

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

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S.A.No.280 of 2015

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JUDGMENT :

This Second Appeal is preferred challenging the judgment and decree dated 27.03.2015 in A.S.No.94 of 2010 on the file of IV Additional District Judge, Kadapa reversing the judgment and decree dt.25.08.2010 in OS.No.84 of 1999 on the file of IV Additional Junior Civil Judge, Kadapa.

2. The appellants herein are defendant nos.2 and 3 in the suit.
3. The 1st respondent/plaintiff filed the suit for declaration of his right and title to plaint schedule property, for a perpetual injunction restraining defendant from entering into plaint schedule property, and for a declaration that 3rd defendant encroached into an extent of Ac.0.58 cents in Sy.No.421 of item No.1 of plaint schedule property.
4. The plaint schedule property consists of an extent of (i) Acs.2.03 cents in Sy.No.421 and (ii) an extent of Ac.1.00 in Sy.No.407/1 of Balaiahgaripalli Village, Hamlet of Gondipalli, Pendlimarri Mandal, Kadapa District.
5. The above reliefs were substituted in place of the original relief for perpetual injunction alone by way of amendment to plaint.
6. The parties will be referred to as per their array in the trial court.
7. One Chinna Varadaiah had three sons, viz., Bala Gangi Reddy

alias Chinna Gangi Reddy, Nadipi Gangi Reddy and Pedda Gangi Reddy. The plaintiff is the son of Bala Gangi Reddy, 1st defendant is the son of Nadipi Gangi Reddy, and the 2nd defendant is the son of Pedda Gangi Reddy.

THE CASE OF THE PLAINTIFF

8. According to plaintiff, the three sons of Chinna Varadaiah were members of Hindu Joint Family and plaintiff schedule property belongs to Chinna Varadaiah. After his death, his sons partitioned the properties fifty years ago. In the said partition, the father of plaintiff was allotted plaintiff schedule property and some other properties. Ten years prior to the suit, plaintiff and his brothers divided their properties and the plaintiff schedule property fell to the share of plaintiff. Since then, plaintiff and his brothers have been in possession and enjoyment of their respective shares, without any hindrance whatsoever. Plaintiff and his brothers were also issued ryotwari pattadar passbooks in respect of their properties. The plaintiff dug a borewell in item No.1 of plaintiff schedule property and had been in possession and enjoyment of property. The plaintiff contended that he intended to sell one of the items in the property, but the defendants wanted to purchase it for a lesser price which was not agreed to by plaintiff ; plaintiff contended that so defendants threatened to trespass into plaintiff schedule property; that 3rd defendant had encroached into an extent of Ac.0.58 cents of land in item No.1 of plaintiff schedule property on the northern side; that plaintiff and his predecessors-in-title had been in possession and enjoyment of plaintiff schedule properties since a long time with the knowledge of defendants and their

predecessors and perfected their title to plaint schedule property also by adverse possession.

WRITTEN STATEMENTS OF DEFENDANTS

9. The defendant nos.1 and 2 and 3rd defendant filed separate written statements. They admitted the relationship between the parties and also acquisition of plaint schedule property by the ancestors of defendant nos.1 and 2.
10. In the written statement of defendant nos.1 and 2 it was contended that father of plaintiff and fathers of defendant nos.1 and 2 partitioned their properties forty years prior to the suit, but not fifty years ago. In the said partition, they took equal shares in all the joint family properties, except a Palmyra Garden covering an extent of Ac.0.57 cents on the western side in Sy.No.421, an extent of Acs.1.56 cents of land in Sy.No.407/1, an extent of Ac.0.40 cents in Sy.No.29, Mango Garden in an extent of Ac.0.40 cents in Sy.No.81/4 and a burial ground covering an extent of Ac.0.05 cents in Sy.No.180. They alleged that the properties were kept joint because there was no uniformity in the growth of trees. They alleged that father of plaintiff and fathers of defendant nos.1 and 2 were selling the yield and were taking their respective shares of sale proceeds, and after their death, plaintiff and defendant nos.1 and 2 had been in joint possession and enjoyment of said extents. About two years ago, they cut Palmyra Trees and sold the logs to one Siddiq Bashu Saheb and his brother-in-law for Rs.40,000/-. Also since the mango trees had become old and were not giving good yield they were also cut four years prior to the suit and the logs were sold to same person for Rs.9,000/-, and they had equally shared the

sale proceeds.

