

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

SECOND APPEAL No.432 of 2000

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JUDGMENT:-

This Second Appeal under Section 100 of Code of Civil Procedure, 1908 ('the Code', for brevity) is filed by the State of Andhra Pradesh assailing the decree and judgment dated 02.02.2000 of the learned I Additional District Judge, Guntur passed in A.S.No.8 of 1996, whereby, the learned I Additional District Judge while dismissing the said appeal had confirmed the decree and judgment dated 16.02.1993 of the learned Additional Subordinate judge, Narasaraopet of Guntur District passed in O.S.No.226 of 1982 filed for declaration that the provisions of the Andhra Pradesh (A.A.) Inams (Abolition & Conversion into Ryotwari) Act, 1956 ('the Act', for brevity), as amended in 1975, do not apply to the suit land and for permanent injunction restraining the defendant from permitting encroachments in the suit land and for costs.

2. I have heard the submissions of the learned Government Pleader appearing for the appellant/defendant ('defendant', for brevity) and the learned counsel for the respondents/plaintiffs ('the plaintiffs', for brevity). I have perused the material record.

3. At the time of admission of the second appeal, this Court had taken note of the substantial questions of law which are mentioned at ground no.3 of the grounds of appeal. The said questions read as under:-

- a. ***Whether Civil suit under Section 9 C.P.C. is maintainable to declare that the provisions of Act 37/56 or even as amended by Act 20/75 are not applicable to the suit schedule land?***
- b. ***When the entire village was an Inam land which includes the suit schedule property, which was originally a tank, on abolition of Inam, did not vest in the Government irrespective of its treatment?***

- c. ***Whether conversion of tank into Ryotwari land is permissible and any such permission prevents vesting of such tank in the Government under the provisions of the Act 37/56 as amended in 1975. The Courts ignored Section 15 of the Act.***
- d. ***When the trial Court found that Government so far did not grant patta to the respondents and when the appellate Court found that the schedule property is a communal tank and therefore, vest in the Government under Section 2-A of the Act, the declaration given by the Courts below that the provisions of Act 37/56 and 20/75 are not applicable to the suit property is sustainable in law?***

(reproduced verbatim)

4. To adjudicate the *lis* and to answer the substantial questions of law, it is necessary to refer to the pleadings of the parties

5. The plaint averments, in brief, are as follows:

The first plaintiff (since died) who had originally brought the suit is the senior joint proprietor of Vipparlapalli Agraharam, which is declared to be not an Inam Estate under the provisions of the Madras Estate Abolition and Conversion into Ryotwari Act, 1948 and 1956. The suit property was allotted survey no.67 when the lands in Agraharam were surveyed. The total extent of land is Acs.34.58 cents. This land was classified as Poramboke before 1902. There was a survey during the year 1902. The land had ceased to be a tank by 1908 and hence, it was no more a tank-bed land by 1908. After survey, the tank was silted up and the tank-bed was brought under cultivation by the Agraharamdars; and, in Fasli 1315, it was assessed and it was converted as assessed land. The Government had also ordered that the suit land should be included in the Agraharam patta. The Agraharamdars were attending to the repairs of the tank till it ceased to be a tank. The Agraharamdars were selling their shares in the tank-bed to others as it is a part of their patta land. One of the Agraharamdars was adjudged insolvent in the year 1932 and his share of Acs.1.00 cents in survey No.67 was sold by the official receiver, Guntur and it was purchased by a ryot of the neighbouring village. Subsequently, he had also sold away the said

land to the plaintiff's cousin who is one of the Agraharamdars. There are a number of sale deeds in respect of the portions of this land and pattas were transferred in pursuance of the sale deeds. The Government had never exercised any ownership in the plaint schedule land. The Government was never in possession of the suit property at any time. Now the Government is trying to assume management of the plaint schedule property basing on Section 2-A of the Act, which has no application as it does not attract the Agraharam land. The schedule land is not Inam in an Inam village but it is a part of the major grant situated in the same village. This land cannot be called as other Inam in Inam village. The main Act itself does not apply to the suit property. The Government without any right is trying to permit encroachments into the property. Hence, the suit is filed.

