

HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

+SECOND APPEAL No.267 of 2015

Between:

Chinna Kullayappa, S/o Pullaiah
R/o. Syndicate Nagar, Anantapur and 2 others.

... Appellants

And

\$ G. Sambasiva Rao, S/o Narayanappa,
R/o. D.No.2/4, Syndicate Nagar, Ananthapur

.... Respondent

JUDGMENT PRONOUNCED ON **18.08.2023**

THE HON'BLE DR.JUSTICE K. MANMADHA RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? - Yes -
2. Whether the copies of judgment may be marked
to Law Reporters/Journals - Yes -
3. Whether Their Ladyship/Lordship wish to see
the fair copy of the Judgment? - Yes -

DR.JUSTICE K. MANMADHA RAO

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.... Respondent

! Counsel for the Petitioner : Sri I. Venkata Prasad

Counsel for Respondent: Sri N. Ranga Reddy

<Gist :

>Head Note:

? Cases referred:

1. 2001(4) SCC 262

HON'BLE DR. JUSTICE K. MANMADHA RAO**SECOND APPEAL No.267 of 2015****JUDGMENT:**

The present Second Appeal is preferred by the appellants aggrieved by the Decree and Judgment dated 30.04.2014 passed in A.S.No.93 of 2012 on the file of III Additional District Judge (FTC), Anantapur, confirming the decree and judgment dated 18.08.2012 passed in O.S No.136 of 2006 on the file of Additional Senior Civil Judge, Anantapur.

2. The appellants herein are the defendants and the respondent herein is the plaintiff in O.S.No.136 of 2006 on the file of Additional Senior Civil Judge, Anantapur (for short "the trial Court").

3. For convenience the parties are hereinafter referred to as arrayed before the III Additional District Judge (FTC), Anantapur (for short "the first appellate Court") in A.S.No.93 of 2012.

4. Brief facts of the case are that the plaintiff is the absolute owner of plaint schedule property and he purchased it from its rightful owner, under registered sale

deed dated 21.4.2005 for a valid consideration of Rs.75,000/- and since then he has been in peaceful possession and enjoyment of the same. Originally the property belonged to one Dhanpat Raj and Company rep. by its partner Lakshnichand has purchased the same from him. The defendants are strangers and have no right over the property. But they are claiming that they are the rightful owners and are claiming their right under sale deeds dated 26.5.2001 and 31.1.2003 respectively and said documents were obtained by impersonating the original owner cum partner Dhanpat Raj. Hence, the plaintiff filed suit in O.S No.136 of 2006 before the trial Court.

5. The 1st defendant filed written statement and the same was adopted by 2nd and 3rd defendants and they denied the right and title of the plaintiff. Dhanpat Raj and Co., rep. by its partner Lakshmi Chand purchased the property from one Shyamala Devi who was its rightful owner on 7.9.1977 for a valid consideration of Rs.1500/-. The plaintiff purchased the property from one Kantilal Pratap Chand and he was not rightful owner. In fact the defendants purchased the property from said Lakshmi

Chand who was its rightful owner and since their purchase, they have been in possession and enjoyment of the property. Since the plaintiff purchased the property from a stranger, he is not entitled to any declaration and hence prayed to dismiss the suit.

6. Basing on the above pleadings, the trial Court framed the following issues:

1. Whether the sale deed dated 21.4.2005 in favour of plaintiff is true, valid and confirms title in favour of plaintiff
2. Whether the plaintiff is in possession of plaint schedule property?
3. Whether the sale deed in favour of the defendants dated 26.5.2001, 5.9.2001 and 31.1.2003 and true valid on binding on the plaintiff?
4. Whether the plaintiff is entitled to the relief of permanent injunction?
5. To what relief?

7. During course of trial, on behalf of the plaintiff, he himself was examined as PW.1 and his vendor was examined as PW.2 and Ex.A1 to Ex.A7 were marked on his behalf, and on behalf of the defendants, 1st defendant was examined as DW.1 and one of the attestors was examined as DW.2 and Ex.B1 was marked on their behalf.

