

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

SECOND APPEAL No.1370 of 2004

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JUDGMENT:-

This Second Appeal, under Section 100 of the Code of Civil Procedure, 1908 by the unsuccessful plaintiffs is directed against the decree and judgment dated 08.10.2004 of the learned Additional Senior Civil Judge (Judge, Fast Track Court), Nandyal passed in A.S.No.17 of 1999. The learned Additional Senior Civil Judge, while dismissing the said appeal, had confirmed the decree and judgment dated 19.04.1999 of the learned Principal Junior Civil Judge, Nandyal passed in O.S.No.462 of 1986.

2. I have heard the submissions of the learned counsel for the appellants/plaintiffs ('plaintiffs', for brevity) and the learned Government Pleader appearing for the respondents/defendants 1 to 4. I have perused the material record.

3. At the time of admission of this second appeal, this Court had taken note of the substantial questions of law mentioned at ground nos. (i) to (iii), which read as under:-

1. **Whether or not the suit for injunction is not maintainable in the Court of Civil Jurisdiction by virtue of the Provisions of L.A. Act?**
2. **Whether or not the civil suit is maintainable by virtue of the fact that the fundamental provisions of this statute are not complied with?**
3. **Whether or not the suit is maintainable inasmuch as notification under Section 4(1) of the L.A.Act with respect to the suit lands especially when the said notification was declared as void?**

4. To adjudicate the *lis* and answer the said substantial questions of law, it is necessary to refer to the pleadings of the parties.

5. The case of the plaintiffs, inbrief, is this: "The plaintiffs are the original owners of the schedule land of a total extent of Acs.15.50 cents. The District

Revenue Officer, Kurnool, at the instance of the District Social Welfare Officer of Kurnool had approved the proposal for acquisition of the plaint schedule land as well as the other lands in survey no.342/2 of Noonepalli Village of Nandyal Taluk; and a Gazette Notification was issued under Section 4(1) of the Land Acquisition Act, 1894 dispensing with the enquiry under Section 5-A of the Act, in view of the urgency that was felt by the Government in the matter. The Government made an attempt to take possession of the suit land and the land in survey no.342 belonging to one Kamini Ramalingam and three others. On that, the owners of the land in survey no.342 and others had filed a Writ Petition in W.P.No.3359 of 1978 before this Court questioning the validity and the legality of the approval of the land acquisition proceedings by the District Revenue Officer, including issuance of Gazette Notification under Section 4(1) of the Act in respect of the suit schedule property as well as the lands in Survey no.342. The said Writ Petition was allowed by this Court on the ground that the land acquisition proceedings were not approved by the District Collector as per the procedure; and, the Gazette Notification under Section 4(1) of the Act was declared as illegal by this Court in the said writ petition and the entire 4(1) notification was set aside. Thereafter, no further steps were taken by the Government. While setting aside the Gazette Notification, it was not observed by this Court that setting aside of the Gazette Notification under Section 4(1) of the Act is in respect of land situated under Survey no.342 only and, therefore, the entire 4(1) Notification was set aside in respect of the lands in survey no.342 and also in respect of the suit lands. Though the plaintiffs are not parties before this Court in W.P.No.3359 of 1978, but, still the orders in the aforementioned writ petition would inure to the benefit of the plaintiffs. Therefore, the defendants are not entitled to take possession of the schedule lands from the plaintiffs and in fact, the possession of the land was not taken by the defendants at any point of time and that the plaintiffs are continuing in possession of the suit schedule land by raising crops. However, the defendants are trying to trespass into the suit schedule land and take possession forcibly and, therefore, the plaintiffs are constrained to file the suit for a declaration that the Gazette Notification under

Section 4(1) of the Act and the subsequent award passed by the District Revenue Officer, Kurnool, are illegal and ultra-vires and for a consequential perpetual injunction.”

6. Be it noted that during the pendency of the first appeal before the Court below, the plaintiffs have got amended the plaint and the amended portion of the plaint, insofar as the relief claimed, is as follows:-

“The Gazette Notification dated 04.02.1977 affected by the defendants under Section 4(1) of the Act and the subsequent award passed by the third defendant in continuation thereof, are illegal, ultra-vires and void in law, in view of the orders passed by this Court in W.P.No.3359 of 1978.”

