

THE HON'BLE SRI JUSTICE A.VENKATESHWARA REDDY

SECOND APPEAL No.63 OF 2017

JUDGMENT:

This second appeal is filed under Section 100 of Civil Procedure Code (for short 'CPC') by the unsuccessful plaintiff assailing the concurrent findings of the trial Court in O.S.No.2 of 2010 and first appellate Court in A.S.No.11 of 2014.

2. The plaintiff has filed original suit in O.S.No.2 of 2010 on the file Senior Civil Judge, Wanaparthy for recovery and possession of suit schedule land bearing Sy.No.82/A to an extent of Ac.0.36 ½ guntas, Sy.No.82/AA1 to an extent of Ac.1.25 guntas and Sy.No.82/A2 to an extent of Ac.0.36 ½ guntas, totally admeasuring Ac.3.18 guntas, situated at Koppunoor Village, Weepangandla Mandal, Mahabubnagar District and also for mesne profits of Rs.1,05,000/- for three years at the rate of Rs.35,000/- per annum from the date of suit.

3. The trial Court has dismissed the suit of the plaintiff while answering the issue Nos.1 to 7 against the plaintiff holding that the plaintiff is not entitled for recovery of possession and

mesne profits. Feeling aggrieved by the said judgment and decree of the trial Court, the plaintiff has preferred the appeal in A.S.No.11 of 2014 before the IX Additional District Judge, Wanaparthy. The first appellate Judge, after hearing both the parties, formulated point Nos.1 to 4 as contemplated under Order 41, Rule 31 of CPC, and answered all these points against the plaintiff holding that the plaintiff is not entitled for recovery of possession of suit schedule property and for mesne profits. Thus, the judgment and decree of the trial Court were conformed by the first appellate Court in its entirety. Feeling aggrieved by the concurrent findings recorded by the trial Court and the first appellate Court, the plaintiff has filed the present second appeal. As per the memorandum of second appeal, the following substantial questions of law are formulated :

- (i) Whether the learned appellate Court is justified in disposing of the appeal without formulating proper points for consideration as contemplated under Order 41, Rule 31 of CPC.
- (ii) Whether both the Courts justified in rejecting the relief in favour of the appellant even though the respondents are not challenging the ownership of the

appellant in respect of the land purchased by him under Exs.B4 to B6.

- (iii) Whether the learned appellate Court is justified in rejecting the appeal on the ground of non-production of original sale deeds of Exs.B4 to B6, even though there is no denial of title by the defendants in respect of the property purchased by appellant.
- (iv) Whether both the Courts justified in rejecting the relief without adjudicating the issue with regard to dispute about the identity of the property on the basis of documents produced by both the parties and non-consideration of documentary and oral evidence is not in accordance with law.

4. Heard learned counsel for the appellant and respondents on substantial questions of law. The submissions made by either side have received due consideration of this Court.

5. I have carefully perused the judgments of the trial Court and the first appellate Court. The plaintiff has claimed that he is entitled for recovery of suit schedule property from the

defendants and that he is also entitled or recovery of mesne profits of Rs.1,05,000/-. In support of the suit claim, the plaintiff has examined PWs.1 to 4 and got marked Exs.A1 to A40. The trial Court, after closure of the plaintiff's evidence, examined DW1 and marked Ex.sB.2 to B8 on behalf of the defendants. After closure of evidence on both sides, on hearing the submissions made on either sides and on appreciation of oral and documentary evidence, available on record, the trial Court has held that if a property is described by distinct boundaries which can be identified, any mistake in the survey number of the land has to be ignored and that the schedule in Exs.B4 to B6 are tallied with the boundaries mentioned in Ex.B7 and accordingly there is some force in the contention of the defendants and that there is heavy burden on the plaintiffs in a suit for declaration of title, recovery of possession and mesne profits and that when the defendants' plea is clear from their pleadings, reply notice and from the contents of the documents filed, that there was some misdiscrepancy of the property and boundaries, further the schedules as mentioned in Exs.B4 to B6 and B7 discloses that the schedule of property as indicated by the plaintiff does not belong to him and that the plaintiff is not

entitled for recovery of possession, declaration of title and mesne profits.

6. The first appellate Court has formulated four points as contemplated under Order 41, Rule 31 of CPC and all the four points were answered in favour of the defendant and against the appellant/plaintiff holding that on perusal of oral and documentary evidence adduced by the defendant it is clear that the property purchased by the plaintiff under Exs.B4 to B6 is land in Sy.No.80 and not the land in Sy.No.82. Accordingly, confirmed the judgment and decree of the trial Court in its entirety.

