

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

SECOND APPEAL No.239 of 2013

Date:27.02.2015

Between:

Kummari Balakrishna,
S/o Ramaiah and another

..... Appellants

And:

Elegonda Sudhakar Reddy,
S/o Laxma Reddy

.....Respondent

Counsel for the Appellants: Sri C.Raghu

Counsel for the Respondents: Sri Vinjamuri Ranga Babu

The Court made the following:

JUDGMENT:

This Second Appeal arises out of judgment and decree, dated 28.09.2012, in A.S.No.133 of 2006 on the file of IV Additional District and Sessions Judge (Fast Track Court), Ranga Reddy District at L.B.Nagar, whereby he has confirmed the judgment and decree, dated 20.03.2006, in O.S.No.133 of 1999 on the file of Junior Civil Judge, Ibrahimpatnam, Ranga Reddy District.

The respondent filed the above-mentioned suit for perpetual injunction against the appellants in respect of land admeasuring Ac.0.39 guntas in Survey No.316/AA of Mankhal Village, Maheshwaram Mandal, Ranga Reddy District. It is his pleaded case that the suit

schedule land is an inam land and that on recognition of his right, Occupancy Rights Certificate was issued to him in Form No.3. He has also filed certified copies of pahanies for the years 1999-2000 and 2000-2001, which were marked as Exs.A-6 and A-7, respectively.

The appellants have pleaded that they have purchased the suit schedule property under unregistered sale deed, dated 05.11.1995 and that on the appeal filed by them challenging grant of Occupancy Rights Certificate to the respondent under Ex.A-4, the Joint Collector, Ranga Reddy District has set aside the same by his order, dated 08.11.2005, which was marked as Ex.B-5. The trial Court by its judgment observed that no doubt, Ex.A-4-Occuancy Rights Certificate issued to the respondent was cancelled under Ex.B-5-order of the Joint Collector, but however Writ Petition No.25502 of 2005 was filed by the respondent challenging Ex.B-5.

The trial Court has also considered the other documentary and oral evidence and concluded that the respondent is in physical possession of the suit schedule property and has, accordingly, decreed the suit. The lower appellate Court confirmed the said judgment and decree in A.S.No.133 of 2006.

Sri C.Raghu, learned counsel for the appellants, submitted that both the Courts below have committed a serious illegality in relying upon Exs.A-6 and A-7-pahanies filed by the respondent as, the same were based on Ex.A-4-Occupancy Rights Certificate, which was set aside under Ex.B-5-order.

In a suit for injunction simplicitor, the Court is primarily concerned with the possession of the parties. A person's possession in respect of agricultural land is proved by the documentary evidence, such as pahanies, which are part of the revenue record. Once pahanies

are issued, it is legally permissible to presume that he is in physical possession of the property. Therefore, even if Ex.A-4-Occupancy Rights Certificate was set aside under Ex.B-5-order, Exs.A-6 and A-7-pahanies will not lose their evidentiary value, unless the appellants are able to show that they are in actual physical possession of the suit schedule property by producing the relevant documentary evidence.

On their part, the appellants have only filed pahanies for the years 1993-94 and 1994-95 (Exs.B-3 and B-4 respectively). The suit was filed in the year 1999. Therefore, the said documents do not prove the appellants' possession as on the date of filing of the suit by the respondent. As the suit was only for injunction simplicitor, Ex.B-5-order, setting aside Ex.A-4-Occupancy Rights Certificate, may not have much bearing on its outcome. The substantive rights of the parties are evidently governed by the proceedings arising under the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 including Writ Petition No.25502 of 2005.

On the analysis as above, the trial Court has rightly granted injunction based on the possession of the respondent and the same has been rightly confirmed by the lower appellate Court. Hence, I do not find any reason to interfere with the concurrent findings of fact rendered by the Courts below. However, the judgments of the Courts below and the dismissal of the Second Appeal would not affect the right of the appellants to contest Writ Petition No.25502 of 2005.

Subject to the above observations, the Second Appeal is dismissed.

As a sequel to dismissal of the Second Appeal, SAMP.No.594 of 2013 filed by the appellants for interim relief stands dismissed as infructuous.

*JUSTICE C.V.NAGARJUNA
REDDY*

*27th February, 2015
DR*