

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

SECOND APPEAL No. 1279 of 2017

JUDGMENT:

The case of the appellant-plaintiff is that he purchased land admeasuring 443.33 square yards situated at Saradhinagar, Khammam Town, and constructed two rooms with asbestos sheet roof and that without any right, the respondents-defendants are interfering with his peaceful possession and enjoyment of the same, as such, he filed O.S.No.572 of 2009 in the Court of the Principal Junior Civil Judge, Khammam, for the relief of perpetual injunction. The respondents-defendants filed a written statement denying the averments in the plaint. The trial Court framed the following issue for its consideration:

“Whether the plaintiff is entitled for permanent injunction??

During the course of trial, the appellant himself was examined as P.W.1 and examined P.W.2 on his behalf and marked Exs.A.1 to A.9. Respondent No.1 himself was examined as D.W.1 and examined D.W.2 on his behalf and marked Exs.B.1 to B.13. Exs.C.1 to C.3 were marked in the evidence of D.W.2.

The trial Court after taking into consideration the evidence on record decreed the suit *vide* judgment dated 25.09.2013. Aggrieved by the same, the respondents filed A.S.No.53 of 2014 in the Court of Family Court-cum-VI Additional District Judge, Khammam. The lower appellate Court after re-appreciating the evidence came to the conclusion that the appellant failed to prove his, *prima facie*, title and

possession over the suit schedule property and the decree passed by the trial Court was not in order, thereby, allowed the Appeal Suit setting aside the judgment of the trial Court. Hence, this Second Appeal.

Learned counsel for the appellant submits that Ex.A.8 - unregistered simple sale agreement dated 19.03.1982, by which, the appellant claimed right over the suit schedule property, was impounded subsequently and the same can be relied on for collateral purpose to establish the possession of the appellant.

Having considered the submissions of the learned counsel for the appellant, at the outset, it may be noted that based on Ex.A.8, the appellant is claiming right in the open land admeasuring 210 square yards in Survey Nos.187 and 188 and it is adjacent to the property purchased under Ex.B.9-certified copy of registered sale deed dated 22.09.1982. The property claimed by the appellant, as mentioned in the plaint schedule, is two rooms with asbestos sheet roofs bearing H.No.1-3-67/A and open land admeasuring 443.33 square yards, thereby, it gives an impression that there is a two rooms house in addition to open land admeasuring 443.33 square yards. From a perusal of Ex.A.1 - property tax receipts 2 in number; Ex.A.2 - electricity bills 2 in number; Ex.A.3 - six photographs along with negatives; Ex.A4 - notice issued by the Commissioner, Municipal Corporation, Khammam to P.W.1; Ex.A.5 - property tax receipts 2 in number for the year 2006-07; Ex.A6 - property tax receipt two in number and Ex.A.7 - property tax demand notice,

dated 17.05.2006, it is clear that they relate to the aforesaid house and not in relation to the open land. There is no dispute with respect to Ex.A.9. The only document which establishes a semblance of title in favour of the appellant is Ex.A.8, which is an unregistered agreement of sale, whereas the respondents successfully established their *prima facie* right and title based on Ex.B.1, registered sale deed dated 15.09.2009. The other documents, Exs.B.2 to B.5, B.8 and B.12 - certified copies of registered sale deeds, Ex.B.9 - gift settlement deed and Ex.B.13 - sale deed, are in connection with Ex.B.1 with respect to either tracing the title or establishing the boundaries. Except Ex.A.8, there is nothing else for establishing the possession of the appellant. Therefore, the lower appellate Court on proper appreciation of the evidence on record rightly came to the conclusion that the appellant failed to establish his possession over the suit schedule property.

In the light of the above and there being no question of law, much less any substantial question of law arises for consideration, the Second Appeal is dismissed. However, as the appellant filed the suit for injunction simplicitor, subject to his right in law, it is open to him to seek declaratory relief with respect to the suit schedule property.

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

CHALLA KODANDA RAM, J

Dt:22.08.2019
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