

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

SECOND APPEAL No. 1688 OF 2018

JUDGMENT:

It is the case of the appellant that he sold the suit schedule property in favour of respondent No.1 for a consideration of Rs.62,000/- and thereby, executed sale deeds, dated 26.03.1998 and 24.03.2000 respectively, in his favour. However, respondent No.1 failed to pay the sum as agreed, as such, the appellant executed cancellation deeds dated 17.08.2002 after issuing a legal notice. He states that he is in possession of the suit schedule property and that mutation was not effected in favour of respondent No.1. While the matter stood thus, the respondents are interfering with his peaceful possession and enjoyment over the suit schedule property, as such, the appellant filed O.S.No.144 of 2003 against the respondents in the Court of Principal Junior Civil Judge, Huzurabad, for injunction simplicitor.

The respondents-defendants filed a written statement stating that respondent No.1 purchased the suit schedule property from the appellant and paid the entire sale consideration under Exs.B1 and B2; that the name of respondent No.1 was mutated in the revenue records and was also issued pattadar pass book; that he was in possession of the suit schedule property since the date of purchase; that he being the true owner, no injunction can be granted in favour of the appellant and that the assertion of the appellant that he is in possession of the suit schedule property is not correct.

The trial Court framed the following issues for its consideration:

- (1) Whether the plaintiff is in possession of plaint schedule property by the date of filing of suit?
- (2) Whether the plaintiff is entitled for grant of permanent injunction against defendants as prayed for?

On behalf of the appellant, P.Ws.1 to 5 were examined and Exs.A.1 to A.42 were marked. On behalf of the respondents, D.Ws.1 to 4 were examined and Exs.B.1 to B.18 were marked.

The trial Court having heard the learned counsel and having found that Ex.B4-mutation order dated 20.07.2003 indicates the name of respondent No.1 in pattadar and possessor columns, recorded a categorical finding that based on the cancellation deeds, dated 17.08.2002 - Exs.A12 and A13, the name of respondent No.1 was deleted and the name of the appellant came to be incorporated in the revenue records, but, as on the date of filing of the suit, respondent No.1 was shown as pattadar and possessor of the suit schedule property and thereby, dismissed the suit *vide* judgment, dated 18.01.2014. Aggrieved by the same, the appellant filed A.S.No.4 of 2014 in the Court of Senior Civil Judge, Huzurabad.

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

- (1) Whether the appellant-plaintiff proved his *prima facie* title and possession over the suit property?
- (2) Whether the judgment and decree of the lower court is liable to be set aside as prayed for?

The lower appellate Court dismissed the said appeal through judgment, dated 25.07.2018, confirming the judgment of the trial Court. Hence, the appellant/plaintiff filed this Second Appeal.

Heard learned counsel for the appellant and learned Senior Counsel for the respondents.

It may be noted that as A.S.No.4 of 2014 was filed by the appellant with the delay of 9 days, notice was ordered and the same was returned with an endorsement 'service is incomplete'. In the interregnum period, respondent No.2/defendant No.2 died, but, his legal representatives were not brought on record, as such, the Appeal Suit stands dismissed against defendant No.2 as abated.

At the outset, it may be noted that the trial Court framed the afore-stated issues and there was no issue framed with respect to the deletion of the name of respondent No.1 in the revenue records basing on the cancellation deeds.

There is no dispute that the sale deeds, Exs.B1 and B2, were executed by the appellant. Even assuming that sale consideration was not paid under Exs.B1 and B2, at best, the appellant ought to have demanded respondent No.1 for payment of balance sale consideration by claiming a charge over the suit schedule property, but, that does not in any way jeopardise the title and interest of the respondents in the property. A perusal of the judgment in the suit indicates that the trial Court by taking into consideration the fact that the appellant failed to sue the respondents for payment of balance

sale consideration; that the entries in the revenue records were subsequent to the registration of the cancellation deeds, Exs.A12 and A13; that cancellation of the registered sale deeds was done unilaterally, and by placing reliance on the judgment of the Hon'ble Supreme Court in **Thota Ganga Laxmi and another Vs. Government of A.P.**¹, dismissed the suit.

In normal circumstances, the possession follows title. In the case on hand, the appellant does not have title over the property as he passed on the same to the respondents in 1998 and 2002 itself. Even assuming that the appellant is in possession of the subject property, in the absence of there being any specific contract and the subject land being an agricultural land, no injunction as such can be granted against the true owner.

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

The Second Appeal is accordingly dismissed with costs.

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

CHALLA KODANDA RAM, J

Dt:16.07.2019

kdl

¹ 2012 (1) ALD 90