11. They also contended that in the partition, father of 1st defendant got an extent of Ac.0.73 cents and father of plaintiff got an extent of Ac.1.00 in Sy.No.421 shown as 'AMLE' and 'MBKL' in the written statement plan respectively and they were in possession and enjoyment of the same. So the plaintiff had no right in Ac.2.03 cents in Sy.No.421 as claimed in plaint. It is further contended that father of 1st defendant sold an extent of Ac.0.73 cents shown as 'AMLE' in the written statement plan and an extent of Ac.1.24 cents in Sy.No.422 to 3rd defendant under a registered sale deed dt.25.09.1978 (Ex.B.6). They claimed that inadvertently in the sale deed the entire extent of Ac.1.97 cents was shown in Sy.No.422 which according to them was a compact bit bounded by permanent ridges and Margosa trees. They contended that 3rd defendant was in possession and enjoyment of this extent.
12. They stated that there was an old well in Sy.No.421 and 2nd defendant installed a bore well in the joint extent of Ac.1.52 cents in Sy.No.407/1 shown as 'P' in the written statement plan with the permission of plaintiff and 1st defendant. They alleged that plaintiff had installed the bore well in the joint extent of Ac.0.57 cents in Sy.No.421 shown as 'Z' in the written statement plan with the permission of defendants, and three years ago the 3rd defendant had installed a bore well in the extent purchased by him in Sy.No.421 shown as 'Y' in the written statement plan. They alleged that defendants had not obtained pattadar passbook and title deed in respect of properties belonging to

them while the plaintiff, without the knowledge of defendants, obtained passbooks with mala fide intention in connivance with Revenue Authorities to grab plaintiff schedule property. They also pleaded that since brother of 2nd defendant, by name N. Varada Reddy, had a joint right in the plaintiff schedule property, he is a necessary party to the suit and the suit is bad for his non-joinder.

13. The 3rd defendant filed a counter-claim seeking relief of declaration of his title to an extent of Ac.0.73 cents in item No.1 of plaintiff schedule property and for a perpetual injunction restraining the plaintiff from interfering with his possession and enjoyment of said extent. He admitted that in the sale deed Ex.B.6 dt.25.09.1978 executed in his favour by father of 1st defendant, Sy.No.421 was not mentioned inadvertently but boundaries were correctly noted. He claimed that ever since the date of purchase, he was in possession and enjoyment of the same and had also dug a bore well in Sy.No.421. He alleged that taking advantage of the mistake in survey number, the plaintiff filed the suit with untenable allegations. He disputed the boundaries of plaintiff schedule property and contended that Revenue Authorities had no right to issue passbook in favour of plaintiff in respect of lands which are not in his possession.
14. After plaintiff amended the plaint, the 3rd defendant filed an additional written statement resisting the same and defendant nos.1 and 2 adopted it.
15. The 3rd defendant contended that plaintiff took contradictory pleas which did not go together. He contended that at first, plaintiff set up title and later he pleaded adverse possession

which clearly shows that he admitted the title of defendants. He also contended that plaintiff did not plead the date from which he had been in continuous possession of the property to the knowledge of everyone including defendant. He therefore prayed that the suit be dismissed and his counter-claim be decreed.

REJOINDER OF PLAINTIFF

16. The plaintiff filed a rejoinder stating that the plan filed by defendants is wrong and misleading; that Revenue authorities issued pattadar passbooks in his favour after due enquiry and there was no question of plaintiff getting it by misrepresentation or fraud. He contended that brother of 2nd defendant by name N. Varada Reddy had nothing to do with plaint schedule property and is not a necessary party. He contended that father of 1st defendant had only Ac.0.27 cents in item No.1 and so he had no right or title to sell the extent of Ac.0.73 cents to 3rd defendant, that he had sold almost Acs.2.00 in Sy.No.422 and so the counter-claim is liable to be dismissed.

THE ISSUES

17. The following issues and additional issues were framed by the Court below :

Issues :

- 1. Whether the plaint schedule properties were allotted to the father of the plaintiff in their partition ?*
- 2. Whether land in Sy.No.421 to an extent of Ac.0.57 cents and in Sy.No.407 to an extent of Ac.1.52 cents are the joint properties of the plaintiff, 1st and 2nd defendant ?*
- 3. Whether the suit is bad for non joinder of necessary party ?*

4. Whether the father's name of the plaintiff is Bala Gangi Reddy alias Chinna Gangi Reddy ?

5. Whether the plaintiff is entitled for permanent injunction as prayed for ?

6. Whether the 3rd defendant is entitled for declaration of his title in an extent of Ac.0.73 cents in Sy.No.421 of Balaiahgaripalli ?

7. Whether the 3rd defendant is entitled for permanent injunction restraining the plaintiff and his men from interfering with the peaceful possession and enjoyment of the 3rd defendant's written statement schedule land ?

