

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

-

Second Appeal No.342 of 1999

-

JUDGMENT:

This Second Appeal under Section 100 of the Code of Civil Procedure, 1908 ('the Code', for brevity) by the unsuccessful defendant is directed against the decree and judgment dated 20.11.1998 of the learned Senior Civil Judge, Sompeta of Srikakulam District passed in A.S.no.8 of 1998. The learned Senior Civil Judge while allowing the said first appeal had set aside the decree and judgment dated 22.01.1998 of the learned Junior Civil Judge, Tekkali passed in O.S.no.67 of 1996 and had decreed the said suit of the sole plaintiff by granting a perpetual injunction restraining the defendant/appellant from ever interfering with the plaintiff's peaceful possession and enjoyment of Ac.3.17 cents of dry land in survey no.5/32 in Akula Raghunadhapuram of Nandigama Mandal of Srikakulam District, more fully described in the schedule annexed to the plaint.

2. During the pendency of this second appeal, the sole plaintiff/respondent had died. His legal representatives are brought on record as respondents 2 to 4. I have heard the submissions of the learned counsel for the appellant/defendant ('the defendant', for short) and the learned counsel for the respondents 2 to 4, who are the LRs of the sole plaintiff, ('the plaintiffs', for short).

3. At the time of admission of this second appeal, this Court had taken note of the substantial questions of law mentioned in ground nos.10 (a) to (c) as the substantial questions involved in this second appeal. The said substantial questions read as under:

- i. **Whether on the facts and in the circumstances of the case, the learned Judge erred in drawing a presumption of continuous possession thereby filling up the gaps in the evidence of the**

plaintiff on matters which the plaintiff had to prove with positive evidence.

- ii. **Whether, on the facts and in the circumstances of the case, the judgment of the Court below is vitiated by error in procedure as it does not come to close quarters with judgment of trial Court and not alluding to the reasons of the trial Judge.**
- iii. **Whether, on the facts and in the circumstances of the case, the suit for mere injunction, without seeking the relief of possession is maintainable.**

(Reproduced verbatim)

4. To adjudicate the *lis* and answer the substantial questions of law, it is necessary to refer to the pleadings of the parties and the facts that lead to filing of this second appeal by the sole defendant.

4.1 The plaint averments, in brief, are as follows:

The sole plaintiff (since died) has been in enjoyment of the plaint schedule poramboke land since 15 years and is paying land revenue to the Government regularly to the knowledge of the villagers and the owners of the lands adjacent to the plaint schedule land. The plaintiff is in possession and enjoyment of the said land. The defendant has nothing to do with the same. In fact, the defendant admits possession and enjoyment of the plaintiff over the suit land by not denying the possession and enjoyment of the plaintiff over the suit schedule land. The defendant has no colour of right and title whatsoever over the suit schedule land. Except the plaintiff, none has got right or interest over the suit land. No other person, except the Government has a right to evict the plaintiff from the suit land; and, it is for the Government to evict the plaintiff by following the due process of law. While so, the defendant who is inimically disposed off towards the plaintiff has been proclaiming that he would trespass into the suit land and forcibly dispossess the plaintiff from the suit land. The defendant has no respect for law and is capable of translating his threat into action. Unless the defendant, his associates, relatives, servants and workmen are restrained by way of perpetual injunction, the plaintiff suffers serious and irreparable injury. Hence, the suit is filed.

4.2 The defence of the defendant, in brief, is this:

The material allegations in the plaint are absolutely false. The averment in the plaint that the plaint schedule land is a poramboke land and that the plaintiff has been in exclusive possession and enjoyment of the same for the past fifteen years and is paying land revenue to the Government and that none has got right in respect of the said land and that except the Government, nobody else can evict the plaintiff and that even the Government has to evict the plaintiff from the suit land by following due process of law are all false allegations and the said allegations are specifically denied. The plaint averment that the defendant has no colour of right and title whatsoever over the suit land is denied. The boundaries as mentioned in the plaint schedule are incorrect. In fact to the East of the plaint schedule land, there is an earthen road and to its East, there are lands of Siriyala Paparao and Korn Balayya. To the South of the plaint schedule land, the lands of Siriyala Ramaswamy and Ramayya are there. And, to the West of the suit land, the land of Siriyala Bariki s/o of Gunnayya is situated. The Northern boundary as described in the plaint schedule is incorrect. The correct Northern boundary is the earthen road and land of Siriyala Appalanarasimhulu. The above land within the above said correct boundaries is an inam patta land but not a poramboke land. The plaintiff is put to strict proof of the survey number and the extent of the plaint schedule land. The plaintiff is not aware of the survey number and the extent of suit land, but had filed the false suit. The subject land is an inam land in an extent of Ac.2.05 cents; and, the said land is in possession of the defendant since 07.01.1948. The plaint averment that the defendant is making proclamations is false. The plaintiff is not in possession of the suit schedule land and is not entitled to any injunction as prayed for. The plaintiff had suppressed the correct facts. Since the defendant is in peaceful possession and enjoyment of the land since 1948 as a tenant and as the plaint schedule land is an inam land and not a poramboke land, the plaintiff is not entitled to the relief of perpetual injunction. The ROR passbook for the inam land, i.e., the suit schedule land is given to the defendant. The documents filed by the plaintiff do not correspond to the plaint schedule land. Hence, the suit may be dismissed.