(Reproduced verbatim)

7. The defendants 1 to 4 had filed a written statement resisting the suit. The averments in the written statement of the first defendant, in brief, are as under: “The lands in an extent of Acs.11.64 cents in survey no.342 and in an extent of Acs.20.66 cents in Survey nos.331/1 and 331/2 of Noonepalli village have been proposed for acquisition to provide house sites to the weaker sections of the society. Notification under Sections 4(1) and 6 of the Act was published in the District Gazette dated 28.02.1977. At this stage, the pattadars of Survey no.331/1 and 331/2 have filed a writ petition before this Court in W.P.No.1640 of 1977 for setting aside all the further proceedings. Similarly, the pattadars of survey no.342 have also filed another writ petition in W.P.No.3359 of 1978. This Court had dismissed the W.P.No.1640 of 1977 filed by the pattadars in survey No.331/1 and 331/2; whereas, the W.P.No.3359 of 1978 filed by the pattadars of the land in survey no.342 was allowed and 4(1) Notification in respect of the said survey number was quashed. The plaint schedule property has been notified for acquisition for weaker sections and an award was also passed on 25.03.1977. The possession was also taken by the defendants on 10.05.1977 and compensation was also paid to the land owners. The plaintiffs, who are the

owners of the lands in survey no. 331/1 have also received the compensation. The order of this Court in W.P.No.3359 of 1978 does not inure to the present plaintiffs as they are not parties to the said writ petition and the said orders are only in respect of survey no.342 and not in respect of the lands in the plaint schedule. The allegations in the plaint are false. The Civil Court has no jurisdiction to try the suit.”

8. Basing on the above pleadings, the trial Court settled the following issues for trial:-

1. **Whether S.4(1) Notification dated 04.02.1977 and the award passed in its pursuance are illegal, void and ultravires and liable to be set aside?**
2. **Whether the plaintiffs are entitled for any permanent injunction?**
3. **Whether possession of the plaint schedule land was taken over by the defendants on 10.05.1977 and whether the plaintiffs have received the compensation amount also?**
4. **Whether the order passed in W.P.No.3359 of 1978 enures to the benefit of the plaintiffs herein?**
5. **Whether the plaintiffs have trespassed into the plaint schedule land before the institution of the suit?**
6. **To what relief?**

Additional Issue, dated 11.04.1991:-

1. **Whether the Court has got jurisdiction to entertain the suit?**

9. At trial, on the side of the plaintiffs, PWs 1 to 9 were examined and exhibits A1 to A46 were marked and on the side of the defendants, DWs 1 to 3 were examined and exhibits B1 to B19 were marked.

10. On merits, the trial Court had dismissed the suit of the plaintiffs, after mainly recording the finding that the Civil Court has no jurisdiction. Aggrieved of the said decree and judgment of the trial court, as already noted, the plaintiffs had preferred the first appeal before the Court below and the said first appeal was also dismissed confirming the findings of the trial Court that the civil Court has no jurisdiction. Therefore, the plaintiffs are before this Court as appellants.

11. A reading of the substantial questions of law would show that the only issue that was raised before this Court is in regard to the lack or otherwise of the jurisdiction of the Civil Court to grant the amended relief to the plaintiffs in the present *lis*. This issue need not detain this Court for long as from the facts of the case it is obvious that the Courts below are justified in holding that the Civil Court has no jurisdiction to grant the relief claimed in the suit. The learned counsel for the plaintiffs fairly submits that the Civil Court has no jurisdiction to grant the relief, but, however, contends that both the Courts below have concurrently held that the plaintiffs are in possession of the property and, therefore, the said finding may be confirmed and the plaintiffs may be given an opportunity to pursue the remedies, which the law permits.

12. Be that as it may. Section 9 of the Code of Civil Procedure, 1908, confers the jurisdiction on a civil Court to try all suits, unless barred. The law is well settled that a civil Suit relating to Land Acquisition proceedings is not maintainable and by implication, taking cognizance of such a suit is barred under Section 9 of the Code. In the instant case, having regard to the relief claimed in the suit and the settled legal position which is undisputed, this Court finds that the concurrent findings of both the Courts below that the civil Court has no jurisdiction to entertain the suit and grant the relief claimed in the suit, are justified and do not call for any interference.

13. Viewed thus, this Court holds that no substantial questions of law are involved and that there is no substance in the questions raised and that the Second Appeal is devoid of merit and is liable to be dismissed.

14. In the result, the second appeal is dismissed. There shall be no order as to costs. Insofar as the request made by the learned counsel for the plaintiffs to confirm the findings of both the Courts below regarding possession, this Court is of well-considered view that any finding by a civil Court having no inherent jurisdiction will be of no avail and, therefore, there is no need to record any such finding. Suffice if it is observed that it is always open to the parties to pursue the remedies, which the law permits.

Miscellaneous petitions pending, if any, in this appeal, shall stand dismissed.

M. Seetharama Murthi, J

04th August, 2015
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