

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

SECOND APPEAL No. 655 OF 1995

JUDGMENT:

Two amongst the four legal representatives of the deceased- sole plaintiff, who were unsuccessful, had preferred this appeal under Section 100 of the Code of Civil Procedure, 1908, assailing the decree and judgment dated 27.01.1995 of the Agent to the Government, East Godavari, passed in A.S.No.10 of 1990, whereby the learned Agent while dismissing the aforementioned appeal had confirmed the decree and judgment dated 07.08.1990 of the Special Assistant Agent to the Government, Rampachodavaram, passed in O.S.No.44 of 1987 filed by the deceased- sole plaintiff for perpetual injunction in respect of the subject property against defendant nos.1 to 4, i.e., the respondents 1 to 4 in the second appeal.

2. Be it noted that respondent nos.5 and 6 herein are the other two legal representatives of the deceased-plaintiff.

3. I have heard the submissions of the learned counsel for the appellants. This appeal against the respondents 1 and 4 was dismissed as abated as their respective legal representatives were not brought on record on their respective deaths. Further, this appeal against the 2nd respondent was dismissed for default i.e., for non-prosecution. Therefore, this appeal is being prosecuted only against 3rd respondent/the 3rd defendant in the said suit. None appeared for the 3rd respondent. I have perused the material on record.

3.1 At the time of admission of the second appeal, this Court had taken note of the substantial questions of law formulated in grounds 7(a) to 7(c) of the memorandum of grounds of appeal, which are as follows:

- (a) Whether the plea that Ex.A1 is obtained by fraud can be countenanced without any basis in the written statement.
- (b) Whether the finding of the Tribunals that Ex.A1 is hit by

Regulation 1/89 is beyond the scope of the suit.

- (c) Whether the finding of the tribunals that the defendants are in possession is valid in that Exs.A2 to A4 have not been referred to? (Reproduced verbatim)

Now, it is to be examined as to whether or not any substantial questions of law are involved in this second appeal.

4. The pleadings and the facts necessary for consideration, in brief, are as follows:

(a) The sole plaintiff, who is the predecessor-in-interest of the present appellants and the respondents 5 and 6 herein, had brought the suit against defendants 1 to 4 *inter alia* claiming that his mother by virtue of a registered settlement deed dated 17.11.1947, under exhibit A1, had settled the subject property upon him, and, that subsequent to the death of his mother, he had entered into possession of the property; and, was and is in continuous possession of the property; and, had also filed a declaration before the Land Ceiling Authority regarding the plaint schedule land and that pursuant to his declaration exhibit A2 Order was passed by the Special Deputy Tahsildar (LR) of Yellavaram and that thereafter, exhibit A3 Order was passed by the Tribunal concerned basing on the report of the Tahsildar concerned and that he had paid the taxes on the subject land as is evident from exhibit A4 and that while so, the defendants 1 to 4 by claiming that their mother had given the property to them as 'pasupukumkuma gifts' at the times of their respective marriages had interfered with the property, which is in the possession of the plaintiff, and that, therefore, he is constrained to file a suit for perpetual injunction.

(b) The defendants had resisted the suit *inter alia* contending that the plaintiff is the adopted son of Chellayya and Ammani and that Ammani had never got any right in the subject land and that the plaintiff was never in possession of the subject lands and that they are in possession of the property and that the property originally belonged to one Chellayya who was having daughters and that the 1st defendant is the son-in-law of the said Chellayya and Ammani and that the 2nd defendant is the son-in-law of the

sister-in-law of the 1st defendant and that during the life time of Chellayya, his said property, i.e., the subject property was gifted to the daughters i.e., Gollapalli Kanthamma and Bathula Ratna Raju towards 'pasupukumkuma' and that even during the life time of Chellayya the defendants are in possession of the plaint schedule lands and the tax receipts are being issued in the name of Gollapalli Kanthamma and the 1st defendant.

5. Having regard to the pleadings, the Assistant Agent to the Government had framed the following issues:

- (i) Whether the plaintiff has title to and possession of the plaint schedule lands?
- (ii) Whether the settlement deed dt.17.11.1947 is valid?