4.3 On the strength of the above pleadings, the trial Court had framed the following issues for trial:

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

2. To what relief?

At trial, the plaintiff and his supporting witnesses were examined as PWs 1 to 3 and exhibits A1 and A2 were marked on his side. The defendant and his supporting witnesses were examined as DWs 1 to 3 and exhibits B1 to B6 were marked. On merits, the trial Court had dismissed the suit of the plaintiff. As already noted, the court below had allowed the appeal and had decreed the suit of the plaintiff as prayed for after setting aside the decree and judgment of the trial Court. Hence, the unsuccessful defendant is before this Court by way of this second appeal.

4.4 I have carefully perused the pleadings and the evidence brought on record, both oral and documentary.

5. The crux of the case of the plaintiff is this: 'The plaint schedule land is a poramboke land and that the plaintiff is in exclusive peaceful possession and enjoyment of the plaint schedule land since fifteen years prior to the suit. No other person including the defendant has any manner of right whatsoever over the plaint schedule land, which is in the possession and enjoyment of the plaintiff. Nobody except the Government has got right over the suit land, which is a poramboke land. And the Government also cannot evict the plaintiff from the suit schedule land except by following the procedure established by law. Since the defendant is a lawless person and had proclaimed to dispossess the plaintiff from the plaint schedule land, the plaintiff is constrained to bring the suit for perpetual injunction.' The defendant while denying the plaint averments had *inter alia* contended as follows: 'The plaint schedule is not correct. The boundaries of the suit land as mentioned in the plaint schedule are not correct. The survey number and extent are also not correct. The correct boundaries of the plaint schedule property are – East: Earthen road; South: Land of Siriyala Ramaswamy and Ramayya; West: Land of Siriyala Bariki S/o Gunnayya; and North: Earthen road and land of Siriyala Appalanarasimhulu. The land covered by the above boundaries is of an extent of Ac.2.05 cents. It is an inam land and not a poramboke land. The said inam land has been in peaceful possession and enjoyment of the defendant since 07.01.1948. The defendant is a tenant of the inam land. As the defendant is in peaceful possession and enjoyment

of the plaint schedule land as a tenant of the inam land and as the plaintiff is not in possession and as the plaintiff had filed the suit by suppressing the material facts, the plaintiff is not entitled to the relief of perpetual injunction.' The plaintiff in his examination-in-chief had reiterated his pleaded case and had exhibited exhibit A1- the copy of the Adangal for Fasali 1396 and exhibit A2-the letter in Rc.No.819/88 dated 14.06.1988. The plaintiff had also examined two supporting witnesses as PWs 2 and 3. The defendant had reiterated his defence in his evidence and further examined two supporting witnesses as DWs 2 and 3 on his side. He had exhibited the cist receipts dated 05.06.1966, 13.02.1967, 05.02.1968, 05.02.1969, 30.03.1970 and 03.06.1972 as exhibits B1 to B6.

5.1 The learned counsel for the defendant/appellant would contend as follows: 'Even according to the case pleaded by the plaintiff, the subject land is a poramboke land and that the plaintiff is in possession of the said land, which belongs to the Government. The plaintiff had also pleaded that the Government is entitled to evict him from the land, which is in his possession by following due process of law. However, in fact, the plaintiff was never in possession of the suit schedule property. The plaintiff could not establish his lawful possession over the plaint schedule land by filing any document. The plaintiff's documents do not establish that he was in possession of the suit schedule land as on the date of the suit. Proof of possession over the suit land, as on the date of the suit, is an essential requisite for granting the equitable relief of perpetual injunction. Even according to the evidence brought on record and the admissions made by the plaintiff and his witnesses, the defendant is cultivating the land. The court below ought to have seen that exhibit A1 relates to the year 1986 and that it is for the plaintiff to establish that he had continued in possession of the suit schedule land even after 1986 and till date of the suit, which is filed in the year 1996. No oral and documentary evidence was adduced to show that the plaintiff was in possession of the suit land after 1986 and as on the date of the suit. The trial court having appreciated the facts and evidence in the correct perspective had rightly dismissed the suit of the plaintiff by recording findings supported by valid and cogent reasons. The court below had grossly erred in drawing a presumption in favour of the plaintiff basing on exhibit A1 in regard to continuation of possession over the suit land even after 1986. When there is no consistency in the evidence, and when there are also variations and ambiguity as to