8. After considering the oral and documentary evidence, the trial Court decreed the suit with costs. Aggrieved by the same, the defendants preferred an appeal

in A.S No.93 of 2012 before the first appellate Court. After hearing the both sides, the first appellate Court has framed point for consideration as under:

i) Whether the decree and judgment of trial Court is sustainable?

9. Basing on the facts and circumstances of the case, the first appellate Court has dismissed the Appeal suit with costs by confirming the decree and judgment in O.S.No.136 of 2006. Challenging the same, the present second appeal came to be filed.

10. Heard Sri I. Venkata Prasad, learned counsel appearing for the appellants and Sri N. Ranga Reddy, learned counsel appearing for the respondent.

11. This Second Appeal is filed under Section 100 CPC on the ground that the judgment and decree of both courts below is totally basing on the presumption, surmises and conjectures, ignoring the material facts available on record and interpretation of law.

12. There cannot be any dispute that, under the amended Section 100 C.P.C., a party aggrieved by the decree passed by the first appellate court has no absolute right of

appeal. He can neither challenge the decree on a question of fact or on a question of law. The second appeal lies only where the High Court is satisfied that the case involves a substantial question of law. The word 'substantial' as qualifying 'question of law', means and conveys – of having substance, essential, real, or sound worth, important, considerable, fairly arguable, in contradiction with – technical, formal, or no substance, no consequence or academic only. A substantial question of law should directly and substantially affect the rights of the parties. A question of law can be said to be substantial between the parties if the decision in appeal turns one way or the other on the particular view of law. But, if the question does not affect the decision, it cannot be said to be substantial question between the parties. Recording a finding without any evidence on record; disregard or non consideration of relevant or admissible evidence; taking into consideration irrelevant or inadmissible evidence; perverse finding- are some of the questions, which involve substantial questions of law.

13. According to Section 100 CPC, a definite restriction on to the exercise of jurisdiction in a second appeal so far as the High Court is concerned. Needless to record that the Code of Civil Procedure introduced such an embargo for such definite objectives and since the Courts are required to further probe on that score and the Courts while detailing out, but the fact remains in second appeal finding of fact, even if erroneous, will generally not be disturbed but where it is found that the findings stand vitiated on wrong test and on the basis of assumptions and conjectures and resultantly there is an element of perversity involved therein, the High Court will be within its jurisdiction to deal with the issue. The High Court can interfere with such finding recorded by the trial Court though not on law in view of judgment reported in **Kulavant Kaur v Gurdial Singh Mann**¹

14. Keeping in mind the scope of Section 100 CPC, I would like to decide the present appeal at the stage of admission.

¹ 2001 (4 SCC 262

15. Learned counsel for the appellants mainly contended that the first appellate Court failed to address itself with reference to question when the sale deeds in favour of the defendants from the rightful owner and they are first in point of time and will prevail over the subsequent sale deed in favour of the plaintiff and in the circumstances as the title with possession is already conferred in favour of the appellants by its true owner, nothing remains either title, possession or interest in the suit schedule property in order to convey the same in favour of subsequent purchaser, who is respondent/plaintiff herein and the court below ought to have dismissed the suit of the respondent/plaintiff. He further submits that the court below, though came to the conclusion that, admittedly except Ex.B1-sale deed of original owner, no other documents are placed on record ignoring the fact that the respondent/plaintiff himself produced the sale deeds. As such it presupposes that the defendants are in possession and enjoyment of the suit schedule property basing on the said documents which are admitted in evidence and the respondent/plaintiff himself produced the same, therefore the trial Court has wrongly

held that the defendants have not produced any documents so as to presume that delivery of possession from the date of sale deeds in their possession. The trial Court admitted that the sale deeds in favour of the defendants i.e., dated 26.5.2001, 5.9.2001 and 31.1.2003 respectively and the sale deed in favour of respondent/plaintiff is dated 21.4.2005. But as on that date, the company or representative of the company has got no right, title and interest so as to convey the same in favour of the respondent/ plaintiff and therefore, both the courts wrongly held that the respondent/plaintiff is in possession. Therefore, the judgments and decrees passed by both the Courts below is against the facts on record and against the well settled principles of deciding the rights with reference to passing of declaratory decrees and the reliefs sought for by the respondent/plaintiff, as such it is illegal and against the law and hence liable to be set aside.

