

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL Nos.905, 908 AND 804 OF 1998

COMMON JUDGMENT:

Since common questions of fact and law are involved in these appeals and they arise out of a common judgment, they are being taken up for disposal by this common judgment.

2. These three appeals are preferred by the State of Andhra Pradesh, represented by the Collector, Srikakulam District - defendant in O.S. Nos.25, 30 and 27 of 1985, respectively, on the file of the learned Subordinate Judge, Rajam, challenging the common judgment and decrees, dated 31-01-1997, in A.S. Nos.116, 117 and 118 of 1988, passed by the learned Additional District Judge, Srikakulam, reversing the common judgment and decrees, dated 11-04-1986, in O.S. Nos.25, 30 and 27 of 1985, whereby and whereunder, the original suits were dismissed.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the original suits before the trial Court.

4. The plaintiffs sought relief of declaration of their title over the respective plaint schedule properties and for a consequential relief of injunction and in alternatively pleaded for restitution of possession,

in case the Court comes to the conclusion that the plaintiffs are not in possession of their respective plaint schedule extents on the date of filing of the suits.

5. In O.S. No.25 of 1985, plaint schedule consists of two plots, approximately Ac.0-14 cents each, in Survey No.110 of Gorinta Village of Ponduru Taluk, Srikakulam District; in O.S. No.27 of 1985, it is Ac.0-20 cents (Three plots) (Plot No.1 - Ac.0-12 cents; Plot No.2 - Ac.0-06 cents and Plot No.3 - Ac.0-02 cents), and in O.S. No.30 of 1985, it is Ac.0-14 cents (Two plots) (Plot No.1 - Ac.0-06 cents and Plot No.2 - Ac.0-08 cents) in the very same survey number and the village.

6 (a) In O.S. No.25 of 1985, the plaintiff's case is that himself and his brother purchased Plot No.1 under a registered sale deed, dated 28-07-1975, from one Chintada Kannaya and his sons, who said to have inherited the same from their ancestors. Their main case is that both the plots are situate in Survey No.110 of Gorinta Village. Plot No.1 is being used as backyard and plot No.2 is being used as thrashing floor. According to the plaintiff and his brother, they inherited plot No.2 as it fell to their vendors' share under a registered partition deed between their father and his co-parceners.

(b) The plaintiff and his brother own Acs.16-00 of wet land and as his brother is in Government Service, he was managing the properties of his brother also. Since the New Tahsildar, Ponduru, was taking steps to survey the village site with a view to assign the plots in favour of weaker sections and even their plots are being surveyed, he approached the Tahsildar, Ponduru, by submitting a petition, dated 20-07-1978, received on 22-07-1978, explaining their ownership and possession over the plaint schedule property.

But, the Tahsildar was not inclined to enquire into his petition and initiated proceedings under the provisions of the Land Acquisition Act, 1894. Even certain allegations were levelled against the Tahsildar also, which are unnecessary to refer to.

(c) Defendant resisted the relief controverting the averments mentioned in the plaint. According to the defendant, the registered sale deeds concerning Plot No.1 do not bind them. The plaintiff and his brother have no right over the suit schedule plots. The land in Survey No.110 of Gorinta Village is registered as village site poramboke covering a total extent of Acs.14-40 cents and there is vacant site of Ac.1-86 cents. The officials of the defendant have been taking steps to assign the vacant site to the backward classes and the scheduled castes as house sites.

7 (a) In O.S. No.27 of 1985, the case of the plaintiff is that he is owner of the plaint scheduled land. On 30-05-1960, Plot No.3 was purchased by him from one Goranta Somayya under a registered sale deed.

Land Acquisition Act, 1894, Land Encroachment Act, 1905 or the Estates Abolition Act, 1948.

On 20-07-1978, to the Tahsildar, Ponduru, received on 22-07-1978, explaining the circumstances and praying for the relief.