possession of the plaintiff over the suit land, the court below ought not to have drawn the presumption forward and ought not to have held that the plaintiff had continued in possession of the plaint schedule land even after 1986. The court below had erroneously granted a perpetual injunction in favour of the plaintiff without determining the tenure of the land. The court below ought to have seen that the case of the plaintiff is that the plaint schedule land is a poramboke land and that on the other hand, the case of the defendant is that it is an inam land. Therefore, the court below ought to have decided as to whether the plaint schedule land is a poramboke land or an inam land. The court below overlooked the infirmities in the case of the plaintiff and had wrongly cast the burden on the defendant and had failed to consider the established legal position that the plaintiff succeeds on the strength of his own case, but, not on the infirmities or weaknesses, if any, in the case of the defendant. The learned Judge of the Court below had applied propositions of law, which are inapplicable to the facts of the case. The court below ought to have seen that as the plaintiff could not establish his lawful possession over the suit schedule land, the suit for perpetual injunction is not maintainable and that the plaintiff ought to have filed a suit for recovery of possession. The judgment of the court below is vitiated by error in procedure as it does not come to close quarters with the judgment of the trial court and as the learned judge had failed to give sufficient and valid reasons for reversing the well considered judgment of the trial court.'

5.2 *Per contra*, the learned counsel for the plaintiffs/respondents 2 to 4 herein while supporting the judgment and decree of the court below had *inter alia* contended that the defendant is claiming some other property by furnishing boundaries of that property, whereas the plaintiff is claiming the plaint schedule property within the specific boundaries, which is a poramboke land and that the plaintiff had established the identity and existence of the suit land and that the trial court had not considered the crucial fact that the plaintiff had filed exhibit A1, the copy of Adangal for Fasali 1396 and also exhibit A2, the letter dated 04.06.1988, which sufficiently established the lawful possession of the plaintiff over the plaint schedule poramboke land by the year 1988 and that the defendant could not establish his possession at any time much less after 1988 and that therefore, the Court below had rightly drawn a forward presumption that the plaintiff, who was in possession by the year 1988, had

continued in possession of the plaint schedule land till the date of the suit and that the plaintiff is therefore, entitled to a perpetual injunction. The learned counsel for the plaintiffs had further urged that in the absence of proof of possession of the defendant or any other person over the suit schedule land since 1988, the court below was not in error and on the other hand was right in drawing a presumption forward in regard to possession in favour of the plaintiff and that the court below had assigned valid and cogent reasons in support of its findings and for reversing the erroneous findings of the trial Court and that the questions raised in this second appeal are not having any substance and that the second appeal is devoid of merit and is liable to be dismissed as no substantial questions of law are involved.

6. I have given earnest consideration to the facts and the submissions. The oral evidence apart, exhibit A1 is the certified copy of the No.2 Adangal extract for Fasali 1396 of Akula Raghunathapuram village of Nandigama Mandal. On a perusal, it discloses that it relates to the land in survey no.32, patta no.5 of an extent of Ac.3.17 cents i.e., the plaint schedule land. In this document, the name of the enjoyer is mentioned as Bommali Ramarao, i.e., the plaintiff. This document was issued by the Mandal Revenue Officer concerned much prior to the filing of the suit i.e., on 20.10.1987. Exhibit A2 is the letter dated 14.06.1988 addressed by the Mandal Revenue Officer, Nandigama to the Station House Officer, Tekkali Police Station. In the said letter, while asking the said police officer to take suitable action, it was stated that the plaintiff had encroached into an extent of Ac.3.17 cents in Akula Raghunadhapuram village and is cultivating the said land by paying the B. Memo charges etcetera to the Government and that it was reported that one Siriyala Appalanarasimhulu is obstructing him and causing hindrance to cultivate that land and that the plaintiff had sought protection and that the matter was brought to the notice of the said police officer previously also. As could be seen from the judgment impugned, exhibit A3 dated 22.05.1998 was issued by the Mandal Revenue Officer to Bommali Thulasamma, the wife of Ramarao, in response to the request for issuance of public copies of 'No. III Adangal'. From the content of this letter it is evident that the copies of the same could not be granted as 'jama Bandi' has not been conducted for the past several years in respect of the village as in the writ petition no.2270 of 1990 filed by one P.Krishnamurthy and others before this court, stay was granted by this court not to pass any final orders in settlement of tenure of

