

HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.585 OF 2008

Dated 9th April, 2015

Between:

The State of Telangana, the Secretary to Revenue Department,
Secretariat, Hyderabad and others.

..Appellants.

And:

Conferment

Saroja and others.

..Respondents.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.585 OF 2008

JUDGMENT:

This appeal is against judgment dated 27-12-2007 in A.S.No.392 of 2006 on the file of II Additional Chief Judge, City Civil Court, Hyderabad, whereunder judgment dated 3-6-2006 in O.S.No.1533 of 1992 on the file of XIX Junior Civil Judge, City Civil Court, Hyderabad, is reversed.

Appellants hereinafter are defendants in O.S.No.1533 of 1992 which is filed for a mandatory injunction directing the appellants herein to make entries in the concerned revenue records by mutating names of plaintiffs in respect of suit schedule land.

Appellants resisted claim of plaintiffs on the ground that suit schedule land is a Government land and it is in possession of Government and the same has been allotted to Director of Fire Services and possession was handed over to the said department on 3-3-1984. Trial court framed appropriate issues and conducted trial during which, one witness is examined and 67 documents are marked on behalf of plaintiff whereas two witnesses are examined and 16 documents are marked on behalf of defendants and on an overall consideration of oral and documentary evidence, trial court dismissed

the suit which is challenged in appeal and appellate court on a reappraisal of oral and documentary evidence, decreed the suit discarding the objections of the appellants-defendants. Now aggrieved by the decree granted by the appellate court, defendants preferred the present appeal.

Appellants-defendants raised the following as substantial questions of law in the grounds of appeal and this court while admitting the appeal formulated the same as substantial questions of law.

- a. Whether the suit filed for mandatory injunction, directing the Government to mutate the names of the Plaintiffs in Revenue records, without seeking any declaration of title by the plaintiffs, is maintainable especially when, the defendants have from the inception denied the title of plaintiffs.
- b. Is not the suit bared by Section 8 of A.P. Rights in Land and Pattedar Pass Books Act, 1971, as the relief sought for in the suit is, against the Government and its offices claiming to have entries made in the Records of Rights, without establishing title to the property.

(c) Whether the Lower Appellate Court was justified in decreeing the plaintiffs suit and directing the Government by way of Mandatory injunction to correct the Record of Rights, by incorporating the name of the plaintiffs, especially when Section 8 (2) of A.P. Rights in Land and Pattedar Pass Books Act, 1971 mandates that a suit for declaration of title has to be filed as contemplated under Chapter VI of Specific Relief Act, 1963, and as such is not the decree and judgment of the Lower Appellate Court is perverse.

Heard both sides.

On behalf of appellants, it is submitted that the first and foremost submission of the counsel representing appellants is that the suit is filed against Government of Andhra Pradesh a non-existing party and as such, it is not maintainable.

Second objection of appellant is that Civil Court has no jurisdiction to entertain the suit in view of the bar under Section 8(1) of A.P. Rights in Land and Pattedar Pass Books Act, 1971 (Hereinafter referred to as "ROR Act.")

The next submission of the appellants is that the findings of the appellate court are perverse and without any evidence and therefore,

the same are liable to be set aside. It is further argued that on behalf of appellants that plaintiffs claimed title through will deed but they failed to prove execution of will and on that ground also decree of the appellate court is to be set aside.

It is further contended for correction or amendment of entries in revenue records, there must be declaration of title from a competent Civil Court but the plaintiffs without any such declaration claimed for mutation and that they are not entitled for such relief.

R.5 who is supporting version of appellants-defendants submitted that there is no necessity of any mutation and appellate court without looking into the provisions of R.O.R. Act granted relief and therefore, those findings have to be set aside.

On behalf of advocate for respondent/plaintiff submitted that the land was originally allotted to Govind Rao under Exs.A.1 and A.2 and his name was recorded in the revenue records and it was not a sarcari land and it is a private land which is clearly held by this court in W.P. filed by one Rukkamma and confirmed in the writ appeal. It is further submitted that a Land Grabbing case filed by appellants-defendants herein against Rukkamma and others is also dismissed and thereby Government has no right in the suit schedule property. It is further submitted that objection as to the suit against non-existing party is not tenable because that decree was rectified on the application filed by appellants herein. It is further submitted that the objection with regard to civil court jurisdiction is not at all raised either in the trial court or in the first appellate court and it is contended for the first time in the Second Appeal, which cannot be permitted.

It is further submitted that substantial question of law raised in the second appeal is in respect of Section 8 of ROR Act but there is no pleading in the written statement about this section and no arguments are advanced on this point either before the trial court or before the lower appellate court and therefore, they are now precluded from raising such objection. It is further submitted that the suit is only for mandatory injunction as the officials of the appellants have not responded to the application submitted by the plaintiffs, they are constrained to file this suit and the objection as to the maintainability of the suit is not tenable.

