



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3397]

WEDNESDAY, THE FOURTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA
KRISHNA RAO

SECOND APPEAL NO: 1211/2018

Between:

Gudivada Jayaram / Jayaram Naidu and Others ...APPELLANT(S)

AND

Guggila Ramesh Babu and Others ...RESPONDENT(S)

Counsel for the Appellant(S):

1.P DURGA PRASAD

Counsel for the Respondent(S):

1.KALEEMULLA S

The Court made the following:

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

SECOND APPEAL No.1211 of 2018

JUDGMENT:

This second appeal is filed aggrieved against the Judgment and decree dated 20-02-2015 in A.S.No.112 of 2012, on the file of the Special Judge for Trial of cases under SCs & STs (POA) Act-Cum- Additional District Judge, Vizianagaram, confirming the Judgment and decree dated 28.09.2012 in O.S.No.461 of 2005, on the file of the Additional Junior Civil Judge at Vizianagaram.

2. The appellants herein are the plaintiffs and the respondents herein are the defendants in O.S.No.461 of 2005, on the file of the Additional Junior Civil Judge at Vizianagaram.

3. The plaintiff initiated action in O.S.No.461 of 2005, on the file of the Additional Junior Civil Judge at Vizianagaram, with a prayer for declaring the plaintiffs 1 and 2 are the absolute owners of the plaint schedule property and for consequential relief of permanent injunction, restraining the defendants and their men from in any way interfering with the peaceful possession and enjoyment of the plaintiffs over the plaint schedule property and for costs of the suit.

4. The learned Additional Junior Civil Judge at Vizianagaram, dismissed the suit with costs. Felt aggrieved of the same, the unsuccessful plaintiffs in the above said suit filed the aforesaid appeal before the first appellate Court.

The learned Special Judge for Trial of cases under SCs & STs (POA) Act-Cum- Additional District Judge, Vizianagaram, dismissed the first appeal by confirming the judgment and decree passed by the trial Court. Aggrieved thereby, the unsuccessful plaintiffs/appellants approached this Court by way of second appeal.

5. For the sake of convenience, both parties in the second appeal will be referred to as they are arrayed in the original suit.

6. The case of the plaintiff, in brief, as set out in the plaint averments in O.S.No.461 of 2005, is as follows:

The plaintiff No.1 is the son, and the plaintiff No.2 is the wife, of late Gudivada China Thati Naidu of Chodamma Agraharam Village in Possapatirega Revenue Mandal, Vizianagaram District. The plaintiffs pleaded that the plaint schedule properties are the ancestral properties belonging to late Gudivada China Thati Naidu and that he died in the year 1989, leaving behind the plaintiffs and another son by name Gudivada Sanyasinaidu, i.e., the husband of the defendant No.2 and father of the defendant Nos.3 to 6. The plaintiffs further pleaded that after the death of late Gudivada China Thati Naidu, as the properties inherited from him were not partitioned, the plaintiffs filed a suit against Gudivada Sanyasinaidu and his wife, Gudivada Eswaramma, i.e., the defendant No.2, for partition and separate possession of the plaintiffs' share in the joint properties in O.S.No.45 of 1992, on the file of the Subordinate Judge's Court at Vizianagaram. During the pendency of the

said suit, the plaintiffs and the defendants in the said suit, i.e., Gudivada Sanyasinaidu and the defendant No.2, entered into a compromise, and the same was referred to the Lok Adalat. Before the Lok Adalat, both the parties filed a compromise petition vide I.A.No.27 of 1999, wherein the compromise was recorded, and an award was passed on 29.01.1999 in terms of the compromise.

The plaintiffs further pleaded that they were put in possession of the said property as per the terms of the compromise and that the plaintiffs have been enjoying the properties that fell to their share with absolute rights. Gudivada Sanyasinaidu, i.e., the husband of the defendant No.2 and the father of the defendant Nos.3 to 6, enjoyed the remaining properties of the said plaint schedule, and each of them is also paying land revenue for their respective lands. The plaintiffs further pleaded that while so, the defendant No.1 purchased some lands around the plaint schedule properties from the neighboring landowners and also from late Gudivada Sanyasinaidu and his son Srinivasa Rao, i.e., the defendant No.3. At that time, the defendant No.1 requested the plaintiffs to sell the plaint schedule property also, which would be convenient for him for enjoying his other lands purchased from the neighboring landowners, but the plaintiffs refused to sell the same, as they had only a small extent of land for their livelihood. As such, he purchased the other neighboring lands from their owners and got some sale deeds executed through them.

