

HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.1019 OF 1998

Dated 3rd July, 2015

Between:

Bavisetty Satyanarayana.

..Appellant.

And:

Veera Brahmananda Bhakta Brunda Committee, a society registered as No.19/83, Digumarthi Vari Street, Kakinada, represented by its President & Secretary and others.

..Respondents.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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JUDGMENT:

This appeal is against judgment dated 15-9-1998 in A.S.No.62 of 1996 on the file of IV Additional District Judge, East Godavari, Kakinada whereunder judgment dated 3-8-1995 in O.S.No.317 of 1987 on the file of I Additional Subordinate Judge, Kakinada (presently Senior Civil Judge, Kakinada) is confirmed.

Appellant herein is third defendant, first respondent herein is plaintiff and respondents 2 to 5 herein are D.2 and D.4 to D.6 in O.S.No.317 of 1987 and they are hereinafter referred to as "plaintiff and defendants" as arrayed in the suit.

Brief facts leading to this appeal are as follows:

Plaintiff filed the above suit for declaration of plaintiff's title over the suit schedule property; ejecting the defendants from the suit schedule property by ordering delivery of property to the plaintiff; for recovery of a sum of Rs.280/- from the defendants towards arrears of rent and order damages for use and occupation; for ascertainment of future rent or damages for use and occupation from 1-6-1985 till date of delivery of possession and for costs of the suit.

Defendants resisted the claim of plaintiff mainly on the ground that plaintiff is not the owner of the suit schedule property and Government being its owner, plaintiff has no right and not entitled for the reliefs claimed in the suit.

On the basis of pleadings, trial court framed the following issues for determination.

1. *Whether the plaintiff schedule site has taken on lease from the plaintiff on a rent of Rs.10/- and made payments upto February, 1984 to the plaintiff is true?*
2. *Whether the plaintiff has got title in the plaintiff schedule property?*
3. *Whether the plaintiff is entitled for eviction of the defendants and recovery of Rs.280/- towards arrears of rent and damages for use and occupation from the defendants?*
4. *Whether the plaintiff is entitled for future rent for damages for use and occupation from 1985 till date of delivery of possession?*
5. *To what relief?*

This suit and another four suits were tried together and common evidence is recorded in all the suits. On a consideration of oral and documentary evidence, trial court decreed the suit in favour of plaintiff and aggrieved by the said decree, D.3 preferred A.S.No.62 of 1996 and the first appellate court, on a reappraisal of entire evidence on record, confirmed the decree and judgment of the trial court. Aggrieved by the same, D.3 preferred the present appeal.

The following are the substantial questions of law that are urged in the grounds of appeal.

- a) *Whether the courts below are entitled to grant a declaration of Title over the plaintiff schedule property in favour of the plaintiff in the absence of the true and original owner of the property i.e., the State Government herein.?*
- b) *Whether the approach of the courts below in deciding the matter is not perverse?*

- c) *Whether the appreciation of the evidence both oral and documentary by the courts below is not wrong and erroneous?*
- d) *Whether the courts below are entitled to grant relief of declaration of possessory Title, which is not at all asked by the plaintiff?*
- e) *Whether the courts below are unable to distinguish and differentiate a suit one for recovery of possession based on previous possession falling under Sec.6 of Specific Relief Act and a suit based on Title and for recovery of possession falls under Section 34 of the Specific Relief Act and thereby gave incorrect findings and conclusions?*
- f) *Whether the courts below are right in decreeing the suit, though the respondent did not file any documents showing that they perfected their title on the schedule property by adverse possession and they have right to collect rents from the appellant?*
- g) *Whether the courts below are right in decreeing the suit when admittedly the property is belonging to the Government and the Government was not made as a party, though the appellant has taken a specific plea of non-joinder of parties in the written statement?*
- h) *Whether the courts below are right in coming to the conclusion that the respondent is entitled for the relief as prayed for in the suit in the absence of ownership of the respondent?*
- i) *Whether the courts below are right in decreeing the suit when admittedly the appellant has been paying the land revenue for the schedule property to the Government and having observed that there was no relationship of landlord and tenant?*
- j) *Whether the courts below are right in decreeing the suit in the absence of proof of title and ownership on the suit land?*

This court admitted Second Appeal on 26-3-2002 treating the above grounds as substantial questions of law.

Heard both sides.

Advocate for appellant submitted that plaintiff is a Muth and the suit property is Government land and as per pleadings of plaintiff, D.1 is the original tenant and paid rents for some time and thereafter, discontinued. He submitted, according to defendants, D.1 to D.3 paid taxes to Government for this land and as such, plaintiff is not entitled for the relief of declaration and consequently ejectment. He further submitted that though plaintiff contended that this appellant paid rents upto February, 1984, no document is filed to show such payment.

