

A T. RAMALINGESWARA RAO (DEAD) THR. LRS. & ANR.

v.

N. MADHAVA RAO & ORS.

(Civil Appeal No. 3408 of 2019)

B APRIL 05, 2019

**[ABHAY MANOHAR SAPRE AND
DINESH MAHESHWARI, JJ.]**

- Appeal: Second appeal – Concurrent findings of facts by courts below – Interference by the High Court – Justification of – Held: Trial court and the first appellate court on appreciating the evidence of the parties came to a conclusion that the plaintiffs failed to prove the ingredients necessary for the grant of perpetual injunction – When the courts below have recorded concurrent findings of fact against the plaintiffs, based on appreciation of facts and evidence, such findings are binding on the High Court – It is only when such findings are found to be against any provision of law or against the pleading or evidence or are found to be wholly perverse, the High Court may interfere in its second appellate jurisdiction – Thus, the High Court erred in interfering in the concurrent findings of facts of the courts below.*

- Injunction: Perpetual injunction – Claim of – On facts, appellants purchased suit land from one of the co-sharers – Respondent no. 1-3, sons of another co-sharer, filed suit against appellants seeking perpetual injunction, rejected by the trial court and first appellate court, however, allowed by the High Court – On appeal, held: Possession of one co-sharer is possession of all co-sharers, it cannot be adverse to them, unless there is a denial of their right to their knowledge by the person in possession, and exclusion and ouster following thereon for the statutory period – Respondents have no case for grant of perpetual injunction – Even assuming that the respondents claimed to be in possession of the suit property for claiming injunction, yet they were not entitled to claim injunction against the other co-sharers over the suit property – Appellants being the purchasers of the suit property from one of the co-sharers stepped into the shoes of their co-sharer, thus, had a*

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right to defend their title and possession against the other co-sharer – High Court erred in interfering in the concurrent findings of the fact without recording a finding as to why the concurrent findings of fact are bad in law and why it requires interference – Order passed by the High Court is set aside and that of the trial court and first appellate is restored.

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Allowing the appeal, the Court

HELD: 1.1 The High Court erred in interfering in the concurrent findings of facts of the two Courts below, which dismissed the plaintiffs' suit. The trial court and the first appellate court on appreciating the evidence of the parties had rightly come to a conclusion that the plaintiffs failed to prove the ingredients necessary for the grant of perpetual injunction. [Paras 10, 11] [476-H; 477-A]

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1.2 When the two courts below have recorded concurrent findings of fact against the plaintiffs, which are based on appreciation of facts and evidence, such findings being concurrent in nature are binding on the High Court. It is only when such findings are found to be against any provision of law or against the pleading or evidence or are found to be wholly perverse, a case for interference may call for by the High Court in its second appellate jurisdiction. Such was not the case made out in the High Court. It is for this reason, the High Court should not have interfered in the findings of the two courts below and instead, the findings should have been upheld by the High Court. [Paras 12, 13][476-B-D]

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2.1 The plaintiffs-respondent Nos.1-3 have no case much less *prima facie* for grant of perpetual injunction. Even assuming that the plaintiffs claimed to be in possession of the suit property (which the two courts below did not find in their favour) for claiming injunction, yet they were not entitled to claim injunction against the other co-sharers over the suit property. The possession of one co-sharer is possession of all co-sharers, it cannot be adverse to them, unless there is a denial of their right to their knowledge by the person in possession, and exclusion and ouster following thereon for the statutory period. Defendant Nos. 1 and 2-appellants being the purchasers of the suit property

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- A from one of the co-sharers stepped into the shoes of their vendor (co-sharer) and, therefore, had a right to defend their title and possession against the other co-sharer. [Para 14, 17 and 19] [476-D; F-G; 477-A]

- B 2.2 The plaintiffs had no case to claim injunction against defendant Nos.1 and 2 in relation to the suit property. The two courts below, therefore, rightly declined it and the same is affirmed. [Para 20][477-B]

- C 2.3 The High Court failed to appreciate the factual and legal controversy in its proper perspective and, therefore, erred in interfering in the concurrent findings of the fact without recording a finding as to why the concurrent findings of fact are bad in law and why it requires interference in its second appellate jurisdiction. The impugned order is set aside and the judgment/decree of the trial court/first appellate which dismissed the suit filed by respondent no. 1-3 is restored. [Para 21, 22][477-C-D]

- D *Mohammad Baqar & Ors. v. Naim-un-Nisa Bibi & Ors.*
AIR 1956 SC 548 – referred to.

Case Law Reference

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| AIR 1956 SC 548 | relied on | Para 17 |
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- E CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3408 OF 2019

From the Judgment and Order dated 23.11.2010 of the High Court of Andhra Pradesh at Hyderabad in S.A. No. 1036 of 2006.

- F M. Rajesh, Byrapaneni Suyodhan, Ms. Tatini Basu, Advs. for the appellants.

K. Maruthi Rao, Ms. K. Radha, Mrs. Anjani Aiyagari, Aniruddha P. Mayee, K. Subba Rao, Ms. K. V. Bharathi Upadhyaya, Advs. for the respondents.

- G The Judgment of the Court was delivered by
ABHAY MANOHAR SAPRE, J. 1. Leave granted.