8. To what relief, if any, is the plaintiff and 3rd defendant entitled for ?

Additional Issue :

1. Whether the plaintiff and his brothers have perfected their title to the suit property by adverse possession ?"

18. The plaintiff examined PWs.1 to 5 and marked Exs.A.1 to A.16. The defendants examined DWs.1 to 5 and marked Exs.B.1 to B.6. Exs.C.1 and C.2 were marked through an Advocate-Commissioner and Exs.X.1 to X.14 were marked witnesses.

19. By judgment dt.08-11-2004, the trial Court decreed the suit in part declaring the right and title of the plaintiff in respect of Ac.1.00 in item No.1 of the plaint schedule and dismissed the suit in respect of the rest of the claim. It decreed the counter claim of the 3rd defendant as prayed for.

20. Aggrieved thereby, the plaintiff filed A.S.No.1 of 2006 along with certain documents. Therefore, the matter was remanded to the trial Court for marking of those documents and for recording further evidence.

21. Subsequently plaintiff marked Exs.A-1 to A-16 and adduced oral

evidence in respect of those documents by recalling him as P.W.1. The defendants did not adduce any further evidence.

THE JUDGMENT OF THE TRIAL COURT

22. By judgment dt.25.08.2010, the Trial Court dismissed both the suit and counter-claim of 3rd defendant. It held that the name of father of plaintiff is only B. Gangi Reddy and plaintiff failed to prove that his father was also known as Chinna Gangi Reddy. It held that plaintiff failed to prove that the entire plaint schedule property fell to the share of his father in the partition on the ground that plaintiff had no personal knowledge about the partition and his evidence is only hearsay and inadmissible. It held that the other oral and documentary evidence adduced by plaintiff also did not probabilise plaintiff's case that his father was allotted plaint schedule property; if the plaintiff's contention was correct, he would have filed Revenue Records since the date of partition, but he did not do so; and consequently, an adverse inference has to be drawn against him. It then considered the plea of defendant that certain items of plaint schedule property were kept joint and rejected the said plea. It held that defendant nos.1 and 2 have not examined Siddiq Bashu Saheb to prove their contention that the Palmyra and Mango trees were cut and sold to the said person and sale proceeds were shared. It took note of statement in the evidence of DW.1 in cross-examination that he was told that he acquired an extent of Ac.0.52 cents in Sy.No.407/1 (Item No.2) in the partition between him and his brothers and the said plea was contrary to the stand of defendants that item No.2 of plaint schedule property along with several extents was kept joint among the sons of Chinna

Varadaiah. It held that DW.2, the 2nd defendant, in his cross-examination, at one stage stated that his father had no share in item nos.1 and 2 of plaint schedule property, that DW.1 had a right to an extent of Ac.0.50 cents in item No.2; and at another stage, he denied that he had any share in plaint schedule property; and therefore, his evidence does not support the version of defendants as regards item No.2. It noted that plaintiff had filed Ex.A.13, a gift deed dt.30.01.2004 executed by 1st defendant in favour of plaintiff's sister by name Vanaja under which Ac.0.27 cents in item No.1 and Ac.0.52 cents in item No.2 were gifted to her; Ex.A.14 is extract of I-B Register, which reflects the transaction covered by Ex.A.13; that DW.2 had taken a plea that the said document was executed in collusion with plaintiff by DW.1. It also noted that Ex.B.5, a registered gift deed was executed on 04.01.1999 by 2nd defendant in favour of his son bequeathing the passage on the northern side of suit land, and when the defendants have taken a plea that the lands which are subject matter of Exs.A.13 and Ex.B.5 are joint, they did not explain how Exs.A.13 and Ex.B.5 could have been executed in the above manner. It also held that Ex.B.4 shows possession of entire extent in suit survey numbers by the three sons of original owner, but there is no mention of the extent of possession by the parties and the extent kept jointly and therefore Ex.B.4 does not help the defendant. It rejected the plaintiff's plea of adverse possession on the ground that he had only filed Revenue records from 1977, i.e., two years prior to the filing of suit. It also held that plaintiff had not examined any of his brothers to prove the partition ten years prior to the filing of suit and although in the cross-examination he stated that through an unregistered

partition deed executed between him and his brothers he acquired plaint schedule property, he did not file it. Consequently, adverse inference has to be drawn against him for withholding it. It held that the brother of 2nd defendant is not a necessary party to the suit. It also held that the Mandal Surveyor (PW.4), who had inspected the land in Sy.Nos.421 and 407/1 and measured it, in Ex.C.2 sketch he had shown that the extent in item No.1 on the southern side of ridge is Ac.1.17 cents and on the northern side is Ac.0.85 cents. During cross-examination, the plaintiff had stated that he is in possession of only Ac.1.17 cents in item No.1, but no documentary evidence is addressed by him in that regard. It further held that in item No.2, plaintiff claimed to be in possession and enjoyment of Ac.1.00 by virtue of a partition effected between him and his brothers, but the same has not been proved. So it cannot be said that he is in possession of Ac.1.00 in item No.2 as well, and it therefore, held that he is not entitled to seek the relief of injunction against defendants.

