

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

SECOND APPEAL Nos.326 & 362 of 2014

COMMON JUDGMENT :

1. These Second Appeals are arising out of the judgment and decree dated 11.12.2013 in A.S.No.6 of 2013 and A.S.No.5 of 2013 (common judgment) respectively on the file of II Additional District Judge, Warangal, which are arising out of judgment and decree dated 14.09.2012 passed in O.S.No.286 of 2006 and O.S.No.213 of 2005 respectively on the file of II Additional Senior Civil Judge, Warangal (common judgment)
2. It is pertinent to note that Chintamalla Narasimha Chary is the plaintiff in O.S.No.286 of 2006 and he is the defendant in O.S.No.213 of 2005. O.S.No.213 of 2005 was filed by Sriramoju Veerananarayana for declaration of title and recovery of possession whereas O.S.No.286 of 2006 was filed by Chintamalla Narasimha Chary against S.Veerananarayana for perpetual injunction.

3. The trial Court after considering the pleadings of both the parties in both the suits framed the following issues as under:-

O.S.No.213 of 2005:

- “i) Whether the suit is barred by limitation?
- ii) Whether the Court has jurisdiction to try the suit?
- iii) Whether the plaintiff is entitled for declaration, as prayed for?
- iv) Whether the plaintiff is entitled for mesne profits, as prayed for?
- v) To what relief?”

O.S.No.286 of 2006:

- “i) Whether the plaintiff is entitled to grant of perpetual injunction as prayed by him?
- ii) To what relief?”

4. It is relevant to mention that common evidence was led in both the suits and on behalf of the plaintiff, P.Ws.1 and 2 were examined and Exs.A-1 to A-9 were marked. On behalf of the defendants, D.Ws.1 to 3 were examined and Exs.B-1 to B-18 were marked.

5. The undisputed facts and pleadings are that the plaintiff is the owner of the suit schedule property, who purchased the property vide registered sale deed dated 01.12.1989 and thereafter, he executed agreement of sale in favour of the defendant on 18.01.1992. Further, it is the case of the plaintiff that the agreement of sale was executed only to enable the defendant to pledge that document with third parties to secure loan to be used for getting his daughters married. But the contention of the defendant is that the plaintiff entered into agreement of sale with a intention to purchase the property and the defendant received the complete sale consideration and later put the plaintiff into possession of the suit schedule property. It is the contention of the plaintiff that the defendant himself dispossessed the plaintiff on 22.01.2003 with the help of unsocial elements and after dispossessing, he got the suit schedule property entered into his name in the municipal record and later the plaintiff got the entries cancelled vide municipal proceedings RC.A4/1494/3239/2003 dated 23.05.2003.

6. The trial Court after considering the oral and documentary evidence dismissed the defendant's/Chintamalla Narsimha Chary's suit i.e., O.S.No.286 of 2006 which was filed for perpetual injunction and decreed O.S.No.213 of 2005 declaring the plaintiff/S.Veeranarayana as the absolute owner of the property and also granted decree for recovery of possession. Being aggrieved by the same, the defendant in O.S.No.213 of 2005 preferred two appeals i.e., A.S.No.6 of 2013 against the suit which was dismissed for perpetual injunction and A.S.No.5 of 2013 against the suit which was decreed declaring S.Veeranarayana as the absolute owner and also for recovery of possession.

7. The appellate Court after hearing the arguments framed the following points for consideration:-

- “1. Whether the common judgment and decree of the learned II Additional Senior Civil Judge is perverse being against the facts on record and law?
2. Whether Ex.A2 and Ex.A3 are fabricated documents?

3. Whether Ex.B18 is a genuine document?
4. Whether the suit of the plaintiff is barred by limitation?
5. Whether the suit for declaration is not maintainable without seeking cancellation of Ex.B-1 agreement of sale?”

8. On hearing the rival contentions, the 1st appellate Court dismissed both the appeals confirming the judgment and decree of II Additional Junior Civil Judge, Warangal in O.S.No.213 of 2005 and dismissal of the suit in O.S.No.286 of 2006 date 14.09.2012.

9. Being aggrieved by the judgment and decree in A.S.Nos.5 and 6 of 2013 dated 11.12.2013, the present Second Appeals are filed raising the following substantial questions of law:

- “a) Whether a suit for declaration of title and recovery of possession is maintainable without seeking the relief of cancellation of the document i.e., Agreement of Sale (Ex.B.1)?

- b) Whether the suit for recovery of possession is maintainable before a civil court, when the case of the plaintiff that the defendant grabbed the property by dispossessing the plaintiff with the help of anti social elements? When a remedy of specific procedure contemplated under A.P.Land Grabbing (Prohibition and Eviction) Act to seek appropriate relief against a land grabber is available.
- c) Whether in a suit for permanent injunction, the documents marked by the plaintiff in support of the case to establish his possession over the suit schedule property as on the date of the institution of the suit is not sufficient to decree the suit for injunction?
- d) When there are admissions with regard to possession in the pleadings, a specific denial in the written statement to defend the case of the defendant?
- e) Whether the courts below can pass the decrees on the basis of assumptions

and presumptions without scrutinizing the oral and documentary evidence available on record?

- f) Whether the Courts below can pass a decree of declaration of title and recovery of possession relying on the document i.e., Ex.A-2 and A-3, which are inadmissible in evidence?”

10. On perusal of the substantial questions of law, it is evident that they all are related to fact findings of both the Courts below but not law.

11. Heard the learned counsel for the appellant. Perused the record.

12. Second Appeals are of the year, 2014 and it underwent numerous adjournments and still coming up for admission.

13. It is pertinent to mention that 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, only then, this Court can interfere with the orders of the Courts below. On

perusal of the entire material on record, it can be construed that the orders of the Courts below are not perverse and there is no misreading of evidence, and further in the absence of substantial question of law, this Court is not inclined to interfere with the concurrent fact findings of the Courts below. Without going into the merits of the case, these Second Appeals deserves to be dismissed, as substantial question of law is not involved.

14. In the result, these Second Appeals are dismissed at the stage of admission confirming the judgment and decree dated 11.12.2013 in A.S.No.6 of 2013 and A.S.No.5 of 2013 (common judgment) respectively on the file of II Additional District Judge, Warangal. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

G.ANUPAMA CHAKRAVARTHY, J

Date: 10.11.2022

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