The plaintiffs further pleaded that they have been in possession and enjoyment of the same, and even if they executed any such document in favour of the defendant No.1 in respect of the plaint schedule property, it is not valid or binding on the plaintiffs and is non est in the eye of law. The plaintiffs pleaded that the plaintiff No.1 got issued a legal notice dated 04.02.2005 to the defendant Nos.1 and 3, which they received, and the defendant No.1 got issued a belated reply dated 12.05.2005 with false allegations. The plaintiffs further pleaded that the defendant No.1 is claiming right over an extent of Ac.1.30 cents in Sy.Nos.14/3, 14/7, 14/8, and 14/13 under the sale deed dated 07.10.2003, whereas the plaintiffs are the owners of the plaint schedule property to an extent of Ac.0.54 cents. Hence, the plaintiffs are constrained to file the present suit.

7. The defendant No.1 filed written statement before the trial Court. The brief averments in the written statement are as follows:

The defendant No.1 pleaded that the suit is not maintainable either under law or fact and that the above suit was filed in collusion with the other defendants, who are close relatives inter se. The defendant No.1 further pleaded that the plaintiffs have never been in possession and enjoyment of the suit schedule land at any time, and this fact can easily be seen from the records submitted by the plaintiffs. As they want to twist the matter to their advantage, the plaintiffs are taking advantage of the demise of late Gudivada Sanyasinaidu. The defendant No.1 further pleaded that the concerned revenue records, including the Pattadar Passbooks, issued by the competent

authority, which are public in nature, were submitted by the vendors of the defendant No.1 at the time of the registration of the sale deed in favour of the defendant No.1, in respect of the lands covered under it, including the suit schedule lands. He further pleaded that from the date of obtaining the registered sale deed from their owners, the defendant No.1 has been in continuous and peaceful possession and enjoyment of the said lands, and that the suit filed by the plaintiffs is not maintainable either under law or fact, especially due to the suppression of all real and true facts. Further, the suit is not maintainable for mere injunction without a declaration, and as such, he prayed for dismissal of the suit with costs.

8. On the basis of above pleadings, the learned Additional Junior Civil Judge at Vizianagaram, framed the following issues for trial:

- 1) Whether the plaintiff is in lawful possession and enjoyment of the plaintiff schedule property as on the date of filing of the suit? If so entitled for permanent injunction as prayed for?
- 2) To what relief?

The trial Court had also framed the following Additional Issue:

- 1) Whether the plaintiffs are entitled for declaration that they are the absolute owners of the suit schedule properties?

9. During the course of trial before the trial Court, on behalf of the plaintiffs, P.Ws.1 to 3 was examined and Exs.A-1 to A-8 were marked. On

behalf of the defendants, D.Ws.1 to 3 were examined and Exs.B-1 to B-9 were marked.

10. The learned Additional Junior Civil Judge at Vizianagaram, after conclusion of trial, on hearing the arguments of both sides and on consideration of oral and documentary evidence on record, dismissed the suit with costs. Felt aggrieved thereby, the unsuccessful plaintiffs filed the appeal suit in A.S.No.112 of 2012, on the file of the Special Judge for Trial of cases under SCs & STs (POA) Act-Cum- Additional District Judge, Vizianagaram, wherein the following points came up for consideration:

- 1) Whether the findings and observations made by the lower Court are contrary to Law, weight of evidence and probabilities of the case?
- 2) If so, to what relief, the parties are entitled to?

11. The learned Special Judge for Trial of cases under SCs & STs (POA) Act-Cum- Additional District Judge, Vizianagaram, i.e., the first appellate Judge, after hearing the arguments, answered the points, as above, against the plaintiffs and dismissed the appeal suit filed by the plaintiffs. Felt aggrieved of the same, the plaintiffs in O.S.No.461 of 2005 filed the present second appeal before this Court.

12. Heard Sri K.M.R. Bala Prasad, learned counsel representing Sri P.Durga Prasad, learned counsel for the appellants and Sri M.Sohail Shareef, learned counsel representing Sri Kaleemulla.S, learned counsel for the respondents.

