

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

SECOND APPEAL No.800 of 2015

JUDGMENT :

This Second Appeal is arising out of the judgment dated 24.06.2015 in A.S.No.68 of 2012 on the file of I Additional District Judge, Nalgonda, which is arising out of O.S.No.88 of 2007 on the file of Junior Civil Judge, Nakrekal.

2. For the sake of convenience, the parties are referred to as arrayed before the trial Court.
3. Heard learned Counsel for the appellant as well as the learned counsel for the respondent and perused the record.
4. The appellant is the defendant in the suit. The suit was filed by the plaintiff for injunction restraining the defendant and his men perpetually from interfering with his possession and enjoyment over the suit schedule property.
5. The brief averments of the plaint are that the plaintiff is the absolute owner and possessor of the plaint schedule land to an extent of Ac.1-19 gts. in Sy.No.484/A1 of Kattangur village and

Mandal and the defendant, who has no right or interest over the plaint schedule property, criminally trespassed into the suit land on 05.11.2007 and tried to obstruct his work while the plaintiff was removing the bushes and tried to dispossess him from the suit land.

6. On the other hand, the defendant filed a detailed written statement denying all the averments made in the plaint and contended that the suit land is the ancestral joint family property of the defendant, his sons and daughters. It is averred that he purchased the suit schedule property with the money out of the nucleus of ancestral properties and they were in actual physical possession and enjoyment of the suit land since the date of the purchase. It is further contended that the plaintiff has no right, title or interest over the suit property and that the plaintiff filed a false suit in order to grab the property.

7. Basing on the pleadings, the trial Court has framed the following issues for trial :

- “i. Whether the plaintiff is entitled for decree of perpetual injunction as prayed for ?
- ii. Whether the plaintiff is not in possession of the suit land as contended by the defendant ?
- iii. To what relief ?

8. During the course of trial, on behalf of the plaintiff, PWs.1 to 5 were examined and Exs.A-1 to A-12 were marked. On behalf of defendant, DWs.1 to 3 were examined and Exs.B-1 to B-6 were marked.

9. On considering the oral and documentary evidence on record, the trial Court has decreed the suit in favour of plaintiff restraining the defendant and his men from interfering with the peaceful possession and enjoyment of plaintiff over the suit schedule property.

10. Being aggrieved by the same, the defendant has preferred appeal before the first appellate Court. The first appellate Court, on hearing the appellant, framed the following points for determination:

- “1. Whether the plaintiff is entitled for perpetual injunction over the suit property, as prayed for ?
2. Whether the judgment and decree passed by the trial Court warrants any interference ?
3. To what relief ?

11. Considering the rival contentions of both the parties, the first appellate Court has dismissed the appeal with a specific finding

that the plaintiff could only prove his possession over the property, but not the title and the trial Court has rightly appreciated the evidence on record and decreed the suit in favour of plaintiff and that there are no reasons to interfere with the findings of the trial Court.

12. Being aggrieved by the judgment and decree of the first appellate Court, the defendant has preferred this second appeal raising the following substantial questions of law:

- “a) Whether the Courts below are justified in decreeing the suit of the plaintiff/respondent herein basing on EXs.A1 to A11 which are obtained fraudulently ?
- b) Whether the Courts below are justified in decreeing the suit of the plaintiff/respondent herein basing on the entries in the revenue records without any substantial document of title and possession of the plaintiff/respondent herein over the suit schedule property ?
- c) Whether the Courts below are justified in not deciding the core question of validity of the Ex.A9 i.e. 13-B and 13-C certificates which show that the stamp duty and registration fee was not collected and thereby no document was validated ?
- d) Whether the courts below are justified in accepting the oral evidence ignoring the documentary evidence as per Sec.92 of the Evidence Act ?
- e) Whether the Courts below are justified in considering the evidence of purchase of suit land

from the defendant/appellant herein without any pleading/placing on record any document ?

