

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.294 of 2000

Date:27.10.2015

Between:

Patnana Bangari

... Appellant.

AND

Nalla Appanna

...Respondent.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.294 of 2000

JUDGMENT:

This appeal is preferred challenging judgment of IV Additional District Judge, Visakhapatnam dated 20-03-1999 in A.S.No.51/1995, whereunder judgment and decree in O.S.No.67/1986 dated 10-11-1994 on the file of District Munsiff, Bheemunipatnam (presently Junior Civil Judge, Bheemunipatnam) is confirmed.

2. The appellant herein was unsuccessful defendant in both the Courts. Respondent herein filed the above referred O.S seeking declaration of his title in respect of Ac.0-46 cents of land in Survey No.318/2015 in Patta No.905 old (1285 new) dry land bounded by East-Mutchi Sanyasi, South-Gadda, West-Pentayya and North-Mutchi Appayya. The defendant resisted the claim of plaintiff on the

ground that eastern boundary is in the occupation of defendant being owner of the property and that plaintiff has neither title nor possession over the plaint schedule land and that plaintiff is not entitled for the relief of declaration and injunction.

3. Trial Court framed the following issues for trial:-

- “1. Whether the plaintiff has get title over the suit schedule land?*
- 2. Whether the plaintiff is in possession of the suit land?*
- 3. Whether the plaintiff is entitled for declaration as prayed for?*
- 4. Whether the plaintiff is entitled for permanent injunction as prayed for?*
- 5. To what relief?”*

4. On the basis of pleadings of both parties and on a consideration of oral and documentary evidence adduced on behalf of both parties, suit was decreed declaring that plaintiff is the owner of plaint schedule property and granted permanent injunction restraining the defendant and his men & agents from ever interfering with peaceful possession and enjoyment of the suit schedule land. Aggrieved by the said judgment and decree, defendant preferred appeal to the District Court, Visakhapatnam and IV Additional District and Sessions Judge, Visakhapatnam, on a reappraisal of oral and documentary evidence, confirmed the findings of trial Court and dismissed the appeal. Aggrieved by the same, present second appeal is preferred contending that following are the substantial questions of law that arise for consideration of this Court:-

- “(a) Whether, on the facts and in the circumstances of the case, the lower Courts are right in considering the Commissioner’s Report as part of the evidence on record without considering the objections filed by the appellant to such commissioner’s report.*

(b) *Whether the Judgment of the lower Court is not vitiated by reason of the fact that objections filed by the appellant were not taken into account before basing its decision on the Commissioner's report.*

(c) *Whether the Judgment of the lower Appellate Court is not vitiated by not framing the necessary points for consideration in view of Order 41 Rule 31 C.P.C."*

5. Advocate for appellant submitted that trial Court and appellate Court have granted relief of declaration only on the basis of passbook issued by the revenue authorities and other revenue documents like revenue tax receipts and plaintiff has not produced any title deed supporting his claim in respect of suit schedule property and therefore, judgments of both the Courts are not proper and liable to be set aside. As seen from the record, an Advocate Commissioner was appointed, on the request of appellant herein, who with the help of Mandal Surveyor localised the plaintiff's land and also defendant's land. Revenue officials issued passbook-Ex.A1 in favour of plaintiff and passbook-Ex.B2 in favour of defendant i.e., appellant herein. As seen from the entries in the passbook, the suit schedule land stands in the name of plaintiff, which is in Survey No.318/15, whereas land of defendant is in Survey No.318/14 in an extent of Ac.0-21 cents. Advocate Commissioner appointed by the Court also noticed the same and fixed boundaries for both the lands i.e land in Survey No.318/15 and land in Survey No.318/14 with the help of Mandal Surveyor. The trial Court and appellate Court have accepted the Commissioner's Report and decreed the suit. One of the grievance of the appellant is that trial Court has not considered the objections filed on behalf of the appellant to the Commissioner's Report, but as seen from the record, when appellant has no land in Survey No.318/15, which is the subject matter of the suit, the objections of

the appellant with regard to Commissioner's report cannot be accepted. When specific boundaries are given to the land in Survey No.318/15 and defendant contended that the eastern boundary is wrongly mentioned, the burden is on him to prove the same, but as seen from the material, no evidence is let in, in support of his plea in respect of eastern boundary. As seen from the plaint schedule, defendant is not there on any of the four sides of the plaint schedule land. The trial Judge has elaborately considered the entire evidence on record particularly report of the Advocate Commissioner, which clearly supported the claim of plaintiff and rightly decreed the suit, which was upheld by the first appellate Court. I do not find any wrong appreciation of evidence either by trial Court or by the Appellate Court and no question of law is involved in this appeal leave alone any substantial question of law.

6. For these reasons, I am of the view that the appeal is devoid of merits and accordingly dismissed.

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

JUSTICE S. RAVI KUMAR

Date:27.10.2015

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