

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

SECOND APPEAL No. 1377 OF 2018

JUDGMENT:

It is the case of the respondents that originally, late Durgaiah, who is the husband of respondent Nos.1 and 2 and father of respondent Nos.3 to 8, purchased an extent of 1452 square yards of land through a registered sale deed, dated 13.07.1961. With respect to an extent of 0.03 guntas from out of the said 1452 square yards of land, one Bollam Ramaswamy and his brothers filed O.S.No.36 of 1967 on the file of the Principal Munsif Magistrate, Warangal, against the said Durgaiah, for the relief of perpetual injunction and the learned Magistrate answered the issue 'whether Durgaiah holds title to the said property?' against the plaintiffs therein and in favour of the said Durgaiah holding that the suit schedule property belongs to him. After the death of Durgaiah, his son, who is respondent No.3 herein, filed O.S.No.897 of 2001 against Bollam Anand Rao and three others and withdrew the same on 06.04.2004. Thereafter, Sri Bollam Ratnam, who is plaintiff No.3 in O.S.No.36 of 1967, executed a sale deed with respect to 100 square yards of land in favour of appellant No.1 herein. Thereupon, the respondents herein filed O.S.No.543 of 2004 in the Court of II Additional Junior Civil Judge, Warangal, for perpetual injunction and recovery of possession with respect to 100 square yards of land.

The appellants-defendants filed a written statement opposing the said suit. It was pleaded that they are in possession and enjoyment of the land admeasuring 100 square yards and that the

respondents-plaintiffs are aware of the fact that their vendor had constructed a house in the said land. Therefore, they prayed for dismissal of the suit.

The trial Court framed the following issues for its consideration:

- (1) Whether the suit schedule property and shown in yellow colour in plaint plan belonged to plaintiffs as alleged by them?
- (2) Whether the defendant forcibly occupied the suit schedule property and shown in yellow colour in the plaint plan as alleged by the plaintiffs?
- (3) Whether the plaintiffs are entitled to recovery of possession and enjoyment as prayed for?
- (4) Whether the plaintiffs are entitled to permanent injunction as prayed for?

On behalf of the respondents-plaintiffs, P.W.1 was examined and Exs.A.1 to A.5 were marked. On behalf of the appellants-defendants, D.Ws.1 to 3 were examined and Exs.B.1 to B.24 were marked.

The trial Court having found that 100 square yards of land is a part of the land admeasuring 1452 square yards and having regard to the fact that title over the land admeasuring 0.03 guntas, which forms part of 1452 square yards, was declared in favour of Durgaiah, decreed O.S.No.543 of 2004.

Aggrieved by the same, appellant No.1 herein filed A.S.No.112 of 2010 in the Court of II Additional District Judge,

Warangal. The lower appellate Court framed the following points for its consideration:

- (1) Whether the plaintiffs are entitled to recover possession of the suit schedule property from the defendant?
- (2) Whether the plaintiffs are entitled to permanent injunction?
- (3) Whether the trial Court's judgment and decree, dated 11.08.2010, are sustainable in law and under the facts?

As appellant No.1 died, appellant Nos.2 to 4 were brought on record as his legal representatives.

The lower appellate Court dismissed the appeal through judgment, dated 29.06.2018, confirming the judgment of the trial Court. Questioning the same, the appellants filed this second appeal.

The following point arises for consideration in this Second Appeal:

“Whether the suit for recovery of possession is maintainable without seeking the relief of declaration in respect of the suit schedule property?”

Virtually, there being no dispute with respect to the facts. Both the Courts below found that the respondents are the owners and possessors of the property in issue i.e., 100 square yards, which forms part of 1452 square yards of land. There is no dispute that on an earlier occasion, O.S.No.36 of 1967 was filed for perpetual injunction and the same was dismissed holding that Durgaiyah is the owner of 0.03 guntas which forms part of 1452 square yards.

It is specifically contended by the learned Senior Counsel for the respondents that in O.S.No.36 of 1967, there is already declaration of title, as such, there is no requirement of separately seeking the relief of declaration of title over the suit schedule property. So far as the suit for recovery of possession being maintainable without seeking a decree of cancellation of registered sale deed is concerned, the respondents-plaintiffs are not parties to the said document and the same does not bind on them. In the circumstances, the respondents do not require to seek cancellation of the registered sale deed as the same does not bind on them in any manner with respect to the property in issue. Therefore, the question is answered against the appellants-defendants and in favour of the respondents-plaintiffs.

For the aforesaid reasons, this Court does not find any question of law, much less, a substantial question of law arises for adjudication in the present Second Appeal.

The Second Appeal is accordingly dismissed.

Miscellaneous petitions, if any, pending shall also stand dismissed. There shall be no order as to costs.

CHALLA KODANDA RAM, J

Dt:05.07.2019

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