

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

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Second Appeal No.842 of 2014
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JUDGMENT:

Heard Smt.P.Rajani Reddy, learned counsel for the appellants and Sri V.R.Reddy Kovvuri, learned counsel for the respondents.

2. This Second Appeal is filed challenging the judgment and decree dt.09-09-2014 in A.S.No.69 of 2010 of the IV Additional District Judge, Kadapa confirming the judgment and decree dt.19-07-2010 in O.S.No.81 of 2008 of the IV Additional Junior Civil Judge, Kadapa.

3. The appellants herein are defendants in the above suit. The respondents/plaintiffs had filed the above suit seeking relief of perpetual injunction against the appellants to restrain them from interfering with their peaceful possession and enjoyment of the plaint schedule properties.

4. The respondents/plaintiffs contended that originally the plaint schedule property belonged to the Government and was a vacant site; that the plaintiffs are landless poor persons to whom house site pattas were granted by proceedings dt.13-02-2006 under Exs.A-1 and A-2 to construct houses with the aid of AP State Housing

Finance Corporation Limited; since the date of assignment, they are in possession and enjoyment of the property; they applied for a loan to the Government under Indiramma Housing Scheme; and under Exs.A-3 and A-4 dt.25-09-2007, the District Collector, Kadapa sanctioned loan also to the plaintiffs under the said scheme. Plaintiffs contended that the defendants, without any manner of right in the plaint schedule property, tried to interfere with the possession and enjoyment of the property and on 14-02-2007, they came to the plaint schedule property along with their men and attempted to store material for construction of floor in the house site. Therefore, the suit was filed.

5. The 2nd defendant filed a written statement which was adopted by 1st defendant. Though the defendants admitted that the plaint schedule property originally belonged to the Government and the same was assigned to the plaintiffs, they contended that the Tahsildar, Chennur by proceedings dt.13-11-2007 cancelled the pattas granted to plaintiffs; that these proceedings were served on the plaintiffs; without challenging those proceedings before the R.D.O., the suit was filed. They also denied that they attempted to store any material in the plaint schedule property. They disputed that the plaintiffs are landless poor persons and asserted that the villagers of Seshaiharipalli and vicinity

villages constructed temple of Lord Sri Rama in the suit property and so the plaintiffs are not in possession.

6. The trial Court framed the following issues:

1. Whether the plaintiffs are entitled for perpetual injunction as prayed for?
2. To what relief?

7. Before the trial Court, plaintiffs examined P.Ws.1 and 2 and marked Exs.A-1 to A-5. The defendants examined D.Ws.1 and 2 and marked Exs.B-1 to B-5.

8. By judgment and decree dt.19-07-2010, the trial Court decreed the suit. Before the trial Court, it was contended that the orders of cancellation of patta granted to the plaintiffs under Exs.B-1 and B-2 were challenged in a Writ Petition before this Court and the same were suspended on 24-09-2009 in W.P.M.P.No.27159 of 2009 and W.P.No.20859 of 2009. The trial Court held that the assignment to the plaintiffs under Exs.A-1 and A-2, and delivery of possession there under to the plaintiff, were no doubt admitted, but the pattas were cancelled under Exs.B-1 and B-2; plaintiffs had approached the High Court subsequent to the filing of the suit and got Exs.B-1 and B-2 orders suspended; the said order of the High Court would not help them to prove their possession as on the date of the suit. It however held that the plea of the defendants that there was a temple erected with the

approval of the Gram Panchayat was not established because the date of approval was not given by D.W.1, the V.R.O., and proceedings of such approval had been also not been filed. It held that D.W.2 admitted in cross examination that portion of the plaint schedule property is in possession of the plaintiffs and also stated that there is no proof to show that the idols exist in the suit property and that villagers of the above village or any one has any right in the plaint schedule property. Having regard to the said evidence and on account of non filing of the approval granted to the villagers by the Gram Panchayat to construct temple, adverse inference was drawn by the Court below to the effect that the balance extent of the plaint schedule property is also vacant site. Therefore, it held that constructive possession thereof would be with plaintiffs, having regard to the suspension of Ex.B-1 on account of the order dt.24-09-2009 in the Writ Petition; and since the defendants admitted that they have no right or interest in the plaint schedule property, they cannot interfere with the possession of the plaintiff.

9. This judgment was questioned by defendants in A.S.No.69 of 2010 before IV Additional District Judge, Kadapa. By Judgment dt.09-09-2014, the said appeal was also dismissed.

10. Questioning the same, this Second Appeal is filed.

11. Learned Counsel for the appellants contended that although the appellants had no right, title or interest in the plaint schedule property, since villagers had erected the idols in the plaint schedule property, this Court ought to entertain the appeal, admit it and then grant status quo order to avoid law and order problem.

12. The learned counsel for the respondents on the other hand contended that both the Courts below have rightly granted relief to the plaintiffs and that no case has been made out by the appellants for interference with the judgments of the Courts below.

13. From the facts narrated above, admittedly Exs.A-1 and A-2 pattas were granted to the plaintiffs by the Revenue officials since they are landless poor persons on 13-02-2006 and they were put in possession thereof. The District Collector, Kadapa by proceedings Exs.A-3 and A-4 also sanctioned loan to the plaintiffs. Although D.W.2 stated that proceedings dt.13-11-2007 in Ex.B-1 were issued canceling the house site pattas Exs.A-1 and A-2 granted to the plaintiffs, it is an admitted fact that Ex.B-1 proceedings were suspended by this Court by Order dt.24-09-2009 in W.P.M.P.No.27159 of 2009 and W.P.No.20859 of 2009.

14. It is not stated by D.W.2, the V.R.O. of the said village, that before canceling the said pattas, any notice was issued to the plaintiffs. His only statement was

that Ex.B-3 notice was given to them informing them about the cancellation of the pattas and that the plaintiffs had refused to receive it. So the orders passed canceling pattas are in violation of principles of natural justice. In any event, D.W.2 did not state that any idols are existing in the plaint schedule property and he also denied that the villagers or anyone has no right to construct any temple in the plaint schedule property. He in fact admitted that in a portion of Ac.0.03 ½ cts. of the plaint schedule property, the plaintiffs are in possession. It is not the case of D.W.2 that the plaintiffs were dispossessed pursuant to Ex.B-1 order before it was suspended by this Court under a Panchanama.

15. Therefore, it has to be presumed that the plaintiffs continue to be in possession of the property notwithstanding cancellation of the Exs.A-1 and A-2 pattas issued to them under Ex.B-1 on 13-11-2007. When the proceedings in Ex.B-1 was suspended by this Court on 24-09-2009, it has to be presumed that Exs.A-1 and A-2 would continue to be valid and the constructive possession of the property would be with the plaintiffs.

16. Since defendants had categorically stated that they have no right, title or interest in the property and they never attempted to store any construction material in the plaint schedule property, they have no right to interfere with the possession and enjoyment of the plaintiffs over

the plaint schedule property.

17. In this view of the matter, I am of the view that the Courts below had not committed any error in granting relief to the plaintiffs. I therefore do not see any merit in the Second Appeal and the same is accordingly dismissed. No costs.

18. As a sequel, miscellaneous petitions pending, if any, shall stand disposed of.

JUSTICE M.S.RAMACHANDRA RAO

Date: 12.02.2015

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