- f) Whether the courts below are justified in holding that the plaintiff/respondent herein is the owner of the suit schedule property without there being any acceptable evidence on record ?
- g) Whether the courts below are justified in discarding the material evidence of the defendant/appellant herein i.e. EXs.B1 to B5 (1974 S.C.1178) ?
- h) Whether the courts below are justified in decreeing the suit on no evidence and only on surmises ?
- i) Whether the courts below are justified in considering Exs.A1 to A11 which are not admissible ?
- j) Whether the 1st Appellate Court is justified in not considering the grounds of Appeal, written arguments and case law submitted by the advocate for the defendant/appellant herein ?”

13. On perusal of the entire oral and documentary evidence as well as the substantial questions of law raised by the appellant herein, it can be construed that those questions of law relate to the factual findings of both the Courts below, but are not of law. In a suit for injunction, it is for the Courts to look whether the plaintiff is in possession of property as on the date of filing of the suit or not. Both the Courts have come to the conclusion that the plaintiff has no title over the property, but he is in possession of the

property as on the date of filing of the suit and was continuing in possession till the date of judgment and therefore granted injunction in favour of plaintiff restraining the defendant from interfering with the possession and enjoyment of plaintiff over the land.

14. One of the substantial questions of law raised by the appellant herein is, “whether the Courts below are justified in accepting the oral evidence ignoring the documentary evidence as per Section 92 of the Evidence Act ?”. In this regard, a reference has to be made to Section 92 of the Indian Evidence Act, which reads as under :

“Exclusion of evidence of oral agreement — When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms.

15. As per the above provision, if there is any documentary evidence on record relating to a grant, contract or other disposition of property, then, there is no necessity of oral evidence in view of

the documents. But, in the present case, there are no grants or contracts or disposition of property in order to exclude the evidence. Therefore, the above substantial question of law is not at all tenable. On the other hand, Exs.B-1 to B-5 are the documents, which are relied on by the appellant/defendant before the trial Court. The trial Court as well as the appellate Court have rightly held that the plaintiff has no title over the property but as the suit itself is filed for permanent injunction, and as the plaintiff is in possession of property, injunction was granted to him. Though the documents of the defendant reveal that he is the owner of the property, there is no need to look into the title, while granting injunction, and title has to be looked into incidentally.

16. The learned counsel for the appellant has relied on the judgment of the High Court of Andhra Pradesh in **N.R.Srinivas v. Madduri Mallareddy & others**¹, wherein, their Lordships have held as under :

“Therefore, in the present suit filed by the plaintiffs for permanent injunction, the question of title and consequential possession has to be essentially gone into. In other words, in the suit for injunction the question of

¹ 2005 (1) ALD 268

title occupies the first place virtually relegating the question of possession to the next.”

17. Admittedly, in the present case, the suit is filed by the plaintiff only for perpetual injunction contending that he is the absolute owner and possessor of the property and the Courts below have rightly looked into title of the plaintiff and held that the plaintiff does not possess title of the property, but was in possession of the property, and therefore, he is entitled for the relief of permanent injunction. The Hon’ble Apex Court in a catena of judgments held that in a suit for injunction, it is for the courts to see who is in possession of the property as on the date of filing of the suit. Admittedly, the evidence reveals that the plaintiff is in possession of the suit schedule property as on the date of filing of the suit and he continued to be in possession till the disposal of the suit.

18. Further, there is limited scope under Section 100 of CPC while dealing with the appeals by the High Courts. In a Second Appeal, if the High Court is satisfied that the case involves a substantial question of law, then only, the Court can interfere with the orders of the Courts below. On perusal of the entire material,

this Court is of the considered view that the orders of the Courts below are not perverse and there is no misreading of evidence, and therefore, it is not proper to interfere with the concurrent fact findings of the Courts below, in the absence of substantial question of law. Therefore, the Second Appeal deserves to be dismissed.

19. In the result, the Second Appeal is dismissed at the stage of admission, confirming the judgment dated 24.06.2015 in A.S.No.68 of 2012 on the file of I Additional District Judge, Nalgonda. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

G.ANUPAMA CHAKRAVARTHY, J

Date: 21.11.2022

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