13. It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. It is regulated in accordance with law. A second appeal preferred under Section 100 of C.P.C., could be admitted only when the appellants satisfies the Court that substantial question of law between the parties arise in the case. A proper test for determining whether a question of law raised in the case is substantial would be or whether it directly and substantially affects the rights of the parties and if so, whether it is either an open question in the sense that it is not finally settled by the superior Courts or is not free from difficulty or cause for discussion of alternative views. In a case of **Boodireddy Chandraiah v. Arigela Laxmi**¹, the Apex Court held that it is not within the domain of High Court to investigate grounds on which the findings were arrived at by the last Court of fact namely, the first appellate Court. In a case where from a given set of circumstances two inferences of facts are possible, one drawn by the lower appellate Court will not be interfered by the High Court in a second appeal. Adopting any other approach is not permissible. Where, the facts required for a point of law have not been pleaded, a litigant should not be allowed to raise that question as a substantial question of law in second appeal. Mere appreciation of facts, documentary evidence and contents of documents cannot be held to be raising a substantial question of law.

14. The plaintiffs having chosen to invoke the jurisdiction of this Court under Section 100 of Civil Procedure Code, it is for them to meet the above

¹ (2007) 8 SCC 155

principles and satisfy the Court whether there exists any substantial question of law.

15. This second appeal is filed against the concurrent findings arrived by both the Courts below, therefore, the grounds urged in the second appeal are to be scrutinized to find out whether the appellants has shown any substantial question of law. The contention of appellants is that the judgment and decree of the trial Court as well as the first appellate Court are contrary to law and that the second appeal may be allowed by setting aside the judgment and decree passed by both the Courts below i.e. the trial Court and the first appellate Court.

16. The appellants are the plaintiffs in the suit in O.S. No.461 of 2005, on the file of the Additional Junior Civil Judge, Vizianagaram. The appellants filed the suit for seeking the relief of declaration of title and consequential relief of permanent injunction in respect of the plaint schedule property. The learned trial Judge, after considering the entire evidence on record, dismissed the suit filed by the plaintiffs. Aggrieved by the said decree and judgment, the plaintiffs in the aforesaid suit filed the first appeal before the First Appellate Court, and the said first appeal was dismissed by the First Appellate Court by confirming the decree and judgment passed by the trial Court. Aggrieved by the same, the appellants/plaintiffs in the first appeal filed the second appeal before this Court.

17. The plaintiffs are none other than the son and wife of late China Thati Naidu. It is the specific case of the plaintiffs that the plaintiffs filed a suit in O.S.No.45 of 1992, before the Subordinate Judge Court at Vizianagaram, against Gudivada Sanyasi Naidu and his wife for partition of the properties, and during the pendency of the said suit, both the parties in the said suit entered into a compromise before the Lok Adalat, and an award was passed by the Lok Adalat on 29.01.1999, in terms of the compromise decree by Lok Adalat Bench, and the plaintiffs were put in possession of the property. The appellants'/plaintiffs' claim is based on Ex.A-1, certified copy of the compromise petition and award copy dated 29.01.1999 in O.S. No.45 of 1992, on the file of the Senior Civil Judge Court, Vizianagaram. As seen from Ex.A-1, in the award itself, it was mentioned that compromise was recorded and that the final decree was to be engrossed as and when non-judicial stamps were deposited. It is undisputed by both sides that no final decree was engrossed on non-judicial stamps. As per the terms of the Lok Adalat award, "*a final decree has to be engrossed as and when the non-judicial stamps were deposited*". It is undisputed that non-judicial stamps were not deposited by the plaintiffs in the said suit. The plaintiffs in the said suit are none other than the plaintiffs in the present suit. Therefore, unless and until the Lok Adalat award was engrossed on non-judicial stamps, as ordered by the terms of the Lok Adalat award, it cannot be said that the plaintiffs will get right and title by virtue of the said award passed by the Lok Adalat Bench. Except relying on Ex.A-1, the plaintiffs herein have not filed any document to prove their right

and title in the plaint schedule property. As stated supra, the plaintiffs herein are seeking relief of declaration of title and consequential relief of permanent injunction in respect of the plaint schedule property.

