

***HIGH COURT OF ANDHRA PRADESH :: AMARAVATI**

+SECOND APPEAL No.422 of 2024

Between:

Pidathala Girijamba, W/o Venkataramana

... Appeallant

And

\$ T.H. Nageswara Rao, S/o Late T.G Bhaskara Rao

R/o D.No.4-5-212 Vijayasree Bhavan, Koti

Hyderabad and 2 others.

.... Respondents

JUDGMENT PRONOUNCED ON **02.08.2024**

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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! Counsel for the Appellant : Sri K. Srinivas

Counsel for Respondents:

<Gist :

>Head Note:

? Cases referred:

APHC010169162024



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

[3310]

FRIDAY ,THE SECOND DAY OF AUGUST
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE DR JUSTICE K MANMADHA RAO

SECOND APPEAL NO: 422/2024

Between:

Pidathala Girijamba

...APPELLANT

AND

Th Nageswara Rao and Others

...RESPONDENT(S)

Counsel for the Appellant:

1.K SRINIVAS

Counsel for the Respondent(S):

1.

The Court made the following:

JUDGMENT :

The unsuccessful 1st defendant has filed the present Second Appeal against the judgment and decree dated 23.12.2023 in Appeal Suit No.6 of 2018 on the file of Senior Civil Judge, Kadiri reversing the judgment and Decree dated 6.8.2018 in O.S No.441 of 2005 on the file of Court of the Principal Junior Civil Judge, Kadiri.

2. The parties in this second appeal are referred to as they are arrayed in the original suit for the sake of convenience.

3. Brief facts of the case are that One Hebbar Lakshamma filed the suit in O.S No.31 of 1944 on the file of the District Munsif, Penukonda, for specific performance of agreement of sale against Matta Surya and Hebbar Chalapathi (plaintiff's grandfather). The said suit ended in compromise and compromise decree dated 27.2.1945 was passed with a condition to execute registered sale deed in favour of Hebbar Lakshamma on payment of Rs.1,500/- by her within one year from the date of the said decree and that Hebbar Lakshamma has got only limited rights of enjoyment over the property during her life time without alienation and the said property should devolve on her sons with absolute rights after her death. In pursuance of the said compromise decree dated 27.02.1945, Hebbar Lakshamma paid consideration and obtained registered sale deed dated 06.04.1946 in her favour.

4. It is further stated that one Hebbar Prakash Rao is the son of Hebbar Lakshamma and they lived together. While Hebbar Prakash Rao was addicted to vices and making efforts to alienate the property, Hebbar Lakshamma to preserve the property executed settlement deed dated 26.08.1950 in favour of her daughter-in-law namely Hebbar Prasannamba with limited rights of enjoyment during her life time and the property should devolve on her children after the death of Hebbar Prasannamba. Further, Hebbar Lakshamma, her son Prakash Rao and daughter-in-law namely Hebbar Prasannamba for their legal necessities and for the benefit of joint family sold the plaint schedule property to T.H.Bhaskar Rao (plaintiffs father)

under the registered sale deed dated 09.09.1952/Ex.A-3 for valid consideration and delivered possession of the property.

5. While the matter stood thus, the defendants No.1 and 2 and T.H.Rama Murthy filed a suit in O.S.No.36 of 1980 on the file of Subordinate Judge, Penukonda against the plaintiffs' father T.H.Bhaskara Rao for declaration of their title, delivery of possession and mesne profits. The said suit was decreed on 30.06.1980 wherein the appeal was preferred by T.H.Bhaskara Rao in AS No.155 of 1980 was dismissed on 30.09.1986 and Second Appeal No.197 of 1987 on the file of the Hon'ble High Court of Judicature, AP, Hyderabad was also dismissed on 20.07.1994. It is further stated that during the pendency of the appeal, defendants No.1 and 2 recovered possession of the suit property from T.H.Bhaskara Rao and mesne profits from him. Subsequently, Hebbar Lakshamma died on 14.05.1994 and on the death of Hebbar Lakshamma, T.H.Bhaskara Rao became entitled to the suit property with absolute rights. In view of the observations of the Hon'ble High Court in S.A.No.197 of 1987 dated 20.7.1994 that the defendants are bound to deliver the possession of the suit property to the plaintiffs. Further, T.H.Bhaskara Rao died on 17.04.1997 leaving behind the plaintiffs No. and 2 as his legal heirs. Though the plaintiffs made efforts for amicable settlement, the defendants postponed the same on one pretext or the other. The possession of the defendants over the suit property is unlawful and hence, they are bound to pay past and future mesne profits. In the said circumstances, the plaintiffs are constrained to file the suit.

