

THE HON'BLE SRI JUSTICE A.VENKATESHWARA REDDY

SECOND APPEAL No.250 OF 2014

JUDGMENT:

1. This second appeal is filed under Section 100 of the Civil Procedure Code, 1908 (for short 'CPC') by the unsuccessful plaintiffs assailing the concurrent findings of the trial Court in O.S.No.168 of 2005 and the first appellate Court in A.S.No.23 of 2013.
2. The plaintiffs have filed the original suit in O.S.No.168 of 2005 on the file of the learned Principal Junior Civil Judge, Sangareddy for partition and separate possession of the suit schedule lands in Survey No.741 admeasuring Ac.0.35 guntas, in Sy.No.822 – Ac.1.04 guntas, in Sy.No.824 – Ac.1.38 ½ guntas and in Sy.No.825 – Ac.0.20 ½ guntas situated at Ameenpur Village, Patancheru Mandal, with precise boundaries as mentioned in the schedule of property. The trial Court on receipt of the written statement settled the issues, recorded the evidence of PWs.1 & 2 and DWs.1 to 3 and marked Exs.A.1 to A.5 and Exs.B.1 to B.22 on behalf of the plaintiffs and defendants respectively.

3. After careful appreciation of the oral and documentary evidence available on record, the trial Court has dismissed the suit of the plaintiffs with an observation that the material *prima facie* discloses that the names of second defendant and one Sathaiah are recorded as pattadars and possessors and to certain extent these documents are sufficient to prove that suit schedule properties are self-acquired properties of second defendant and Sathaiah and there is no document to show that Mallaiah as pattadar of the suit schedule properties and accordingly, the plaintiffs failed to establish *prima facie* that the suit schedule properties are ancestral properties and they are not entitled for partition.

4. Feeling aggrieved by the judgment and decree, dated 17.04.2013 in OS No.168 of 2005, the plaintiffs have preferred first appeal in AS No.23 of 2013 before the Principal District Judge, Medak at Sangareddy, who confirmed the judgment and decree of the trial Court in its entirety holding that the pahanies filed by the plaintiffs do not anywhere show the name of Mallaiah as owner of the suit schedule properties, the plaintiffs failed to put forth any evidence in support of their claim and

that they are not entitled for partition and separate possession of their share in the suit schedule ands. Accordingly, the appeal was dismissed.

5. Feeling aggrieved by the said findings recorded by the trial Court and the first appellate Court, the unsuccessful plaintiffs have preferred this Second Appeal. As per the Memorandum of Second Appeal, the following substantial questions of law are formulated in point Nos.(a) to (e), as extracted below:

- a) Whether the courts below are justified in dismissing the suit for partition without framing the issues as to the joint and ancestral nucleus of the property to decide the issue and if so whether dismissal of the suit for partition is proper?
- b) Whether the appellant court is justified in dismissing the appeal without re-appreciating the evidence on record and if so non-consideration of evidence is fatal for dismissal of the suit?
- c) Whether the appellate court is justified in not considering the framing of issue regarding nature of property having found nucleus as ancestral and if so dismissing the appeal without framing issue is sustainable?
- d) Whether courts below committed illegality in dismissing the suit for partition without considering

the documentary evidence on record to find the truth in Exhibit B-2 and if so, non-consideration of the evidence to trace the nucleus of the nature of the property is a valid judgment?

- e) Whether the courts below are justified in observing the presence of defendants 2 and 4 in the document itself constitutes self-acquisition without appreciating the supporting oral evidence and if so concluding the revenue records as the source of property is justified in dismissing the suit?

6. Heard the learned counsel for the appellants/plaintiffs and the respondents/defendants. Perused the material available on record. The submissions so made have received due consideration of this Court.

7. I have carefully perused the judgments of the trial Court and the first appellate Court. Though as per the pleadings in the plaint the plaintiffs claimed that the suit schedule property is their ancestral property and one Mallaiah is their ancestor, both the Courts below on careful appreciation of the oral and documentary evidence available on record have arrived at a conclusion that the plaintiffs have failed to adduce any oral and documentary evidence to substantiate their plea and the

material available on record would only establish that the suit schedule properties were purchased by one Sathaiah and the second defendant and accordingly, the plaintiffs are not entitled for the partition and separate possession of their share in the suit schedule properties. The findings recorded by the trial Court were confirmed by the first appellate Court in its entirety. In fact, the learned appellate Judge has formulated two points as contemplated under Order-41 Rule-31 CPC and answered both points in the negative against the plaintiffs and in favour of the defendants. I do not find any perversity or irregularity in the findings recorded or in the appreciation of evidence by the trial Court and the first appellate Court.

8. I have given my thoughtful consideration to the substantial questions of law that are proposed by the appellants/plaintiffs in the memorandum of second appeal. The points (a) & (c) are with regard to non-framing of a specific issue as to the nature of suit schedule property. Though no such specific issue as to the nature of suit schedule property is framed, the trial Court has appreciated the evidence and discussed at length as to the

nature of the property, source of acquisition and on whose name the properties are recorded.

9. In that view of the matter, merely because a specific issue is not framed as to whether the suit schedule property is joint and ancestral nucleus by itself does not constitute any valid ground nor any question of law much less substantial question of law is involved. Point (b) deals with non-appreciating the evidence by the first appellate Court. As indicated above, the learned first appellate Judge has formulated the points as contemplated under Order 41 Rule 31 of CPC and re-appreciated the evidence on record. Therefore, I do not find any merit in these points. Whereas, Points (d) & (e) deals with the appreciation of evidence and as to the acquisition of properties. In my considered opinion, the trial Court and the first appellate Court have appreciated the evidence at length in correct lines. There is no perversity in the findings recorded.

10. Therefore, I do not find any question of law much less substantial question of law in any of the points formulated in the grounds of Second Appeal, as extracted above. The first appellate Court while appreciating the evidence assigned valid

reasons for dismissal of the suit and so also the first appeal. All the grounds, as indicated above, are either on factual side or on appreciation of the oral and documentary evidence by the trial Court and the first appellate Court and therefore, I do not find any force in the contention raised by the learned counsel for the appellants/ plaintiffs.

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:

¹ (2004) 5 SCC 762

² (2008) 2 SCC 741

³ AIR 2019 SC 1441

“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 reappreciate 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.

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 touchstone of the principles laid by the Hon’ble Apex Court in the above decisions, the answer is in the negative. No substantial question of law is made out as required under Section 100 of C.P.C. No material has been over looked nor 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 the first appellate Court. Further, the judgments of

the trial Court and the first appellate Court do not disclose any irregularity or perversity and no question of law much less substantial question of law is made out either from the grounds of appeal or from a perusal of judgments of trial Court as well as the first appellate Court.

14. In the result, the second appeal is dismissed at the admission stage itself confirming the concurrent findings of the trial Court in O.S.No.168 of 2005 and the first appellate Court in A.S.No.23 of 2013. However, in the circumstances of the case, there shall be no order as to the costs.

As a sequel, miscellaneous applications, if any, pending in this second appeal, shall stand closed.

A.VENKATESWHARA REDDY, J

Date: 05-07-2022
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