

HON'BLE SRI JUSTICE A.V. SESA SAI

SECOND APPEAL No.76 of 2015

-

Date: April 08, 2015

-

Between:

Bakkashetti Anjaiah. ... Appellant

And

1. Bakkashetti @ Naini Narsaiah & 4 others. ... Respondents

* * *

HON'BLE SRI JUSTICE A.V. SESA SAI

SECOND APPEAL No.76 of 2015

JUDGMENT:

This second appeal is directed against the judgment and decree dated 20.03.2014 passed by the Court of the Junior Civil Judge, Vemulawada, Karimnagar District, in O.S.No.93 of 2011, as confirmed in the judgment and decree dated 17.11.2014 passed by the Court of the Senior Civil Judge, Siricilla, Karimnagar District, in A.S.No.4 of 2014.

2. Heard Sri Chetluru Sreenivas, learned counsel for the

appellant and Sri S. Surender Reddy, learned counsel for the first respondent/plaintiff apart from perusing the material available before this Court.

3. Defendant No.1 in the said suit is the appellant in the present second appeal preferred under Section 100 of the Code of Civil Procedure (CPC). This second appeal arises in the manner indicated infra:

Respondent No.1 herein instituted O.S.No.93 of 2011 against the appellant and respondents 2 to 5 herein for partition of the plaint schedule properties and for allotment of 1/6th share in his favour. The first defendant/appellant filed a written statement, resisting the plaint averments and defendants 2 to 5 supported the claim of the plaintiff/first respondent herein.

4. Based on the pleadings, the learned Junior Civil Judge, Vemulawada, framed the following issues for trial:

- (1) Whether the plaintiff is entitled for 1/6th share over suit schedule properties?
- (2) Whether the schedule properties are the joint family and ancestral properties of plaintiff's and defendants 1 to 5?
- (3) Whether defendant No.1 is the sole owner and possessor of land in Sy.No.203/AA measuring Ac.1.08 guntas and land in Sy.No.406/B measuring Ac.3.28 guntas?
- (4) Whether defendants 3 to 5 relinquished their rights over suit lands?
- (5) To what relief?

5. During the course of trial, plaintiff/first respondent herein examined himself as P.W.1 apart from examining P.W.2 on his behalf and marked Exs.A-1 to A-7. On defendants' side, first defendant examined himself as D.W.1 apart from examining D.Ws.2 and 3 and marked Exs.B-1 to B-12.

6. The learned Junior Civil Judge, Vemulawada, by way of judgment and decree dated 20.03.2014, decreed the suit, holding that the plaintiff and defendants 1 to 5 are entitled for 1/6th share each. As against the same, the first defendant/appellant preferred A.S.No.4 of 2014 under Section 96 of the CPC on the file of the Court of the Senior Civil Judge, Siricilla, Karimnagar District, and the said appeal ended in dismissal by virtue of judgment and decree dated 17.11.2014. Calling in question the validity and the legal acceptability of the said judgments and decrees rendered by the trial Court and the lower appellate Court, the present second appeal has been preferred.

7. It is contended by the learned counsel for the appellant herein that the courts below erred in not considering the oral and documentary evidence from proper perspective. It is further contended that the courts below failed to appreciate the aspects of oral partition and the relinquishment of their rights by D-2 to D-5 in favour of the first defendant. It is nextly contended that the courts below failed to assign any reason for not accepting Ex.B-1 pattadar pass book which shows the land in Survey No.203/AA admeasuring Ac.1.08 guntas and the land in Survey No.406/B admeasuring Ac.3.28 guntas in favour of the first defendant/appellant. It is further contended that the courts below did not consider the aspect of presumption under the provisions of the Andhra Pradesh

Rights in Land and Pattadar Pass Books Act, 1971 (for short 'the Act'), while considering Ex.B-1 pattadar pass book. In support of his submissions and contentions the learned counsel for the appellant places reliance on the judgment of this Court in **M. Varthamma and others V. Kannappa and others**.

8. On the contrary, it is contended by the learned counsel for the plaintiff/first respondent that since the trial Court as well as the lower appellate Court recorded concurrent findings of fact, the judgments and decrees rendered by the courts below are not amenable for any interference of this Court under Section 100 of the CPC in the absence of any perversity. It is also contended that as there are no substantial questions of law, the present second appeal is not maintainable under Section 100 of the CPC. It is further argued by the learned counsel for the first respondent/plaintiff that the contention that in view of presumption under the provisions of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971, the appellant is entitled for the relief, is neither sustainable nor tenable in the facts and circumstances of the case.

