

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

SECOND APPEAL No.1281 of 2011

JUDGMENT :

This Second Appeal is arising out of the judgment dated 30.05.2011 in A.S.No.59 of 2006 on the file of II Additional District Judge, Ranga Reddy District, confirming the judgment and decree dated 08.02.2006, passed in O.S.No.559 of 1999 on the file of Principal Junior Civil Judge (East and North), Ranga Reddy District.

2. For the sake of convenience, the parties are referred to as arrayed before the trial Court.

3. Heard learned Counsel for the appellants as well as the counsel for the respondents and perused the record.

4. The appellants are the plaintiffs. Originally, the suit is filed by the plaintiffs against the defendants (Revenue Authorities) for grant of perpetual injunction to restrain defendants 1 to 4 and their men from interfering with the construction activities of the plaintiff

over the 'A' and 'B' schedule properties and from demolishing the structures thereon and for costs.

5. The case of the plaintiffs is that they are the absolute owners and possessors of 'A' and 'B' schedule properties by virtue of registered sale deeds and that the 1st plaintiff purchased 'A' schedule property under two registered sale deeds dated 30.08.1993 and 23.03.1998 from her vendor Smt.Raj Kumari for consideration. Likewise, the 2nd plaintiff purchased 'B' schedule property through two registered sale deeds dated 30.08.1993 and 23.03.1998 from the said Smt.Raj Kumari. Further, they obtained permission from the Gram Panchayat, Gaddiannaram for construction of houses in their respective property by paying fee on 21.08.1998 and the Gram Panchayat granted permission for construction of ground plus one floor on the suit schedule properties. Later, the plaintiffs constructed houses by investing huge amounts. While so, on 17.05.1999 and 18.05.1999, the officials of the defendants came to the suit schedule property, tried to interfere with the construction without assigning any reason and threatened to demolish the structures. Therefore, the plaintiffs

were constrained to file the suit for perpetual injunction restraining the defendants.

6. The third defendant filed a written statement denying the plaint averments. The recitals of the written statement disclose that as per the revenue records, the total land in Sy.No.260 is 8 acres and one Mohd.Baig was the absolute owner of the said land. Subsequently, it has been sub-divided into six sub-divisions in the name of the following persons:

Mohd. Baig	-	Ac.2-10 gts.
Smt.Ramulamma, Sayanna	-	Ac.2-08 gts.
P. Venkataiah	-	Ac.0-22 gts.
P. Rajaiah	-	Ac.0-36 gts.
P. Balram	-	Ac.1-20 gts.
P. Anand	-	Ac.0-34 gts.

7. It is the specific plea in the written statement that the plaintiffs have encroached upon the '*Bila Dakala*' under the alleged sale deeds of Smt. Raj Kumari and sought relief from interfering with the Government officials and the plaintiffs are liable to be evicted and further the Gram Panchayat cannot grant permission to the plaintiffs for constructing houses in the '*Bila*

Dakala' and on noticing the constructions of the plaintiff, the defendants directed the plaintiffs to stop the constructions.

8. The written statement of the 3rd defendant was adopted by the 2nd defendant. The 4th defendant also filed written statement contending that the Government of A.P. passed G.O.Ms.No.244, dated 28.03.1988 and transferred the lands in Sy.Nos.2, 4, 9 and 11 to 280 of Gaddiannaram village of Saroornagar Mandal, Ranga Reddy District, and therefore, the District Collector, Hyderabad District is ousted from jurisdiction by virtue of the said G.O. and that the 1st and 4th defendants are not necessary parties to the suit and prayed to dismiss the suit as devoid of merit.

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

- “i. Whether the suit is bad for mis-joinder and non-joinder of parties ?
- ii. Whether the constructions of the plaintiffs are in Government land '*Bila Dakala*' ?
- iii. Whether the plaintiffs are entitled for injunction as prayed for ?
- iv. To what relief ?”

10. During the course of trial, on behalf of the plaintiffs, PWs.1 and 2 were examined and Exs.A-1 to A-17 were marked. On behalf of the defendants, DW.1 was examined.

11. On considering the oral and documentary evidence on record, the trial Court has dismissed the suit with a finding that the constructions of both the plaintiffs are in Government land (*'Bila Dakala'*) and therefore, there are not entitled for the discretionary relief of perpetual injunction and therefore dismissed the suit with costs.

12. Being aggrieved by the judgment and decree of the trial Court, the plaintiffs have filed an appeal in A.S.No.59 of 2006 on the file of II Additional District Judge, Ranga Reddy.

13. The first appellate Court, after hearing the rival contentions of the parties and considering the material on record, has framed the following points for consideration:

- “i. Whether the plaintiffs are in legal possession of the plaint schedule property by the date of filing of the suit and entitled for permanent injunction as prayed for ?

ii. To what relief ?

14. On considering the contentions of the parties and material on record, the first appellate Court has come to the conclusion that the plaintiffs, showing Sy.No.260, wanted to encroach into the Government land which is located between the Gaddiannaram main road on the East and North (canal) on the West and the identity of the property is also very much in dispute and therefore, the plaintiffs ought to have taken steps for appointment of Advocate-Commissioner, to locate the property and to make out whether the property covered under Exs.A-1 to A-4 in connection with Exs.A-7 and A-8/sale deeds and also to make out their property different from Government land (*'Bila Dakala'*) and accordingly dismissed the appeal confirming the judgment and decree of the trial Court.