(b) The defendant resisted the suit stating that the alleged partition deed, dated 30-05-1960, and the registered sale deed, dated 04-02-1958, are not true, valid and binding on them and that neither the plaintiff nor his vendor have any right, title or interest over the plaint schedule land at any point of time. The plaint schedule land is not the ancestral property of the plaintiff and the averments in the plaint are invented only for the purpose of the suit. The plaint schedule land is part and parcel of Survey No.110 of Gorinta Village, registered as village site poramboke covering a total extent of Acs.14-40 cents and there is vacant site of Ac.1-86 cents. The officials of the defendant have taken steps to assign the vacant site to the weaker sections of the society and since none raised any objection including the plaintiff, possession of the assigned sites was delivered to the landless persons on 09-07-1978 and that the plaintiff cannot question their action.

8 (a) In O.S. No.30 of 1985, the case of the plaintiffs is that Late Venkata Rao, who is the husband of plaintiff No.1 and the father of plaintiff Nos.2 and 3, has inherited the plaint schedule lands i.e., Plot Nos.1 and 2 from his father and after the death of Venkata Rao, they inherited the same. The plaint schedule lands are house sites classified as village site. The plaintiffs and their predecessors in title are enjoying the plaint schedule lands as their absolute lands with full rights of ownership and possession since long time. Since the Tahsildar, Ponduru, deputed his Surveyor to measure the plaint schedule and to sub-divide them into plots to assign the same as house sites to the weaker sections of the society, without any jurisdiction and without initiating any action under the Land Acquisition Act, 1894, Land Encroachment Act, 1905 or the Estates Abolition Act 1948, they submitted a petition, dated 20-07-1978, to the Tahsildar, Ponduru, received on 22-07-1978, explaining the circumstances and as the Tahsildar did not choose to enquire into the matter, he compelled to file the suit.

(b) The defendant resisted the suit stating that neither the plaintiffs nor their predecessors have any right, title or interest over the plaint schedule land at any point of time. The plaintiffs never used the plaint schedule as thrashing floor and they had no cattle sheds thereon. The averments in the plaint are invented only for the purpose of suit. The plaint schedule land is part and parcel of Survey No.110 of Gorinta Village, registered as village site poramboke covering a total extent of Acs.14-40 cents and there is vacant site of Ac.1-86 cents. The officials of the defendant have taken steps to assign the vacant site to the weaker sections of the society and since none raised any objection including the plaintiffs, possession of the assigned sites was delivered to the weaker sections on 09-07-1978 and that the plaintiffs cannot question their action.

9. The trial Court framed as many as seven (7) identical issues, in each of the suits, which are thus:

- "1) Whether the plaint-schedule is correct ?
- 2) Whether the plaintiff is entitled to the declaration and permanent injunction ?
- 3) Whether the suit is not legally maintainable ?
- 4) Whether the suit is premature ?
- 5) Whether the suit is maintainable without issuing section 80 C.P.C. notice ?
- 6) Whether the court fee paid is correct ?
- 7) To what relief ?"

10. Since common question of fact and law are involved in all the matters, joint trial had been taken up and common evidence was recorded in O.S. No.25 of 1985, which was to be treated as evidence in O.S. Nos.27 and 30 of 1985 also.

11. The trial Court by taking up issue Nos.1 and 2 together, appreciating the oral evidence of PWs.1 to 3 and documentary evidence under Exs.A-1 to A-25 marked on behalf of the plaintiffs, the oral evidence of DW.1 - K.V. Narasimha Murthy, Senior Assistant in the office of the Mandal Revenue Officer, Ponduru, documentary evidence under Exs.B-1 to B-64, and having found from Ex.A-1, which is dated 28-07-1975, that the plaint-A schedule property in

O.S. No.25 of 1985 is described as ancestral vacant site and backyard of the vendors' therein and the document Ex.A-23 relates to the period prior to the Estates Abolition Act, 1948 coming into force and survey and settlement operations were done and also having found that the plaint schedule land is described as Village Site Poramboke in the records of Survey and Settlement Office and the Village Accounts, and basing on other oral and documentary evidence and the probabilities derived from the facts, held both the issues against the plaintiffs in all the three suits. Further, on appraisal of both, oral and documentary evidence, held issue Nos.3, 4 and 5 against the defendants.

12. Issue No.6 is also held against the defendants, in view of the findings recorded on issue Nos.1 and 2, and, thus, dismissed all the three suits by recording a finding to that effect on issue No.7. Aggrieved of the same, plaintiffs preferred appeals in A.S. Nos.116, 117 and 118 of 1988, respectively, on the file of the Additional District Judge, Srikakulam.