It is further submitted that the findings of the appellate court are based on material and there is no perversity and the objection of the appellants on this score is not tenable. It is further submitted that no objection is raised in the written statement with regard to the will and without pleading and without any objection, such a ground cannot be raised in a second appeal. It is further submitted that even otherwise it is a ground touching factual aspect which cannot be treated as

substantial question of law without taking leave of the Court. It is further submitted that there are no grounds to interfere with the findings of the appellate court and that the appeal is liable to be dismissed.

Brief facts which are necessary for determination of point involved in this appeal are as follows:

According to plaintiffs, suit property was originally allotted to late Sri Govind Rao, son of late Sri Shankara Rao in the year 1952 through patta order number 5635 dated 11-6-1952 and was put in possession. According to plaintiff, after death of Govind Rao in May, 1962, property was devolved on his father late Shankar Rao with absolute rights as per the provisions of Hindu Succession Act as Govind Rao died as bachelor and while his father was alive, late Shankara Rao applied to the concerned Tahsildar for mutation vide application dated 29-3-1963, 25-3-1965, 6-9-1965 and 23-9-1968. The said Shankar Rao bequeathed the property to the plaintiffs 1 and 2 with absolute rights and subsequent to the death of Shankar Rao, plaintiffs entered into sale agreement with 3rd party and submitted several applications to mutate their names in the revenue records and as the authorities failed to make necessary entries in spite of applications dated 19-1-1981, 6-4-1981, 15-6-1981, 25-9-1981, 27-7-1982, 20-4-1985, 3-8-1989, 14-6-1990 and 21-7-1990, therefore, plaintiffs are constrained to file the above suit, for mandatory injunction.

Defendants resisted the claim of plaintiff contended that suit property is a Government land and the same was allowed to one A.R.Ayyangar and as he failed to pay requisite value, possession was not given and thereafter, it was allotted to Fire services, who took possession of the property and that the plaintiffs have no right in the suit schedule property.

Now the point that would arise for my consideration in this appeal is whether grounds urged as substantial questions of law on behalf of appellants are tenable and can be accepted.

POINT:

First and foremost objection on behalf of appellant is that suit is filed against Government of Andhra Pradesh represented by Secretary to Government Revenue, as first defendant but the same is not proper since according to provisions of Section 79 C.P.C. a suit should be filed against the State represented by Secretary to Government and therefore, the suit as instituted is not correct. It is further submitted that the suit filed against a non-existing party, therefore, any judgment passed against non-existing party is not maintainable. It is also

submitted that even as per Article 300 of Constitution of India, the State has to be impleaded but not the Government of Andhra Pradesh as referred in the plaint and the suit is bad for non-joinder of necessary party. For this, advocate for appellants cited a ruling of Honourable Supreme Court in *CHIEF CONSERVATOR OF FORESTS, GOVERNMENT OF A.P. VS. COLLECTOR AND OTHERS* () and the decision of Division Bench of this court in Writ Appeal No.1317/2014 dated 20-11-2014. In reply to this objection, advocate for plaintiff submitted that during the pendency of this appeal after bifurcation of the State, the appellants moved this court for amendment and by virtue of amendment State of Telangana is now made as a party and the defect is duly cured,. therefore, this objection is not tenable.

Next objection of the appellants-defendants is that Civil Court has no jurisdiction to entertain the suit.

Advocate for appellants submitted that as per Section 8(1) of ROR Act, no suit shall lie against Government or any officials of the Government in respect of an entry made or in relation to any entry omitted or amendment in Record of Rights as per R.O.R.Act, therefore, the civil court has no jurisdiction.

It is submitted that confirmation of jurisdiction is a legislative function and it can be neither confirmed with the consent of the parties nor by a court and if the court passes a decree having no jurisdiction over the matter, it would amount to nullity. It is further submitted that jurisdictional issue can be raised at any stage of the proceeding and as there is a specific bar under Section 8, the suit as filed is not maintainable. It is further submitted that when statute provide procedure for mutation and when the authorities have not followed, plaintiff can only pray for mandamus and the civil Court has no jurisdiction.

Advocate for appellant submitted that jurisdiction aspect can be taken even at the appeal stage and to support his argument, he relied on a decision of Supreme Court in *S.SUBRAMANIAM BALAJI VS. STATE OF TAMILNADU AND OTHERS* () whereunder Honourable Supreme Court observed as follows:

“In the matters relating to pecuniary jurisdiction and territorial jurisdiction, the objection as to jurisdiction has to be taken at the earliest possible opportunity. But, this case relates to the jurisdiction over the subject matter. This is totally distinct and stands on a different footing. As such, the question of subject matter jurisdiction can be raised even in the appeal stage.”