15. Being aggrieved by the judgment of appellate Court, this second appeal is filed by the plaintiffs raising the following substantial questions of law along with the grounds of appeal:

“(a) Whether the Courts can make a roving enquiry into title in a suit for perpetual injunction simplicitor and non-suit the appellants/pltf. on

the ground that they failed to prove the title, when the appellants/pltfs. established their possession in respect of suit schedule of properties by way of oral and documentary evidence ?

- b) Whether the Judgments of Lower Courts are vitiated for non-consideration of relevant evidence and perversity in reasons assigned by both the Courts ?

In this context, both the Courts below wholly ignored the vital admissions given by DW.1 in his cross-examination and in fact such admissions are sufficient to decree the suit, without considering any other material on record.

- c) Whether the Judgments of the Lower Courts or the result of surmises and conjunctures, inasmuch as Ex.A1 to A17 marked by the appellants/pltfs. were never disputed by the respondents/defts. ?
- d) Whether both the Courts below committed error of Judgment in refusing to grant perpetual injunction, even though the appellants/pltfs. established their title and lawful possession in respect of schedule of properties and more particularly when such possession was categorically admitted by the respondents/defts. ?
- e) Whether the conclusions drawn by both the Courts below with regard to the title and possession of the appellants/pltfs. in respect of schedule of properties, are erroneous being contrary to law ?

- f) Whether both the Courts can hold the suit is bad for mis-joinder of parties, when there is a specific categorical allegation in the plaint with regard to the illegal interference caused by such parties ?
- g) Whether both the Courts fell in serious error in refusing the relief of perpetual injunction in favour of the appellants/pltfs. even though the respondents/defts. Miserably failed to establish that there is a Government land adjacent to the schedule of properties and that the appellants/pltfs. encroached upon such land ?
- h) Whether finding of both the Courts below that non-examination of appellants' vendor is fatal, is perverse, when the respondents never disputed the genuineness of Ex.A1 to A17 filed by the appellants/pltfs ?
- i) Whether the burden of proof is on the respondents to establish that the appellants encroached upon the Government land and making illegal construction thereon, when they specifically alleged in their Written Statement ?”

16. On perusing the substantial questions of law, it is evident that they are on the findings of fact by both the Courts below but not on law. It is urged by the learned counsel for appellants that the first appellate Court has mechanically confirmed the judgment of the trial Court and held that ‘A’ and ‘B’ schedule properties are part of ‘Bila Dakala’ without any evidence on record. It is further

contended by the learned counsel for appellants that inspite of failure to produce documentary evidence by the respondents, the trial Court ought to have decreed the suit of the plaintiffs. Accordingly prayed to grant decree in favour of the appellants for perpetual injunction.

17. Admittedly, the second appeal is filed in the year 2011 and it is still coming up for admission, though it underwent numerous adjournments. Both the Courts below have given concurrent findings as to the facts.

18. On the other hand, it is contended by the learned Government Pleader, that Sy.No.260 is sub-divided into six parts. Even the record reveals that the vendors of the appellants are not parties to the sub-divisions, which was specifically admitted by the appellants, and therefore, prayed to dismiss the appeal as devoid of merits.

19. On perusal of the record, it is evident that the name of Smt. Raj Kumari was not shown as the person holding Ac.8-00 gts., of land in Sy.No.260 and the names of one Mohd. Baig,

Smt.Ramulamma, Sayanna, P.Venkataiah, Rajaiah, Balram and Anand were only shown as the persons holding respective shares of land after sub-division of Sy.No.260. The evidence of PW-2 also disclose that the plaintiffs are in possession and enjoyment of the suit schedule property. No doubt, it is also the contention of the defendants that the plaintiffs have encroached the Government land and took permission from the Gram Panchayat, Gaddiannaram for construction of houses. It is the specific finding of the trial Court that the approved layout was not filed before the Court by the plaintiffs to establish the title and possession over the property, except the sale deeds covered under Exs.A-1 to A-4. It is the specific contention of the learned Government Pleader that Sy.No.260 was sub-divided into six parts, but the said sale deeds do not disclose about the sub-division number of Sy.No.260 and on the other hand, PW-1 admits that '*Bila Dakala*' is abutting Sy.No.260 of Gaddiannaram and also a 'Nala' is flowing through Sy.No.260 as well as '*Bila Dakala*' and the Western side boundary of 'A' and 'B' schedule properties is shown as 'Nala'. As per the admission of PW-1, '*Bila Dakala*' is Government land, which is

beside the Nala and as per the evidence of the plaintiff, the trial Court as well as the appellate Court have concluded that '*Bila Dakala*' was located on the Western side of 'A' and 'B' schedule properties. It is also an admitted fact that the plaintiffs have not filed any application before the Court for appointment of Advocate-Commissioner either to identify or to locate the land. In the absence of proper identification of the property before the trial Court as well as the appellate Court, the relief sought for by the appellants cannot be considered.

20. 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.

21. In the result, the Second Appeal is dismissed at the stage of admission, confirming the judgment dated 30.05.2011, in A.S.No.59 of 2006 on the file of II Additional District Judge, Ranga Reddy District. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

G.ANUPAMA CHAKRAVARTHY, J

Date: 13.10.2022

ajr