



IN THE HIGH COURT OF ANDHRA PRADESH

AT AMARAVATI

[3369]

(Special Original Jurisdiction)

FRIDAY, THE THIRTY-FIRST DAY OF JANUARY  
TWO THOUSAND AND TWENTY-FIVE

PRESENT

THE HONOURABLE SRI JUSTICE T. MALLIKARJUNA RAO

SECOND APPEAL NO: 795/2001

**Between:**

V.Somulu & Another ...APPELLANT

AND

G Lakshmi ...RESPONDENT

**Counsel for the Appellant:**

1.O MANOHAR REDDY

**Counsel for the Respondent:**

1.K KANAKA RAJU

2.K SUBRAHMANYAM

**The Court made the following JUDGMENT:**

1. This Second Appeal has been filed by the Appellants/Defendants against the Decree and Judgment dated 11.07.2001, in A.S.No.92 of 1995 on the file of learned Senior Civil Judge's Court, Chodavaram (for short, 'the First Appellate Court') confirming the decree and Judgment dated 06.04.1995, in O.S.No.39 of 1990 on the file of learned Principal District Munsif Court, Chodavaram (for short, 'the Trial Court').

2. The Respondent is the Plaintiff, who filed the suit in O.S.No.39 of 1990 seeking for permanent prohibitory injunction restraining the Defendants and their men from interfering with the peaceful possession and enjoyment of the Plaintiff over the plaint schedule land.

3. Referring to the parties as they are initially arrayed in the suit is expedient to mitigate confusion and better comprehend the case.

4. The factual matrix, necessary and germane for adjudicating the contentious issues between the parties inter se, may be delineated as follows:

(a) The Plaintiff purchased the schedule land from Bonda Kullemma, W/o. Rajulu Dhora for Rs.1,600/- under a sale agreement dated 03.11.1984 was put in possession on the same day, along with 18 tamarind trees on the land. Since then, the Plaintiff has maintained possession and enjoyment of the property. Being in a backward area, the land has not been subject to land revenue collection. Meanwhile, the Plaintiff's vendor filed a suit in O.S.No.72 of 1989 against the Plaintiff and her husband in the District Munsif Court, Narsipatnam, seeking an interim injunction. The Court passed an ex-parte injunction in I.A.No.269 of 1989, but this was subsequently dismissed on 18.09.1989, with the Court confirming the Plaintiff's possession and enjoyment of the property.

(b) The Plaintiff is entitled to protect her property under Section 53-A of the Transfer of Property Act, having paid the full consideration and taken possession of the land under the sale agreement. She has always been ready and willing to obtain a sale deed from the vendor, who, harbouring ill will, has sought to cause harm to the Plaintiff since the dismissal of her injunction petition by the District Munsif, Narsipatnam. Following this, the Defendants, allegedly instigated by the Plaintiff's vendor, committed theft of the millet crop and damaged the black gram crop cultivated on the schedule land. In response, the Plaintiff filed a criminal case.

(c) The schedule land contains tamarind trees, and the fruit-bearing season has arrived. The Defendants, allegedly instigated by the Plaintiff's vendor, sought to seize the usufruct from these trees unlawfully. They attempted to harvest the tamarind but were resisted by the Plaintiff and her husband. As they left, the Defendants declared that they would not permit the Plaintiff to enjoy the usufruct or retain possession of the land, making similar proclamations throughout the village.