23. Coming to the claim of 3rd defendant that he purchased under Ex.B.6, Ac.0.73 cents in item No.1 and Ac.1.27 cents in Sy.No.422, it noticed that in Ex.B.6 survey No.421 is not mentioned. It further held that no Revenue Records showed possession of 3rd defendant of extent Ac.0.73 cents in item No.1 and no rectification deed had been obtained by defendant from his vendor or his legal heirs. Since plaintiff had denied the title of the vendor of 3rd defendant also, the 3rd defendant ought to establish the title of his vendor in respect of written statement schedule property (Ac.0.73 cents out of Acs.2.30 cents in

Sy.No.421) and no document has been filed to this effect. It held that 3rd defendant had made no effort to get boundaries of his land fixed with reference to Revenue Records; PW.4, the surveyor, had given evidence that 3rd defendant had not given his sale deed to measure his property at the time of execution of his warrant. It rejected the oral evidence of DWs.1 to 4 on the ground that they were all interested witnesses who were supporting 3rd defendant and held that there is no cogent and convincing evidence to prove his right and title to the extent of Ac.0.73 cents in item No.1 of the plaint schedule property. It, therefore, rejected the counter-claim made by 3rd defendant in respect of his title to written statement schedule land. It also held that 3rd defendant had failed to establish his possession in the written statement schedule land and is therefore not entitled to relief of injunction for the said land. It rejected the plea of 3rd defendant that PW.4, the Mandal Surveyor, had admitted that 3rd defendant possessed an extent of Ac.0.85 cents in item No.1 by holding that this observation was outside the scope of warrant entrusted to PW.4.

THE JUDGMENT IN A.S.94 OF 2010

24. Challenging the same, the plaintiff alone filed A.S.No.94 of 2010 before the IV Additional District Judge, Kadapa. The defendant nos.1 to 3 filed A.S.No.90 of 2010 before the IV Additional District Judge, Kadapa.
25. By a common judgment and decree in 27.03.2015, the lower appellate court allowed A.S.No.94 of 2010 and decreed the suit OS.No.84 of 1999 filed by plaintiff. It dismissed A.S.No.90 of

2010.

26. In the said common judgment, the lower appellate Court took the view that DW.1 had admitted that plaintiff's father's name is Bala Gangi Reddy. It held that plaintiff's plea was that there was a partition between his father and fathers of defendant nos.1 and 2 fifty years ago and that although defendant nos.1 and 2 admitted the said partition, they claimed that some land was kept joint, but DW.4 did not say anything about keeping any lands joint. It agreed with the trial court findings on this issue and held that defendants failed to prove that land in Sy.No.421 to an extent of Ac.0.57 cents and Acs.1.52 cents in Sy.No.407 are joint properties. It held that Exs.A.1 to A.3, A.7 to A.11, X.5 and Exs.8 to 12 along with the evidence of PWs.2 to 4 prove the continuous possession and enjoyment of plaintiff and his predecessors-in-title and rejected the plea of defendants that these documents were created by manipulation by the Village Administration Officer. It held that PW.2 in his evidence stated that he is in possession of Ac.1.17 cents in item No.1 and his sketch Ex.C.2 prepared by PW.4 supports his plea, and therefore, he is entitled to injunction against defendants. It rejected the counter-claim made by 3rd defendant in the subject matter of A.S.No.90 of 2010. It held that 2nd defendant admitted that father of plaintiff and younger brother of 2nd defendant had given a statement before the Grama Sabha that they have given their share in S.No.407/2 to plaintiff and the plaintiff has got Ac.1.00 in Sy.No.407/1.

THE SECOND APPEAL

27. Challenging the judgment in A.S.No.94 of 1990, the present

Second Appeal is filed by defendant nos.2 and 3.

28. Heard Sri G. Seena Kumar, counsel for appellants.

CONTENTIONS OF COUNSEL FOR APPELLANTS

29. The counsel for appellants contended that the judgment and decree of lower appellate court reversing the judgment and decree of trial court is contrary to law, perverse and unsustainable. He contended that points for determination have not been framed by lower appellate court except a nominal point, i.e., "*Whether there are grounds to allow these appeals as sought for by the appellants*". He further contended that lower appellate court ignored the well-considered judgment of trial court and allowed AS.No.94 of 2010 and decreed OS.No.84 of 1999 filed by 1st respondent.