6. The 1st defendant has resisted the suit by way of his written statement. The 2nd defendant has remained exparte.

7. The 1st defendant in his written statement denying the averments of the plaint except admitting certain facts i.e, (a) D-1 states that T.H.Prakash Rao has no right to execute any sale deed as he had relinquished his right under relinquishment deed dated 04.07.1950/Ex.B-1. Thus, the plaintiffs will not derive any right by virtue of sale deed dated 09.09.1952/Ex.A-3. (b) Lakshamma had four sons namely Prakash Rao, Nanjundappa, Subba Rao and Vasantha Rao. After the death of Lakshamma all the sons are entitled to the property but the plaintiffs have suppressed the above fact and filed this suit as if Prakash Rao is the only son of Lakshamma. (c) Out of the 4 sons of Lakshamma, Prakash Rao and Nanjundappa died and other two sons of Lakshamma are alive. Thus, the suit is bad for non-joinder of necessary parties. (d) D-1 is in possession of the property and the plaintiffs are not entitled for any mesne profits either future or past. (e) The plaintiffs are not entitled for declaration of their rights or for recovery of possession of the property and there is no cause of action to file the suit. (f) The Court-Fee paid by the plaintiffs is incorrect. At last, she sought to dismiss the suit with costs.

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

1. Whether the suit is bad for non-joinder of necessary parties?
2. Whether the plaintiffs are entitled for declaration of title over the suit schedule property as prayed for?

3. Whether the plaintiffs are entitled for delivery of possession of the plaint schedule property as prayed for?
4. Whether the plaintiffs are entitled for Rs. 18,000-00 towards mesne profits for the past three years as prayed for?
5. Whether the plaintiffs are entitled for future mesne profits from the date of suit till the delivery of possession of the suit property as prayed for?
6. Whether the Court Fee paid by the plaintiffs is correct?
7. To what relief?

9. During the course of trial, on behalf of plaintiffs, PW.1 was examined and Ex.A1 to Ex.A7 were marked. On behalf of the defendants, DW1 and DW.2 were examined and Ex.B1 and Ex.B2 were marked on their behalf.

10. On consideration of the facts and evidence on record, the trial Court has decreed the suit vide its judgment dated 06.08.2018 and aggrieved by the same, the 1st defendant has preferred A.S No.6 of 2018 and the Appellate Court has dismissed the appeal by confirming the decree and judgment of the lower Court. Assailing the same, the present Second Appeal is preferred by the 1st defendant.

11. Learned counsel for the appellant would submit that the judgment and decree of the lower appellate Court is illegal and contrary to law and facts. The lower appellate Court failed to appreciate the material evidence on record. He would further submit that the lower appellate Court misconstrued the evidence and reached erroneous conclusions. Learned counsel for the appellant would further submit that the following substantial questions of law fall for consideration before this Court:

- i) Whether the findings of the first appellate Court that the respondents suit was not barred by limitation invoking Art 65 of Indian Limitation Act 1963, was recorded de hors the pleadings to that effect or was it arrived at on misreading of material documentary evidence Ex.A8 judgment in SA No.197 of 1987 or by non application of Art 58 of limitation Act 1963 in proper perspective as laid down by the apex court?
- ii) Whether the first Appellate Court committed a grave error in not recording the legal aspect vehemently argued, that what T.H Bhaskar Rao derived under Ex.A8 was only a right to sue, which is not enforceable, transferable, or succeeded under Section 6 of (e) of Transfer of Property act, which was personal right and got extinguished upon his death on 17.04.1997, thereby the respondents did not succeed to any effects of him on the subject matter, which debarred them from instituting the suit itself?