the village. Exhibit A1-adangal extract and exhibit A2-letter of the Mandal Revenue Officer concerned which were much prior to the suit instituted in June 1990 amply establish that the plaintiff had encroached the plaint schedule Government land and was cultivating the same and had also paid the necessary charges to the Government and that the plaintiff was in possession and enjoyment of the plaint schedule land by June 1988. Though exhibit A1 relates to the 1985-86, it was issued in the year 1987. The suit was filed in the year 1990 originally and was re-numbered after the suit was transferred from the file of the Court of District Munsif, at Palasa to the Court of the Junior Civil Judge, Tekkali in the year 1996. So, even in exhibit A1, the copy of the adangal, granted in the year 1987, the possession and enjoyment of the plaintiff over the suit schedule land are recorded. The defendant had filed cist receipts from the year 1996 to 1972 except for the year 1971. No cist receipts of the subsequent years are filed whereas, as already noted, exhibit A1 shows plaintiff's possession over the suit schedule land by the year 1985-86. Exhibit A2 shows the Plaintiff's possession over the suit land even by June 1988. Though it was contended in the written statement that pattedar passbook was issued to the defendant under ROR Act, no such pattedar passbook was exhibited. The cist receipts filed by the defendants are having over writings. The evidence brought on record does not disclose that the suit schedule land is an inam land. By placing reliance on exhibit A1, the trial Court which had held against the plaintiff, had also accepted that the plaintiff was in possession and enjoyment of the suit land by the year 1985-86. But, the trial court did not give much credence to that document and had held against the plaintiff as the suit was filed in the year 1990 and as the said document does not establish the possession of the plaintiff over the suit land as on the date of the suit and as the plaintiff did not produce any other documentary evidence to show his possession as on the date of the suit. Not only exhibit A1, extract of adangal, which establishes the cultivation of the land by the plaintiff during that year but also exhibit A2 which was of the year 1988 and which was issued prior to the filing of the suit sufficiently establish the possession and enjoyment of the plaintiff over the suit land. Exhibit A2 has come to be issued when a dispute was raised by Siriyala Appalanarasimhulu by obstructing the plaintiff's enjoyment over the suit schedule land. It is not in dispute that in respect of the suit schedule land for some time, a Receiver was appointed and the plaintiff had deposited amounts for a period of three years when the suit was originally pending on the file of the District Munsif Court, Palasa. In the light of the factual backdrop and the evidence, the Court

below having found that the plaintiff was in possession of the property for a long time had presumed that the plaintiff's possession over the suit land is continuing as the law permits to draw a presumption in favour of the continuation of possession. In this regard, the Court below had placed reliance on a decision in **Nathee Lal v. Durga Prasad** and had held that in the instant case, the plaintiff is in continuous possession till the date of filing of the suit as there is no evidence to the contra. It is apt to note that the defendant is claiming a lesser extent of Ac.2.05 guntas of land which is an inam land whereas the plaintiff is claiming the plaint schedule land in an extent of Ac.3.17 cents within the boundaries mentioned in the plaint schedule. Though the defendant had disputed the correctness of the plaint schedule, exhibit A1-copy of the adangal corresponds in material particulars to the plaint schedule land insofar as the extent, the patta number and survey number. Exhibit A2 letter of the MRO, concerned also establishes that the suit land is a Government land and that the same is in the possession and the enjoyment of the plaintiff and also the actual cultivation of the said land by the plaintiff and payment of charges by him to the Government. Having considered the evidence harmoniously in juxtaposition with the facts, this Court finds that the Court below was justified in drawing a presumption forward in regard to possession of the plaintiff over the suit land and in granting a perpetual injunction in favour of the plaintiff by decreeing his suit after reversing the decree of dismissal passed by the trial Court. On a consideration of the facts and evidence and on going through the judgments of the court below, this Court does not find any grounds to hold that the judgment of the court below is vitiated. In fact, the court below had recorded findings supported by reasons, which are cogent and valid and which are sufficient to over turn the decree and judgment of the trial court. The plaintiff is not claiming title over the Government land and is only claiming perpetual injunction to protect his possession from interference from the defendant by *inter alia* stating that the Government is alone entitled to evict him from the property that too, by following due procedure established by law; and, the specific case of the plaintiff is that he is entitled to continue in possession till the Government evicts him by following the due procedure established by law. Therefore, it is for the Government to take steps against the plaintiff for eviction, if the Government so desired and it is not for the defendant to plead the cause of the Government. On the application of the test of preponderance of probabilities, it can safely be concluded that the plaintiff is in peaceful possession and enjoyment of the suit land and that in the facts and circumstances of the case the suit for perpetual injunction without seeking the relief

of declaration of title is maintainable and that the plaintiff is entitled to the relief of perpetual injunction as against the defendant.

7. Having regard to the reasons, this Court finds that there is no substance in the substantial questions of law and that there is no merit in this second appeal and hence, the second appeal is liable to be dismissed.

8. In the result, the Second Appeal is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M. SEETHARAMA MURTI, J

28th October 2015

RAR