would contend that when the respondent No.1/plaintiff failed to prove his possession and enjoyment over the suit land as on the date of filing of the suit, he is not entitled to seek the equitable relief of perpetual injunction. There is no material to substantiate the possession of the respondent No.1/plaintiff over the suit land. Even then, the trial Court was pleased to grant the relief of perpetual injunction in favour of the respondent No.1/plaintiff, which is erroneous and ultimately prayed to set aside the judgment and decree under challenge and allow the Second Appeal as prayed for.

13. The material placed on record reveals that the original suit is filed by the plaintiff for perpetual injunction restraining the defendants from interfering with his peaceful possession over the suit land. The defendant No.2 was unsuccessful before the trial Court. The appeal filed by him was also dismissed, confirming the judgment and decree of the trial Court. It is the case of the appellant/defendant No.2 that the respondent No.1/plaintiff is not in the possession of the suit schedule property and as such, he has no *locus standi* to seek injunction against the adjacent land owner. Ex.A.1 is the registered sale deed, dated 27.05.2002, executed by the defendant No.1 (deceased mother of the appellant/defendant No.2) in favour of the respondent No.1/plaintiff. The appellant/defendant No.2 is the attester to Ex.A.1. Clause 4 of page 3 of Ex.A.1 reveals that the vendor (defendant No.1) has put the vendee (plaintiff) in physical possession of the suit land on the date of execution of Ex.A.1 sale deed. When the defendants themselves alienated the suit land in favour of the plaintiff by executing Ex.A.1 registered sale deed and delivered physical possession to the plaintiff, they cannot contend that the plaintiff is not in physical possession of the suit land. Further, P.W.1 (plaintiff) categorically stated in his cross-examination that after obtaining Ex.A.1 registered sale deed, the possession of the suit land was delivered to him by defendant No.1 and the factum of delivery of possession was mentioned in Ex.A.1 registered sale deed itself. Ex.A.2 is the pattadar pass book, Ex.A.3 is the Encumbrance Certificate, dated

31.08.2006, Ex.A.4 and Ex.A.5 are the certified copies of ROR for the year 1989-90 and Ex.A.6 and Ex.A.7 are the pahanies for the years 2006 to 2008. Ex.A.8 and Ex.A.9 are the pahanies for the years 2009 to 2011. All these documents reveal the ownership and possession of the suit land by the respondent No.1/plaintiff. Ex.B.1 and Ex.B.2 are the sale deeds showing purchase of land by the defendant Nos.1 and 2 from their vendors and there is no dispute with regard to the same. Ex.B.3 and Ex.B.4 are the sale deeds through which the appellant/defendant No.2 alienated some part of the land to other persons. Ex.B.5 to Ex.B.16 are the certified copies of pahanies and ROR extracts. The documentary evidence under Ex.B.3 to B.16 nowhere disprove the ownership and possession of the suit land by the respondent No.1/plaintiff. On the other hand, the documentary evidence under Ex.B.1 and B.2 coupled with Ex.A.1 registered sale deed executed by defendant No.1 in favour of the respondent No.1/plaintiff to which, the appellant/defendant No.2 was the attestor, clinchingly establishes the lawful possession of the suit land by the respondent No.1/plaintiff. Both the Courts below recorded concurrent findings while negating the defence set up by the appellant/defendant No.2. The general rule is that High Court will not interfere with concurrent findings of the Courts below, except in the cases where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts below have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden

of proof. The words 'decision based on no evidence', not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding. No such conclusions are possible in the subject judgments rendered by both the Courts below in favour of the plaintiff. The questions sought to be raised in this Second 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 lower appellate court 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 lower appellate Court are not perverse. There is nothing to take a different view. The lower 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.

14. In the result, the Second Appeal is dismissed *in limine*. No costs.

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

20th December, 2019
Bvv

Dr. SHAMEEM AKTHER, J