

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL No.1032 of 1999

JUDGMENT:

The unsuccessful plaintiff all through is the appellant herein. Aggrieved by the judgment and decree dated 23.04.1999 in

A.S. No.10 of 1997 on the file of Senior Civil Judge, Hindupur (for short, 'lower appellate court'), whereby and whereunder, the lower appellate court dismissed the appeal suit, confirming the judgment and decree dated 20.12.1996 passed in O.S. No.18 of 1993 on the file of the District Munsif, Madakasira (for short, 'trial court') dismissing the suit filed for permanent injunction restraining respondents Nos.1 and 2 herein (defendants) from interfering with the peaceful possession and enjoyment of the suit schedule property, which is in an extent of Acs.2-98 cents out of Acs.7-46 cents in Sy.No.196-2/A situated in Mutnukurpalem, Madakasira, Anantapur District, within specific boundaries mentioned therein, the instant Second Appeal is preferred.

2. Appellant herein, who is also the appellant before the lower appellate court, is the plaintiff in the original suit before the trial court, while respondent Nos.1 and 2, who are respondent Nos.1 and 2, respectively, before the lower appellate court, are defendant Nos.1 and 2, respectively. Appellant Nos.3 and 4 are brought on

record as legal representatives of the deceased-respondent No.1 vide court order dated 07.02.2011 in C.M.P. No.12967 of 2004.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the trial court in the original suit.

4. The facts in brief are that in the partition among the father of the plaintiff and his (plaintiff's) paternal uncle, total extent was divided among the four brothers, viz., (1) Pedda Durgappa, (2) Nagappa, (3) Kanjigappa and (4) Sanna Durgappa, into four shares and the plaintiff's father got $\frac{1}{4}^{\text{th}}$ share and even liabilities were also divided and arrived at clearing off the debts initially and then to take their respective extents. It is his case that his father could not discharge his share of debts, but one of the brothers, Pedda Durgappa would clear the debts of the plaintiff's father and, thus, the said Pedda Durgappa got his share and also the other share of the plaintiff's father making a total of $\frac{2}{5}^{\text{th}}$ share in the suit schedule properties. It is his specific case that he paid Rs.500/- to Pedda Durgappa and redeemed the share of his father and, thus, the $\frac{1}{4}^{\text{th}}$ share of his father became his self-acquired property. It is also his case that he purchased the share of son of Sanna Durgappa, but taken the sale deed in the name of his brother-Hanumappa. It is also his case that he

borrowed money from Poosala Ademma and purchased the property in the name of Sanna Durgappa under a conditional sale, he could get back both the shares from Ademma by paying amount to the said Ademma. It is also his case that he acquired title by prescription even having perfected his title by adverse possession for more than statutory period. It is also his specific case that defendant No.1's husband, Hanumappa, who is no other than his (plaintiff's) elder brother, relinquished his title deed and executed a document on 11.07.1975 and subsequently, the said Hanumappa died. Since the defendants, who are the sister-in-law and her son-in-law, unjustly interfered with his possession and enjoyment over the plaint schedule property, he filed the suit seeking perpetual injunction.

5. Suit was contested by the defendants by filing a common written statement. According to them, defendant No.1's husband, Hanumappa succeeded to plaint schedule property along with the father of the plaintiff by name Choudappa. The death of her husband took place 16 years prior to filing of written statement leaving herself and their son-Nagaraju and daughter-Lakshmi Devi as his heirs to succeed to his share in the joint family property. It is according to the defendants, on 19.07.1972, defendant No.1's husband-Hunamappa and the plaintiff sold away the schedule property to Ademma by a conditional sale deed, but subsequently on 08.08.1974, the property was sold in favour of her

husband-Hanumappa and the plaintiff having received Rs.500/-. After her husband's death, herself, their son and daughter succeeded to the share of Hanumappa, but the plaintiff in collusion with one Thipeswamy got filed O.S. No.121 of 1992 on the file of the District Munisif, Madakasira, against the defendants herein. It is her specific stand that her husband never executed any agreement in favour of the plaintiff relinquishing his share in the suit properties and she (defendant No.1) claimed that the suit is bad for non-joinder of their daughter and Hanumappa.

6. On the basis of the said pleadings, the trial court framed two issues and on appraisal of evidence, both, oral and documentary, and observing that Ex.A.4 pattedar passbook was, in fact, originally issued in some other's name and erasing earlier name, the plaintiff's name was written and, thus, suffers from over-writings, disbelieved the contents therein, more particularly, the absence of evidence of any official from revenue department to prove the issuance of Ex.A.4 by the concerned revenue department and ultimately, basing on the findings recorded by it, arrived at the conclusion that the plaintiff is not in possession of the entire property and defendant No.1 is in possession of half of the plaint schedule property fallen towards the share of her husband-Hanumappa and thereby, dismissed the suit.

7. Aggrieved by the said judgment and decree, the plaintiff preferred A.S. No.10 of 1997 before the lower appellate court. The lower appellate court on re-appraisal of evidence on record, affirmed the judgment and decree passed by the trial court by recording reasons. Having got aggrieved by the judgment and decree of the lower appellate court, the plaintiff preferred the instant second appeal raising various grounds in the grounds of appeal and formulated the substantial questions of law as hereunder:

"8. Whether the court below is right in ignoring the pattedar passbook which is issued to the persons who is a pattedar and in possession of the land and recorded a finding that the plaintiff made the defendants are in joint possession ?

9. Whether the court below is right in recording a finding of joint possession when Sec.6 of the R.O.R.Act raises a statutory presumption that the entries mentioned in the pattedar passbook are true until contrary is proved ?

10. Whether the courts below are right in considering any right to the defendants in the light of the relinquishment deed Ex.A.3 dated 11-7-1975 ?"

