

**HON'BLE SRI JUSTICE A. GOPAL REDDY**

**SECOND APPEAL No.1060 OF 2011**

**DATE:16-09-2011**

BETWEEN

Shaik Chan Basha

...Appellant

AND

Shaik Madar Saheb (died) by L.Rs.  
And others

...Respondents

**THIS COURT MADE THE FOLLOWING:**

**HON'BLE SRI JUSTICE A. GOPAL REDDY**

**SECOND APPEAL No.1060 OF 2011**

**JUDGMENT:**

Defendant in O.S.No.86 of 1992 filed by the plaintiff-first respondent herein for declaration, for ejectment and for mesne profits, filed this second appeal aggrieved by the judgment and decree passed by XI Additional District and Sessions Judge, Gudivada, Krishna District in A.S.No.29 of 2010 in allowing the appeal filed by the plaintiff-respondent herein setting aside the findings on issue Nos.2 to 4 and decreeing the suit of the plaintiff for ejectment of the defendant from the suit schedule property and for delivery of the same to the plaintiff and for profits at the rate

claimed by the plaintiff from the date of the suit till the date of delivery of the property and modifying the judgment and decree passed by the trial Court in O.S.No.86 of 1992, dated 3.12.1999.

Plaintiff-first respondent herein instituted the above suit initially in the form of indigent person to declare him as absolute owner of the suit schedule property and direct the defendant-appellant herein to deliver the suit schedule property, which is part of 'B' schedule property of O.S.No.143 of 1988 filed by appellant herein, and for ejectment of the appellant herein from the suit schedule property and for delivery of the same and also for future profits at the rate of Rs.250/- per month from the date of filing of the suit till the date of delivery. Whereas, the defendant-appellant herein filed O.S.No.143 of 1988 to declare him as absolute owner of the plaint 'A' schedule property, to direct the defendant (plaintiff herein) to deliver possession of 'B' schedule property, which is part of 'A' schedule property, to direct the defendant therein to convey Ac.2.00 of wet land situated in Gudivada and deliver possession of the same to the plaintiff, to grant permanent injunction restraining the defendant from interfering with the possession and enjoyment of the plaintiff over 'B' schedule property or in the alternative to grant damages to a tune of Rs.1,00,000/- and for costs. Both the suits were tried together and by a common judgment dated 3.12.1999 the Senior Civil Judge, Gudivada decreed the suit of the plaintiff in O.S.No.86 of 1992 partly granting the relief for declaration while rejecting the claim for ejectment of the defendant and for mense profits on issue Nos.2 and 4. Similarly, O.S.No.143 of 1988 filed by the appellant herein was decided against the plaintiff on issue Nos.1 to 3 and 5, but issue No.4 was decided in his favour granting relief of permanent injunction in respect of plaint 'B' schedule property. Aggrieved by the findings on issue Nos.2 to 4, the plaintiff-respondent herein

carried the matter in appeal. The lower appellate Court by the impugned judgment decreed the suit with costs throughout as aforementioned. Questioning the same, the present appeal is filed by the defendant.

Sri R.V.Nagabhushan Rao, learned counsel appearing for the appellant contends that the plaintiff-respondent herein has not preferred any appeal against the judgment in O.S.No.143 of 1988, wherein issue No.4 was answered in favour of the appellant herein and granted permanent injunction in respect of plaint 'B' schedule property and the said findings have become final and therefore, he is not entitled to the relief in the appeal and the lower appellate Court ought to have dismissed the appeal on the principle of *res judicate*. Though the same was argued, the lower appellate Court erroneously allowed the appeal decreeing the suit of the plaintiff in toto.

It is not in dispute that the suit of the plaintiff-respondent herein was partly decreed for declaration while rejecting the claim for ejectment and mesne profits in O.S.No.86 of 1992. Similarly, the suit filed by the appellant herein for declaration of his rights over the plaint schedule property and for recovery of possession of Ac.2.00 cents of agricultural land was dismissed while granting only the relief of permanent injunction in respect of plaint 'B' schedule property. Since the relief with regard to the declaration of title is decreed and the appellants suit for declaration of title is dismissed, the said finding has become final as no appeal has been preferred by the appellant against the said finding. On decreeing the suit for declaration of title of the plaintiff-respondent herein, whether he is entitled for recovery of possession and the findings on issue Nos.2 to 4 refusing to grant ejectment and mesne profits is only the question before the lower appellate Court.

It is not the case of the appellant that a finding was recorded in his favour in the suit filed by him to the effect that he is entitled for declaration of title and entitled for possession of A schedule property and B schedule property on issue No.1 and 2 respectively, and the said finding has become final for non-filing of the appeal. But the fact remains that the finding that the plaintiff-respondent herein is entitled for declaration and the defendant-appellant herein is not entitled for declaration not entitled for possession of A and B schedule properties has become final. In that view of the matter, mere grant of injunction in favour of the appellant in respect of schedule 'B' property on issue No.4 in O.S.No.143 of 1988 cannot be construed as a finding to bar the hearing of appeal filed by the plaintiff-respondent for the portion of the decree where the relief is not granted. The judgments of the Apex Court in **Sheodan Singh v. Daryao Kunwar**<sup>[1]</sup> and **Premier Tyres Ltd. V. Kerala State Road Transport Corporation**<sup>[2]</sup> cannot be taken to the aid of the appellant to non-suit the plaintiff. The findings so recorded by the lower appellate Court are on re-appreciation of the entire evidence in proper perspective, which does not give any substantial question of law to admit the second appeal.

The second appeal fails and the same is accordingly dismissed at the admission stage. No order as to costs.

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A. GOPAL REDDY, J.

SEPTEMBER 16, 2011  
Tsr.

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[\[1\]](#) AIR 1966 SC 1332

[\[2\]](#) AIR 1993 SC 1202