13. The learned first appellate Court, formulating the point for determination as to

whether the plaintiffs in all the three suits are entitled to declaration and injunction or in the alternate, possession, as prayed for; on appraisal of evidence on record, recorded a definite finding that the subject property is a village site poramboke and there is no evidence worth the name let in by the defendants, except filing Ex.B-1 fair *adangal* to show that the subject lands were assigned to the weaker sections and the beneficiaries have obtained possession of the same and are in possession and enjoyment thereof, based on the report of the Advocate-Commissioner appointed by the trial Court that the suit extents are tallying with the measurements noted in the F.M.B. and that the plaintiffs alone are in enjoyment and possession of the same, recorded a finding as to existence of old trees, cattle sheds, hay-heaps and manure pits in the suit lands, and also existence of *pucca* cattle sheds and no other constructions, and the suit extents being located in Survey No.110 and also the village, the adjoining house owners are enjoying the sites abutting their lands as their personal property, drawn an inference that the plaintiffs and their predecessors were in possession and enjoyment of the disputed plaint schedule property extents since a long time. Thus, the first appellate Court also noted that the report of the Advocate-Commissioner makes it clear that there cannot be any dispute with regard to identity of the suit lands and, thus, when identity of the property is not in dispute and possession and enjoyment of the plaintiffs is also evidenced by the report of the Commissioner, faulted the findings recorded by the trial Court in refusing to grant the reliefs in their favour. The first appellate Court placed reliance on the decisions, more particularly,

decision of the Madras High Court in **N.S. Kuppuswamy Odayar v. The Panchayat Narthangudi**^[1] for the proposition that the mere fact that in the re-settlement register, a particular piece of land has been described as poramboke, will not establish title of the Government over the land in question.

14. The first appellate Court placing reliance on the decision of this Court in **State of Andhra Pradesh v. Raji Rangaiah**^[2], observed that without resorting to the provisions of the Land Encroachment Act or the Estates Abolition Act 1948, the State has no right to dispossess the plaintiffs from the suit land by using force claiming superior right. Further observing that the State has failed to produce any record, more so, the Survey and Land Register to show that after survey and settlement operations, abolition of the estates, the suit property is described as Grama Kantam Poramboke and that the suit properties are appurtenant to the houses of the plaintiffs and there is no dispute with regard to identity of the suit lands, allowed the first appeals reversing the judgment of the trial Court and granted the relief of declaration and consequential injunction as prayed for by directing both the parties to bear their own costs. Aggrieved of the same, these second appeals are preferred by the defendant.

15. It is pleaded by the defendant that the lower appellate Court, somehow, went wrong in recording findings against it.

It is stated that the lower appellate Court having held that the suit land is a 'village site poramboke' failed to appreciate the fact that the entire land is situated in Survey No.110 of Gorinta Village and the suit schedule property forms part of the very same survey number.

It is further stated that Ex.B-1 reveals that the total extent of Survey No.110 is Acs.14-40 cents and out of it, an extent of Ac.1-86 cents is vacant site shown as village poramboke, but the first appellate Court, somehow, overlooked even Exs.B-2 and B-3, which show assignment of land to the weaker sections. It is also stated that the finding recorded by the first appellate Court that even though the suit land is Grama Kantam Poramboke, the defendant failed to show its superior right over the suit land is erroneous.

16. Concerning substantial questions of law, the State formulated the same as under:

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S.A. No.905 of 1998:

- “1. When the respondents failed to prove their title and possession to the suit schedule site, whether the Judgment of the lower appellate court in allowing the suit for declaration and consequential injunction is sustainable ?
2. When it is the duty of the plaintiffs to prove their case and when they failed to prove that the boundaries stated in the documents do not tally with the plaint schedule, can the suit be allowed?
3. When the suit schedule site is not appurtenant to the respondent's building and when the case of the plaintiffs is not that the suit site is appurtenant to their building, whether the lower appellate court is right in declaring respondent's title to it.
4. Can a decree declaring title to the suit schedule vacant site belonging to Govt. be granted on the basis of alleged long possession without there being positive proof of possession?”