In reply to this, advocate for plaintiffs submitted that defendants have

not raised any objection with regard to jurisdiction either in the written statement or in the evidence during trial, so also before the first appellate court and it is raised for the first time in the Second Appeal and the same cannot be entertained without showing prejudice. It is submitted that exclusion of jurisdiction of civil Court is not applicable to the facts of the case because as application moved by the plaintiff is not attended and they have no other remedy except seeking mandatory direction, therefore, the suit is maintainable.

It is further submitted that when the jurisdiction aspect is not raised before the fact finding courts, it is not open to take such plea in the Second Appeal. For this, plaintiffs relied on decision of Supreme Court in *RAMESH CHAND ARDAWATIYA Vs. ANIL PANJWANI* () wherein it is held that an objection as to the exclusion of civil court jurisdiction for availability of an alternative forum should be taken before the trial court at the earliest, failing which, the High Court may refuse to entertain plea in the absence of proof of prejudice. The appellant failed to place any material to show that prejudice is caused to them and therefore, as rightly pointed out by advocate for plaintiffs, the objection with regard to jurisdiction is not tenable particularly when appellants proceeded with the trial and also challenged the same before the first appellate court without raising any objection, as to the jurisdiction.

The other two objections are that the findings of the first appellate court are perverse and acceptance of will without proof is contrary to the provisions of Evidence Act. It is the contention of the appellants that the suit property is a Government property and therefore, plaintiffs without seeking declaration of title cannot claim for mandatory injunction. According to plaintiffs, the property was assigned to fire services through G.O.Ms.No.110/28-11-1994 and the plaintiffs have no right. This G.O. was challenged in a writ petition No.2628 of 1985 and this court in clear terms held that the Government treated this land as private land and possession is with the writ petitioner. In that writ petition, even the objection with regard to the genuineness of Ex.A.1 was also considered and this court while accepting that document recognizes the ownership and possession. This court specifically held that Government is precluded from claiming ownership and if they have any grievance they have to get their title established in a civil court. The same findings are confirmed in writ appeal but in spite of that Government has not filed any suit seeking declaration of their right in respect of this property but they still contend that it is a Government land and not a private land.

From the documentary evidence, it is clear that Government had never claimed this land as belonging to them. On the other hand, the

documents filed in the writ petition go to show that they treated it as private land.

But Government is now contending that the various G.Os. under which permissions are granted are not correct and the papers of their own files are spurious. The burden is on them to prove the spurious nature of their document and without that they cannot be allowed to contend that those documents have to be ignored. As directed by this Court in the writ petition and confirmed in the writ appeal, their remedy is to go to a civil court and get their orders were granted mistakenly. As per evidence, right from 1941 upto 1976, Government has treated this property as private property. Possession was with the petitioner till 1983 just before the land was assigned to the 3rd respondent herein. Therefore, respondents are not justified in claiming the property without getting a declaration of their ownership from a competent court.

As seen from the record, plaintiffs addressed several letters with a request to mutate their names, but there was no response from the officials of the defendants. So, as there was no response from the District Collector, the plaintiffs have filed the suit. The appellate court has scanned the entire oral and documentary evidence of both parties and assessed them with reference to the earlier proceedings and findings in respect of the same property and accepted the claim of the plaintiffs. Appellate court also noticed that name of Govind Rao was recorded as pattadar and possessor in revenue records and basing on that accepted the claim of plaintiffs and I do not find any perversity in the judgment of the appellate court either with reference to appreciation of evidence or application of law.

It is also clear from the record that even a land grabbing case filed by the appellant herein is also dismissed and in all these proceedings, specific finding is that the property is a private property and not a Government Land and the appellants in spite of direction in the writ to approach civil court for declaration of title, they have not taken any such steps, on the other hand, they contend that plaintiffs have to get declaration of their title which is contrary to the findings in the writ and writ appeal. When the appellants have not approached civil court for declaration of title, it is not open to them to dispute the claim of plaintiffs and as rightly pointed out by advocate for plaintiff, the objection with regard to will is not at all tenable and it cannot be accepted.

Advocate for appellants has referred to some rulings with reference to proof of will as per Section 68 of the Evidence Act, but those rulings are no way relevant for the dispute involved in the suit and therefore, I am not referring to those decisions. When the name of the predecessor in title is recorded in the records without passing any

orders on the series of applications submitted by plaintiffs, it is not open to defendants to contend that plaintiffs cannot claim for relief of mandatory injunction to incorporate their names.

For these reasons, I am of the view that first appellate court has rightly appreciated evidence and material on record and came to a right conclusion that there are no grounds to interfere with the findings of the First Appellate Court and that there are no substantial questions of law involved in the Second Appeal and the appeal is devoid of merits.

Accordingly, this Second Appeal is dismissed. No costs.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI KUMAR

Dated 9th April, 2015.

Dvs.

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