THE CONSIDERATION BY THIS COURT

30. As regards the contention that points for determination have not been framed is concerned, a reading of lower appellate court judgment indicates that the issue about title of plaintiff to plaintiff schedule properties, the pleas of defendants as regards some properties being kept joint, the claim of plaintiff for injunction against defendants and the counter-claim set up by 3rd defendant have been separately considered by lower appellate court in distinct paragraphs. Therefore, even if separate points for determination is not framed, since there is proper application of mind to the issues arising in the appeal, I am not inclined to set aside the judgment of lower appellate court on the said ground.

31. Coming to the other contention regarding counter-claim of 3rd defendant is concerned, the same is not the subject matter of AS.No.94 of 2010 out of which this Second Appeal arises but is the subject matter of A.S.No.90 of 2010. Although the counsel for appellants addressed arguments as regards this issue, I do not wish to go into the same in this appeal. The counter-claim of 3rd defendant can only be considered in the Second Appeal, if any, filed against the judgment in A.S.No.90 of 2010 but not in the present Appeal.
32. The plaint claim is with regard to Acs.2.03 cents in Sy.No.421 (Item No.1) and Ac.1.00 in Sy.No.407/1.
33. The plaintiff, 1st defendant and 2nd defendant admitted that there was a partition between their respective fathers. According to plaintiff, the said partition was about fifty years ago, but according to defendant nos.1 and 2 it was forty years ago. But there is no documentary evidence as to which of the properties got allotted to which person in the said partition. Although defendant nos.1 and 2 took a plea that some items were kept joint, since they admitted in their evidence that Ex.A.13 and Ex.B.5 were executed in respect of properties which they claimed to be joint, both the courts in my opinion rightly held that there is no evidence on record to prove their plea of joint enjoyment of an extent of Ac.1.52 cents in Sy.No.407/1 (Item No.1) and Ac.0.57 in Sy.No.421.
34. In the written statement of defendant nos.1 and 2 the defendant had admitted that plaintiff's father had got one acre in item No.1. The lower appellate Court had considered the oral evidence of

PWs.2 to 4 and relied on Ex.A.1 pattadar passbook issued to plaintiff, Ex.A.2 and A.3 Adangals, Exs.A.7 to A.11 Adangals for Faslis 1412, 1411, 1410, 1409 and 1407, respectively apart from Ex.X.5 10(1) Adangal for Fasli 1406 and Exs.X.8 to X.12 Adangals for Faslis 1407, 1409, 1410, 1411 and 1412. Thus, the pattadar passbooks as well as these documents prove the possession of plaintiff in respect of plaint schedule property from 1996 to 2002. The Panchayat Secretary had also deposed that plaintiff was in possession and enjoyment of Acs.2.03 cents where as 1st defendant possessed Ac.0.27 cents in item No.1 of suit schedule property; and in item No.2 of the plaint schedule property, plaintiff has got Ac.1.00 and 1st defendant has got Ac.0.52 cents. The 2nd defendant, as DW.2, also deposed that the father of plaintiff and the younger brother of 2nd defendant had given a statement before the Grama Sabha that they have given their share in Sy.No.407/1 to plaintiff and plaintiff had thus got one acre in Sy.No.407/1. Having regard to pattadar passbook as well as the evidence of possession of plaintiff in respect of plaint schedule properties as per the Adangals referred to above, it has to be held that the plaintiff was in possession of Acs.2.03 cents in item No.1 and Ac.1.00 in item No.2.

35. As regards plaintiff's contention that 3rd defendant was in possession of Ac.0.58 cents in Sy.No.421 of item No.1 of the suit property is concerned, since 3rd defendant claimed under Ex.B.6 dt.25.09.1978 title to land in Sy.No.421 (Item No.1), and since there is no reference to the said survey number in Ex.B.6 at all, it is clear that 3rd defendant had no right to be in possession of

any extent of land in Sy.No.421. Therefore, the plaintiff is entitled to an injunction in respect of plaint schedule property also as the defendants do not have possession thereof.

36. Therefore, I do not find any question of law, muchless any substantial question of law, arising for consideration in this Second Appeal. Therefore, the Second Appeal fails and it is accordingly dismissed at the stage of admission. No order as to costs.

37. Miscellaneous applications, pending if any in this Second Appeal, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date : 02-06-2015

Ndr/*