

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

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Second Appeal No.809 of 2013

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JUDGMENT:

This Second Appeal is filed challenging the judgment and decree dt.18-01-2012 in A.S.No.78 of 2008 of the Judge, Family Court, Kadapa confirming the decree and judgment dt.04-04-2006 in O.S.No.290 of 2001 of the III Additional Junior Civil Judge, Kadapa.

2. The appellants herein are plaintiffs in the suit. They filed the suit for (i) declaration of their title over the plaint schedule properties, (ii) for recovery of possession of A schedule item, (iii) for grant of mandatory injunction to 2nd defendant to remove the structure laid by 2nd defendant in the 1st item of the plaint schedule and (iv) also restraining the defendant Nos.1, 2 and their men from interfering with the peaceful possession and enjoyment of plot No.169 in Block No.3 of the 1st plaintiff and plot No.1 in Block No.4 of the 2nd plaintiff in the original layout plan of 1979 according to the respective D.K.T. pattas assigned in their favour by way of permanent injunction and for costs of the suit.
3. The parties will be referred to as per their array in the trial Court.
4. The 1st defendant is Kadapa District Ex. Servicemen Cooperative House Building Society of which plaintiffs are members. According to the plaintiffs, they were allotted house sites of 5 cents each in old S.No.919/1 and new Sy.No.1043 of Sainik Nagar in Chinnachowk village of Kadapa Mandal and

District under Exs.A-1 and A-2 respectively; that Sy. No.1043 was divided into two blocks No.3 and 4 comprising 225 and 198 plots respectively under AP Government sanction orders Memo No.2555/Q2 dt.21-07-1979; and that a layout plan was also prepared in 1994. They alleged that on the ground that the plaintiffs had failed to comply with the terms and conditions of the grant, the entire land was reallocated to N.G.O's Association, Kadapa by the Government and under the guise of the said allotment, the said association demolished the layout of the 1st defendant-Society in 1994. They alleged that this was questioned in W.P.No.7685 of 1995 by one S.N.Devaraj, the President of 1st defendant-Society; plots were re-allotted to the plaintiffs; in the meantime, the said Writ Petition was withdrawn by the then President of 1st defendant Society and the extent of Ac.22.00 cts was divided under a settlement out of which Ac.12.00 cts went to 1st defendant-Society and Ac.10.50 cts went to the N.G.O's Association. They alleged that when the plaintiffs attempted to construct in the plaint schedule property, their structures were demolished and 1st defendant highhandedly entered into the plots of the plaintiffs and did not permit plaintiffs to construct houses in their DKT patta sites.

5. The 1st defendant filed a written statement contending that the plaintiffs are not ex-servicemen and their DKT pattas are not in force and they were never acted upon; since the plaintiffs have admitted that NGO's Association demolished the structures erected by the plaintiffs in 1994, the present suit is filed seven years later. Although the defendants contended that they have no land in Sy. No.1043 and they are concerned with the plots in

Sy. Nos.1044 and 1045, 1059/1 part and 1060/1 and 2 part of Chinnachowk village, they alleged that under the guise of Exs.A-1 and A-2, the plaintiffs are trying to enter into the lands belonging to the defendants. They also contended that NGO's Cooperative House Building Society, Kadapa as well as the MRO and District Collector, Kadapa are proper and necessary parties to the suit and since they have not been impleaded, the suit is bad for non-joinder of parties.

6. The Court below framed the following issues:

1. Whether the plaintiffs are entitled to the permanent injunction against the defendants as prayed for?
2. To what relief?

7. The plaintiffs examined P.Ws.1 to 3 and marked Exs.A-1 to A-33. The defendants examined D.Ws.1 to 4 and marked Exs.B-1 to B-23. Exs.X-1 and X-2 were also marked.

8. By judgment dt.04-04-2006, the Court below dismissed the suit.

9. It held that the plaintiffs had filed no evidence to show that they had made any constructions on the ground; they had admitted in the plaint and in their evidence that they were dispossessed in 1994 from the plaint schedule property; that Advocate Commissioner was appointed to identify the plaint schedule property on the ground more than once but that attempt did not succeed; the Mandal Surveyor also expressed inability to identify the plots in Sy. No.1043 claimed by plaintiffs and stated that he verified the records and found Sy. No.1043 itself was subdivided and in the said layout, plots of plaintiffs were not marked. The trial Court therefore held that Sy. No.1043

cannot be identified on the ground, that as per the Surveyor's Report the area claimed by the plaintiffs was not identifiable and can not be found on the ground. It therefore held that no relief can be granted to the plaintiffs.

10. Questioning this judgment, the plaintiffs filed A.S.No.78 of 2008.

11. The Judge, Family Court-cum-VI Additional District Judge, Kadapa confirmed the judgment of the trial Court by judgment dt.18-01-2012. The lower appellate Court also held that the real dispute is between the plaintiffs, the State Government and the N.G.O's Association; the suit is filed by the plaintiffs against the defendants who are not concerned with the land in Sy. No.1043; and the plaintiffs ought to have added both the N.G.Os Association and the Government as parties to the suit.

12. Challenging the same, this Second Appeal is filed.

13. The learned counsel for the appellant sought to contend that the judgments of the Courts below are unsustainable; that the Courts below ought to have seen that the plaintiffs were allotted land under Exs.A-1 and A-2 DKT pattas and that since the said pattas are not cancelled by any orders passed by the State Government, the Court below should have decreed the suit.

14. The learned counsel for 1st respondent however contended that the findings of the Courts below are based on correct appreciation of evidence on record; that no substantial question of law arises for consideration in the Second Appeal; and there is no warrant to interfere with the judgments of the Courts below.

15. I have noted the submissions of both sides.

16. It is no doubt true that the plaintiffs claimed to have been allotted these two plots of land under DKT pattas allegedly issued in their favour by the State Government officials. Both the courts below have held that according to these pattas, the plots allotted are in Sy. No.1043 but Advocate Commissioner appointed in the trial Court could not identify both these plots. In the absence of identification of the plots on the ground, the decree of declaration of title and other reliefs sought in this suit would have no use. Moreover, plaintiffs have categorically admitted that it was the N.G.O's Cooperative Society which had dispossessed them from the land in the year 1994. Yet the plaintiffs have not chosen to implead the said Association as a party to the suit. It is also admitted by the plaintiffs that the DKT pattas were initially cancelled on the ground that no constructions were made within the requisite time by the State Government and thereafter, the extent of Ac.22.00 cts originally given to 1st defendant was divided into two parts and only Ac.12.00 cts was allotted to 1st defendant Society and Ac.10.50 cts to 2nd defendant. It is alleged by the plaintiffs that the cancellation of the DKT pattas was initially challenged by way of Writ Petition and matter was then settled out of Court and it was decided to give a portion of the land to the N.G.O's Association referred to above as well. Therefore, the Government would also be the necessary party to the suit. In the absence of these two parties, who in my opinion are necessary parties, the claims of the plaintiffs cannot be properly decided.

17. In this view of the matter, I do not therefore find any question of law much less any substantial question of law arises for

consideration in the Second Appeal.

18. Accordingly, the Second Appeal fails and the same is dismissed. No costs.

19. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date : 10-04-2015

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