9. To bolster his submissions and contentions, the learned counsel for the first respondent/plaintiff places reliance on the judgments in **Yeluri Vijayabharathi and others V. Yeluri Manikyamma and others; Sammeta Tulasi Ram and others V. State of A.P. and others; Pogiri Jagannadharao V. Gorla Venkatinaidu and others; G. Saravaiah Goud and others V. Government of A.P., rep. by its Principal Secretary, Revenue (Assignment) Dept. and others**.

10. In the above background, now the issue which this Court

is called upon to answer in the present second appeal is whether there exists any substantial question of law in the present second appeal, warranting interference or indulgence of this Court under Section 100 of the CPC?

11. The present suit is one for the relief of partition. The parties to the present case are closely related. The plaintiff is the son of one late Sri Bakkashetti Hanumanthu and the first defendant (appellant herein), defendants 2, 3 and 4 are the sons of the deceased brothers of the plaintiff and the 5th defendant is the son of plaintiff. The plaint schedule consists of 5 items viz., (1) Ac.0.39 guntas in Survey No.199 (2) Ac.1.08 guntas in Survey No.203/AA (3) Ac.0.08 guntas in Survey No.208/E, (4) Ac.1.20 guntas in Survey No.203/U and (5) Ac.3.28 guntas in Survey No.406/B. The said properties are situated at Ananthapally and Timmapur Villages, Karimnagar District. The claim of the first defendant/appellant herein in this case is only with regard to the above items 2 and 5 of the plaint schedule properties.

12. The case of the plaintiff/first respondent herein is that all the items of the schedule properties are the ancestral properties of the plaintiff and the defendants and the same are liable for partition. On the contrary, the case of the first defendant/appellant is that there was oral partition after the death of their grandfather, Bakkashetti Hanumanthu and D-2 to D-5 relinquished their rights in favour of the first defendant and in view of Ex.B-1 pattadar pass book, the plaintiff and defendants 2 to 5 are not entitled to claim any rights over items 2 and 5 of the schedule properties. According to the learned counsel for the appellant, non-consideration of the effect of the provisions of Section 6 of the Act while dealing with Ex.B-1 pattadar pass book is the substantial question of law in the present second appeal.

13. It is needless to observe that the second appeal under Section 100 of the CPC is entertainable by this Court only on substantial question of law. In order to decide as to whether there exists any substantial question of law in this second appeal, it would be highly essential to examine the findings recorded by the trial Court as well as the lower appellate Court. The trial Court, as mentioned supra, framed as many as five issues for trial. The trial Court, after thoroughly considering the oral and documentary evidence available on record categorically held that when the name of the original owner is continued in the revenue records, the contention of the first defendant that he is cultivating for the last 20 years and the plaintiff and defendants 2 to 5 relinquished their rights does not arise. The trial Court also found that the suit schedule properties are the ancestral properties of the plaintiff and the defendants. The learned Junior Civil Judge, Vemulawada, also came to a categorical conclusion that the first defendant failed to put forth any material to believe oral partition and relinquishment by defendants 2 to 5 and also observed that D.Ws.2 and 3, who were examined on behalf of the first defendant, did not speak anything with respect to oral partition and relinquishment. While assigning cogent and convincing reasons the learned Junior Civil Judge refused to believe that there was partition amongst the sons of Bakkashetti Hanumanthu. Eventually, the learned Junior Civil Judge recorded a finding that in the absence of any partition in the family and the relinquishment of rights by defendants 2 to 5, the first defendant cannot claim sole ownership over the subject properties. The learned Junior Civil Judge also dealt with Ex.B-1 pattadar pass book and while giving credence for the documents filed on behalf of the plaintiff, the learned Junior Civil Judge decreed the suit.

14. Coming to the judgment of the lower appellate Court – the learned Senior Civil Judge, Siricilla, on thorough, meticulous analysis and appreciation of the entire material available on record, categorically found that all the schedule properties are the ancestral properties and confirmed the judgment of the trial Court while assigning cogent, convincing and valid reasons. The learned Senior Civil Judge also dealt with the aspects of the alleged oral partition and the relinquishment and disbelieved the version of the first defendant.