12. Heard Sri K. Srinivas, learned counsel for the appellant/1st defendant.

13. This Court before entertaining a second appeal has to examine whether any substantial question of law arises in the case which warrants interference of this Court with the finding of the lower appellate Court. It is settled law that the Courts will entertain the second appeal only if it is satisfied that the appeal involved a substantial question of law.

14. Before dealing with the merits of this case it is appropriate to have a look at the catena of judgments of the Hon'ble Apex Court wherein the scope of Section 100 C.P.C which restricts the right of second appeal, to those cases where a substantial question of law is involved. The existence of

a substantial question of law is the *sine qua non* for exercise of jurisdiction under Section 100 C.P.C.

15. Admittedly, Section 100 has introduced 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 Amendment Act, 1976 introduced such an embargo for such definite objectives and since we are not required to further probe on that score, we are not detailing out, but the fact remains that while it is true that in a second appeal a finding of fact even if erroneous will generally not be disturbed but where it is found that the findings stands 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 in our view will be within its jurisdiction to dealt with the issue. This is, however, only in the event such a fact is brought to light by the High Court explicitly and the judgment should also be categorical as to the issue of perversity vis-à-vis the Concept of justice. Needless to say however, that perversity itself is a substantial question worth adjudication what is required is a categorical finding on the part of the High Court as to perversity.

(Emphasis supplied) in **Kulwant Kaur and Ors vs. Gurdial Singh Mann (Dead) By Lrs. and Ors. Appeal (Civil) 1287 of 1990.**

17. It will be apt to refer to Section 103 of C.P.C. which enables the High Court to determine the issues of fact:

"103. Power of High Court to determine issue of fact.- In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal,

(a) which has not been determined by the Lower Appellate Court or both by the Court of first instance and the Lower Appellate Court, or

(b) which has been wrongly determined by such court or courts by reason of a decision on such question of law as is referred to in section 100."

The section, noted above, authorizes the High Court to determine any issue which is necessary for the disposal of the second appeal provided the evidence on record is sufficient, in any of the following two situations : (1) when that issue has not been determined both by the trial court as well as the Lower Appellate Court or by the Lower Appellate Court; or (2) when both the trial court as well as the Appellate Court or the Lower Appellate Court has wrongly determined any issue on a substantial question of law which can properly be the subject matter of second appeal under Section 100 of C.P.C."

(Emphasis supplied) in **Leela Soni vs. Rajesh Goyal 2001 (7) SCC 494.**

18. It is essential for the High Court to formulate a substantial question of law under section 100 CPC, after the 1976 amendment and it is not permissible to reverse the judgment of the first appellate Court without doing so.

(Emphasis supplied) in **Ishwasdas Jain vs. Sohan Lal 2000 (1) SCC 434.**

19. In the light of the law laid down by the Hon'ble Apex Court on the scope of interference of by the High Court in second appeal, this Court while exercising jurisdiction under Section 100 of the CPC has to confine to the substantial question of law involved in the appeal. This Court cannot re-appreciate the evidence and interfere with the concurrent findings of the Court below where the Courts below have exercised the discretion judicially. Further the existence of substantial question of law is the *sine qua non* for the exercise of jurisdiction. This Court cannot substantiate its own opinion unless the findings of the Court are manifestly perverse and contrary to the evidence on record.