5. Both the Defendants have filed written statements denying all the material averments in the plaint by contending that:

(a) Bonda Kullemma filed CMA No.25 of 1989 challenging the orders passed by the District Munsif, Narsipatnam, in I.A.No.269 of 1989 of O.S.No.72 of 1989, and the matter is still pending. The Plaintiff is not entitled to protection under Section 53-A of the Transfer of Property Act and claims that the alleged attempt by the Defendants to seize the usufruct from the tamarind trees, allegedly instigated by Kullemma, is fabricated as a cause of action for the suit. The land in question belongs to Bonda Rajulu Dhora, a Mokasadhar, and has been in continuous possession and enjoyment by him and his family, including their father Pentayya, for over 100 years as tenants. Kullemma filed an O.S.No.211 of 1984 seeking a permanent injunction, which the Defendants contested. Kullemma was not Rajulu Dhora's wife and had no title to the property. They also claimed to have been in possession as tenants of Sanyasayyadora, Latchannadora, and Rajulu Dhora. Ultimately, the suit was dismissed on 31.07.1989, thereby negating her title. Since Kullemma had no title to the property, she could not transfer a better title to the Plaintiff.

(b) The Defendants assert that the sale agreement is time-barred and, upon careful examination, reveals material alterations. The Plaintiff should have filed a suit for specific performance against Bonda Kullemma within the prescribed time frame. The sale agreement presented by the Plaintiff is forged, and no possession was delivered under it. This suit is speculative,

initiated by the Plaintiff despite knowing that the Defendants have been in possession and enjoyment of the schedule land as tenants. Hence, the Defendants requested the suit be dismissed with exemplary costs.

6. Based on the above pleadings, the trial Court has framed the following issues:

- 1) *Whether the Plaintiff is entitled for a decree of permanent injunction as prayed for?*
- 2) *Whether the Plaintiff is in possession of plaint schedule land by the date of the suit?*
- 3) *To what relief?*

7. During the trial, PWs.1 to 3 were examined and marked Exs.A.1 to A.6 on behalf of the Plaintiff. Conversely, on behalf of the Defendants, DWs.1 to 3 were examined and marked Exs.B.1 to B.4.

8. After completing the trial and hearing the arguments of both sides, the trial Court decreed the suit in O.S.No.39 of 1990, directing that the Defendants and their men are permanently restrained by prohibitory injunction from interfering with the peaceful possession of the Plaintiff in respect of the schedule land.

9. Aggrieved by the same, the Defendants filed an Appeal in A.S.No.92 of 1995 on file of the First Appellate Court. The First Appellate Court, being the final fact-finding Court, framed the following point for consideration:

- *Whether there is any ground to allow this Appeal or not?*

10. The First Appellate Court, after scrutinizing oral and documentary evidence on behalf of both sides, dismissed the Appeal without costs in A.S.No.92 of 1995 by its Judgment and Decree dated 11.07.2001. Assailing the same, the Defendants preferred the present Second Appeal.

11. I heard Sri O. Manohar Reddy, learned Senior Counsel representing the Appellants/Defendants and Sri K. Subrahmanyam, learned Counsel for the Respondent/Plaintiff.

12. Based on the Appellants' contentions, the following substantial questions of Law are involved in this Second Appeal:

- (1) *Whether the Courts below act legally in decreeing the suit for an injunction even though the Plaintiff has failed to adduce any documentary evidence to show that she was in possession of the property?***
- (2) *Whether a person claiming title by means of an agreement of sale can invoke the provisions of Section 53-A of the Transfer of Property Act against third parties in possession of the property without impleading the owner as a party to the property?***

13. Before delving into the matter, since the Appeal is filed under Sec.100 CPC, this Court must see the scope of Section 100 of CPC.

14. In *H.P.Pyarejan V. Dasappa (dead) by L.Rs.and others*<sup>1</sup>, the Hon'ble Supreme Court held that:

*Under Section 100 of the Code (as amended in 1976), the jurisdiction of the High Court to interfere with the judgments of the courts below is confined to hearing on substantial questions of Law. Interference with the finding of fact by the High Court is not warranted if it involves re-appreciation of evidence (see Panchugopal Barua v. Umesh Chandra Goswami (1997) 4 SCC 713) and Kshitish Chandra Purkait v. Santosh Kumar Purkait (1997) 5 SCC 438).....*

15. Considerations in Section 100 of CPC arise only when there is a substantial question of Law and not mere such questions of Law or one based on facts. However, it has to be borne in mind that in case of misapplication of Law and improper appreciation of evidence on record, particularly the documentary evidence, it is the bounden duty of the High Court sitting in second Appeal to consider such questions which are substantial in terms of Law.

