

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**THURSDAY, THE TWENTY NINTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

SECOND APPEAL NO: 434 OF 2023

Appeal under section 100 of C.P.C against the Judgment and Decree Dated 20.01.2022 made in A.S.No.5 of 2018 on the file of the Court of the Senior Civil Judge Huzurabad preferred against the Decree in O.S.No.108 of 2011 dated 14.11.2017 on the file of the Court of the Principal Junior Civil Judge, Huzurabad.

Between:

Bokkala Veera Reddy, S/o. Mukunda Reddy, aged. 60 years, Occ. Agriculture, R/o. Thummanapally Village Huzurabad RevenueMandal, Karimnagar District.

...Appellant

AND

1. Gunda Bal Reddy, S/o. Mallaiah, aged. 70 years, Occ. Agriculture, R/o. Thummanapally Village, Huzurabad Mandal of Karimnagar District.
2. Gunda Thirupathi Reddy, S/o. Bal Reddy, aged. 48 years, Occ. Agriculture, R/o. Thummanapally Village, Huzurabad Mandal of Karimnagar District.
3. Gunda Malla Reddy, S/o. Bal Reddy, aged. 40 years, Occ. Agriculture, R/ o. Thummanapally Village Huzurabad Mandal Karimnagar District.
4. Bokkala Kanthamma, W/o. Bhoomaiah, aged. 80 years, Occ. Agriculture, R/o. Thummanapally Village, Huzurabad Mandal of Karimnagar District.

...Respondents/Defendants

IA NO: 3 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the Judgment and decree passed in AS.No.5 of 2018 by the Senior Civil judge Huzurabad as confirmed the Judgment and decree passed in O.S.No.108 of 2011 by the Principal Junior Civil judge, Huzurabad till disposal of the Second Appeal.

Counsel for the Appellant: M/s V Srikantha Rao

Counsel for the Respondent No.2: Sri Mukkera Sahithi Sri Kavya

The Court delivered the following: Judgment

HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

SECOND APPEAL No.434 of 2023

JUDGMENT:

The Second Appeal is filed against the judgment and decree dated 20.01.2022 in A.S.No.5 of 2018 on the file of the Senior Civil Judge, Huzurabad, wherein the judgment and decree dated 14.11.2017 passed in O.S.No.108 of 2011 on the file of the Principal Junior Civil Judge, Huzurabad, was confirmed.

2. For the sake of convenience, the parties hereinafter are referred to as they were arrayed before the trial Court.

3. Brief facts leading to filing of the present second appeal are that the plaintiff is the absolute owner and exclusive possessor of the lands in Survey No.333/B to an extent of Ac.1-26 guntas, Survey No.344/A to an extent of 0-31 guntas and Survey No.344/C to an extent of Ac.0-21 guntas, situated at Thummanapalli village of Huzurabad Mandal, Karimnagar District (herein after referred to as 'suit land'). The father of the plaintiff had purchased part of suit land in Sy.No.333/B to an extent of Ac.1-26 guntas from one Bokkala Bhumaiah for valid consideration in the year 1957 through a simple sale deed. It is also contended that the plaintiff purchased the land in

Sy.No.344/A to an extent of Ac.0-31 guntas and Sy.No.344/C to an extent of Ac.0-21 guntas, from his vendor namely Gunda Bal Reddy for valid consideration on 05.04.1996 through a simple sale deed and the vendor of the plaintiff had delivered the possession thereof and since then, the plaintiff is in possession and enjoyment over the suit lands. The suit lands are separate lands and not compact plots.

4. Further, it is contended that on 08.06.2011, when the plaintiff was ploughing the suit lands for the next crop, the defendants with a malafide intention tried to interfere with the peaceful possession and enjoyment of the plaintiff over the suit lands. However, the plaintiff with the timely help of well wishers resisted the illegal acts of the defendants and the defendants while going unsuccessfully declared that they will dispossess the plaintiff from the suit lands in the near future. Therefore, the plaintiff has preferred O.S.No.108 of 2011 before the Principal Junior Civil Judge, Huzurabad, for perpetual injunction to restrain the defendants from interfering with the possession and enjoyment of the plaintiff over the suit lands.

5. Defendant Nos.1 to 3 filed written statement denying the averments made by the plaintiff *inter alia* contending that the plaintiff is not the owner and exclusive possessor of the suit

land and that defendant No.2 is the absolute owner and exclusive possessor of the land to an extent of Ac.0-27 guntas in Survey.No.333/F situated at Thummanapalli village shivar of Huzurabad Mandal Revenue of Karimnagar District.