7. I have given my thoughtful consideration to the substantial questions of law that are proposed by the appellant in memorandum of second appeal. The first point relates to formulating proper points for consideration as contemplated under Order 41, Rule 31 of CPC. I have given my anxious and thoughtful consideration to the points formulated by the learned first appellate Judge in A.S.No.11 of 2014. Having heard the learned counsel on both sides and on perusal of the entire material available on record, the first appellate Court has

formulated four points. I do not find any irregularity in the points formulated by the first appellate Court. They are in true spirit of Order 41, Rule 31 of CPC. Therefore, I find no force in the contentions raised by the learned counsel for the appellant that the first appellate Court has failed to formulate proper points for consideration as contemplated under Order 41, Rule 31 of CPC.

8. Point Nos.2 and 3 of substantial questions of law, as formulated in the grounds of appeal, deal with Exs.B4 to B6 and their evidentiary value and both these points are only on factual side. The Courts below have appreciated the oral and documentary evidence including the recitals of Exs.B4 to B6 and arrived at a conclusion that the property purchased there under is in Sy.No.80 and not covered by Sy.No.82. I do not find any question of law much less substantial question of law made out from the point Nos.2 and 3 formulated in the grounds of appeal.

9. Point No.4 deals with appreciation of evidence adduced on both sides. In my considered opinion, the trial Court and the first appellate Court have appreciated and re-

appreciated oral and documentary evidence in accordance with the settled principles of law.

10. In that view of the matter, I do not find any question of law much less substantial question of law in any of the points 1 to 4 as extracted from the grounds of appeal. The trial Court and the first appellate Court, while appreciating the oral and documentary evidence available on record, assigned valid reasons for dismissal of the suit and first appeal. All the grounds, as indicated above, are only on factual side questioning the manner of appreciation of oral and documentary evidence by the trial Court and the first appellate Court or not framing the required points as contemplated under Order 41, Rule 31 of CPC.

11. Section 100 of CPC deals with second appeals. The existence of a substantial question of law is the *sine qua non* for the exercise of the jurisdiction under the amended provisions of Section 100 of CPC. The jurisdiction of the High Court is now confined only to entertain such appeals wherein substantial question of law has specifically set out in the memorandum of

appeal and formulated by the Court (**Thiagarajan v. Venugopalaswamy B. Koil**¹ and **Dharmarajan v. Valliammal**²).

12. Recently, the Hon'ble Apex Court in **Gurnam Singh (D) by LRs and others v. Lehna Singh (D) by LRs**³ while dealing with the scope of Section 100 of CPC held at para-18 as under:

“18. Before parting with the present judgment, we remind the High Courts that the jurisdiction of the High Court, in an appeal under Section 100 of the CPC, is strictly confined to the case involving substantial question of law and while deciding the second appeal under Section 100 of the CPC, it is not permissible for the High Court to reappraise the evidence on record and interfere with the findings recorded by the Courts below and/or the First Appellate Court and if the First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in Second Appeal. We have noticed and even as repeatedly observed by this Court and even in the case of **Narayanan Rajendran v. Lekshmy Sarojini** (2009) 5 SCC 264, despite the catena of decisions of this Court and even the mandate under Section 100 of the CPC, the High Courts under Section 100 CPC are disturbing the concurrent findings of facts and/or even the findings recorded by the First Appellate Court, either without formulating the substantial question of law or on framing erroneous substantial question of law.

¹ (2004) 5 SCC 762

² (2008) 2 SCC 741

³ AIR 2019 SC 1441

Therefore, we are constrained to observe as above and remind the High Courts the limitations under Section 100 of the CPC and again hope that High Courts would keep in mind the legal position before interfering in Second Appeal under Section 100 of the Code of Civil Procedure.”

13. When the facts of the present case are tested on the touch stone of the principles laid in the above decisions, the answer is in the negative. No substantial question of law is made out either from plain reading of the judgments of the trial Court and the first appellate Court or from the points formulated in the grounds of appeal. Considering the scope of Section 100 of CPC I do not find any irregularity or perversity in appreciation of the evidence by the trial Court and first appellate Court. No material has been overlooked or any inadmissible evidence has been considered by the Courts below for recording such findings and as such, there is no scope for interference in such concurrent findings recorded by the trial Court and appellate Court and no question of law much less substantial question of law is made out in the second appeal.

14. In the result, this second appeal is dismissed at the admission stage itself conforming the concurrent findings of the

trial Court in O.S.No.2 of 2010 and appellate Court in A.S.No.11 of 2014.

However, in the facts of the case, there shall be no order as to the costs. As a sequel, miscellaneous petitions if any, pending in this second appeal, shall stand closed.

A.VENKATESWHARA REDDY, J

Dated : 07-07-2022
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