

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL NO.574 OF 2013

JUDGMENT:

This appeal is filed by the plaintiffs, under Section 100 CPC, assailing the judgment and decree, dated 28.03.2013 passed in A.S.No.348 of 2011 on the file of the VII Addl. District Court (Fat Track Court), Vijayawada, wherein and whereby the judgment and decree, dated 30.09.2011 passed in O.S.No.1122 of 2010 on the file of the Rent Controller-cum-IV Addl. Junior Civil Judge, Vijayawada, dismissing the suit filed by the plaintiff for perpetual injunction in respect of the suit schedule property, was confirmed.

2. Heard both the counsel.

3. For the sake of convenience, the parties will be referred to as they were arrayed before the trial Court.

4. The facts, leading to filing of this appeal are briefly stated as follows:

The 1st plaintiff is the husband of the 2nd plaintiff. The 2nd plaintiff purchased an extent of Ac.0.33¾ cents of vacant site situated in R.S.No.51/13 of Maredumaka village, Kankipadu mandal, Krishna District along with passage right in ABCD plaint plan from Chirivella Ramaiah. As per the terms and conditions of the sale deed, the plaintiffs are entitled to use ABCD path way. One Venkata Subbaiah, s/o Chirivella Ramaiah filed O.S.No.131 of 1985 on the file of the II Addl. District Munsif Court, Vijayawada, against Ramaiah and 2nd plaintiff for declaration and recovery of possession of the suit schedule property. Later on, Ramaiah and his son Venkata Subbaiah admitted their fault and kept quiet. The plaintiffs came to know on 07.07.2010 that the 1st defendant purchased the vacant site from Venkata Subbaiah

under a registered sale deed, dated 07.07.2010. The defendant in collusion with the vendors of the plaintiffs inserted a false recitals in the sale deed. The 2nd plaintiff issued a notice on 16.08.2010 to the defendants and their vendors demanding them to rectify the false recitals made in the registered sale deed, dated 07.07.2010. The defendants are interfering with the suit schedule property without any manner of right whatsoever. Therefore, the plaintiffs are constrained to file a suit for perpetual injunction restraining the defendants from interfering with the suit schedule property.

5. The 1st defendant filed written statement. The 2nd defendant filed memo adopting the written statement of the 1st defendant.

6. The 1st defendant denied the averments made in the plaint *inter alia* contending that Chiruvella Venkata Subbaiah filed O.S.No.131 of 1985 on the file of the II Addl. District Munsif Court, Vijayawada against the plaintiff and Chiruvella Ramaiah and the same was decreed on 18.03.1985. Ramaiah is no other than the father of Ch.Venkata Subbaiah. As per the judgment and decree, Ch.Ramaiah and 2nd plaintiff has to deliver the property covered in O.S.No.131 of 1985 in favour of Venkata Subbaiah. After passing of the decree, at the intervention of elders, the property was delivered in favour of Ch.Venkata Subbaiah. The said Venkata Subbaiah and other sold the property to the 1st defendant and others. The plaintiffs have no right whatsoever in the suit schedule property and the suit is liable to be dismissed.

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

1. Whether the plaintiffs have any right over ABCD portions of plaint plan?

2. Whether the plaintiffs are entitled for permanent injunction as prayed for?

3. To what relief?

8. Before the trial Court, to substantiate the case, the 2nd plaintiff herself was examined as P.W.1 and got marked Exs.A1 to A9. To demolish the case of the plaintiffs, the 1st defendant himself was examined as D.W.1 and no documents were marked.

9. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the plaintiffs are not entitled to seek the relief of perpetual injunction in respect of the suit schedule property and consequently dismissed the suit. Feeling aggrieved by the judgment of the trial Court, the plaintiffs preferred A.S.No.348 of 2011 on the file of the VII Addl. District Court (Fast Track Court), Vijayawada. The learned VII Addl. District Judge, after re-appraising the oral and documentary evidence available on record, arrived at a conclusion that the plaintiffs are not entitled to seek the relief of perpetual injunction in respect of the suit schedule property and dismissed the appeal. Hence, the unsuccessful plaintiffs preferred this appeal.

