

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.15 of 2006

Date:23.02.2015

Between:

The State of Andhra Pradesh,
Rep by the District Collector, Waranagal
and another.

...Appellants.

AND

Kothwal Yeswantha Rao and another.

...Respondents.

The Court made the following:

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.15 of 2006

JUDGMENT:

This appeal is preferred against judgment dated 19-04-2005 in A.S.No.69/2002 on the file of IV Additional District Judge, Warangal whereunder judgment dated 01-04-2002 in O.S.No.286/1999 on the file of Principal Junior Civil Judge, Warangal was reversed.

2. Appellants herein are defendants 1 & 2 and first respondent herein is plaintiff and second respondent herein

is D3 in the above referred O.S.No.286/1999. Parties are herein after referred to as plaintiff and defendants as arrayed in the suit.

3. Brief facts leading to this appeal are as follows:-

Plaintiff filed the above referred suit for relief of declaration that he is owner and possessor of suit schedule property and to restrain the defendants from interfering with peaceful possession and enjoyment. Plaintiff contended that he purchased suit schedule property from D3 and father of D4 on 19-05-1965 and took possession of the property and since then enjoying same without any interruption. The Revenue Authorities recognised the possession of the plaintiff and title and issued R.O.R Passbooks and Title Deed on 04-03-1995, but surprisingly D2 issued a notice on 13-12-1997 contending that plaintiff is not entitled to be in possession of the land and asked him to explain as to why he should not be evicted from the suit schedule property and that the plaintiff filed preliminary objection to the said notice and that he did not receive any further communication from the second defendant and anticipating some arbitrary cohesive action from the revenue officials, plaintiff is constrained to file the suit for the relief of declaration and injunction. D3 remained *exparte* and suit against D4 was dismissed as plaintiff did not proceed against him and only the appellants herein contested the suit. According to their written statement, plaintiff is not a landless poor and he was declared as surplus holder of land under Agricultural Ceiling

Act and the purchase of suit land from D3 and father of D4 is in violation of Laoni Rules. It is further contended that plaintiff holding possession of assigned land is in contravention of the provisions of A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 and as such plaintiff is not entitled for the reliefs claimed.

4. On these contentions, trial Court examined two witnesses and marked 18 documents on behalf of plaintiff and examined one witness and marked three documents on behalf of contesting defendants and on a over all consideration of oral and documentary evidence, dismissed the suit. Aggrieved by the dismissal of the suit, plaintiff preferred appeal to the District Court and IV Additional District Judge, Warangal, on a reappraisal of evidence, allowed the appeal and decreed the suit by setting aside dismissal order of the trial Court. Now aggrieved by the judgment of the appellate Court, defendants 1 & 2 in the suit preferred present appeal.

5. This Court admitted the second appeal treating the following grounds as substantial question of law, which are as follows:

“(1) Whether the Civil Court has got jurisdiction in view of the provisions of Act 9/77?

(2) Whether the 1st Appellate Court is justified in decreeing the suit without considering the conditions of the patta having held that the land in question is a Government land?

- 3) *Whether the defendants are not entitled to dispute Ex.A1 to A3, in view of the fact that the land in question is a Government land?"*

7. Heard both sides.

8. Advocate for appellants submitted that the Civil Court has no jurisdiction in view of the provisions of Act 9/1977 and that the appellate Court is not justified in decreeing the suit without considering the patta conditions.

He submitted that this suit schedule property is a ceiling land and when the plaintiff has declared as surplus land holder, granting relief of declaration is not maintainable and it is contra to the provisions of Act 9/1977.

He submitted that the trial Court has rightly appreciated evidence on record, but the appellate Court without any valid reasons, modified the findings of the trial Court, which is not warranted. He submitted that as the relief is prohibited under the provisions of Act 9/1977, decree granted by appellate Court is liable to be set aside. On the other hand, Advocate for plaintiff submitted that the contention of the defendants that the plaintiff was declared as surplus holder is not at all supported by any evidence and the contentions of the defendants remained as contentions without any proof and therefore, the appellate Court rightly decreed the suit. He further submitted that the very Revenue Authorities recognised the purchase of land by plaintiff and granted patta under R.O.R Rules, therefore, they are estopped from contending that plaintiff has no right over the suit land. He

submitted that appellate Judge elaborately considered all these aspects including the maintainability of the suit and there are no grounds to interfere with the findings of the appellate Court.

He further submitted that there is no question of law involved much less any substantial question of law and the appeal is liable to be dismissed.

9. Now the point that would arise for my consideration in this appeal is whether there is any substantial question of law involved for determination by this Court?

10. **Point:-** As already referred above, plaintiff filed the above referred suit with specific plea that he purchased suit property from D3 and father of D4 for a valuable consideration and this transaction was recognised and regularised by the Revenue Authorities, after collecting required stamp duty and registration fee and thereafter, issued patta under provisions of Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for short 'R.O.R Act'). The main contention of the defendants is that the provisions of Act 9/77 prohibits such a suit and the appellate Court committed error in decreeing the suit. As seen from the evidence of P.Ws.1 to 3 and documents Exs.A1 to A18, it is clear that plaintiff is in possession and enjoyment of the suit property from 1965 continuously. It is also clear from the evidence Revenue Authorities issued order under Exs.A3 & A4 proceedings regularising the sale in favour of plaintiff in

respect of suit land. When such is the case, the burden is heavy on the defendants i.e., appellants herein that the suit property was a assigned land and there is prohibition for alienation, but the defendants, except producing the oral evidence of D.W.1, no material is produced to substantiate their plea of assignment. Learned Appellate Judge discussed each and every objection raised on behalf of the appellants with reference to evidence on record and I do not find any wrong appreciation of evidence or any incorrect findings or observations in the judgment of the appellate Court. If really, there is a prohibition of alienation, there is no point in regularizing such alienation by the Revenue Authorities and Exs.A3 & A4 by duly collecting stamp duty and registration fee. As seen from the record, appellate Judge has meticulously examined both oral and documentary evidence of both parties and came to a right conclusion that the defendants failed to show that the suit land is a assigned land and alienation is prohibited under provisions of Act 9/77. In view of the findings of the appellate Court, which are based on evidence, I am of the view that the objection of the appellants with regard to such findings cannot be sustained. Further, the very point relating to jurisdiction was also considered by the appellate Court and in my view, the appellate Judge was right in holding that the provisions of Act 9/77 are not applicable as the defendants failed to place any material to show that the disputed land falls within the purview of provisions of Act 9/77.

11. For these reasons, I am of the view that no substantial question of law is involved and that the appeal is liable to be dismissed as devoid of merits.

12. Accordingly, appeal is dismissed as devoid of merits.
No costs.

13. As a sequel, miscellaneous petitions, if any, pending in this Second Appeal, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:23.02.2015

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