6. At trial, the sole plaintiff was examined as PW1 and the above-mentioned documents were marked as exhibits A1 to A4 on his side. The 1st defendant and the 2nd defendant were examined as Dws 1 and 4 and their supporting witnesses were examined as DWs 2 and 3 and exhibits B1 to B14, which are all land revenue receipts, were marked on their side.

7. On merits, the trial court had dismissed the suit while *inter alia* holding that under Regulation 1 of 1989, Mokhasas have been abolished and are taken over by the Government and that the plaint schedule land is in Nellipudi Village and it falls in Mokhasa and that after abolition of Mokhasas, the subject property vested in the Government. However, the trial court had directed the parties to the *lis* to file their claims before the Settlement Officer for granting pattas as per the provisions of the said Regulation. The trial court had also recorded findings against the plaintiff in regard to the truthful nature of exhibit A1 registered settlement deed and his possession over the subject land. Further, the plaintiff's appeal was dismissed by the Agent to the Government. Therefore, two of the legal representatives of the plaintiff are before this court.

8. It is contended by the learned counsel for the appellants that the document i.e., exhibit A1 is a thirty years old document and that the presumption under Section 90 of the Act as to its due execution and

attestation is attracted and that the defendants did not adduce any evidence to show that exhibit A1 was obtained by fraud and that therefore, the finding of the lower court that exhibit A1 is hit by Regulation 1 of 1989 is beyond the scope of the suit and that exhibits A1 to A4 amply established the possession of the plaintiff and that the defendants had failed to establish that the property was given to the daughters of Chellayya at the time of their respective marriages and that in a suit for injunction, the possession is only relevant and that, therefore, the courts below had erred in dismissing the suit and the 1st appeal.

9. I have bestowed my attention to the facts and noted the submissions. Be it noted that though the plaintiff had claimed that his mother had settled the property upon him under exhibit A1-settlement deed, there is no evidence brought on record to show as to how his mother has acquired title to the said land. On the other hand, based on record, a finding was recorded by the Assistant Agent to the Government that the property originally belonged to Chellayya, the husband of Dummula Ammani. It is also admitted that the said Chellayya had left behind him two daughters and also his wife Ammani. On the death of Chellayya when the property devolved upon all his legal heirs, his wife alone has no right whatsoever to execute the settlement deed in respect of the entire property in favour of the plaintiff. Even assuming for a moment that the plaintiff is the adopted son of the said Chellayya and Ammani, he is not entitled to exclusively claim right, title and interest in the entire property. Viewed thus, it appears that daughters of the Chellayya are the co-owners along with their mother. The defendants had disputed the adoption, which was being relied upon by the plaintiff. Without further going into the merits of the matter as to the truthful nature of the plea of the plaintiff that he is an adopted son, suffice to observe that the plaintiff cannot claim a perpetual injunction against the defendants who are claiming through the daughters of Chellayya.

10. Be that as it may, during the pendency of the proceedings the Regulation 1 of 1989 has come into force and under the said Regulation, Mokhasas have been abolished and were taken over by the Government

and, therefore, the plaint schedule land, being a Mokhasa, vested in the Government and, hence, the right, title and interest, if any, of the parties and their predecessors in interest stands abolished as the Mokhasa lands had vested in the Government. Therefore, the findings of the courts below that the parties have to file their claims before the Settlement Officer for grant of pattas as per their entitlement and as per the provisions of Regulation 1 of 1989 appear to be not beyond the scope of the adjudication of the issues involved in the suit.

11. In view of the concurrent findings of the facts and having regard to the discussion coupled with reasons, this court finds that no substantial questions of law are involved and that there is no substance in the questions sought to be raised as substantial questions and that therefore, the appeal deserves to be dismissed being devoid of merit.

12. In the result, the Second Appeal is dismissed giving liberty to the parties and others, if any entitled to, to approach the Settlement Officer for grant of pattas, in accordance with the procedure established by law. It is needless to mention that if any such claims are made by the parties or any other persons in respect of the suit lands for grant of pattas, the said claims shall be determined on merits and in accordance with the procedure established by law without being influenced by the observations, if any, in the orders of the courts below and in the instant orders.

As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

M.SEETHARAMA MURTI, J

June 18, 2015
LMV