

THE HON'BLE SRI JUSTICE SUBBA REDDY SATTI

SECOND APPEAL No.64 of 2021

JUDGMENT:

The unsuccessful plaintiffs filed the present second appeal against the decree and judgment dated 07.11.2019 in A.S.No.212 of 2014 on the file of the Court of VI Additional District Judge, Sompeta, confirming the decree and judgment dated 31.12.2001 in O.S.No.105 of 1988 on the file of the Court of Junior Civil Judge, Palasa.

2. For the sake of convenience, parties to this second appeal are referred to as they were arrayed in suit.

3. Plaintiffs filed the suit seeking permanent injunction restraining the defendants and their men from interfering with the peaceful possession and enjoyment of the plaint schedule property. Plaint schedule property is shown in schedule as, an extent of Ac.0.22½ cents in S.No.232/2A/1/B; Ac.1.37½ cents in S.No.232/2A/2/A; Ac.0.40 cents in S.No.232/2A/1/B; Ac.0.62½ cents in S.No.232/2A/1/C; Ac.0.82½ cents in S.No.232/2A/2/B; Ac.0.25 cents in S.No.232/2A/1/C, totaling an extent of Ac.3.70 cents in Patta No.122 of Parasamba @ Kasibugga, Palasa Mandal, Srikakulam District.

4. It was averred in the plaint that the plaint schedule properties are joint family property of all the plaintiffs; that the plaint schedule properties were purchased under registered sale deeds dated 24.07.1971 and 24.11.1972 with the joint family monies; that the plaintiffs are in exclusive possession and enjoyment of the same; that the defendants without any manner of

right are trying to invade into the plaint schedule properties; that the 2nd defendant worked as Tahsildar, Palasa and 3rd defendant is the daughter of 2nd defendant; that defendants 1 and 2 in connivance with each other created sham and nominal documents and tried to trespass into the schedule properties and hence filed the suit for the reliefs mentioned supra.

5. Originally, suit was filed against defendants 1 to 3. Pending suit 1st defendant died and his legal representatives were brought on record as defendants 4 to 10. Defendants 11 to 36 were brought on record being the purchasers from 3rd defendant pendent lite. Pending the suit, 2nd defendant also died and 3rd defendant was recognized as his legal representative.

6. The 7th defendant filed written statement and the same was adopted by defendants 2 to 6 and 8. In the written statement, it was contended *inter alia* that the plaintiffs have nothing to do with the schedule properties in S.No.232/7 in an extent of Ac.3.77 cents; that the 1st defendant sold Ac.2.25 cents of land to 3rd defendant in the year 1972, which was allotted to him as per the splitting up joint pattas by the then Deputy Tahsildar, Tekkali on 27.07.1973, and have been enjoying the land with absolute rights by paying land revenue to the Government; that the authorities also issued pattadar pass books in favour of defendants; that the plaint schedule is incorrect and prayed the Court dismiss the suit.

7. Subsequent purchasers of the schedule properties also filed written statement. It was contended that total extent of land in S.No.232 covered by Patta No.121 is Ac.28.02 cents, which is a joint family property of 1st defendant, Karji Raghunadha Sahu,

Illatom Suryanarayana and Penta Jayalakshmi etc; that the 1st defendant enjoyed the properties and later sold North-East portion of an extent of Ac.2.25 cents covered by S.No.232 to 3rd defendant under a registered sale deed dated 24.06.1972 and delivered possession by demarcating the boundaries; that the 3rd defendant applied for sub-division of the properties covered by sale deed dated 24.06.1972; that sub-division was effected and survey number was revised as S.No.232/P.1; that the vendors of the plaintiffs had no title; that pending suit 3rd defendant sold plots to defendants 11 to 36 and they are in peaceful possession and enjoyment of the property and prayed the Court dismiss the suit.

8. During the course of trial, on behalf of plaintiffs, 2nd plaintiff was examined as P.W.1 and got examined P.W.2 and Exs.A-1 to A-19 were marked. On behalf of defendants, 9th defendant was examined as D.W.1 and got examined D.Ws.2 to 5 and Exs.B-1 to B-65 were marked.

9. Heard Sri Mohammed Gayasuddin, learned counsel for the appellants.

10. Learned counsel for the appellants would contend that the judgments of the Courts below vitiated in not granting injunction basing on Exs.A-1 and A-3 sale deeds. He would further contend that 3rd defendant executed sale deed in favour of defendants 11 to 36 pending suit and hence, they are hit by doctrine of *lis pendens*. He would further contend that in the appeal an interlocutory application was filed under Order 41 Rule 27 of CPC seeking to receive additional documents and the first appellate Court ought to have decided the said application before disposal of the appeal, but

not along with the appeal. Hence, he prayed this Court to set aside the decree and judgments of the Courts below.

