

HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.91 OF 2006

Dated 21-1-2015

Between:

Mallabattula Nagamani and others.

_____.Appellants.

And:

_____.Mallabattula Nagamani and others.

_____.Respondents.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.91 OF 2006

JUDGMENT:

This appeal is against judgment dated 16-6-2005 in A.S.No.51 of 1998 on the file of Senior Civil Judge, Kovvur whereunder judgment dated 17-4-1998 in O.S.No.447 of 1990 on the file of I Additional Junior Civil Judge, Kovvur, is reversed.

Brief facts leading to this appeal are as follows:

First respondent herein filed O.S.No.447 of 1990 against one Mallabathula Nagamani and five others for permanent injunction and trial court after considering oral and documentary evidence dismissed the suit of first respondent herein holding that he failed to prove his possession of plaint schedule property as on the date of filing of suit and aggrieved by dismissal of the suit, he preferred appeal to the Senior Civil Judge, Kovvur and on a reappraisal of evidence, the Senior Civil Judge, Kovvur reversed the findings of the trail court and decreed the suit and aggrieved by which, first defendant in the suit preferred the present appeal and during pendency of the appeal, she died and her Legal Representatives are brought on record as appellants 2 and 3 and second defendant who is shown as second respondent in this appeal is transposed as fourth appellant.

Parties are hereinafter referred to as 'plaintiff and defendant' as arrayed in the suit for convenience and better understanding.

According to plaintiff, plaint schedule property is his ancestral property which fell to the share of his grandfather by name Sarvayya in the partition that took place between Sarvayya and his brothers Pullayya and Veerayya about 100 years ago. According to plaintiff, Sarvayya had three sons by name Basavayya, Tatayya and Somanna. The property fell to the share of Sarvayya is succeeded to his three sons and grandsons.

According to plaintiff, first defendant (wife of Narayya son of Pullaya one of the brother of Sarvayya) got land to the west of schedule property which fell to the share of Pullayya. Plaintiff has constructed a small thatched house in an extent of Ac.0-08 cents and enjoyed the plaint schedule property uninterruptedly and the first defendant has been proclaiming that she will forcibly occupy the property with the help of her party workers as she belongs to communist party and therefore, he filed the suit for permanent injunction.

On the other hand, first defendant disputed claim of plaintiff and according to her, plaintiff is nothing to do with plaint schedule property and the plaint schedule property which fell to the share of Pullayya in the partition was succeeded by her husband and after the death of husband, she succeeded to it and enjoying the same without any interruption. Revenue authorities issued patta in the name of her father-in-law for Ac.3.59 cents and out of the said land, her husband sold away Ac.1.50 cents and the remaining Ac.2.09 cents has been in her possession and enjoyment. She further contended that plaintiff has no right in the suit schedule property.

On these allegations, trial court examined seven witnesses on plaintiff's side besides marking eight documents and examined four witnesses besides

marking 23 documents on behalf of defendants and on an overall consideration of oral and documentary evidence, dismissed the suit. As already referred, in appeal, the claim of plaintiff is accepted and suit is decreed in favour of plaintiff. Aggrieved by which, present Second Appeal is preferred.

Heard arguments.

Advocate for appellant submitted that the lower appellate court only relying on a boundary recital in Ex.A.1 sale deed accepted the contention of plaintiff ignoring all the revenue documents which would clinchingly show that first defendant has been in possession and enjoyment of the suit schedule property since long time prior to filing of the suit.

He further submitted that appellate court erroneously decreed the suit on surmises and presumptions ignoring documentary evidence. He submitted that in a suit for injunction, plaintiff has to prove his possession as on the date of the suit besides legal right in the property but the plaintiff has miserably failed in discharging the said burden but the appellate court only on the basis of entry in the sale deed relating to one boundary decreed the suit and the findings of the appellate court are not based on evidence.

On the other hand, advocate for plaintiff submitted that appellate court rightly decreed the suit because, Ex.A.1 document is a document executed by husband of first defendant wherein plaintiff was shown as owner on one side in the boundaries and that there are no grounds to interfere with the findings of the appellate court.

Appellants contended that the following are substantial questions of law that require consideration.

4. *In a suit for bare injunction, whether the lower appellate court is justified in granting injunction on the basis of mere surmises and presumptions?*
5. *Whether the lower appellate court acted legally in not framing a point for consideration with regard to*

the possession of the property as on the date of filing of the suit?