6. It is contended that long back, the father of the defendant No.2 purchased the said land in the name of the defendant No.2 from one Annadi Veeraiah, who was original owner of the said land. The father of defendant No.2 delivered the possession of the said land to defendant No.2 and since then defendant No.2 is enjoying the ownership and possession over the said land. It is further contended that the plaintiff having land to southern side to the land of defendant No.2 and after filing the above suit, on 26.07.2011 the plaintiff tried to disturb and dispossess defendant No.2 from his land, therefore, defendant No.2 filed O.S.No.171 of 2011 for grant of perpetual injunction. Hence, they prayed to dismiss the present suit.

7. Before the trial Court, on behalf of the plaintiff, PW1 and PW2 were examined and Exs.A1 to A16 were marked. On behalf of the defendants, DW1 to DW3 were examined and Exs.B1 to B10 were marked.

8. The trial Court, after considering the entire material available on record, *vide* its judgment and decree dated 14.11.2017, dismissed the suit by observing that item No.1 of plaint schedule property is sold by Bokkala Kanthamma, who is the wife of Bokkala Bhumaiah from whom the father of the plaintiff alleged to have purchased the land to an extent of Ac.0-63 guntas in Survey No.333 under Ex.A11. Further, the plaintiff failed to disprove Ex.B7, which is the sale deed executed by one Bokkala Kanthamma in favour of one Gunda Pula to an extent of Ac.1-26 guntas in Survey No.333/B.

9. The first appellate Court on re-appreciation of the entire evidence and perusal of the material available on record *vide* judgment and decree dated 20.01.2022 dismissed the appeal by observing as under:

"Therefore, the case law cited by the learned counsel for the plaintiff would not render any assistance in support of the case of the plaintiff. Even otherwise, whatever the defense put-forth by the Defendants, however it may be weak, but the weakness of the defense or the failure on the part of the Defendants, would not enable the plaintiff to a decree.

There is no dispute on the fact that the plaintiff filed the suit for perpetual injunction claiming that he is in possession and enjoyment of the suit schedule property as on the date of filing the suit while claiming that the defendants made an attempt to infringe or invade his

legal rights. In view of the same, referring to the discussion made as above in respect of issues No.1 and 2, it can be said that basing on evidence on record, the trial court correctly recorded findings and dismissed the suit refusing to grant injunction. Therefore, this court do not find any reason to differ with the findings recorded by the trial."

10. Heard Mr.V.Srikantha Rao, learned counsel for the appellant and Ms.Mukkera Sahithi Sri Kavya learned counsel for the respondents. Perused the record.

11. A perusal of the record discloses that the trial Court as well as first appellate Court concurrently held that the plaintiff failed to establish his possession in respect of the suit property as on the date of filing of the suit and thus, the plaintiff is not entitled to the perpetual injunction. Further, the first appellate Court has held that whatever the defense put-forth by the defendants, however, it may be weak, but the weakness of the defense or the failure on the part of the defendants, would not enable the plaintiff to a decree.

12. Learned counsel for appellant vehemently argued that the trial Court dismissed the suit without proper appreciation of the evidence and the first appellate Court also committed an error

in confirming the judgment and decree passed by the trial Court.

13. However, learned counsel for appellant failed to raise any substantial question of law to be decided by this Court in this second appeal. In fact, all the grounds raised in this appeal are factual in nature and do not qualify as the substantial questions of law in terms of Section 100 C.P.C.

14. It is well settled principle by a catena of decisions of the Apex Court that in the Second Appeal filed under Section 100 of C.P.C., this Court cannot interfere with the concurrent findings arrived at by the trial Court and first appellate Court, which are based on proper appreciation of the oral and documentary evidence on record.

15. Further, in **Gurdev Kaur v. Kaki**¹, the Apex Court held that the High Court sitting in Second Appeal cannot examine the evidence once again as a third trial Court and the power under Section 100 C.P.C. is very limited and it can be exercised only where a substantial question of law is raised and fell for consideration.

¹(2007) 1 Supreme Court Cases 546

16. Having considered the entire material available on record and the findings recorded by the trial Court as well as the Appellate Court, this Court finds no ground or reason warranting interference with the said concurrent findings, under Section 100 C.P.C. Moreover, the grounds raised by the appellants are factual in nature and no question of law, much less, a substantial question of law arises for consideration in this Second Appeal.

17. Hence, the Second Appeal fails and the same is accordingly dismissed at the stage of admission. No costs.

Pending miscellaneous applications, if any, shall stand closed.

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Sd/- M.RAMANA KRISHNA
DEPUTY REGISTRAR

SECTION OFFICER

To,

1. The Senior Civil Judge Huzurabad
2. The Principal Junior Civil Judge, Huzurabad
3. One CC to Sri V Srikantha Rao, Advocate [OPUC]
4. One CC to Sri Mukkera Sahithi Sri Kavya, Advocate [OPUC]
5. Two CD Copies

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HIGH COURT

DATED:29/02/2024



JUDGMENT

SA.No.434 of 2023

DISMISSING THE SECOND APPEAL AT THE STAGE
OF ADMISSION WITHOUT COSTS

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18/4/24