

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

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LETTERS PATENT APPEAL NO. 14 OF 2003

ORDER: *(Per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This letter patent appeal preferred under Clause 15 of the Letters Patent Act, 1894 is directed against the judgment rendered by the learned Single Judge on 22.03.1996 in C.C.C.A No.244 of 1982 and Tr.C.C.C.A Nos.100 and 102 of 1984.

None appeared for the appellants and there was also no representation when their names were called. Though, nearly after 45 minutes time has elapsed, the learned counsel entered his appearance on behalf of the respondent-Bank, but, unfortunately, he could not get along with the case by making submissions on the ground that the case papers were delivered to him only today. We are, therefore, left with no other option except to go through the paper book on our own and then proceed to decide the case, as we cannot retire to chambers nearly 1½ hours prior to the lunch recess. No counsel in any of the other cases down below was ready to keep us engaged otherwise.

O.S.No.167 of 1979 is preferred by Andhra Pradesh State Cooperative Bank Limited, Hyderabad. The said suit was filed for the declaration of title and possession of the suit schedule site admeasuring 3096 square yards against the first defendant and his sons, who are the appellants in this Intra-Court appeal.

One Sri Raja Pratap Girji appears to have obtained a loan from the plaintiff/bank on 01.07.1347 fasli (corresponding to 1937 A.D) by executing a registered mortgage deed. Since the loan amount stood unpaid, the bank appears to have initiated arbitration proceedings before the Deputy Registrar of Co-operative Societies, Hyderabad, who passed an award on 15.10.1953. Since the mortgage has not been redeemed within the time limits specified therein, the plaintiff/bank had initiated Execution Proceedings in E.P.No.45 of 1962 before the Court of the learned Additional Chief Judge, City Civil Court, Hyderabad. The plaintiff/bank has been

permitted and hence, it purchased the present suit schedule site. The Court bailiff delivered possession thereof on 17.11.1964. When the defendant started trespassing into the suit site, the present suit O.S.No.167 of 1979 came to be instituted seeking a declaration.

The case of the first defendant is that he was a servant of Raja Pratap Girji and that he was working as a gardener and that he was put in possession of a servant quarter and that the late Raja Pratap Girji has gifted orally the site in question to him and that he was running a nursery by cultivating and developing several varieties of plants in the site in question and therefore by virtue of his adverse possession, he has earned prescriptive rights as against plaintiff/bank.

Eight issues were framed by the Trial Court. The first issue framed was whether the plaintiff has right title and possession of the suit schedule property, while the second issue was whether the defendants have become owners of the suit schedule property. The other issues are interconnected to these two main issues and perhaps they may not detain us for long. On behalf of the plaintiff, P.Ws.1 to 7 were examined and Exs.A-1 to A-28 were got marked. On behalf of the defendants, D.Ws.1 to 10 were examined and Exs.B-1 to 68 were got marked. Through the Advocate Commissioner, Exs.C-1 to C-302 and Exs.X-1 to X-5 were got marked.

Ex.A-1 dated 25.04.1964 was the sale certificate issued by the Court which tried E.P.No.45 of 1962, conveying the suit property in favour of the plaintiff/bank. Ex.A-2 is the plan of the suit site annexed to Ex.A-1. Ex.A-3 is the copy of the delivery receipt in proof of delivery of possession of the suit site to the plaintiff on 17.11.1964. Ex.A-4 is the acknowledgment passed on by the plaintiff for the delivery of possession effected under Ex.A-3. Ex.A-5 is the certified extract of the execution proceedings in E.P.No.45 of 1962. Ex.A-6 is the report of the Court bailiff, who delivered possession of the suit site under Ex.A-3. P.Ws.1 & 2 are the officers authorized to depose on behalf of the plaintiff/bank. Of them, P.W.2 is the one who has actually taken possession of the suit site from the Court bailiff on 17.11.1964, on behalf of the plaintiff/bank. P.W.3 was a contractor engaged by the plaintiff/bank for construction of a compound wall around the suit site. It is P.W.3, who actually raised the compound wall as commissioned by the plaintiff/bank and P.W.4 is the watchman who has been kept in-charge of the suit site. P.W.7 is another officer of the plaintiff/bank who was present at the suit site at the time of its delivery by the Court bailiff to P.W.2, the authorized representative of the plaintiff/bank. Right at this