16. The main issue in this case is **whether the plaintiff/respondent purchased the suit schedule property from its rightful owner Lakshmi Chand, who was representing Dhanpat Raj and Co., or that the**

defendants/appellants purchased said property from same person?

17. On perusing the material available on record, it is observed that, admittedly, one Syamala Devi was rightful owner of suit schedule property and from her one Lakshmi Chand, who represented Dhanpat Raj and Co. purchased the property. Ex.B1 is the certified copy of registered sale deed. There is also no dispute that said Lakshmi Chand was representing Dhanpat Raj and co. and the property was sold by him. But now the issue is whether the said Lakshmi Chand sold suit schedule property to the respondent/plaintiff under Ex.A1 or to the respondents/defendants under Ex.A2 to Ex.A4 which are certified copies of registered sale deeds.

18. This Court further observed that, the respondent/plaintiff to prove his case, has examined his vendor as P.W.2 and according to him, he sold suit schedule property to the respondent/plaintiff under Ex.A1 and also delivered its possession. However, the appellants/defendants in the cross examination of PW.2 elicited that his name is mentioned as Lakshmi Chand S.Shah in Ex.A5 and

his father's name is mentioned as Shankar Narsinhlal Shah instead of Shankar Lal. But nowhere, it is stated that he was not representing Dhanpat Raj and co. In the examination of PW.2, he clearly stated that he sold suit schedule property only to the respondent/plaintiff and not to the appellants/ defendants. Further, as seen from the record, it is very clear that the sale deed of the respondent/ plaintiff was marked as Ex.A1-original copy of sale deed, but the appellants/defendants have not filed their original sale deeds before the trial Court.

19. As seen from the Ex.A1 original sale deed, it is clearly mentioned that Dhanpatraj and Co. rep by its partner Lakshnichand is the vendor and the same is not evident from Ex.A2 and Ex.A4. In both Ex.A2 and Ex.A4, it is only mentioned that one Lakshnichand sold said property to the 1st and 2nd defendant in his individual capacity but not in the capacity of partner of Dhanpatraj and Co. The signatures of vendor are one and the same. Therefore, it is clear that all the appellants/ defendants purchased the property from same person.

20. Learned counsel for the appellants/defendants argued that the respondent/plaintiff got prepared Ex.A6 by taking photograph from the sale deeds of the appellants/defendants. But the said plea is not considered for the reason that DW.1 and DW.2 in their cross examination admitted that they purchased property from same person. When the plaintiff has taken specific plea that Ex.A2 to Ex.A4 came into existence by impersonating his vendor and hence to discharge his burden the respondent/plaintiff has also examined his vendor as PW.2 and also marked the identity cards. It is the duty of the appellants/ defendants to examine their vendors and prove his identify and mere disputing genuineness of Ex.A6 is not enough when the respondent/plaintiff has discharged his burden.

21. Admittedly, the appellants have not examined their vendor. On verifying the photographs and name tallied with regard to name Lakshmichand who is the vendor of the respondent but not with regard to the claim of the appellants. Moreover, in the evidence of DW.2 he categorically admitted that he executed an undertaking on

14.9.2001 stating that he will be responsible for any disputes with regard to Ex.A2 to Ex.A4, as he knows said Lakshnichand gave said undertaking to resolve the dispute through Lakshnichand and that to resolve any disputes between the appellants in the year 2001 itself when Ex.A2 to Ex.A4 belong to 2001, 2002, 2003 also creates a doubt about the genuineness of said transactions because nobody will anticipate any dispute if the transaction is genuine. Further, since the 2nd appellant in his cross examination also stated that except attesting the documents, he did not involve in said transaction.

22. For the above-mentioned reasons, I do not find any reason to interfere with the well-considered judgments of the Courts below.

23. Accordingly, the Second Appeal is dismissed at the stage of admission. No order as to costs. As a sequel, all the pending miscellaneous applications shall stand closed.

DR. K. MANMADHA RAO, J.

Date : -08-2023

Note : L. R copy to be marked.

(b/o)Gvl

HON'BLE DR. JUSTICE K. MANMADHA RAO

SECOND APPEAL No.267 of 2015

Date : .08.2023

Gvl