6. The case of the Government/defendants, in brief, is this: - "The land belongs to the Government. This suit land is a Poramboke and it had vested in the Government. The plaintiff has no legal right to question the same. The plaintiff is not entitled to the declaration or injunction in respect of the suit land. The suit is bad for want of a statutory notice and, therefore, the suit is liable to be dismissed. There is no cause of action for this suit. The suit claim is barred by time. The suit is not properly valued for the purpose of Court fees and jurisdiction. The plaintiff is claiming ownership of the suit land. The relief of declaration, therefore, is to be valued at half of the market value of the suit land but, the suit is notionally valued under Section 26 (c) of the Andhra Pradesh Court Fees and Suits Valuation Act. The suit is bad for non-joinder of the alleged Agraharamdars of the suit village as parties to it. The Government denies all the other material allegations in the plaint. It is also denied that the provisions of the Act, as amended in 1975, are not applicable to the suit land. The suit is liable to be dismissed with costs.

7. Basing on the above pleadings, the trial Court had framed the following issues for trial:-

1. **Whether the plaintiff has title to or possession of the suit property?**
2. **Whether the suit property is valued for Court fee?**

3. **Whether the suit is not bad for non-joinder of parties?**
4. **Whether the suit without a prior notice to defendant is maintainable?**
5. **Whether the plaintiff is entitled to declaration as prayed for?**
6. **To what relief?**

[Reproduced verbatim]

8. At trial, on behalf of the plaintiff, PWs.1 to 9 were examined and exhibits A1 to A28 were marked. On the side of the defendant, DW1 was examined and exhibits B1 to B6 were marked. Exhibits X1 to X8 were also marked.

9. On merits, the trial Court had decreed the suit of the plaintiff. The first appeal preferred by the Government/defendant was dismissed by the first appellate Court. Aggrieved of the same, the Government/defendant is before this Court as appellant.

10. The learned Government Pleader appearing for the defendant would contend as follows: 'The suit schedule property admittedly, at one point of time, was a tank and a tank-bed. The plaintiff had failed to prove that it had ceased to be a tank and a tank-bed and that it was silted up and was converted into assessed land and that the plaintiff had exercised ownership rights. The suit land, being Poramboke, had vested in the Government. The plaintiff has no manner of right over the suit land. The suit is not maintainable under Section 9 of the Code; and, no declaration can be granted. The provisions of the Act, as amended, have application to the suit. Since the entire village is an Inam village and the suit land is situated in the Inam village, it is an Inam land and on abolition of the Inams, it had vested in the Government irrespective of its treatment. Conversion of the tank into the ryoti land is impermissible and such a conversion does not prevent vesting of such tank in the Government as per the provisions of the said Act. The Courts have ignored Sections 14 and 15 of the Act. The trial Court has no jurisdiction to entertain the suit or grant the relief. The first appellate court did not properly appreciate the facts, the evidence and the law applicable to the case and, therefore, in view of the substantial

questions of law involved in the appeal, the appeal may be allowed.'

11. The learned counsel for the plaintiffs while supporting the decrees and judgments of the Court below had urged that the Courts below had considered the facts accurately and the evidence in proper perspective and that the trial court in particular made extensive reference to the oral and documentary evidence while answering the issues in favour of the plaintiff and that the Court of first appeal had independently examined and appreciated evidence before recording concurrence on the findings recorded by the trial Court on various issues and that none of the questions raised are questions of law let alone substantial questions of law and that there is no substance in the questions and that no reasons are made out calling for interference with the well reasoned concurrent findings of the Courts below and that the second appeal is devoid of merit and is liable to be dismissed. He made references to certain portions of the judgments of the Court below in support of his contentions.

12. Now the substantial questions are taken up.

13. The sum and substance of the substantial questions of law is that the suit land is a Government tank-bed Poramboke and that it is an Inam land, being a part of Inam village and that after coming into force of the Act, as amended in the year 1975, the suit land vested in the Government and that, therefore, the Government is the owner of the land and that mere conversion of tank into ryoti land does not prevent the vesting of the land in the Government and that the Government did not grant any patta to the plaintiffs and that, therefore, the civil Court has no jurisdiction.

