

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Second Appeal No.1094 of 1998

JUDGMENT:

This is an appeal by the unsuccessful defendants under Section 100 of the Code of Civil Procedure, 1908 assailing the decree and judgment dated 03.06.1996 of the learned III Additional District Judge, Tirupati passed in AS.No.72 of 1992 whereby the learned Additional District Judge while dismissing the said appeal had confirmed the decree and common judgment dated 23.09.1991 of the learned Principal District Munsif, Tirupati passed in OS.No.619 of 1986.

2. I have heard the submissions of the learned counsel for the appellants/defendants ('the defendants' for brevity). Though 1st respondent is served with notice, none appeared. 2nd respondent is stated to be not a necessary party. I have perused the material record.

3. At the time of admission of this appeal on 11.02.1999, it is only stated 'Admit'. Neither the substantial questions of law were specifically formulated nor were the substantial questions of law mentioned in the grounds of appeal taken note of. However, the substantial questions of law formulated and mentioned in the grounds of appeal, read as follows: -

- 1. Whether the judgment and decree of the lower appellate court confirming the judgment and decree of the trial court is sustainable and is supported by evidence on record?**
- 2. Having regard to the judgment of the Hannibal High Court passed in AS.130 and 243/73 wherein it is clearly held that plea of recovery of possession is barred by limitation whether the court below acted legally in decreeing the suit for injunction?**
- 3. Whether the civil court has got jurisdiction to entertain a suit restraining the tenant from making construction especially when the provision of A.P. Tenancy Act bans the jurisdiction of the civil court?**

4. Whether the reasoning of the courts below for decreeing the suit for restraining the appellant from converting the plaint 'C' schedule property into house sites contrary to the terms of the lease is maintainable?

5. Whether the reasoning of the court below that the plaintiff the original owner has got right to seek injunction is legally sustainable?

6. Whether the courts below are right in holding that the relief claimed by the plaintiff against the respondents is maintainable?

(reproduced verbatim)

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

5. The suit-OS.No.619 of 1986 along with three other suits was filed by the plaintiff Mutt against the present defendants and the other defendants in the other suits for perpetual injunctions restraining the defendants in the respective suits from interfering with the respective plaint schedule properties and from converting the plaint schedule properties into house plots and make constructions thereon and change physical features and for costs.

6. In the plaint in the instant suit, it is averred as follows: - 'The plaint 'A' schedule property belongs to the plaintiff Mutt. The head of the plaintiff Mutt had entered into an agreement of lease in respect of the plaint schedule property with one Mandaram Munikannaiah of Tirupathi with the following conditions: -

1. The land was given to M. Munikkanaiah in accordance with the conditions mentioned in the earlier lease dated 29.11.1915.

2. From 1340 fasli, an amount of Rs.25/- shall be paid towards rent per annum (Theeruve):

3. If Munikannaiah or his heirs want to transfer the rights, it should be intimated to pedda Jeeyangar and his consent must be obtained and document must be executed in favour of Pedda Jeeyangar:

4. Failure to do so, Munikannaiah and his legal heirs are liable to pay the rent;

5. The schedule property shall be first charge for the rents payable;'

While so, one Sakamuri Veera Swamy Naidu, the father of the 1st defendant had purchased the leasehold rights of the 'B' schedule property under registered deed dated 26.10.1959 from Papaiah and others, who were themselves derivative holders of the leasehold right of Mandaram Munikannayya. Therefore, the said purchaser S. Veeraswamy Naidu is bound by the terms of the original lease in favour of Munikannayya and accordingly, he has to pay the lease amount annually in respect of plaint 'B' schedule land. However, he had stopped paying the rents for the said property from fasali 1372 onwards and had committed default in payments of rents for more than 3 years and had thus violated the terms of the lease and, therefore, he was liable for eviction. In the circumstances, the plaintiff Mutt had filed a separate suit OS.No.59 of 1964 against the said Veeraswamy Naidu on the file of the Subcourt, Chittoor for declaration of its title in regard to plaint 'A' schedule property and the said suit on transfer to the Sub-Court, Tirupathi was re-numbered as OS.7 of 1971 on the file of the said Court and was later decreed with costs. The first appeal in AS.No.130 of 1973 preferred by the said Veeraswamy Naidu before the High Court was dismissed confirming the plaintiff's title in respect of plaint 'A' schedule property. However, the relief of possession was negatived on the ground that the parties are governed by the provisions of A.P Tenancy Act and it is open to the plaintiff to take appropriate legal action for evicting the appellants under the said Act. Subsequently, the plaintiff Mutt also filed A.T.C.No.34 of 1980 against Veeraswamy Naidu for the relief of eviction from plaint 'B' schedule land. Later on Veeraswamy Naidu through his son/the 1st defendant had sold a portion of plaint 'B' schedule to the defendants 2 to 6 and the same is described as 'C' schedule. The said alienation is not valid and legal. The plaintiff had thus taken steps to evict the said Veeraswamy Naidu from plaint 'B' schedule property. Since the 1st defendant and his father were making preparation to convert the plaint 'C' schedule property into house plot and change the nature of the land and are trying to put the same to non agricultural purpose in violation of terms of lease, the present suit is filed for

perpetual injunction.