18. As noticed supra, the plaintiff relied on Ex. A-1, namely, the Lok Adalat award passed by the Lok Adalat Bench in O.S.No.45 of 1992, there was a specific recital in the award itself that the compromise was recorded and engross the final decree as and when non-judicial stamps were deposited. It is undisputed by the plaintiff that the non-judicial stamps were not deposited, and therefore, the final decree is not engrossed on non-judicial stamps. The plaintiff No.1/P.W.1 admitted in his evidence, in cross-examination, that they themselves got partitioned the property subsequent to the compromise award. But, in order to prove the same, no evidence is produced by the plaintiffs, and the same is not pleaded by the plaintiffs in the plaint itself. As per the own case of the plaintiffs in the present suit, after the date of passing of the award, on the same day, they were put in possession of the said property. Therefore, the evidence of P.W.1 is not in consonance with the pleadings in the plaint.

19. As per the own case of the plaintiffs, they were put in possession on 29.01.1999. But, in order to prove the same, the plaintiffs have not filed any single document to prove their possession since 1999. The plaintiffs relied on Ex. A-3, Land Revenue Receipt, dated 12.12.2004, said to have been issued in favour of the plaintiff No.1, which is much prior to the institution of the suit. The plaintiffs also relied on Ex. A-8, Tax Receipt, dated 27.01.2007, said to

have been issued in favour of the plaintiff No.1, which relates to the pending suit proceedings.

It is needless to mention that the suit is instituted by the plaintiffs before the trial Court in the year 2005, for seeking relief of declaration of title and consequential relief of permanent injunction in respect of the schedule property. Moreover, the trial Court held in its judgment that “a Panchayat Secretary is not supposed to issue tax receipt in respect of the agricultural property. A Panchayat Secretary will collect the house tax, but not the tax on agricultural land”. As noticed supra, the Panchayat Secretary issued Ex. A-3 and Ex. A-8; here, the schedule property is an agricultural land. The learned trial Judge held in its judgment, by giving reasons, that Ex. A-3 and Ex. A-8 are not legally valid..

20. Learned counsel for the appellants placed reliance on a case law in ***K.Srinivasappa and others (S) Vs. M.Mallamma and Others (S)***².

Learned counsel for the appellants has also placed another reliance on a case law in ***P.T. Thomas Vs. Thomas Job***³.

In the case at hand, the plaintiffs are seeking the relief of declaration of title in respect of the plaint schedule property and consequential relief of permanent injunction in respect of the plaint schedule property. In Ex. A-1 award itself, it was specifically recited that the final decree has to be

² 2022 SCC Online SC 636

³ AIR 2005 SUPREME COURT 3575

engrossed as and when non-judicial stamps are deposited by the plaintiffs. Admittedly, non-judicial stamps were not deposited from 1999 till the date of filing of the suit. If an award like a final decree in a suit for partition is passed by the Lok Adalat, the same also requires registration. There is a specific term and condition in Ex. A-1 award itself that the final decree has to be engrossed on non-judicial stamps. Therefore, unless and until the Lok Adalat award was engrossed on non-judicial stamps as stipulated in the Lok Adalat award, the plaintiffs will not get any right and title in respect of the plaint schedule property.

21. P.W.1 admits in his evidence in cross-examination itself that they themselves got partitioned the properties subsequent to the compromise award passed by the Lok Adalat. But, no evidence was produced by the plaintiffs. It is not the case of the plaintiffs in the plaint that, subsequent to the passing of the award by the Lok Adalat Bench, both the parties in the said suit have partitioned their properties. If a suit for partition is settled before the Lok Adalat, non-judicial stamps have to be necessarily deposited for engrossing at the time of execution of such award through the court of law. Unless and until the final decree of partition is engrossed on non-judicial stamps, it cannot be enforced, and it can be enforced only when engrossed on proper stamp and registration. In this case, admittedly, the final decree is not engrossed on non-judicial stamps, and the terms and conditions as stipulated in Ex.A-1 award that a final decree has to be engrossed on a non-judicial stamp itself is not complied with by the plaintiffs.

22. As noticed supra, the plaintiffs in the present suit filed a suit for relief of declaration of title and consequential relief of permanent injunction in respect of the schedule property before the Civil Court.

23. In a case of ***Union of India and others vs. Vasavi Cooperative Housing Society Limited and others***⁴, wherein the Apex Court held as follows:

"In a suit for declaration of title, burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited."

In a case of ***Moran Mar Basselios Catholicos vs. Thukalan Paulo Avira & others***⁵, wherein the Apex Court held as follows:

"It is perfectly clear that in a suit of this description if the plaintiffs are to succeed they must do so on the strength of their own title."