13.1 Be it noted that no issue was raised by the Government in its written statement with regard to jurisdiction. The issue of jurisdiction was no doubt raised before the Court of first appeal. In fact, the trial Court had framed one of the issues relating to title and possession of the plaintiff over the suit land and had answered the said issue along with other issues in favour of the plaintiff and decreed the suit. The plaintiffs, in this case, did not seek declaration of title. They only sought a declaration that the provisions of the Act, as amended in the year 1975, have no application to the suit land.

13.2 Section 2-A of the Act was brought on the Statute Book in the year 1975 by amending the Act. It reads as under:-

2-A. Transfers to, and vesting in the Government of all communal lands, porambokes etc., in the inam lands:- Notwithstanding any contained in this Act, all communal lands and porambokes, grazing lands, waste lands, forest lands, mines and quarries, tanks, tank-beds and irrigation works, streams and rivers, fisheries and ferries in the inam lands shall stand transferred to the Government and vest in them free of all encumbrances.”

It is also pertinent to refer to Section 9 of the Code, which reads as under:-

9. Courts to try all civil suits unless barred:-

The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

[Explanation I].- A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

[Explanation II].- For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.].

The evidence brought on record shows that Vipparlapalli Agraharam is an Agraharam village and an extent of 700 acres was Inam land belonging to one Sadasiva Rao. Out of the same, the plaint schedule property admeasuring Acs.34.58 cents was a tank initially. Therefore, in the circumstances of the case, the short question that falls for consideration is whether the schedule property was a patta land by virtue of coming into force of the Act, as amended by Section 2-A of the Act, or it continued to be a tank land. If it is to be held that the schedule land continued to be a tank land as on the date of the coming into force of Section 2-A of the Act, then it follows that the land stands vested in the Government. But, if it is to be held that the suit land is converted into a patta land even prior to the coming into force of the said provision of law, then it cannot be said that the land vests in the Government, not being Poramboke land as on the date of coming into force of the said provision of law. The law is now well-settled that Section 2-A of the Act is not retrospective but is only prospective, vide decision of this Court in **Gajuwaka Gram Panchayat Vs. Nedisetti Venkata Suryanarayana**. While answering the question as to whether the suit land is a Government tank or a patta land, the Court of first appeal had extensively referred to both the oral and documentary evidence. Exhibit

X1 is the sale deed dated 30.03.1991. PW3 had purchased the property from one of the Agraharamdars under Exhibit X1, which is of the year 1991. PW4 purchased Acs.0.71 cents of plaint schedule property, again in the year 1981, under Exhibit X2 from the vendor of PW3. According to his evidence, he has been given possession of the property and has been enjoying the same ever since the date of purchase. PW5 had similarly purchased the property in the year 1981 from another Agraharamdar under Exhibit X3. PW6 had also purchased another piece of suit schedule land under Exhibit X4 from a lady who is one of the legal heirs of one of the Agraharamdars. The father of PW7 had also purchased another piece of schedule land from one of the Agraharamdars in the same year under Exhibit X6. PW7 in his evidence had also referred to a Will under Exhibit X7 executed by one of the Agraharamdars, in favour of another person. Exhibit X8, on a perusal, would disclose that one of the Agraharamdars by name Ch.Venkata Narasaiah filed an insolvency petition before the Court and was adjudged as an insolvent and the property of Acs.1.00 cents belonging to him was taken over by the Official Receiver, Guntur, and the same was sold in a public auction and was purchased by one Vadlamudi Chinna Venkatappaiah in the auction held in July, 1943, and subsequently, a sale deed under Exhibit X8 was executed. All these documents lay bare that the suit schedule land has become cultivable land even prior to the year 1975 and lost its characteristic as a tank. All these documents, which are much prior to the suit, cannot be brushed aside by holding that they are the documents brought into existence to get over the legislation when it was in the offing. Therefore, the contention of the Government that the suit schedule land continued to be a tank or tank-bed and is not a patta land, cannot be countenanced in view of the overwhelming documentary evidence. Exhibit A17, on a careful perusal, would disclose that some of the Agraharamdars filed a suit in O.S.No.410 of 1914 on the file of the Junior Civil Judge (District Munsif), Guntur, and that by a judgment dated 08.01.1916, the learned Junior Civil Judge, Guntur had held that the property belonged to the Agraharamdars. The appeal preferred by the Government in A.S.No.6 of 1917 on the file of Additional Senior Civil Judge, (Additional Subordinate Judge), Guntur, assailing the judgment dated 08.01.1916 was dismissed. Thus, there are sufficiently old Court proceedings, wherein, the schedule property was recognized as the property of Agraharamdars. Exhibits A22 and A23 are the copies of the Guntur Gazette, 1982 and the Andhra Gazette, 1955 respectively. Both the said Gazettes on a perusal would disclose that the title of the