6.1 Be it noted that by filing an interlocutory application in IA.315 of 1988 which was allowed the plaint was amended seeking relief that the sale of plaint 'B' schedule land by Papayya on 26.10.1959 in favour of S. Veeraswamy Naidu is null and void and that the sale of plaint 'C' schedule property by Veeraswamy Naidu through his son/1st defendant is also null and void as per the provisions of the above said enactment and that the defendants have no manner of right, title and interest in the properties.

7. The common defence of the defendants as stated in their written statements is this: The lease which was granted by an agreement to Mandarm Munikannaiah on 11.03.1931 is a permanent patta and not a lease. As per the recitals of the permanent patta, the grantee as well as his successors in interest including his alienees can enjoy the property absolutely and permanently and the plaintiff Mutt has no right except to collect the Theerva. There is no landlord and tenant relationship between the plaintiff on one hand and, Munikannaiah and the defendants on the other. In a partition in the year 1977 between the defendants 1 and 2, Ac.4.72 cents in plaint 'B' schedule fell to the share of 2nd defendant. The 2nd defendant had converted the said land into plots and had sold the same to number of persons. The plaint 'C' schedule was sold to the 3rd defendant. The alienations are binding on the plaintiff. The land was already converted into house plots. Hence, the suit is not maintainable. The plaint 'A' schedule originally belonged to the plaintiff Mutt. Pedda Jeeyangar had executed a registered permanent lease deed dated 29.11.1915 in respect of Ac.15.00 of land to one Shaik Budan Saheb and he in turn had sold the said land in equal halves to Narasimhaiah and M. Munikannaiah under two sale deeds dated 01.12.1919 and 19.08.1922 respectively. Again Narasimhaiah sold Ac.7.50 cents to Munikannaiah under a registered sale deed dated 19.08.1922. Pedda Jeeyangar had granted permanent lease for the remaining Ac.12.00 in the plaint 'A' schedule to one Kotilingam Subbaraya Chetty under a registered deed dated 06.01.1900. Subsequently that land

was occupied by Munikannaiah. Pedda Jeeyangar in recognition of rights of Munikannaiah had granted a permanent patta for the entire 'A' schedule under registered deed dated 11.03.1931. Thus, it is not a lease deed but a patta. Munikannaiah sold Ac.7.72 cents to one Adenna under a registered sale deed dated 24.03.1939. After the death of Adenna, his widow Masakka and her son had sold the said land to Avilala Venkatarayulu under a registered sale deed dated 11.12.1939. Later the 1st defendant obtained an agreement of sale on 15.10.1959 from Papaiah who is the son of Venkatarayulu. Subsequently, a registered sale deed dated 26.10.1959 was executed in favour of 1st defendant. Thus the first defendant was put in possession of plaint 'B' schedule land. The 1st defendant never paid any rent to the plaintiff. As such, he had perfected his right by adverse possession. The suit-OS.7 of 1971 was dismissed by the High Court holding that the suit was barred by time as the alienees perfected their right by adverse possession. Hence, the suit is barred by res judicata. The plaintiff is not entitled for any injunction.

8. Having regard to the pleadings, the trial Court had framed the following issues and additional issue in this instant suit.

1. **Whether the plaintiff is entitled for permanent injunction as prayed for?**
2. **To what relief?**

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Additional issue:

In view of Section 81 and 82 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 whether the sale in respect of 'B' and 'C' schedule properties are null and void?

9. All the suits were consolidated and common evidence was recorded. On behalf of the plaintiff Mutt, PW1 was examined and exhibits A1 to A25

were marked. On the side of the defendants, DW1 was examined and exhibit B1 was marked.

10. On merits, the trial Court had decreed the suit of the plaintiff Mutt. The first appeal preferred by the defendants in AS 72 of 1992 insofar as the decree granted in OS.No.619 of 1986 was dismissed by the Court below. Therefore, the defendants are before this Court.

11. The learned counsel for the defendants would submit that the judgments and decrees of the Courts below are unsustainable as civil Court has no jurisdiction to entertain the suit and grant the reliefs and that the suit is barred by law of limitation.

12. A perusal of the questions raised would show that both the questions are not pure questions of law let alone substantial questions of law. A perusal of the judgments of the Courts below would show that the Courts below had accurately considered the facts and appreciated the evidence in proper perspective and recorded findings supported by valid and cogent reasons and had answered the issues and points involved by applying the correct principles of law, which are relevant and applicable to the facts of the case. The issue of bar of limitation being a mixed question of fact and law seeks no interference particularly in the absence of any mis-appreciation of facts or perversity in the appreciation of the evidence brought on record. The suit is only for perpetual injunction restraining the defendants from making constructions pending disposal of the tenancy proceedings which are filed for eviction. Since a separate proceeding was already initiated before a competent Tribunal for eviction and the suit is confined to only an injunction not to alter the nature of the property to the detriment of the plaintiff Mutt, both the Courts had concurrently held that civil Court has jurisdiction to entertain the suit even though there is landlord and tenant relationship. Even that finding which is well supported by reasons does not call for any interference in the well considered view of this Court.

13. Viewed thus, this Court finds that there is no substance in the substantial questions of law raised and that the appeal is devoid of merit.

14. Accordingly, the Second Appeal is dismissed. There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

19th August, 2015

Vjl