15. The material available before this Court manifestly reveals that both the courts below considered the evidentiary value of Ex.B-1 pattadar pass book and categorically found that the entries in the revenue records are not conclusive proof for the title. Even according to the first defendant/appellant herein all the items of the plaint schedule were initially the ancestral properties. As per the appellant, there was oral partition followed by relinquishment of rights by defendants 2 to 5 in his favour which the courts below concurrently refused to believe by assigning valid reasons. According to the learned counsel for the appellant, the courts below did not properly consider the impact of Section 6 of the Act. In order to assess, examine and appreciate the same, it would be apt to refer Section 6 of the Act which reads as under:

“Presumption of correctness of entries in record of rights:- Every entry in record of rights shall be presumed to be true until the contrary is proved or until it is otherwise amended in accordance with the provisions of this Act. [Any mortgage or charge created earlier to a mortgage or charge created in favour of a credit agency shall lose its priority if it is not entered in the pattadar pass book.]”

16. According to the learned counsel for the appellant, as per the above provision of law, there is a presumption of

ownership in favour of the persons whose names are found in the revenue entries. In **M. Varthamma and others V. Kannappa and others** (1 supra) this Court held as under:

“A pattadar pass book and title deeds issued under that enactment carry with them, a presumption as to existence of title. It is only when such documents are set aside, either in any appeal or revision, or by a Court of law that they can be ignored.”

17. At this juncture it would be appropriate to refer to the judgments cited by the learned advocate for the 1st respondent. In **Yeluri Vijayabharathi and others V. Yeluri Manikyamma and others** (2 supra) this Court at paragraph 8 held as under:

“Mr. Haranath, the learned advocates is not right in contending that the entries in the Record of Rights register should be taken as the basis to fix the title. Although the entries in the Record of Rights register enjoy the presumption in law that the entries are true unless the contrary is proved and may not be discredited, the records of rights are no records of documents of title. Such a question has been clearly dealt with by the Hon'ble Supreme Court in *Nagarpalika, Jind vs. Jagat Singh* 1 and following *Nirman Singh vs. Lal Rudra Pratap* 2, it has been held that such documents are more in the nature of fiscal inquiries instituted in the interest of the State for the purpose of ascertaining which of the several claimants for the occupation of certain denominations of immovable property may be put into occupation of it with greater confidence that the revenue for it will be paid. In other words, the records of rights are the documents ensuring the person to be made liable to pay the revenue and for no other purpose. However, it may not be hastened to be added that such entries have got corroborative value regarding the possession of a party in regard to an immovable property.”

18. In **Sammeta Tulasi Ram and others V. State of A.P. and others** (3 supra) this Court at paragraphs 16 and 20 held as under:

“It is an undisputed fact that there is no valid document of title in favour of the 4th defendant and she did not raise the plea of adverse possession against the plaintiffs. The 4th defendant is alleged to have got the patta transferred in her name from Sri Venkateswara Rao at his instance. So it has to be considered whether the entries in the revenue records amounts to valid transfer of title from the rightful owner. In this regard the learned counsel for the appellants-plaintiffs relied on a judgment of this court in Y. Vijayabharathi v. Y. Manikamma 1, wherein it was contended that the entries in the Record of Rights Register should be taken as a basis to fix the title. The court held that such contention cannot be accepted, although the entries in the Records of Rights Register enjoining the presumption in law that the entries are true unless the contrary is proved and may not be discredited. The records of rights are not records of documents of title. Such documents are more in the nature of fiscal inquiries instituted in the interest of the State for the purpose of ascertaining which of the several claimants for the occupation of certain denominations of immovable property may be put into occupation of it with greater confidence that the revenue for it will be paid. It was further held therein that such entries have got corroborative value regarding the possession of a party in regard to an immovable property.

So far as the principle laid down in the above judgment is concerned, it is not in dispute, but in the facts and circumstances of the case on hand and in view of the decision referred above, I am of the view that the entries in the revenue records do not confer any valid title to the person in whose name the entries are made against the person who acquired valid title according to law. Unless the parties adopt one of the modes provided under the Transfer of Property Act or any other law for the time being in force, the claim regarding the title of the 4th defendant cannot be recognized, as it is not valid under law.”

19. In Pogiri Jagannadharao V . Gorla Venkatinaidu and others (4 supra) this Court at paragraph 9 held as under:

“It is true that presumption of correctness arises from entries in the records of rights but what is the extent of such presumption and what value can be attached to such entries depends on the facts and circumstances of the case. The presumption so arising is not

conclusive and is rebuttable presumption. To rebut such presumption, it is not necessary that specific evidence has to be adduced by the person disputing the correctness of such entries. The presumption may stand rebutted from the facts and circumstances appearing in the case.”

