

HON'BLE SRI JUSTICE S.V.BHATT

S.A.Nos.566, 565 & 596 OF 2015

COMMON JUDGMENT:

The plaintiff in O.S.Nos.349 and 361 of 2002 and defendant in O.S.No.391 of 2006, on the file of the Principal Junior Civil Judge, Nellore, is the appellant.

S.A.Nos.565, 566 and 596 of 2015 are directed against the common judgment dated 21.10.2014 in A.S.Nos.73, 74 and 75 of 2012, on the file of the I-Additional District Judge, Nellore, wherein the said appeals were dismissed confirming the judgment and decree dated 20.04.2012 in O.S.Nos.361 and 349 of 2002 and O.S.No.391 of 2006 respectively, on the file of the Principal Junior Civil Judge, Nellore.

For convenience sake, the parties are referred to as arrayed in the suits.

The averments, in brief, in the suits are:

O.S.No.349 of 2002:

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It is the case of plaintiff that 1st defendant is the absolute owner of the suit schedule property. Owing to the death of her husband, the 1st defendant leased out the said property to the plaintiff with some terms and conditions that the plaintiff has to pay 10 thooms of paddy per acre to the 1st defendant. On 05.01.2001, a lease agreement was executed. The plaintiff claims to have spent substantial amounts towards the schedule property for making it fit for cultivation. The 1st defendant availed loan of Rs.80,000/- from the plaintiff. The 2nd and 3rd defendants offered more maktha to the 1st defendant and all of them tried to dispossess the plaintiff. The plaintiff is in possession and enjoyment of the suit schedule property since 05.01.2001 by paying maktha to the 1st defendant. The name of the plaintiff is entered in the revenue records. Hence, the plaintiff filed the suit for permanent

injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment over the suit schedule property till he is evicted.

The defendants filed written statement *inter alia* denying all the allegations made in the plaint. It is contended that the 1st defendant never leased out the suit schedule lands to the plaintiff and the plaintiff was never in possession and enjoyment of the suit schedule property. In the year 2000, the plaintiff induced 1st defendant and her daughter to file suit O.S.No.1253 of 2000 in the Court of the file of I-Additional Junior Civil Judge, Nellore against defendants 2 and 3 and Vallepu Surendra, who is son of 2nd defendant. The defendants further contend that the plaintiff gave third party affidavit in O.S.No.1253 of 2000 by categorically stating that 1st defendant and her daughter are in possession and cultivating the suit schedule property as well as the property shown in O.S.No.361 of 2002. The question of plaintiff taking the said land from the 1st defendant and her daughter on lease does not arise. The documents filed by the plaintiff are concocted. The plaintiff filed the suits after the compromise took place in the suit O.S.No.1253 of 2000. The plaintiff has nothing to do with the said suit schedule property.

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O.S.No.361 of 2002:

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The plaintiff's case is that defendants 1 and 2 are the owners of the suit schedule property. As defendants 1 and 2 were not able to cultivate the land, they leased out the same to the plaintiff by fixing the maktha at 15 thooms of paddy per acre etc. It is the further case of the plaintiff that the plaintiff approached defendants 1 and 2 and requested them to endorse the receipt of maktha as per the agreement and also for execution of regular lease deed, for which the defendants gave evasive replies. The plaintiff was ready and willing to perform his part of the contract to take the registered lease deed. Hence, the plaintiff filed the suit against the defendants for a direction to defendants 1 and 2 to execute a registered lease deed in his favour in terms of the lease

agreement dated 05.12.2001 and for perpetual injunction.

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The defendants filed written statement reiterating almost all the contentions of the defendants made in O.S.No.349 of 2002

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O.S.No.391 of 2006:

The plaintiff pleads that he is the absolute owner of the suit schedule property, having acquired the property through a compromise decree dated 19.03.2002 in O.S.No.1253 of 2000, on the file of the I-Additional Junior Civil Judge, Nellore. By virtue of the compromise decree, the plaintiff and his brother Vallepu Srinivasulu became absolute owners of the suit schedule property and thus are in possession of the same. The plaintiff is managing the affairs of cultivation on behalf of his family members and also paying cist to the suit schedule property. There are disputes between the family members of the plaintiff and defendant.

The defendant nursed grudge and started harassing the plaintiff and his family members and on 08.03.2006, the defendant came to the suit schedule property illegally and highhandedly along with his men and attempted to trespass into the suit schedule property. Therefore, the plaintiff filed the suit for permanent injunction restraining the defendant and his men from interfering with the plaintiff's peaceful possession and enjoyment over the suit schedule property.

The defendant filed written statement contending that the defendant took the suit schedule land and also another land under lease agreement dated 05.01.2001 on payment of annual maktha. The father and brother of the plaintiff colluded with one Venkamma and attempted to dispossess the defendant and the defendant filed O.S.No.349 of 2002 for permanent injunction and obtained interim injunction against them. The defendant is in possession and enjoyment of the suit schedule land since 05.01.2001 by raising paddy crop. The plaintiff and his family members attempted to cut and carried away the standing crop. The plaintiff lodged a complaint to the SHO, Venkatachalam and also the Superintendent of Police. The plaintiff suppressed the suits filed by the defendant.

It is on this controversy the parties have joined trial. The trial Court settled necessary issues for trial and the appellate Court has also framed four points for determination.

The trial court clubbed the suits O.S.Nos.349 and 361 of 2002 with O.S.No.391 of 2006 for joint trial and evidence was recorded in O.S.No.349 of 2002.

The plaintiff in O.S.Nos.349 and 361 of 2002 himself was examined as P.W.1 and P.Ws.2 to 4 were examined on behalf of plaintiff. Exs.A-1 to A-34 were marked on behalf of plaintiff. The 2nd defendant in O.S.No.349 of 2002, who is 5th defendant in O.S.No.361 of 2002, was examined as D.W.1 and D.W.2 was examined on behalf of defendants. Exs.B-1 to B-9 were marked on behalf of defendants.

By reference to the oral and documentary evidence adduced by the parties, the trial Court held that the plaintiff in O.S.Nos.349 and 361 of 2002 failed to prove that he is in possession of the suit schedule properties and, accordingly, dismissed the suits. The trial Court allowed O.S.No.391 of 2006 granting injunction.

Aggrieved thereby, the plaintiff in O.S.Nos.349 and 361 of 2002 preferred A.S.Nos.74 and 73 of 2012, on the file of the I-Additional District Judge, Nellore and the defendant in O.S.No.391 of 2006 preferred A.S.No.75 of 2012.

The appellate Court, having considered each and every one of the circumstances contended by the appellant, dismissed A.S.Nos.74, 73 and 75 of 2012 holding that the appellant failed to prove that he is possession of the suit schedule properties as on the date of filing the suit. The impugned judgment and decree passed by the appellate Court on proper re-appraisal of the evidence on record and reaching at a correct conclusion and confirming the judgment of trial Court, does not call for any interference in the present second appeal.

No question of law, much less substantial question of law, arises for consideration. I see no reason to interfere with the findings of fact recorded by the

Courts below. The appeal does not merit consideration under Section 100 of Civil Procedure Code.

Hence, the second appeals are dismissed with the following observations:

The dispute between the appellants and the respondents vis-à-vis subject matter of land, which admittedly is Government land subsits. The aggrieved party is given liberty to file appropriate representation before the revenue authorities and the revenue authorities are free to examine and pass appropriate orders without reference to the judgment impugned in the appeals. No costs.

Miscellaneous petitions, if any pending, shall also stand disposed of.

S.V.BHATT, J

18th September, 2015

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