

THE HONOURABLE JUSTICE G. SRI DEVI

A.S.No. 2080 of 2018 and A.S.No.352 of 2019

COMMON JUDGMENT:

Both these Appeal Suits are filed against the common judgment and decree, dated 06.06.2018 passed in O.S.Nos.266 of 2005 and 200 of 2010 on the file of the II-Additional District Judge, Ranga Reddy District at L.B.Nagar.

A.S.No.2080 of 2018 is filed by the plaintiff in O.S.No.266 of 2005 and A.S.No.352 of 2019 is filed by the plaintiff in O.S.No.200 of 2010.

Since both the appeals are arising out of the common judgment and the property involved in both the appeals is one and the same, they are being disposed of by this common judgment.

The facts, in brief, are as under:

The appellant in A.S.No.2080 of 2018 filed O.S.No.266 of 2005 seeking to declare him as the absolute owner of plaint-B schedule property i.e., to the extent of Ac.1.03 guntas in Sy.No.56/1, Hafeezpet village, Serilingampally Mandal, Rangareddy District and to direct the defendants therein to deliver vacant possession of the same and also to award a sum of Rs.2,41,875/- towards damages for use and illegal occupation of the same from the date of suit till the date of actual realisation. The plaint consists of two schedules. 'A'

schedule of property is 11.00 guntas and 'B' schedule of property is Ac.01.03 guntas. According to him, plaint 'B' schedule property is part and parcel of plaint 'A' schedule property.

The appellant in A.S.No.352 of 2019 filed O.S.No.200 of 2010 seeking to grant perpetual injunction, restraining the defendant therein, who is the plaintiff in O.S.No.266 of 2005, his agents, successors, legal representatives and any person or persons claiming through him from interfering with his peaceful possession and enjoyment of the suit scheduled property.

After considering the oral and documentary evidence available on record, the trial Court dismissed both the suits. Aggrieved by the same, the present Appeal Suits have been filed.

Heard learned Counsel appearing for the appellants in both the appeals, learned Counsel appearing for the respondents in both the appeals and perused the record.

It is not in dispute that the whole controversy in both the suits is only in respect of the land admeasuring Ac.1.03 guntas in Sy.No.56/1, Hafeezpet Village, Serilingampally Mandal, Ranga Reddy District. The appellant in A.S.No.2080 of 2018 has claimed that he had purchased the entire land admeasuring Ac.11.00 in Sy.No.56/1/, which is described in 'A' schedule property from the family members of defendants 2 to 6 in O.S.No.266 of 2005, by way of registered sale deed/Ex.A1 dated 22.05.1967; there were earlier

litigations in Civil and Revenue Courts between him and his vendors, which ended in his favour. However, the appellant in A.S.No.352 of 2019 claimed that it had purchased Ac.1.03 guntas of land from the same parties i.e., defendants 2 to 6 in O.S.No.266 of 2005, by a registered sale deed/Ex.B3 dated 16.06.2004.

According to the plaintiff in O.S.No.266 of 2005, the title with respect to Ac.11.00 of land can be traced through Ex.A1 registered sale deed and his possession was confirmed through various proceedings of the Civil Court as well as the proceedings of the revenue authorities in which his vendors were the parties. Therefore, in respect of the plaint-A schedule property, the title of the plaintiff in O.S.No.266 of 2005 in no way can be attacked/ asserted by the defendants therein or their legal representatives.

The learned trial Court giving a good bye to the aforesaid factual aspects misdirected itself on the actual dispute to be decided between the parties, has given a different finding which is not the case of either of the parties.

Further more, the findings of the learned trial Court are perverse to the extent that the provisions of the Andhra Pradesh Tenancy and Agricultural Lands Act, 1950 (for short "the Act") are applicable to the facts of the present case. In Ex.A1 sale deed itself, it was specifically mentioned that the land sold to the plaintiff in O.S.No.266 of 2005 is a non-agricultural land. It is nobody's case

including that of the defendants 2 to 6 in O.S.No.266 of 2005 that the said Act applies to the land under Ex.A1 and due to lack of permission under the said Act, the sale is invalid. Defendants 2 to 6 in O.S.No.266 of 2005, who were the vendors of Ex.A1 sale deed and also were parties to the different proceedings before the Civil Court as well the revenue authorities, had never raised such contention. Hence, even according to the vendors, the total extent of land covered under Ex.A1, being the non-agricultural land, there was no need to obtain any permission as per the provisions of the said Act. But, the learned trial Court, without looking into the contents of Ex.A1 and pleadings of the parties in a proper perspective, held that Ex.A1 is hit by the aforesaid Tenancy Act, which is unsustainable, contrary to the pleadings and hence the said finding is liable to be set aside.

As seen from the material on record, apparently, there is dispute with regard to the identity, location of Ac.1.03 guntas of land claimed to have been purchased by the appellant in both the appeals. The trial Court has failed either to frame the same as an issue or to deal with the aspect of dispute with regard to the identity, location of the land. The trial Court, instead of resolving the dispute with regard to the identity and existence of the land in question, and also the question whether the B-Scheduled property is part and parcel of the A-Scheduled property in O.S.No.266 of 2005, erroneously dismissed both the suits. The trial Court having not

arrived at any specific finding with regard to the existence and identity of the land, I do not think it proper to examine that question for the first time in these appeals. Therefore, I am of the view that the matter requires a remand to the trial Court for fresh disposal on the following issues:-

- i) With regard to the identity, location of the land in question, which was claimed to have been purchased by the appellants in both the appeals;
- ii) Whether B-Scheduled property is part and parcel of the A-Scheduled property in O.S.No.266 of 2005, if not what are the specific boundaries of B-Scheduled property?
- iii) What is the total extent of land in Sy.No.56/1 situated at Hafizpet vllage, Serilingampally Mandal, Ranga Reddy District, which was said to have been purchased by the plaintiff in O.S.No.266 of 2005.

While deciding the aforesaid issues, the learned trial Court shall also take into consideration the Advocate Commissioner's report available on record and also may call for the revenue records with respect to the total extent of land in Sy.No.56/1 situated at Hafizpet vllage, Serilingampally Mandal, Ranga Reddy District.

Accordingly, both appeals are allowed and the common judgment and decree, dated 06.06.2018 passed in O.S.No.266 of 2005 and O.S.No.200 of 2010 on the file of the II-Additional District Judge,

Ranga Reddy District at L.B.Nagar, are hereby set aside and the matters are remanded to the trial Court for fresh disposal, in accordance with law. Since the suits are of the years 2005 and 2010 respectively, the learned II-Additional District Judge, Ranga Reddy District at L.B.Nagar, is directed to dispose of the same, as expeditiously as possible, preferably, within a period of four months i.e., by 30.04.2021. Both the parties are directed to appear before the Court below by 20.01.2021 positively.

As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed. There shall be no order as to costs.

29.12.2020
Gsn/gkv

The seal of the High Court for the State of Telangana, Hyderabad, is a circular emblem. It features the Ashoka Lion Capital in the center, with the motto 'Satyameva Jayate' below it. The text 'HIGH COURT FOR THE STATE OF TELANGANA' is written around the top inner edge, and 'HYDERABAD' is written around the bottom inner edge, separated by two stars. The entire seal is rendered in a light green color.
JUSTICE G. SRI DEVI

