

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

SECOND APPEAL No.773 of 1997

JUDGMENT:

The unsuccessful plaintiffs had preferred this second appeal under Section 100 of the Code of Civil Procedure assailing the decree and judgment dated 17.07.1997 of the learned Subordinate Judge, Chodavaram, passed in A.S.No.52 of 1996, whereby the learned Judge, while dismissing the afore mentioned appeal had confirmed the decree and judgment dated 24.07.1996 of the learned Principal District Munsiff, Chodavaram, passed in O.S.No.100 of 1992 filed by the appellants/plaintiffs for perpetual injunction restraining the defendants 1 to 11 from interfering with the plaintiffs' peaceful possession and enjoyment of the land in an extent of 15.30 cents covered by patta no.324, Survey no.245 of Pooraketu, Arli Village, which is more fully described in the schedule annexed to the plaint.

2. I have heard the submission of the learned counsel for the appellants/plaintiffs and the learned counsel for the respondents/defendants 1 to 10. The appeal against the 11th respondent/11th defendant, the then Mandal Revenue Officer of K. Kotapadu Mandal, was already dismissed for default. I have perused the material on record.

3. At the time of admission, having heard the learned

counsel for both the sides, this Court made the following observations and framed the substantial question of law as follows:

“It appears from the judgment and pleadings that though the Courts below have held that the appellant was not in possession of the disputed property, there is abundant material to show that at least to an extent of 99 cents each of the plaintiff was in possession. In view of the admitted defence that assignment was made to the extent of 99 cents and possession was given 99 cents in favour of each of the plaintiff. Therefore, this evidence ought to have been considered which has not been considered. A substantial question of law arise as to whether in view of this admitted evidence appellants were entitled to claim injunction in respect of that much property”.
[Reproduced verbatim]

4. In view of the narrow compass of the substantial question of law formulated by this Court and in view of the fact that no other substantial question of law is involved and as the Courts below had recorded concurrent findings of facts, it is trite to observe that the plaintiffs are not entitled to a decree for perpetual injunction as prayed for in respect of entire extent of Ac.15.30 cents of suit property. However, now the important question is as to whether or not a relief of perpetual injunction can be granted in favour of the plaintiffs against the contesting defendants insofar as Ac.0.99 cents each out of the suit property, which were and are admittedly in respective possessions of the plaintiffs, having been granted to them under pattas as is borne out by the record and as contended by the learned counsel for the plaintiffs.

5. This question need not detain us for long. Firstly, it is to be noted that for the entire extent of Ac.15.30 cents of land, no

boundaries are furnished in the schedule. The pattas of the plaintiffs are not exhibited. The evidence on record does not show that anywhere the plaintiffs have mentioned the boundaries of the respective extents of land, in respect of which pattas were granted to them. Though PW1 had admitted that he and his brother were also given pattas by the revenue people in respect of lands to an extent of Ac.0.99 cents each in the plaint schedule property, which is a vast extent, he had further admitted that besides him, some other members of his village were also in enjoyment of the land in the same survey number and that he does not know whether the other ryots had raised casurina and mango plants in the said lands. He had further admitted that the suit was filed when the Mandal Revenue Officer and Revenue officials came and delivered possession to the defendants. Therefore, in the absence of filing of the pattas of the plaintiffs and in the further absence of any evidence either oral or documentary in regard to the boundaries of respective extents of land for which pattas are granted to the plaintiffs and when admittedly there is no material brought on record, which is sufficient to distinctly identify the respective extents of the plaintiffs within defined boundaries, this Court is of the well considered view that the plaintiffs are not entitled to the perpetual injunction in respect of the extents of Ac.0.99 cents of land each, which were said to have been respectively granted to them under pattas by the revenue authorities. Moreover, there is no proof that the contesting defendants had committed any overt acts and had tried to

interfere with the possession of the plaintiffs over the respective extents of Ac.0.99 cents of land each said to have been granted to the plaintiffs by the revenue authorities under pattas. Having regard to the reasons assigned, the substantial question of law is accordingly answered holding that the plaintiffs are not entitled to perpetual injunction in their favour and against the contesting defendants in respect of Ac.0.99 cents of land each granted to them under pattas from out of the vast extent of suit land as their respective extents are not shown to be distinctly identifiable within specific boundaries from out of the suit property.

6. Hence, this Court is of the well considered view that there is no substance in the substantial question of law and therefore, the appeal deserves to be dismissed.

7. In the result, the second appeal is dismissed. No costs.

Miscellaneous Petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

16th June 2015.

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