10. The substantial question of law urged by the plaintiffs is:

Whether the findings recorded by the Courts below are perverse and it is a fit case to allow the appeal?

11. The following admitted facts can be culled out from the record. One Ch.Venkata Subbaiah is the son of Ramaiah. The 1st plaintiff is the husband of the 2nd plaintiff. The 2nd plaintiff purchased an extent of Ac.0.33 $\frac{3}{4}$ cents of

vacant site situated in R.S.No.51/13 of Maredumaka village, Kankipadu mandal, Krishna District, under Ex.A9-registered sale deed, dated 28.09.1984. Ch.Venkata Subbaiah filed O.S.No.131 of 1985 on the file of the II Addl. District Munsif Copurt, Vijayawada against Ramaiah and 2nd plaintiff for declaration and delivery of suit schedule property therein. After full-fledged trial, the trial Court decreed the suit. Ex.A7 is the served copy of plaint in O.S.No.131 of 1985. Ex.A8 is the suit register extract in O.S.No.131 of 1985. The 1st defendant purchased the suit schedule property along with some other property under a registered sale deed, dated 07.07.2010. Exs.A5 and A6 are the sale deeds. The 2nd plaintiff issued notice directing the defendants to rectify the recitals in the sale deeds, Exs.A5 and A6. Ex.A1 is the plaint plan.

12. A person, who filed a suit for perpetual injunction has to establish that the defendant without any right whatsoever is interfering with the suit schedule property. The suit schedule property is described as ABCD in the plaint plan. In the cross-examination, P.W.1 deposed that he does not know the relief sought for by the vendors of the defendants in O.S.No.131 of 1985. P.W.1 in the cross-examination in unequivocal terms admitted that the suit schedule property covered in O.S.No.131 of 1985 and the present suit schedule property is the one and the same. A perusal of Ex.A8 reveals that O.S.No.131 of 1985 filed by the vendors of the defendants against Ch.Ramaiah and 2nd plaintiff for declaration and recovery of possession of the suit schedule property was decreed. It is not the case of the plaintiffs that they challenged the judgment and decree passed in O.S.No.131 of 1985. The judgment and decree passed in O.S.No.131 of 1985 is binding on the 2nd plaintiff,

who is the defendant in the suit. The plaintiffs have taken a specific plea in the written statement that after passing of the decree in O.S.No.131 of 1985, the vendors of the defendants and Ramaiah admitted their fault before them. The vendors of the plaintiffs and the defendants are competent persons to speak about the above aspect. For the reasons best known, the plaintiffs did not choose to examine their vendor or the vendor of the defendants in order to substantiate the stand taken by them. The 2nd plaintiff categorically admitted that the property covered in O.S.No.131 of 1985 and the present suit schedule property is one and the same. This itself indicates that the 2nd plaintiff has no right whatsoever over the suit schedule property. A person, who is not having title or possession over the suit schedule property, is not entitled for the relief of perpetual injunction. It is needless to say that a person, who seeks the equitable relief, has to come to the Court with clean hands by placing all material facts. For the reasons best known, the defendants need not disclose the factum of decreeing the suit in O.S.No.131 of 1985 in favour of vendors of the defendants. The trial Court as well as the 1st appellate Court after considering the oral and documentary evidence available on record, arrived at a conclusion that the plaintiffs failed to prove their right or possession over the suit schedule property. Therefore, they are not entitled for the relief of perpetual injunction. The findings recorded by the Courts below are based on evidence, much less, cogent and convincing evidence. I am fully endorsing with the findings recorded by the Courts below.

13. In view of the foregoing discussion, I am unable to accede to the contention of the learned counsel for the appellants that the findings recorded by the Courts below

are perverse. This Court shall not lightly interfere with the concurrent findings of fact recorded by the Courts below. The 1st appellate Court is the fact finding final Court. There are no grounds, much less, valid grounds to set aside the judgment and decree of the Court below. There is no question of law, much less, substantial question of law involved in this appeal. Therefore, the second appeal is liable to be dismissed.

14. Accordingly, the Second Appeal is dismissed. No order as to costs. Miscellaneous petitions, if any pending, in this appeal shall stand closed.

DATED: 05-11-2018.
Hsd

T.SUNIL CHOWDARY, J

