

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

SECOND APPEAL Nos.759 of 2013 and 340 of 2014

COMMON JUDGMENT :

Second Appeal No.759 of 2013 is arising out of the judgment and decree in A.S.No.38 of 2012, dated 17.12.2012 on the file of Principal District Judge, Warangal, which is arising out of O.S.No.456 of 2008 on the file of V Additional Junior Civil Judge, Warangal.

2. Second Appeal No.340 of 2014 is arising out of the judgment and decree in A.S.No.46 of 2011, dated 17.12.2012 on the file of Principal District Judge, Warangal, which is arising out of O.S.No.456 of 2008 on the file of V Additional Junior Civil Judge, Warangal.

3. The plaintiffs are different in both the suits, but the defendants are one and the same. The suits are filed by the plaintiffs against defendant Nos.1 and 2 for grant of mandatory injunction directing the defendants to delete the two suit plots admeasuring 300 square yards each in Sy.No.565/A of Waddepally

village of Hanamkonda Mandal, from D.P.No.8 of 1986 and also to award costs of the suit.

4. It is pertinent to note that the prayer in both the suits is also one and the same, the extent of land is also one and the same, gifted under the registered gift settlement deeds to the plaintiffs, vide document Nos.4355 of 2000 and 4356 of 2000, dated 07.09.2000 respectively.

5. The trial Court has decreed both the suits, in favour of plaintiffs granting mandatory injunction against defendant Nos.1 and 2 to delete the suit schedule property from D.P.No.8 of 1986 within a period of two months from the date of judgment, failing which, plaintiffs are entitled to have the same through the process of the Court.

6. Being aggrieved by the same, the Municipal Corporation of Warangal i.e. the 2nd respondent herein, has preferred two appeals i.e. A.S.Nos.46 of 2011 and 38 of 2012 and both the appeals have been allowed by separate judgments dated 17.12.2012, setting aside the judgments and decrees of the trial Court.

7. As stated supra, the plaintiffs being aggrieved, have filed the present two Second Appeals seeking to set aside the orders of the first appellate Court in both the appeals.

8. It is pertinent to mention that likewise, some other plaintiffs have also filed O.S.No.455 of 2008 on the file of V Additional Junior Civil Judge, Warangal, against respondent Nos.1 and 2 herein, for deletion of the suit schedule property in Sy.No.565/A to an extent of 195 square yards at Waddepally village of Hanamkonda Mandal, from D.P.No.8 of 1986 and the trial Court has decreed the said suit in favour of plaintiffs. Being aggrieved by the said judgment and decree, the respondents herein i.e. Municipal Corporation of Warangal as well as Kakatiya Urban Development Authority (KUDA) have preferred two appeals and the learned District Judge passed two separate judgments vide A.S.Nos.49 of 2011 and 34 of 2012 on 17.12.2012, setting aside the judgment and decree of the trial Court, against which, the plaintiffs in O.S.No.455 of 2008 on the file of V Additional Junior Civil Judge, Warangal, have preferred two Second Appeals i.e. S.A.Nos.697 and 797 of 2013, which were allowed by this Court

by way of common judgment dated 27.10.2014, setting aside the judgments and decrees of the first appellate Court and restoring the judgments and decrees of the trial Court.

9. It is submitted by the learned counsel for the appellants that both the present Second Appeals are covered to be allowed in terms of the judgment of this Court, dated 27.10.2014, in S.A.Nos.697 and 797 of 2013, and therefore, prayed to allow these two appeals.

10. On the other hand, the learned Counsel for the Municipal Corporation, Warangal as well as the Kakatiya Urban Development Authority, contended that the first appellate Court has rightly appreciated the evidence on record and reversed the judgment of the trial Court, and therefore, prayed to dismiss these second appeals.

11. It is the specific contention of the learned counsel for the respondents that the trial Court cannot grant mandatory injunction without the parties seeking declaration of title, and further, no substantial question of law is involved in these Second Appeals so

as to interfere with the impugned judgments and decrees of the first appellate Court and prayed to dismiss the Second Appeals.

12. On perusing the grounds of appeal, this Court formulates the following substantial questions of law in these two appeals:

- “1. Whether the first appellate Court is right in giving a finding that without seeking declaration of title, the suit for mandatory injunction simplicitor is not maintainable ?
2. Whether the findings recorded by the first appellate Court as to the title of the plaintiff and the legality of the development plan are contrary to the evidence on record and perverse ?”

13. On perusal of the judgment of this Court in S.A.Nos.697 and 797 of 2013, dated 27.10.2014, it is evident that the first appellate Court has allowed all the first appeals on the same day i.e. 17.12.2012 setting aside the judgments of the trial Court in the original suits. The relief sought for in all the original suits is one and the same i.e. deletion of properties therein from D.P.No.8 of 1986, and the substantial questions of law involved in all these second appeals is also one and the same.

14. It is contended by the learned counsel for the appellants in both the appeals that being aggrieved by the common judgment and decree in S.A.Nos.697 and 797 of 2013, a Special Leave Petition vide SLP (Civil) Diary No.11306 of 2020, has been filed by the Kakatiya Urban Development Authority before the Hon'ble Supreme Court and on 01.02.2021, the Hon'ble Supreme Court has dismissed the said SLP on the ground of delay. As the SLP itself is dismissed, the common judgment of this Court in S.A.Nos.697 and 797 of 2013, has become final.

15. Since the connected Second Appeals i.e. S.A.Nos.697 and 797 of 2013 are allowed by way of common judgment dated 27.10.2014 by setting aside the judgments of the first appellate Court and restoring the judgments and decrees of the trial Court, and as the said judgment has become final in view of dismissal of SLP by the Hon'ble Supreme Court, for the reasons recorded in the said common judgment, the present Second Appeals are also liable to be allowed.

16. Accordingly, S.A.Nos.759 of 2013 and 340 of 2014 are allowed, setting aside the judgments and decrees dated 17.12.2012 in A.S.Nos.46 of 2011 and 38 of 2012 respectively on the file of Principal District Judge, Warangal, as the Second Appeals are covered by the common judgment of this Court vide order dt.27.10.2013 in S.A.Nos.697 and 797 of 2013. Consequently, the judgments and decrees in O.S.Nos.456 and 482 of 2008, dated 17.06.2011 on the file of V Additional Junior Civil Judge, Warangal, are restored. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

G.ANUPAMA CHAKRAVARTHY, J

Date: 08.12.2022

ajr