Agraharamdars was recognized long time back. Thus, the evidence brought on record would make it manifest that by the time Section 2-A of the Act was enacted, the schedule property was not a tank or a tank-bed or a poramboke and, therefore, by virtue of provision of Section 2-A of the Act, it cannot be said that the suit schedule property vested in the Government. Even assuming for a moment that exhibits X1 to X7 have to be kept out of consideration, still exhibit A8 by itself is sufficient to record a finding in favour of the plaintiffs, as it would lay bare that the land in question was a Patta land of Agraharamdars and has been treated as such by the Agraharamdars. Therefore, it is not open to the Government, who now claim at this distance of time by invoking Section 2-A of the Act to contend that the subject land is only tank and, therefore, it vested in the Government pursuant to the provision of Section 2-A of the Act. Apart from exhibit A8, there are also two more documents which need consideration. They are exhibits A22 and A23 – the Gazettes of the Government. The said Gazettes, which are copies of Guntur Gazette, 1982 and Andhra Gazette 1955, recognized the title of the Agraharamdars. Therefore, it is evident that the grant of pattas was also recognized by the Government in the said Gazettes. Therefore, the Government now cannot question the same by invoking the provision of Section 2-A of the Act. However, the learned Government Pleader, having placed reliance on exhibits B1 to B6, would contend that the plaintiffs are to be non-suited. Exhibits B1 to B4 are the Adangal extracts, which are subsequent to the filing of the suit, so also exhibits B5 and B6. Further DW1 – the Mandal Revenue Officer, in his evidence, had candidly stated that in the year 1914 itself, the civil Court found that the Agrahamdars are owners of the plaint schedule property and the plaint schedule property was not classified as tank even by the date of coming into force of the Act. It was also further admitted by him that as per the Inam-B Register, the schedule land was given title deed No.1155 in the year 1915 by converting poramboke land into Agraharam land. The Government could not produce any documentary evidence to show that by the year 1975, the plaint schedule land was classified as tank poramboke. The evidence brought on record coupled with the evidence of DW1 would disclose that from the year 1915 onwards till 1935 it was shown as Agraharam land and it was assessed as cultivable land and that the plaint schedule property was not classified as tank even by the date of Act, 1956. Therefore, the Courts below, having appreciated the evidence brought on record, had recorded concurrent findings that the Act of 1956, as amended by Act 20/75, has no application to the suit land. The suit was not one for declaration of

plaintiffs title to the schedule land and the suit is only laid for a declaration that the provision of Section 2-A of the Act, as amended by Act 20/75, does not apply to the plaintiff schedule property and for a perpetual injunction on the basis that the plaintiffs are the Agraharamdars and are owners of the plaintiff schedule property. Moreover, in the suit filed by the Agraharamdars in O.S.No.410 of 1914 on the file of the District Munsif, Guntur, it was held that the plaintiff schedule property is the property of Agraharamdars. The appeal preferred by the Government in A.S.No.6 of 1917 before the District Court, Guntur, was also dismissed confirming the decree and judgment of the trial Court. Several sale transactions were affected by some of the pattadars and they had sold their shares in the suit schedule land, is evident from exhibits A2 to A13 and exhibits A25 and A26 and exhibits X1 to X8 about which a reference is already made to supra by this Court. Thus, there is ample evidence on record to show that subsequent to the grant of Pattas to the Agraharamdars, they treated the said land as their own.

14. Keeping in view the facts and the evidence brought on record, if the questions raised are examined, it is clear that the questions raised are not even pure questions of law, let alone substantial questions of law. Viewed thus, this Court finds that the appeal is *devoid* of merit and is liable to be dismissed. Accordingly, the appeal is dismissed. There shall be no order as to costs.

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

M.Seetharama Murthi, J

14th August, 2015

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