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<sup>1</sup> 2006 (3) ALT 41 (SC)

16. In the second Appeal, while exercising jurisdiction under Section 100 of the CPC, this Court must confine itself to the substantial questions of Law involved in the Appeal. This Court cannot re-appreciate the evidence and interfere with the findings of the Courts below, where the Courts below recorded the findings judicially by appreciating both oral and documentary evidence. Further, the substantial questions of Law are the sine qua non for the exercise of jurisdiction. This Court cannot substitute its own opinion unless the findings of the Courts below are manifestly perverse and contrary to the evidence on record.

17. In support of her case, the Plaintiff testified as PW.1. Additionally, she examined PW.2, Bonda Mallesu, the brother of Rajulu Dhora, and PW.3, Setti Demudu. Both PWs.2 and 3 corroborated the Plaintiff's claim, stating that one Kullemma had sold the schedule land to the Plaintiff for Rs.1,600/- under a sale agreement, Ex.A.3, dated 03.11.1984. They further testified that the Plaintiff has had the property since the transaction.

18. On the other hand, the 2<sup>nd</sup> Defendant was examined as DW.1, and the scribe of the lease deed, Bonda Pothu Raju, was examined as DW.2. The Defendants also examined DW.3, Gurisingi Atchayamma, the daughter of Rajulu Dhora. According to the testimony of DW.2, one Jogi Dhora is the common ancestor of himself and Rajula Dora. DW.2 further stated that Jogi Dhora had three sons: Ganganna Dhora, Lakshmana Dhora, and Sanyasi Dhora. According to the testimony of DW.3, following the demise of Rajulu Dhora, his entire property devolved upon her, as she was his sole heir. She also stated that Bonda Kannamma was Rajulu Dhora's wife, not Bonda Kullemma's. Therefore, Kullemma had no claim over the schedule land at any point in time. Additionally, DW.3 asserted that the Defendants have been cultivating the schedule land as tenants since the time of her father, paying cists to her during his lifetime and that she has continued to collect the cists thereafter.

19. As previously mentioned, according to the Plaintiff's case, Bonda Kullemma, the original owner of the schedule land, sold it to the Plaintiff under the original sale agreement, Ex.A.3. The Plaintiff contends that her vendor, Kullemma, had filed a suit in O.S.No.72 of 1989 before the District Munsif, Narsipatnam, seeking relief of injunction and that she had initially obtained an ex parte injunction. However, this injunction order was subsequently vacated on 18.09.1989, as evidenced by Ex.A.2, the certified copy of the order in I.A.No.269 of 1989 in O.S.No.72 of 1989.

20. As previously mentioned, the Defendants contend that the Plaintiff's vendor, Kullemma, was not the wife of Rajulu Dhora and that DW.3 is the sole legal heir of Rajulu Dhora. According to the Defendants, Kullemma, the alleged vendor of the Plaintiff, filed a suit in O.S.No.211 of 1984 before the District Munsif, Narsipatnam, against them, which was ultimately dismissed, thereby negating Kullemma's claims. Although the Defendants referenced the suit proceedings, they did not, for reasons best known to them, submit a certified copy of the judgment in O.S.No.211 of 1984, which could have clarified the issue of whether Kullemma was indeed the wife of Rajulu Dhora. Ex.A.2, an order passed by the District Munsif, Narsipatnam, indicates that the Plaintiff had the schedule land. Although the Defendants were aware of the pendency of O.S.No.72 of 1989, a suit filed by Kullemma against the Plaintiff, they did not take steps to implead themselves as parties to the suit. The Defendants assert that they have had the property as tenants, relying on Ex.B.3, a permanent lease executed by Rajulu Dhora in favour of Sage Boraiah and others and based on Ex.B.3, the Defendants claim to have had the property for eight years.