stage, it would be appropriate to notice that the son of Raja Pratap Girji filed a civil suit O.S.No.386 of 1958 challenging the correctness of the award of arbitration passed by the Deputy Registrar of Co-operative Societies, Hyderabad, on 15.10.1953 and that suit was dismissed by the Court. Ex.A-28 is the certified copy of the judgment rendered in the said suit O.S.No.386 of 1958. It will also be appropriate to notice at this stage that a complaint was lodged by the plaintiff/bank on 09.08.1972 to the police against the first defendant in the suit regarding his criminal trespass in the suit site. That complaint dated 09.08.1972 was marked as Ex.A-7. There is also another complaint of similar nature lodged against the first defendant by the plaintiff/bank with the police, which was marked as Ex.A-12. Ex.A-26 is the certified copy of the judgment rendered by the Criminal Court in C.C.No.3322 of 1972 convicting the first defendant for theft of certain articles, as well as criminal trespass into the suit site. It would also be appropriate at this stage to notice the letter addressed by Smt. Gunavathi Devi, D/o late Raja Pratap Girji on 14.10.1970 to the plaintiff/bank who proposed to repurchase the suit land offering Rs.90,000/- as consideration. That letter addressed to the Managing Director of the plaintiff/bank by Smt. Gunavathi Devi was marked as Ex.A-10. Smt. Gunavathi Devi has sent another reminder which was also marked as Ex.A-27. Upon an overall analysis of the entire evidence marshaled before the Trial Court, and particularly, taking into account and consideration the fact that the plaintiff/bank has paid money to the contractors for raising the compound wall, it has returned a finding of fact that that the possession of the suit site has been validly delivered by the Court bailiff to the plaintiff/bank on 17.11.1964 and that by virtue of Ex.A-1, the title to the suit site has been validly conveyed in favour of the plaintiff/bank, thus, bringing to an end the right title and interest of Raja Pratap Girji, the original mortgagor of the suit site and by virtue of the dismissal of the civil suit O.S.No. 386 of 1958 instituted by the son of Raja Pratap Girji, challenging the correctness of the arbitration award, the right title and interest of the successors of the Raja Pratap Girji also stood vanquished. It will be interesting to notice that the present suit O.S.No.167 of 1979 is instituted after the Criminal Court has convicted the first defendant herein for criminal trespass into the suit site. The judgment rendered by the Criminal Court convicting the first defendant, as evidenced by Ex.A-26, which would bring out a fundamental principle of law that a trespasser convicted for such an offence cannot set-up a title to the property which has been trespassed by him.

We have not found any infirmity in the findings of fact recorded by the learned Trial Judge when he held issue no.1 in favour of the plaintiff/bank, which finding of fact has been confirmed by the learned Single Judge of this Court.

There is no material available on record for us to entertain any doubt with regard to the concurrent finding of fact recorded by both the Courts and in view of the concrete evidence as reflected in Ex.A-1 sale certificate issued by the Executing Court and Ex.A-3 delivery of possession carried out by the bailiff of the Executing Court and Ex.A-4 acknowledging the delivery by an Authorized Officer of the plaintiff/bank, the finding of fact recorded by both the Courts is based upon proper and correct appreciation of the material that has been marshaled, as evidenced before the Trial Court. Therefore, there is no reason, muchless a justifiable one for us to upset this finding on Issue No.1, as settled in O.S.No.167 of 1979.

Unless, the finding of both the Courts on Issue No.1 is upset by us, the question of arriving at favorable finding on Issue No.2 in favour of the first defendant, who is the appellant in this appeal would arise. We, therefore, do not find any error in the judgment under appeal warranting interference at our hands and hence, the appeal stands dismissed, with costs. But however, since no assistance has been rendered to us, on behalf of the respondent/bank, we direct the costs to be paid to the High Court Legal Services Authority, instead.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

25.11.2015

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