In a case of ***Sajana Granites, Madras and another vs. Manduva Srinivasa Rao and others***⁶, wherein the Composite High Court of Andhra Pradesh at Hyderabad, held as follows:

"The Supreme Court in *M.P. Athanastus case (supra)*, *M.M. Catholices v. Polo Avira case (supra)* and this Court in *C. Audilakshmamma case (supra)* held that plaintiff in a suit for declaration of title, and for recovery of possession, can succeed only on the strength of his own title and that it is not obligatory on the defendants to plead and

⁴ (2014) 2 Supreme Court Cases 269

⁵ 1958 SCC OnLine Supreme Court 136

⁶ 2001 SCC OnLine AP 666

prove the possible defects in the plaintiffs title and so if the plaintiff fails to establish his title, even if the defendant fails to establish his own title, plaintiff must be non suited. In this case since appellants are seeking declaration of their title to the suit property they have to establish their title; and cannot expect relief on the basis of the weakness of the case of respondents 1 and 2, or on the basis that the evidence adduced by respondents 1 and 2 does not establish their title to the suit property.”

24. Admittedly, in the case at hand, no single document is filed by the plaintiffs to prove their possession in the suit schedule property since 1991 till the date of filing of the suit. In the case at hand, except relying on Ex.A-1 Lok Adalat award, the plaintiffs did not produce any documentary evidence to prove their right and title in the plaintiff schedule property. As noticed supra, the plaintiffs will not get any right and title through Ex.A-1 award, since it was not engrossed on non-judicial stamps as per the terms and conditions stipulated in the Lok Adalat award. Furthermore, the plaintiff No.1 admitted in his evidence in cross-examination itself that subsequent to the passing of the Lok Adalat award, there was a partition between both the parties; the same is not yet pleaded by the plaintiffs in the plaintiff itself. As per the own case of the plaintiffs, they were put in possession of the plaintiff schedule property by virtue of the Lok Adalat award in the year 1999. As noticed supra, the plaintiffs failed to prove that they are in possession and enjoyment of the plaintiff schedule property since 1999. Furthermore, the plaintiffs also failed to prove that they are having absolute right and title in the plaintiff schedule property. Therefore, the plaintiffs approached the Civil Court with unclean hands. Furthermore, the defendant No.1 relied on Ex.B-1, registered sale deed, Ex.B-6, Pattadar Passbook, Ex.B-7, title deed passbook said to have been issued by the

Revenue Officials, and Ex.B-8, No.3 Adangal issued by the Revenue Department to prove his possession in the plaint schedule property. On appreciation of the entire evidence on record, the learned trial Judge rightly dismissed the suit filed by the plaintiffs, and the same is confirmed by the First Appellate Judge.

25. Having regard to the reasons assigned, this Court is satisfied that the concurrent findings of fact recorded by both the Courts below on all the issues/points against the plaintiffs and in favour of the defendants do not brook interference and that both the Courts below are justified in dismissing the suit against the plaintiff. The findings of fact recorded by both the Courts below were based on proper appreciation of evidence and the material on record and there was neither illegality nor irregularity in those findings and therefore, the findings do not require to be upset. Further, the existence of substantial questions of law is a sine qua non for the exercise of jurisdiction by this Court as per Section 100 of Code of Civil Procedure. The questions raised, strictly speaking, are not even pure questions of law, let alone substantial questions of law.

26. Viewed thus, this Court finds that none of the questions raised are substantial questions and there is no subsistence in the questions raised and that therefore, the second appeal is devoid of merits and is liable for dismissal at the stage of admission. The law is well settled that a second appeal shall not be admitted if no substantial questions of law arise for consideration and when no substantial questions of law is involved. The view of this Court is

reinforced by the ratio laid down by the Apex Court in the case of ***Gurdev Kaur v. Kaki***⁷. In the case on hand, as stated supra, this Court finds after careful examination of the pleadings, evidence and contentions that no substantial question of law is involved, this second appeal is liable for dismissal at the stage of admission, in view of narrow compass of Section 100 of Civil Procedure Code.

27. In the result, the second appeal is dismissed at the stage of admission, confirming the judgment and decree of both the Courts below. Pending applications, if any, shall stand closed. No costs.

V. GOPALA KRISHNA RAO, J.

Date: 04.02.2026

SRT

⁷ AIR 2006 SC 1975