11. O.S.No.105 of 1988 was filed for perpetual injunction, basing on registered sale deeds dated 24.07.1971 and 24.11.1972. Defendants filed written statement and denied the title of plaintiffs. Defendants also pleaded title to the property by virtue of Ex.B-2 registered sale deed dated 24.06.1972 executed by 1st defendant in favour of 3rd defendant. Ex.B-3 pattadar pass book was also marked, wherein the extent owned by 1st defendant, was shown as Ac.3.75 cents. The other revenue records were also filed by defendants to substantiate their contention that the 1st defendant got the property of Ac.3.75 cents and he sold Ac.2.25 cents to 3rd defendant.

12. Suit was filed on 22.07.1988. By the time, the suit was filed basing on Exs.A-1 and A-3, Ex B-2 registered sale deed is in existence. By filing written statement and pleading registered sale deeds, defendants denied the title of plaintiffs as also title of vendor of the plaintiff. In view of the said denial, since the denial is not for the sake of denial, cloud over the property, the plaintiffs ought to have filed suit for declaration instead of injunction simplicitor. Though question of title would be incidentally go into in a suit filed for injunction, when the adversary parties are claiming the schedule property under registered documents the plaintiffs ought to have filed suit for declaration. Complicated question of title will not be determined in a suit for perpetual injunction. Court would only concerned possession of the plaintiffs on the date of filing of the suit.

13. It is interested to note that a suggestion was put to D.W.3, 26th defendant in the suit, that he trespassed into their site under the guise of Ex.B-60 sale deed dated 31.05.1993. If plaintiffs' have been in possession of the property prior to filing of the suit, the plaintiffs would have been sought for amendment in view of the subsequent developments pending the suit (alleged trespass). This instance makes the things more than discernable that the plaintiffs failed to prove their possession over the schedule property either as on the date of filing of the suit.

14. Plaintiffs relied upon Ex.A-5 true copy of Village Account, wherein Figure Fasli 1400 was struck off by correcting fasli 1395 to 1408 without any signature by the attesting authority or the staff of revenue department. It shows that faslis on Adangals were interpolated and it raises doubt about its genuineness. Plaintiffs also did not examine any person from the revenue department to establish genuineness of Ex.A-5. Exs.A-7 to A-11 are post *litis* documents and hence, no importance be attached to those documents. Ex.A-17 also contains corrections in respect of signature of attestation authority. It is also settled law that entries in revenue records do not confer title. A perusal of the documents filed by the plaintiffs prima facie do not establish possession over the schedule property on the day of filing of the suit, sine qua non, in a suit filed for perpetual injunction.

15. The Hon'ble Apex Court in **Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs. and Ors.**¹ held thus:

“(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and

¹ AIR 2008 SC 2033

possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in *Annaimuthu Thevar* (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his

property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”

16. In view of the law declared by the Hon'ble Apex Court, the suit filed and continued by appellants/plaintiffs for perpetual injunction notwithstanding the denial of title by respondents may not proper. The dismissal of the suit by the Trial Court and confirmation of the judgment and decree by Appellate Court do not call for any interference by this Hon'ble Court under Sec 100 CPC.

17. After dismissal of the suit by the trial Court, the plaintiffs filed appeal, wherein they filed I.A.No.264 of 2014 under Order 41 Rule 27 of CPC to receive the copy of FMB; I.A.No.265 of 2014 was filed to receive Photostat copies of pattadar pass books issued in favour of appellant Nos.1, 4 and 3, original notice issued by the Mandal Revenue Officer, Palasa and office copy of letter addressed to Mandal Revenue Officer, Palasa; I.A.No.126 of 2015 was filed under Rule 128 of Civil Rules of Practice to send Exs.B-42 to B-47 in O.S.No.14 of 2014 on the file of VI Additional District Judge, Sompeta; I.A.No.263 of 2014 was filed under Rule 129 of Civil Rules of Practice to send for certain documents. In support of the said interlocutory applications, the appellants relied on the order passed in C.R.P.No.4177 of 2001. A perusal of the order passed in C.R.P.No.4177 of 2001 manifest that it was filed questioning the order of amendment of plaint schedule, but it has nothing to do with the documents. The first appellate Court considered the scope of Order XLI Rule 27 CPC all the aspects and dismissed the appeal *vide* judgment dated 07.11.2019.

18. The Court below considered both oral and documentary evidence came to conclusion that the suit for injunction simplicitor in the facts of the case is not maintainable without seeking for declaration of title. Apart from the same, in fact, trial court also recorded finding about possession. The findings recorded by the Courts below are based on evidence available on record. This Court do not find question of law much less substantial questions of law involved in the present second appeal under Sec 100 CPC. Hence the appeal fails and is liable to dismissed, however, without costs.

19. Accordingly, the second appeal is dismissed. No order as to costs.

As a sequel, all the pending miscellaneous applications shall stand closed.

SUBBA REDDY SATTI, J

8th March, 2022

PVD

THE HON'BLE SRI JUSTICE SUBBA REDDY SATTI

SECOND APPEAL No.64 of 2021

8th March, 2022

PVD