- H 2. This appeal is filed against the final judgment and order dated 23.11.2010 passed by the High Court of Judicature, Andhra Pradesh at Hyderabad in Second Appeal No. 1036 of 2006 whereby the High Court allowed the second appeal filed by respondent Nos. 1 to 3 herein.

3. A few facts need mention hereinbelow for the disposal of this appeal, which involves a short point. A

4. The appellants herein are defendant Nos.1 and 2, respondent Nos.1-3 herein are the plaintiffs and respondent Nos.5-9 are the defendant Nos.4-8 of the civil suit out of which this appeal arises.

5. Respondent Nos.1-3 (plaintiffs) filed a civil suit against the appellants (defendant Nos.1 and 2) and respondent Nos.5 to 9 (defendant Nos.4 to 8) seeking perpetual injunction against the defendants restraining them from interfering in his peaceful possession over the suit properties. B

6. The appellants (defendant Nos.1 and 2) contested the suit whereas the remaining defendants (4 to 8) remained *ex parte*. The Trial Court by judgment/decrees dated 20.08.2001 dismissed the suit. Respondent Nos.1-3 (plaintiffs) felt aggrieved and filed first appeal before the Additional District & Sessions Judge(Fast Track Court), Visakhapatnam. By judgment dated 07.11.2005, the First Appellate Court dismissed the appeal and upheld the judgment/decrees of the Trial Court. C

7. The plaintiffs (respondent Nos.1-3) felt aggrieved and filed second appeal in the High Court of Andhra Pradesh. By impugned order, the High Court allowed the appeal, set aside the judgment impugned therein and decreed the plaintiffs' suit by passing a decree for perpetual injunction against the defendants in relation to the suit property, which has given rise to filing of the present appeal by way of special leave in this Court by defendant Nos.1 and 2. D

8. So, the short question, which arises for consideration in this appeal, is whether the High Court was justified in allowing the plaintiffs' second appeal and thereby was justified in decreeing their suit by granting a decree of perpetual injunction against defendant Nos.1 and 2 in relation to the suit property. E

9. Having heard the learned counsel for the parties and on perusal of the record of the case, we are constrained to allow the appeal and while setting aside the impugned order restore the judgment/decrees of the First Appellate Court and the Trial Court which resulted in dismissal of the plaintiffs' suit. F

10. In our considered opinion, the High Court erred in interfering in the concurrent findings of facts of the two Courts below, which dismissed the plaintiffs' suit. G

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- A 11. In our view, the Trial Court and the First Appellate Court on appreciating the evidence of the parties had rightly come to a conclusion that the plaintiffs failed to prove the ingredients necessary for the grant of perpetual injunction.
- B 12. When the two Courts below have recorded concurrent findings of fact against the plaintiffs, which are based on appreciation of facts and evidence, in our view, such findings being concurrent in nature are binding on the High Court. It is only when such findings are found to be against any provision of law or against the pleading or evidence or are found to be wholly perverse, a case for interference may call for by the High Court in its second appellate jurisdiction.
- C 13. Such was not the case made out in the High Court. It is for this reason, we are of the view that the High Court should not have interfered in the findings of the two Courts below and instead, the findings should have been upheld by the High Court.
- D 14. Coming now to the facts of the case, we find that the plaintiffs (respondent Nos.1-3) have no case much less *prima facie* for grant of perpetual injunction.
- E 15. The suit property is a part of big chunk of land owned by several brothers who inherited the same after the death of their father, namely, Poornayya.
- F 16. The appellants (defendant Nos.1 and 2) are the purchasers of the suit land from one of the co-sharers (one of the brothers) by a registered sale deed. Respondent Nos.1-3 (plaintiffs) are the sons of another co-sharer (brother).
- G 17. In our view, even assuming that the plaintiffs claimed to be in possession of the suit property (which the two Courts below did not find in their favour) for claiming injunction, yet they were not entitled to claim injunction against the other co-sharers over the suit property. It is a settled principle of law that the possession of one co-sharer is possession of all co-sharers, it cannot be adverse to them, unless there is a denial of their right to their knowledge by the person in possession, and exclusion and ouster following thereon for the statutory period. [See **Mohammad Baqar & Ors. vs. Naim-un-Nisa Bibi & Ors.**(AIR 1956 SC 548)]
- H 18. So far as the claim of the plaintiffs as being in exclusive possession to the exclusion of others was concerned, the same was held not proved by the two Courts below.

19. Defendant Nos.1 and 2 (appellants herein) being the purchasers of the suit property from one of the co-sharers stepped into the shoes of their vendor (co-sharer) and, therefore, had a right to defend their title and possession against the other co-sharer. A

20. In the light of the aforesaid admitted position arising in the case, in our view, the plaintiffs had no case to claim injunction against defendant Nos.1 and 2 in relation to the suit property. The two Courts below, therefore, rightly declined it and we affirm the same. B

21. As noted above, the High Court failed to appreciate the factual and legal controversy in its proper perspective and, therefore, erred in interfering in the concurrent findings of the fact without recording a finding as to why the concurrent findings of fact are bad in law and why it requires interference in its second appellate jurisdiction. C

22. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the judgment/decrees of the Trial Court/First Appellate Court which dismissed the suit filed by respondent Nos.1-3 (Plaintiffs). D

Nidhi Jain

Appeal allowed.