

\HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.52 of 1998

JUDGMENT:

This appeal is against judgment dated 07.07.1997 in A.S.No.4 of 1991 on the file of the Additional District Judge, Khammam, whereunder judgment dated 22.01.1991 in O.S.No.51 of 1984 on the file of the Subordinate Judge (presently Senior Civil Judge), Kothagudam, is reversed.

2. Brief facts leading to this appeal are as follows:

Respondents herein filed the above referred suit O.S.No.51 of 1984 contending that one Byri Mallamma is owner of plaint schedule property, which is an extent of Ac.3.30 gts. in Sy.No.17/24 and Ac.3.27 gts. in Sy.No.17/25 with Mango and cashewnut gardens, situated at Laxmidevipalli Village and that Government granted patta to said B.Mallamma in the year 1954 treating her as landless poor and since then she is in continuous possession and enjoyment as a owner and paying taxes to the Government, but the Forest Range Officer, Kothagudem (Defendant No.3) started interfering with the possession on the ground that he received instructions from Divisional Forest Officer, Kothagudam (Defendant No.2) and threatening dispossession, therefore, plaintiff is constrained to file suit for injunction. After filing of the suit, sole plaintiff B. Mallamma died and her legal representatives are brought on record as

plaintiffs No.2 and 3 in the year 1988.

3. Appellants-Defendants resisted the claim of plaintiff contending that Laxmidevipalli Village is in scheduled area and that non-tribals are not entitled for any assignment of Government land and that plaint schedule property is in 'Reserve Forest' and it cannot be assigned to anybody without permission from Conservator of Forests and as per the provisions of Forest Act, Forest Department is in possession and enjoyment of the land including Mango and Cashewnut trees in plots No.1 to 5 and that the usufruct of the garden is being auctioned and that plaintiffs have no right in the plaint schedule property.

4. On these allegations, trial Court examined two witnesses and marked seven documents on plaintiff's side and examined six witnesses and marked twenty four documents on behalf of defendants and on a overall consideration of oral and documentary evidence, dismissed the suit holding that plaintiffs are not entitled for the relief of injunction and aggrieved by the same, plaintiffs preferred appeal to the District Court and Additonal Distrct Court, Khammam, on a re-appraisal of evidence, decreed the suit in favour of plaintiffs, and granted injunction holding that plaintiffs are in possession and enjoyment of plaint schedule property, by giving liberty to defendants to take appropriate legal recourse for cancellation of pattas and resumption of possession in accordance with law. Aggrieved by the same, present

appeal is preferred by defendants.

5. The substantial question of law as urged in the grounds of second appeal are as follows:

1. When the suit land is admittedly situated in Reserve Forest and in Agency area, the assignment of such land even if true is not void ipso facto and whether the Lower Appellate Court is right in granting permanent injunction in favour of non-tribal respondents reversing the well considered decision of the trial Court and whether such assignment requires cancellation?
2. When the land is in Reserve Forest and when it is not denotified, whether Revenue Department has any right to assign such land and such assignment creates any right in assignees more so in view of the fact that the land is in schedule area and alleged assignees are non-tribals and it is not void abinitio?
3. Whether the claim, made by the respondents in view of the above facts amounts to bonafide dispute as to title?
4. When parties are not granted and B memo were booked and penalty collected, the respondents are not licencees?
5. Whether entries in Revenue records are reliable piece of evidence in respect of Forest land?
6. Whether the suit for Permanent Injunction lies against real owner, the Forest Department and when respondents possession on the date of the suit not established?
7. When the Forest Conservation Act, 1980

prohibits using of Forest land for any purpose other than Forest purposes, granting injunction by Lower Appellate Court is not violative of the Act?

6. Heard arguments.

7. Learned Government Pleader for Arbitration submitted that lower appellate Court went wrong in holding that plaintiffs are in possession of the property ignoring the fact that the Revenue Department has no right to assign land covered by Reserve Forest. He further submitted that entries in revenue records cannot be taken as reliable piece of evidence in respect of Forest Land and when the Forest Department is the real owner, granting permanent injunction against the appellants is not sustainable.