20. In G. Saravaiah Goud and others V . Government of A.P., rep. by its Principal Secretary, Revenue (Assignment) Dept. and others (5 supra) this Court at paragraphs 22, 23 and 24 held as under:

“The matter can be viewed from another angle also. Issuance of pass books and title deeds under Section 6-A of the Act is not by itself an act of conferment of ownership. Sub-section (5) thereof attaches evidentiary value to them, exclusively for the purpose of equitable mortgage under the Transfer of Property Act, 1882f, and treats it on par with a document, registered in accordance with the provisions of the Registration Act, 1908. In the ultimate analysis, the exercise is, one of recognition of the jural relationship, which is already in existence as regards, the land in question. To be precise, if the transfer of a land, by way of a sale, is a primary act, issuance of pass books and title deeds under Section 6-A of the Act, in favour of the transferee, is a secondary or consequential step. Further, Section 6-A of the Act itself enables issuance of pass books and title deeds in favour of a person, other than an owner also. Even a tenant is entitled to be issued pass book and title deed, may be, for a limited purpose. Section 6-A of the Act reads as under:

“6-A. Pass Book holder to have entries of alienation etc. recorded in Pass Book:-

(1) Every Owner, Pattadar, mortgagee, or tenant of any land shall apply for the issue of a pass book and title deed to the Mandal Revenue Officer on payment of such fee as may be prescribed. The owner-pattadar shall apply for the issue of a title deed in addition to a pass-book.

Provided that an occupant of an inam land is also eligible to apply for the issue of a pass book and title deed as an occupant;

Provided further that where no application is made under this sub-section the Mandal Revenue Officer may *suo motu* issue a Pass Book after following the procedure prescribed under sub-section (2) and collect the fee prescribed therefore.

- (2) On making such application, the Mandal Revenue Officer shall cause an enquiry to be made in such manner as may be prescribed and shall issue a title deed and pass book in accordance with the Record of Rights with such particulars and in such form as may be prescribed:

Provided that no such title deed and pass book shall be issued by the Mandal Revenue Officer unless the Record of Rights have been brought up to date.

- (3) The entries in the title deed and pass book may be corrected either *suo motu* or on an application made to the Mandal Revenue Officer in the manner prescribed.

- (4) The Government may prescribe by rules the manner in which the title deed and pass book may be issued to all owners, pattadars, mortgagees or tenants and to such other person in accordance with the record of rights.

- (5) The title deed issued under sub-section (1) and duly certified by the Mandal Revenue Officer, or such other authority as may be prescribed, shall be the title deed in respect of an owner-pattadar and it shall have the same evidentiary value with regard to the title for the purpose of creation of equitable mortgage under the provisions of the Transfer of Property Act, 1882 as a document registered in accordance with the provisions of the Registration Act, 1908 has under the law.”

Under the 1st proviso to sub-section (1), even an occupant of an inam land can be issued pass book, though he is not the owner, nor any transfer has taken place in his favour.

The main purpose of issuance of pass books and title deeds is mentioned in sub-section (5) of the Act. It is, principally, to enable the holder thereof, to create mortgage, which happens to be one of the important facets of exercise of rights over immovable property.”

21. In the instant case, the first defendant/appellant herein having admitted the initial nature of the properties as ancestral could not prove the basis for the issuance of the pattadar pass book in his favour and the alleged relinquishment deed by defendants 2 to 5 by adducing evidence in the teeth of denial of such oral partition and relinquishment by other defendants. It is a settled and well established principle of law that unless the findings recorded by the courts below are patently perverse and fundamentally erroneous and defective and in utter disregard of the basic principles of law, the invocation of jurisdiction of this Court under Section 100 of the CPC is impermissible.

22. The questions of law framed in the present second appeal, by any stretch of imagination, cannot be regarded as substantial questions of law nor the Court finds any such substantial questions of law, as such this Court is not inclined to entertain the present second appeal under Section 100 of the CPC.

23. In view of the principles laid down in the above referred judgments and for the reasons recorded in the preceding paragraphs, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the substantial questions of law which is pre-requisite for entertaining and admitting the second appeal under Section 100 of the CPC is totally and conspicuously absent in the present case.

24. For the aforesaid reasons and having regard to the principles laid down in the above referred judgments, the second appeal is dismissed.

25. Pending miscellaneous petitions, if any, shall stand dismissed in consequence. No order as to costs.

A.V.SESHA SAI, J

Date: April 08, 2015.

BSB

HON’BLE SRI JUSTICE A.V. SESHA SAI

— — — — —

-

-

-

Date: April 08, 2015

-

BSB

-