21. The Trial Court observed that the Defendants had not submitted cultivating accounts or copies of the fair adangal, which could have substantiated their claims. In contrast, the Plaintiff relied on Ex.A.6 undermines the Defendants' claim by including the names of both the Plaintiff and Kullemma, along with the Defendants. The Plaintiff explained that the

Defendants' names appeared in the fair adangal due to their purchase of land to the east of the schedule property from Devada Satyanarayana in the same survey number.

**22.** The Trial Court also noted that the fair angels, F-1402 and F-1403, demonstrate Kullemma's right as the original owner of the schedule land. In contrast, the Defendants relied on Ex.B.1, an unregistered Kadhapa for Rs.42/- executed between V. Rama Naidu and Sage Boraiah, and Ex.B.2, an unregistered Kadhapa for Rs.5/- executed by V. Ramaiah and others in favour of Bonda Jogi Dhora. However, both the Trial Court and the First Appellate Court declined to place reliance on Exs.B.1 to B.3, citing the absence of any reference to these documents in the Defendants' written statement. The Defendants failed to provide a convincing explanation for not referring to these documents in the written statement. Both Courts rightly observed that the existence of Exs.B.1 to B.3 have not been properly pleaded in the written statement so that those documents might not have been considered.

**23.** The Trial Court observed a significant variance between the evidence adduced and the pleadings made, stating that the Plaintiff could succeed only based on the pleadings. Since the Defendants did not raise certain pleas in their written statement, both the Court found that they were not permitted to advance evidence without those pleadings. Furthermore, the Trial Court expressed concerns about the possibility of the Defendants fabricating documents after filing the suit. The courts also highlighted that although the Defendants claimed to be tenants, they did not contend in their pleadings that Rajulu Dhora, the original owner, had executed a perpetual lease, such as the one referenced in Ex.B.3. Another point the Trial Court considered was the admission made by the Defendants in their counter in I.A.No.184 of 1990, filed in pursuit of an injunction. In paragraph 4 of the counter, the Defendants contended that the plaintiff schedule property belonged to Bonda Kullemma and that she was a mokasdhar. Based on these admissions, both the Trial Court

and the First Appellate Court observed that the Defendants could no longer dispute Kullemma's ownership of the schedule property.

**24.** Another argument raised by the Defendants before both the Trial Court and the First Appellate Court was that, based on Ex.A.3, the Plaintiff had not filed a suit against her vendor to obtain a sale deed; therefore, the document could not be relied upon. However, as the record shows, Plaintiff issued a legal notice to her vendor within the prescribed time, as evidenced by Ex.A.4, requesting her vendor to execute the sale deed. Additionally, PW.2, the brother of Rajulu Dhora, supported the Plaintiff's case concerning the Ex.A.3 transaction. Both the Trial Court and the First Appellate Court found no reason to disbelieve the testimony of PW.2, particularly given his close familial connection to Rajulu Dhora.

**25.** On the other hand, DW.3, the daughter of Rajula Dora, claimed to be unaware of the suit filed by Kullemma. She also testified that she did not enquire whether Kullemma had sold the land to anyone and had no knowledge of the disputed land. The Trial Court noted that if Kullemma were indeed not the wife of Rajulu Dhora, DW.3 should have filed a suit challenging Kullemma's right to execute the agreement of sale in favour of the Plaintiff. After carefully considering the evidence adduced, the Trial Court and the First Appellate Court concluded that Plaintiff had sufficiently established her possession of the land through Ex.A.3, the sale agreement.