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S.A. No.908 of 1998:

- “1. When the respondent failed to prove his title and possession to the suit schedule site, whether the Judgment of the lower appellate court in allowing the suit for declaration and consequential injunction is sustainable ?
2. When it is the duty of the plaintiffs to prove their case and when they failed to prove that the boundaries stated in the documents do not tally with the plaint schedule, can the suit be allowed?
3. When the suit schedule site is not appurtenant to the respondents building and when the case of the plaintiffs is not that the suit site is appurtenant to their building, whether the lower appellate court is right in declaring respondent's title to it.
4. Can a decree declaring title to the suit schedule vacant site belonging to Government be granted on the basis of alleged long possession without there being positive proof of possession?”

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S.A. No.804 of 1998:

- “1. When the respondent failed to prove his title and possession to the suit schedule site, whether the Judgment of the lower appellate court in allowing the suit for declaration and consequential injunction is sustainable ?
2. When it is the duty of the Plaintiff to prove his case and when he failed to prove that the boundaries stated in his documents do not tally with the plaint schedule, can the suit be allowed?

3. When the suit schedule site is not appurtenant to the respondent's building and when the case of the plaintiff is not that the suit site is appurtenant to his building, whether the lower appellate court is right in declaring respondent's title to it.

4. Can a decree declaring title to the suit schedule vacant site belonging to Govt. be granted on the basis of alleged long possession without there being positive proof of possession?"

17. Heard the learned Government Pleader for Arbitration appearing for the State - defendant (appellant), and Sri P.V. Vidya Sagar, learned counsel appearing for the respondents (plaintiffs), in all the appeals, and perused the material on record.

18. In fact, having heard both sides, these matters were reserved for orders. Soon after the matters were reserved for orders, learned counsel for the plaintiffs has circulated a decision of a learned single Judge of this Court in **Karri Raghavulu v. Principal Secretary, Registration & Stamps Department**^[3] decided on 07-04-2015 in W.P. No.9552 of 2015. The matter was, therefore, again listed for 'further hearing' on 18-09-2015 and since none appears for the defendant, adjourned to 23-09-2015, and, on that day, directed to list today under the caption "for judgment". Still, today also, there is no representation for the defendant. It is listed for 'further hearing' only to draw the attention of the learned Government Pleader with regard to the decision in **Karri Raghavulu's Case** (Supra 3) relied on by the learned counsel for the plaintiffs, as such, taken up for judgment.

19. Amongst the substantial questions of law aforementioned, in fact, the first three (3) questions relate to factual aspect and only the fourth question relates to question of law. The only disputed question is whether the subject land (suit schedule properties) is 'Grama Kantam Land' and whether it is vested in the Government or not?

20. It is the submission of the learned counsel for the plaintiffs that this Court in **Karri Raghavulu's Case** (Supra 3), ruled that occupied 'Grama Kantam' by its very nature of classification does not belong to the Government to include the same in the prohibitory list either under the Madras Estates Land Act or in the Estates (Abolition and Conversion into Ryotwari) Act and exceptions have been carved out and Grama Kantam is one of the categories of land which is not included in the Government lands. It is, therefore, submission of the learned counsel for the plaintiffs that since the suit lands are appurtenant to the houses of the plaintiffs and they are being used either as thrashing floors or for storing the hayrick construed as hayrick yard, and, even Ex.B-1 clearly showing that Survey No.110 is recorded therein as 'Grama Kantam Land', the defendant cannot contend that possession of the suit sites were given to the Weaker Sections belonging to the Scheduled Castes and the Backward Classes, more particularly, when the evidence of DW.1 is not clinching enough to establish the same.

21. It is no doubt true, dealing with the second appeal, more particularly, the substantial questions of law, evidence need not be probed into, but the exceptions being that the very title is in dispute and it is a reversal judgment, it is imperative for this Court to look into the evidence