He submitted that no rent receipts are filed and plaintiff mainly relied on Ex.A.33 but it is a self serving document which is resolution of Muth. He further submitted that plaintiff did not place any material to prove its ownership and on the other hand, evidence on record would show that appellant and other defendants are in continuous uninterrupted possession for more than 30 years and the possessory title claimed by plaintiff is not correct.

He submitted without any material both the courts granted reliefs to plaintiff as prayed for and findings of both courts are not correct.

On the other hand, advocate for plaintiff submitted that suit is originally filed against D.1 (original tenant) and after his death, D.2 to D.6 were added as L.Rs. and out of them, D.3 alone filed written statement. He further submitted that as per Section 116 of the Evidence Act, defendants cannot question title of the plaintiff having admitted that the property was taken on lease initially and as the suit is based on possessory title against the defendants, the contention of appellant that Government is a proper and necessary party is not at all tenable and all these objections were rightly negated by the trial court

and appellate court and that there are absolutely no grounds to interfere with the concurrent findings.

He submitted that no question of law is involved in this appeal leave alone substantial question of law and that the appeal is liable to be dismissed. He further submitted that in all the other suits, the other tenants also raised similar plea, which was negated by both the courts and decree against them has become final.

Now the point that would arise for my consideration in this appeal is whether there are any grounds attracting substantial questions of law to be determined by this court.

POINT:

As per pleadings, plaintiff Muth occupied Government land in or about 1937 and made some constructions. Plaintiff schedule land was leased out to D.1 for running a cycle repair shop on a monthly rent of Rs.10/- and the tenant paid rent upto 1984 and thereafter discontinued payment of rent by setting up title in himself and made plaintiff to approach the court for the reliefs claimed in the plaint. Plaintiff schedule property is a Government poramboke site and according to plaintiff, this property and some other property were originally occupied by one Nunnaguppala Suryanarayana who is the founder of Muth and who established it in the year 1937. Existence of temples and Muth are not in dispute.

The appellant raised as many as ten grounds in the grounds of appeal as substantial questions of law and all these grounds are interlinked with each other and therefore, they can be classified into two groups.

According to the appellant, the approach of the courts below in deciding the matter is perverse and the oral and documentary evidence is not properly

appreciated by both the courts, this is one contention. Other contention is that suit based on previous possession will fall under Section 6 of the Specific Relief Act whereas suit based on title for recovery of possession will fall under Section 34 of the Specific Relief Act and both the courts failed in distinguishing the difference between these two provisions.

During evidence, articles of association of the Muth and souvenir of Muth are marked as Exs.A.4 and A.28, respectively and these two documents would disclose that there was a flower garden by the side of Anjaneyaswamy temple which is meant for growing flowers for the purpose of doing puja for the deities in the Muth. Recitals in these two documents are supported and corroborated with the evidence of P.Ws.1 to 3, from which, it can be gathered that the flower plants died gradually and site fell vacant in or about, 1969. It is also in evidence that Government issued notice under Encroachment Act to this Nunnaguppala Ramarao reiterating his encroachment. One of the witnesses examined on behalf of defendants admitted that he signed on the minutes of various meetings of the committee of plaintiff Muth which would further lend support to the plaintiff's claim. One of the contentions of appellant is that resolution under Ex.A.33 is a self serving document, which cannot be relied on, but in view of admission of D.W.1, as a signatory on Committee Resolution Ex.A.33, this objection of appellant is not at all tenable.

From a scrutiny of material evidence, it is clear that D.W.1 was in occupation of part of Muth property and paid rent to Muth for some time. Both trial Court and appellate court considered this aspect for decreeing the suit in favour of plaintiff. Though the appellant contended that the findings of the trial court and appellate court are perverse in nature, no specific reasoning or defects in the

findings were focused except saying generally that findings are perverse. Both courts have elaborately dealt with oral and documentary evidence of both parties and arrived at a just conclusion and I do not find any perversity in the findings of the courts below nor any wrong appreciation of evidence either oral or documentary. Therefore, the objection of the appellant on this score cannot be accepted.

The other contention of the appellant is that the trial court and appellate court failed in distinguishing between the provisions of Sections 6 and 34 of the Specific Relief Act. From a reading of the pleadings and examination of evidence on record, this is not a suit based on previous possession and therefore, the question of application of Section 6 of Specific Relief Act does not arise. Here, the suit is filed basing on possessory title and when the evidence on record would disclose that defendant was inducted into the property as a tenant, he cannot be allowed to contend that plaintiff is not the owner of the property. As the suit is based on possessory title, the plaintiff having proved his possession long prior to leasing it to D.1, the claim will fall under Section 34 of the Specific Relief Act only, therefore both the courts have not committed any error in accepting the claim of the plaintiff. As rightly pointed out by advocate for plaintiff, no question of law is involved in this case, much less, substantial question of law and the appeal is devoid of merits.

For these reasons, the appeal is dismissed with costs. The appellant is granted two months time for delivering the vacant possession.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE

S.RAVI KUMAR

Dated 3rd July, 2015.

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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