20. Coming back to the facts of this case, the respondents No.1 and 2 have filed the suit for declaration of their right and title over the plaint schedule property and thereby to recover possession of the plaint schedule property from the defendants besides claiming mesne profits of Rs.18,000-00 for three years preceding the suit. The Court below on examination of both oral and documentary evidence has allowed the suit. The first Appellate Court has also confirmed the judgment of the trial Court holding that the suit file dby the plaintiffs is not barred by limitation, if the death of H.Lakshamma is taken in to consideration or the date of judgment in S.A No.197/1987 is considered. Therefore, the submission of the learned advocate for 1st defendant/appellant that the suit is barred by limitation is not considered and the submission of

learned advocate for the respondents No.1 and 2/plaintiffs, is considered and hence the judgment of lower court is sustainable in law and facts and hence the appeal filed by the appellant/1st defendant has also dismissed confirming the judgment of lower Court.

21. The case of the plaintiffs is that the father of the plaintiffs viz., T.H. Bhaskara Rao has purchased the suit property from Hebbar Lakshamma, his son Hebbar Prakasa Rao and Hebbar Prasannamba, who is daughter-in-law of Hebbar Lakshamma cum wife of Hebbar Prakasa Rao, under a registered sale deed dated 9-9-1952 in respect of the suit property wherein Hebbar Lakshamma has only a limited right of enjoyment of the suit property for her life time and the vested remainder interest in favour of her children. Since neither of the three brothers of Hebbar Prakasa Rao, have claimed any right or title over the suit property, their mother/Hebbar Lakshamma had executed a registered settlement deed dt. 26-8-1950 in favour of her daughter-in-law Hebbar Prasannamba, wife of Hebbar Prakasa Rao, creating limited right of enjoyment in her favour and the vested remainder interest in favour of her children i.e. Defendant No.1, Defendant No.2 and T.H. Ramamurthy. Indisputably Prasannamba, predeceased Hebbar Lakshamma, who is her mother-in-law. Admittedly, Hebbar Lakshamma died on 14-5-1994. Therefore after the demise of Hebbar Lakshamma, in the absence of any rival claim from her any other three sons, Hebbar Prakasa Rao, having vested remainder interest in the suit property by way of compromise decree dated 27- 2-1945 rendered in the suit

O.S. No.31 of 1944 on the file of then District Munsif, Penukonda, has become entitled for entire suit property.

22. It is the case of the defendants that neither Hebbar Lakshamma nor her son/Hebbar Prakasa Rao nor Hebbar Prasannamba, who is daughter-in-law of Hebbar Lakshamma cum wife of Hebbar Prakasa Rao, have any absolute right or title over the suit property and as such the sale deed dated 09.09.1952 is Invalid, inasmuch as by the date of the sale deed, Hebbar Lakshamma has only limited life interest and that her son Hebber Prakasa Rao, during her life time would not get any right over the suit property and that Prasannamba, who has also a limited interest by way of gift deed dt. 26.8.1950 does not acquire any right to alienate the suit schedule property. Hebbar Prakasa Rao, after the demise of his mother Hebbar Lakshamma, by virtue of compromise decree dated 27-2-1945 rendered in O.S.No. 31/1944 on the file of then District Munsif, Penukonda has become entitled for absolute rights over the suit property and as such the sale deed dated 9-9-1952 executed by himself along with his mother and his wife, is invalid.

23. Though the learned counsel for the appellant/ 1st defendant has pointed out the grounds which are extracted in the earlier paragraphs as substantial questions of law, this Court is of the view that there are no questions of law much less the substantial questions of law involved in this appeal.

24. In view of the aforesaid reasons and having given earnest consideration to the facts and submissions, this Court finds that there is no error or illegality in the findings of the Courts below warranting interference by this Court.

25. In the result, the Second Appeal is dismissed. No order as to costs.

26. As a sequel thereto, miscellaneous petitions pending, if any, shall also stand closed.

DR. K. MANMADHA RAO, J.

Date : -08-2024

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HON'BLE DR. JUSTICE K. MANMADHA RAO

SECOND APPEAL No.422 of 2024

Date : .08.2024

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