8. Heard Sri A. Prabhakar Sarma, learned counsel for the appellant, and Smt. Vijayalakshmi Agisam, learned counsel for the respondents.

9. Learned counsel for the appellant-plaintiff would submit that both the courts below went wrong in not

believing Ex.A.4-pattedar passbook issued by the concerned revenue authority and also went wrong in not accepting the relinquishment deed executed by Hanumappa and, thus, failed to appreciate the evidence on record in proper perspective. It is his submission that the finding recorded by the courts below that the plaintiff and defendants are in joint possession, when Section 6 of the Records of Rights Act, 1971, raises statutory presumption that the entries mentioned in the pattedar passbook are true only. It is, therefore, his submission that without there being a plead in the written statement that defendant No.1 is the co-owner, the lower appellate court recorded a wrong finding that the plaintiff and defendant No.1 are co-owners and the suit for injunction is not maintainable as against the co-owner, though, defendant No.1 is not in possession of any extent in the plaint schedule property. In support of his submissions, he relied on the decisions in **Chanumolu Nirmala and others Vs. Chanumolu Indira Devi**^[1], **Sadasivuni Manmadeswara Rao Vs. Patnana Lakshmana Rao and others**^[2] and **K.Ramamoorthi Vs. C.Surendranatha Reddy**^[3].

10. On the other hand, learned counsel for the respondents-defendants would submit that the relinquishment deed marked as Ex.A.3, though, admitted

in evidence, having been impounded, still, it is compulsorily registrable and for want of registration, it cannot be looked into. It is also his submission that the findings recorded by the courts below cannot be faulted with as the findings are based on appreciation of evidence on record in accordance with evidentiary rule and, therefore, sought to dismiss the instant second appeal.

11. Perused the judgments and decrees of the trial court as well as the first appellate court. So far as the relinquishment deed dated 11.7.1975 marked as Ex.A.3 is concerned, which is said to have executed by Hanumappa, husband of defendant No.1, admittedly it is an unregistered deed and absolutely no title passes from Hanumappa to the plaintiff even accepting for argument sake that it is admissible and can be used for collateral purpose. In that view of the matter, the finding recorded by both the courts below, more particularly, the first appellate court that Ex.A.3 cannot be used for substantiating the case of the plaintiff cannot be faulted.

12. Concerning the returned conditional sale deed, it is not in dispute that it was executed jointly by the plaintiff and Hanumappa in favour of Poosala Ademma. Though, the plaintiff's stand is that he alone paid Rs.500/- to the said Poosala Ademma and there was no contribution from Hanumappa, but it is clear from the document itself that there is no reference to Hanumappa

beneath the endorsement made on it, thus, making it clear that Hanumappa had joined in clearing the amount to Ademma. Except the self-serving statement of plaintiff as P.W.1, the plaintiff has not taken any steps to examine either Ademma or the persons connected to Ex.A.2-returned conditional sale deed to prove the assertion made by him that he has no amount to clear the loan taken from the said Poosala Ademma. Therefore, the concurrent finding recorded by both the courts below discarding that stand of the plaintiff cannot be disturbed.

13. Turning to Ex.A.4, when there is specific finding recorded by the courts below that the name on the pattedar passbook was overwritten indicating that it was in fact issued to someone else earlier and the same was used by the plaintiff, the said finding cannot be disturbed for the reason that, *ex facie*, it reflects the striking off name earlier recorded and then writing the name of the plaintiff against it. It is not as though that on the first page of Ex.A.4 alone, it was done, even the entries recorded in the inside pages against column Nos.1 to 10 in the first page and column Nos.1 to 16 in the second page, the earlier entries recorded were erased by using an eraser and beneath the same, the present entries are made without there being any initials or signatures to prove the authenticity of the present entries. Thus, it is clear that the pattedar passbook issued to some other person was used

by the plaintiff by getting his name written on the entries made earlier and that, that has been the reason the trial court rightly suspected the authenticity of the entries made therein and also the very issuance of Ex.A.4 to the plaintiff by the concerned revenue authorities. It is no doubt true, the statutory presumption has to be drawn until contrary is proved, on which the substantial questions 1 and 2 have been mentioned in the grounds of appeal, but the said presumption would apply only to the entries recorded in revenue records when they are not altered or erased and the new entries are made. Therefore, the finding recorded by the courts below that non-examination of the concerned official from the revenue department is sufficient to suspect the genuinity of Ex.A.4 is well reasoned and does not suffer from any infirmity in appreciation of evidence in accordance with evidentiary rule. So, the presumption, certainly, cannot be drawn concerning the entries in Ex.A.4 and, therefore, Ex.A.4 is not useful to prove the possession of the plaintiff over the entire extent of plaint schedule property. When viewed in that angle, the so-called questions of law cannot be held to have been substantiated by the plaintiff. The decisions relied on by the learned counsel for the plaintiff also would render any assistance in view of the observation made in the above to refer to pattedar passbook.

14. Concerning the relinquishment deed Ex.A.3 also, as discussed in the above, both the courts below are

right in rejecting the same for the reason that no propriety or title passes to the plaintiff and so far as the possessory title is concerned, the documentary evidence let in by defendant No.1 is sufficient enough to prove her possession and when viewed from that angle, it has to be held that there is no merit in the instant second appeal.

15. The instant Second Appeal is, therefore, dismissed. There shall be no order as to costs.

16. As a sequel thereto, miscellaneous petitions, if any, pending in this appeal, shall stand closed.

A. SHANKAR NARAYANA, J

1st October, 2015.

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[\[1\]](#) 1994(1) ALT 673 (D.B.)

[\[2\]](#) 2012(2) ALT 54

[\[3\]](#) 2012(6) ALT 786