**26.** In ***Shamrao Suryavanshi and ORs. V. Pralhad Bhairoba Suryavanshi by LRs. and Ors.***<sup>2</sup>, the Hon'ble Supreme Court held that:

*6. A perusal of Section 53-A shows that it does not forbid a defendant transferee from taking a plea in his defence to protect his possession over the suit property obtained in part performance of a contract even though the period of limitation for bringing a suit for specific performance has expired. It also does not expressly provide that a defendant transferee is not entitled to protect his possession over the suit property taken in part performance of the contract if the*

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<sup>2</sup> MANU/SC/0093/2002

*limitation period to bring a suit for specific performance has expired. In the absence of such a provision, we have to interpret the provisions of Section 53-A in a scientific manner. It means to look into the legislative history and structure of the provisions of Section 53-A of the Act.*

**27.** Both the Trial Court and the First Appellate Court concurrently held that the Plaintiff had the property in part performance of the contract. The possession of the Plaintiff is considered to be proved in the proceedings of I.A.No.269 of 1989 in O.S.No.72 of 1989, a suit filed by the Plaintiff's vendor against the Plaintiff. The courts further observed that, despite Plaintiff not filing a suit for specific performance of the sale agreement, this fact does not preclude Plaintiff from protecting her possession under Section 53-A of the Transfer of Property Act. Both courts correctly noted that the material on record substantiates the Plaintiff's possession of the property by Ex.A.3, the sale agreement. Additionally, the Defendants interfered with the Plaintiff's possession. The revenue records also corroborated the Plaintiff's possession of the schedule property.

**28.** The Hon'ble Supreme Court, in several cases, has held that the exercise of powers under Section 100 of CPC can interfere with the findings of fact only if the same is shown to be perverse and based on no evidence. Some of these judgments are ***Hajazat Hussain V. Abdul Majeed & others***.<sup>3</sup>, ***Union of India V. Ibrahim Uddin***<sup>4</sup>, and ***Vishwanath Agrawal V. Sarla Vishwanath Agrawal***<sup>5</sup>.

**29.** The findings of the Trial Court and the First Appellate Court affirm that Plaintiff has successfully established possession of the schedule property by the agreement of sale as of the date of filing the suit. Plaintiff demonstrated that the Defendants interfered with her possession of the property, which is neither perverse nor a result of misinterpretation of documents or misreading

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<sup>3</sup> 2011 (7) SCC 189

<sup>4</sup> 2012 (8) SCC 148

<sup>5</sup> 2012 (7) SCC 288

of evidence. After careful reading of the material on record, this Court finds that the Trial Court and the First Appellate Court concurrently decreed the Plaintiff's suit by recording all the findings of facts against the Defendants enumerated above, and the findings were neither against the pleadings nor evidence nor against any provisions of Law.

**30.** This Court discerns no perversity in the Judgments rendered by the learned Trial Court and the First Appellate Court. The findings and reasoning provided by both the Courts are consistent with established legal principles. Both the Courts meticulously reviewed all the evidence available on record.

**31.** This Court considers that the Trial and First Appellate Courts' conclusions are not subject to interference under Section 100 of CPC. In these circumstances, upon consideration of the decrees and judgments of the Trial Court and the First Appellate Court, this Court is satisfied that the arguments presented pertain solely to the factual matrix and do not involve any substantial questions of Law. The Appellants have not raised any legal issues in this Second Appeal that warrant consideration. There are no sufficient grounds to interfere with the judgment of the Trial Court and the First Appellate Court. There is no question of Law, let alone the substantial question of Law, involved in this Second Appeal, and therefore, the Appeal is liable to be dismissed.

**32.** As a consequence, the Second Appeal is ***dismissed without costs***. The judgment dated 11.07.2001 of learned Senior Civil Judge, Chodavaram, in A.S.No.92 of 1995, stands confirmed.

Miscellaneous applications pending, if any, in this Appeal, shall stand closed.

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**JUSTICE T. MALLIKARJUNA RAO**

**Date: 31.01.2025**  
**SAK**

**THE HONOURABLE SRI JUSTICE T MALLIKARJUNA RAO**

**SECOND APPEAL NO. 795 OF 2001**

**Date: 31.01.2025**

**SAK**