

THE HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

S.A.No.1095 OF 2008 & C.C.No.945 OF 2016

COMMON JUDGMENT:

This second appeal is directed against the judgment dated 02.05.2008 in A.S.No.19 of 2002, on the file of the Principal Senior Civil Judge, Kothagudem, wherein the said appeal filed by the appellants herein was dismissed, confirming the judgment and decree dated 31.12.1996 in O.S.No.220 of 1993, on the file of the Principal District Munsif, Kothagudem, wherein the suit filed by the respondents herein for permanent injunction, was decreed.

2. C.C.No.945 of 2016 is filed by respondents Nos.1 to 3 (plaintiffs) in the second appeal complaining willful disobedience of the orders dated 30.10.2008 passed by this Court in S.A.M.P.No.2426 of 2008 in S.A.No.1095.

3. Heard the learned counsel for the appellants and the learned counsel for the respondents. Perused the record.

4. The respondent, who is plaintiff, filed the suit for perpetual injunction against the appellants, who are defendants, restraining them from interfering with the plaintiff's peaceful possession

and enjoyment of the plaint schedule land. According to the plaintiff, he purchased the suit land from M.Satyanarayana under an agreement of sale Ex.A-1 dated 16.08.1990. The said Satyanarayana purchased the suit land from the original pattadar. Ever since then, the plaintiff was in possession and enjoyment of the same. As the defendants tried to dispossess him, the plaintiff filed the suit. Hence, the plaintiff filed the suit for injunction.

5. The defendant filed written statement contending that they have succeeded to the properties from their ancestors who were the protected tenants and the suit property is part of the said property and they were in possession and enjoyment of the same in the capacity of owners and the sale pleaded by the deceased plaintiff was hit by Section 46 of the Tenancy Act.

6. The trial Court framed the following issues:

- i) Whether the plaintiff is entitled for grant of permanent injunction?
- ii) To what relief?

7. During trial, the plaintiff was examined as P.W.1 and also examined P.W.2 and marked Exs.A-1 to A-4. On behalf of defendants, D.Ws.1 to 5 were examined and Exs.B-1 to B-9 were

marked. Before the appellate Court, on behalf of plaintiffs Exs.A-5 to 8 were marked and on behalf of defendants, Exs.B-10 to B-14 were marked by way of additional evidence.

8. On a consideration of the evidence available on record, the trial Court held that the plaintiff is entitled for a permanent injunction as prayed for. The trial Court further held that the evidence of P.Ws.1 and 2 coupled with Exs.A-1 to A-4 established possession the plaintiff over the suit land prior to the date of suit, whereas the defendants failed to prove their possession over the suit land at any time. Aggrieved by the judgment and decree, the defendants preferred appeal in A.S.No.19 of 2002, on the file of the Principal Senior Civil Judge, Kothagudem. The learned Principal Senior Civil Judge, by judgment dated 02.05.2008, dismissed the appeal and confirmed the judgment and decree passed by the trial Court. Aggrieved by the same, the present second appeal is filed.

9. As can be seen from the grounds of appeal, no question of law, much less a substantial question of law, has been raised, except contending that the evidence on record has not been properly appreciated. The suit is filed for mere injunction. The

plaintiff adduced oral and documentary evidence in support of his claim of ownership and possession over the suit land. The defendants, while denying the plaintiff's claim, pleaded that the suit land purchased by M.Satyanarayana from the original pattadar in the year 1958 is hit by Section 45 of the Tenancy Act and that the plaintiff got manipulated the pahanies for the purpose of suit. The appellate court held that on the strength of Exs.B-10 to B-14, the defendants cannot claim that they are in possession of the suit land by the date of filing the suit. Both the Courts below have, on proper appreciation of evidence, oral and documentary available on record, upheld the claim of possession made by the plaintiff. The said concurrent finding recorded by the Courts below on a question of fact, cannot be interfered with in the second appeal. It is well settled that the scope of second appeal is limited.

10. In **R.RAMACHANDRAN AYYAR VS. RAMALINGAM CHETTIAR**¹, the Apex Court held as follows:

"That the High Court was not justified in interfering with the findings of fact recorded by the first appellate Court in favour of the appellants. There is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however, gross or inexcusable

¹ (1963) SCR 604

the error may seem to be. To enable the High Court to interfere under Section 100(1)(c) of the Code of Civil Procedure there must be a substantial error or defect in the procedure which may possibly have produced error or defect in decision of the case upon the merits; it is not enough that there is an error or defect in the appreciation of evidence. Even where the appreciation of evidence made by the first appellate court is patently erroneous and the finding of fact recorded in consequence is grossly erroneous, it cannot be said to introduce a substantial error or defect in procedure”.

11. In **KSHITISH CHANDRA BOSE VS. COMMISSIONER OF RANCHI**², the Apex Court held that ‘the High Court had no jurisdiction to entertain second appeal on findings of fact even if it was erroneous. It exceeded its jurisdiction under section 100 in reversing pure concurrent findings of fact given by the trial Court and the then appellate Court both on the question of title and that of adverse possession.’

12. In **VEERAYEE AMMAL VS. SEENI AMMAL**³, the Hon’ble Apex court held while deprecating the practice of liberal construction and generous application of provisions of Section 100 by the High Courts, observed as follows:

² (1981) 2 SCC 103

³ (2002) 1 SCC 134

“It is distressing that despite amendment, the provisions of Section 100 of the Code have been liberally construed and generously applied by some judges of the High Courts with the result that the objective intended to be achieved by the amendment of Section 100 appears to have been frustrated. Even before the amendment of Section 100 of the Code, the concurrent finding of facts could not be disturbed in the second appeal”.

It was further held as follows:

“In this case the question was covered under Issue 1 as framed by the trial court and issue 1 was, admittedly, an issue of fact which was concurrently held in favour of the appellant-plaintiff and did not justify the High Court to disturb the same by substituting its own finding for the findings of the Courts below, arrived at on appreciation of evidence.’

13. Unless the appellant in the second appeal is able to canvass the substantial question of law, the concurrent findings of fact recorded by the Courts below cannot be disturbed by re-appraisal of the evidence. It is not the case of the appellant nor does the record also show that the impugned judgments suffer from any perversity in the matter of appreciation of evidence.

14. Under those circumstances, it is held that no question of law, much less a substantial question of law, arises for determination in

the present second appeal. There are no merits in the second appeal.

15. On 30.10.2008, this Court, while admitting the second appeal, granted *status quo*. As the first appellant in the second appeal violated the order of *status quo*, the respondents (plaintiffs) filed the present contempt case complaining willful disobedience of the orders dated 30.10.2008 passed by this Court in S.A.M.P.No.2426 of 2008 in S.A.No.1095. Inasmuch as the second appeal is dismissed, this contempt case is closed.

16. In the result, the second appeal is dismissed and the contempt case is closed. There shall be no order as to costs.

A.SANTHOSH REDDY, J

21.02.2023

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