of the Senior Assistant, Mandal Revenue Officer, Ponduru, who is examined as DW.1. His evidence reflects that though, he asserts in his chief-examination that the Government have taken possession of all the sites in question and even possession was delivered to the respective allottees of the weaker sections and filed Ex.B-2 so-called delivery receipts of the assignees in token of delivery of the land, but a perusal of the answers given by him in his cross-examination would show that he has no awareness at all as regards identity or location of the plaint schedule sites. The answers given by him in his cross-examination would show that no separate register was maintained for entering the applications for allotting house site pattas. It also shows that the Government has not prepared any separate register for applications for house site pattas and did not prepare any layout to grant individual pattas. He admits that who do not own houses, house site pattas will be granted to them and the patta registers will be verified at the time of Zamabandhi every year. Certain other answers given by him in his cross-examination would condemn what all he asserted in his chief-examination. But, it is certain from the answers given by this witness, that R.S. No.110 is registered as 'Grama Kantam' as per village accounts. Even the same situation is reflected from a perusal of Ex.B-1 to show that the nature of the land in RS No.110 is 'Grama Kantam Land'.

22. Now, the further question that arises is whether the Government has authority to deal with 'Grama Kantam Land' in dividing it into plots and allotting it to the weaker sections?

23. In **Karri Raghavulu's Case** (Supra 3), relied on by the learned counsel for the respondent referred to hereinabove (Supra 3), this Court extensively dealt with the meaning of "Grama Kantam Land" as occurring in P. Ramanatha Aiyar's Law Lexicon as 'a part of ground in a village for building huts upon' and Grama Natham (Tamil) as 'ground set apart on which a house of a village may be built'. The meaning of expression "Grama Kantam" referred to in the decision is derived from 'Glossary of Judicial and Revenue Terms of British India - 1855'. In the said decision, Section 3(ii) of the Survey and Boundaries Act, 1923, which deals with definition clauses and defines the Government land, was referred to, and observed that 'Grama Kantam Land' is not included in the definitions.

Even Section 2 of the A.P. Land Encroachment Act was also referred to, which deals with the right of property in public roads, etc., waters and lands. Even the Board Standing Order 21 Part 4 is also extracted. Therefore, the learned single Judge placing reliance on the decision in **Palani Ammal v. L. Sethurama Aiyangar** [(1) (1949) 1 MLJ 290] and also other decisions, and while referring to Section 18 of Act XXVI of 1948, held that a building in a Gramanatham (or village habitation) is protected from transfer of title to the Government both under Section 18(1) of Madras Act XXVI of 1948 and under the Madras Land Encroachment Act (III of 1905), ruled thus, in paragraph No.17:

"Therefore, occupied Gramakantam by its nature or classification does not belong to the Government to include the Gramakantam in the prohibitory list. Either under the Madras Estates Land Act or in the Estates (Abolition and Conversion into Ryotwari) Act exceptions have been carved out and Gramakantam is one of the categories of land which is not included in the Government lands. This Court is of the opinion that refusing to entertain document for registration on the ground that the subject property is classified as Gramakantam amounts to illegal refusal and consequently the writ petition is ordered by directing the Sub-Registrar/3rd respondent to receive the document presented by the petitioner for registration of subject property without reference to the

classification of petition land as Gramakantam, consider the same and pass orders for registration, if the document is otherwise compliant. No order as to costs.”

24. Thus, it is clear that ‘Grama Kantam’ is one of the categories of the land, which is not included in the Government Lands, and, therefore, certainly, the same cannot mean that the plaint schedule properties in all the three suits since poramboke sites, vests in the Government. When viewed in that perspective, certainly, it is not open for the Government to lay any claim over the suit schedule properties. Incidentally, it is also necessary to refer to a relevant fact, that the report of the commissioner marked as Ex.A-21 would clearly show the identity of the plant schedule lands with definite location as being appurtenant to the houses of the respective plaintiffs, and, therefore, all the plaintiffs have not established identity of respective suit sites and that the description of the properties in the plaint schedules is incorrect, cannot be sustained.

25. Thus, viewed from any angle, on the question of law mentioned as No.4 in the grounds of appeal, it has to be held that the defendant (appellant) viz., State has not substantiated it, and, thus, all the three appeals fail and, therefore, they are dismissed confirming the common judgment and decrees passed by the first appellate Court. There shall be no order as to costs.

26. Consequently, Miscellaneous Applications, if any, pending in these appeals stand closed.

A. SHANKAR NARAYANA, J

October 1, 2015.

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[\[1\]](#) (1971) 1 MLJ 1990

[\[2\]](#) 1972 1 APLJ 386

[\[3\]](#) 2015 (3) ALT 215