8. On the other hand, advocate for respondents submitted that the lower appellate Court as rightly granted injunction since the documentary evidence produced on behalf of plaintiffs do show that plaintiffs are in possession and enjoyment of the plaint schedule property and that defendants cannot dispossess the plaintiffs by unlawful means, therefore, there are no grounds to interfere with the findings of the lower appellate Court and that there is no substantial question of law involved for determination by this Court.

9. Now the points that would arise for my consideration in this second appeal is

Whether there is any substantial question of

law that has to be decided by this Court?

POINT :

10. As seen from the record, plaintiffs contended that the plaint schedule property was assigned to the deceased sole plaintiff B.Mallamma in the year 1954 and ever since she has been in possession and enjoyment and she raised Mango and cashewnut trees in the subject property and after her death, respondents No.2 to 4..herein have been enjoying the same. To substantiate the same, plaintiffs produced certified copies of pahanies for the years 1971-72 to 1976-77, 1977-78 to 1983-84 and 1984-85 to 1987-88 besides land revenue receipts of the year 1983. Appellants also produced certified copy of pahanies for the years 1979-80 to 1982-83 in respect of suit property. In all these documents, name of B. Mallamma is recorded as pattadar and she is shown as person in possession of the plaint schedule property. Though appellants produced some documents like, auction papers, showing the usufruct of the trees was sold by way of auction, but these auction papers are not in respect of the plaint schedule property covered by Sy.No.17/24 and 17/25. When the Revenue records clearly show that B. Mallamma was the pattadar and in possession and enjoyment of the plaint schedule property as rightly observed by the lower appellate Court, appellants cannot take forcible possession without resorting to due process of law. When the pahanies

produced by plaintiffs and defendants discloses that plaintiffs are in possession of the plaint schedule property as pattadars, the remedy of defendants is to take legal recourse for resumption of the possession in accordance with law. One of the objections of appellants is that the revenue authorities have no right to assign the lands and grant pattas, the same cannot be accepted, because it is the internal dispute between two departments and if the revenue department acted without any power, it is for the defendants to take appropriate steps for cancellation of such pattas, but, the appellants cannot take forcible possession on the ground that revenue department has no right to issue pattas in respect of Forest land. The lower appellate Court elaborately discussed each and every objection raised on behalf of appellants and came to right conclusion on the basis of both oral and documentary evidence produced on behalf of both parties. In fact, the lower appellate Court gave liberty to the appellants to take appropriate legal recourse including cancellation of pattas and to take possession in accordance with law, but the appellants without taking any such recourse questioned the said judgment and decree of the appellate Court again on the same ground that revenue department has no right to grant pattas in respect of Forest Land. Admittedly, both revenue department and forest department are wings of State Government and if any mistake is committed by one wing, it has to be

corrected and rectified by way of an appropriate Government Order, but for the mistake committed by one wing, the other wing cannot interfere with the rights of third parties. When the evidence on record discloses that plaintiffs are in possession and enjoyment of the property in pursuance of assignment made in favour of B. Mallamma in the year 1954, without taking appropriate steps for cancellation of such assignment and resumption of possession, appellants cannot resort to unlawful means of forcible dispossession and as plaintiffs complained forcible dispossession, the appellate Court granted injunction restraining such forcible dispossession. I do not find any wrong exercise of jurisdiction or power by the lower appellate Court and there are absolutely no grounds to interfere with the findings of the lower appellate Court. Further, as seen from the material, the grounds raised as substantial question of law are only in respect of factual aspects and there is absolutely no substantial question of law involved and as such, the second appeal is devoid of merits and liable to be dismissed.

11. For these reasons, second appeal is dismissed giving liberty to the appellants to take appropriate legal recourse for cancellation of pattas and resumption of possession as observed by the lower appellate Court. No costs.

12. Miscellaneous Petitions, if any, shall stand dismissed.

S. RAVI KUMAR, J

11th February 2015.

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