6. *In the absence of proof of possession as on the date of filing of the suit?*
7. *Whether the lower appellate court acted legally in granting injunction only on the basis of Ex.A.1 dated 17-6-1958 in a suit filed for injunction in the year 1990?*

Now the point that would arise for my consideration in this appeal is whether the findings of the appellate court are contra to the material on record?

POINT:

As already referred above, suit is filed for mere injunction and the suit schedule property is to an extent of Ac.1-70 cents out of total extent of Ac.3.59 cents in R.S.No.83 of 5 of Srinivasapuram village, Jangareddygudem, West Godavari District.

It is the specific case of plaintiff that this property fell to the share of his grand father in the partition and the same is enjoyed by plaintiff's predecessors and also plaintiff whereas the contention of first defendant is that this property fell to the share of her father-in-law Pullayya and they have been in possession and enjoyment of property all through.

Admittedly, Pullayya i.e., father-in-law of first defendant and Sarvayya i.e., grand father of plaintiff are own brothers and there was a partition among themselves with another brother about century back both sides have not produced any documentary evidence in respect of said partition. But the fact remains that the property was ancestral property. Both parties have adduced oral evidence supporting their respective contentions. So far as documentary evidence is concerned, 1st defendant has produced pattadar passbook, entries in revenue record, tax receipts etc., whereas plaintiff, except relying on the recitals of sale deed executed by husband of first defendant, did not produce any revenue records. In a suit

for injunction, the burden is on the plaintiff to prove possession and his legal right. So far as legal right is concerned, there is absolutely no documentary proof except oral testimony of P.W.1. Regarding possession, he has not produced any revenue records to show that this property was enjoyed by his predecessor for some time and after the death of his predecessor, he continued and has been enjoying the same. There is no dispute that the total extent belong to this family in S.No.83/5 is Ac.3.59 cents. Now the plaint schedule property is Ac.1-70 cents out of this Ac.3.59 cents. It is the specific case of first defendant that Ac.3.59 cents fell to her

father-in-law's share and out of Ac.3.59 cents, her husband sold Ac.1.50 cents under Ex.A.1 sale deed and remaining Ac.2.09 cents was in their possession and enjoyment. Plaintiff failed to plead as to how this Ac.1.70 cents out of Ac.3.59 cents fell to the share of his predecessors. On defendant's side, bunch of tax receipts is marked as Ex.B.1 which show that defendant's husband paid land revenue for this land from 1963 to 1965 and again from 1976 to 1988. First defendant also produced pattadar pass book which is marked as Ex.B.17 in which this property is recorded against her husband's name. Defendant also produced certified copy of adangal issued by Mandal Revenue Officer, Jangareddygudem for Fasli 1403 and 10(1) account for Fasli 1380 which are marked as Exs.B.18 and B.20 respectively in which this suit property was shown in the name of husband of first defendant. To rebut these documents, plaintiff did not file any documents to show that plaintiff or his father or plaintiff or his predecessor were in possession and enjoyment of the suit property.

Admittedly, suit property is an agricultural land and the owner of the land or the cultivator of the land is bound to pay land revenue to the Government. Plaintiff failed to explain as to why he has not paid any tax for any single

year though he claimed long possession for more than a decade. The appellate judge ignoring all the revenue records simply carried away with the boundary recital in Ex.A.1 and basing on that reversed a well considered judgment of trial court.

As rightly pointed out by advocate for appellant, lower appellate court did not refer to any of these revenue records produced by the first defendant and failed to answer as to why they are discarded. When the tax receipts do show that property is enjoyed by first defendant till 1988, burden is heavy on the plaintiff to show as to how the first defendant lost possession and how plaintiff came into possession. It is not the case of plaintiff that he came into possession of the suit land after 1988, on the other hand, it is the specific case that he and his predecessors in title have been in possession and enjoyment since some decades which version is falsified by the documentary evidence produced by first defendant under Exs.B.1 to B.20. As rightly pointed out by advocate for appellant, there is absolutely no evidence to show that plaintiff or his predecessors were in possession of the suit schedule property as on the date of the suit or any time prior to the filing of the suit. In the absence of such evidence, simply relying on boundary recital in one document decreeing the suit, in my view, is absolutely incorrect and therefore, the findings of the appellate court have to be treated as findings given on surmises and presumptions.

For these reasons, this Second Appeal is allowed and judgment dated 16-6-2005 in A.S.No.51 of 1998 on the file of Senior Civil Judge, Kovvur is set aside and judgment of trial court dated 17-4-1998 in O.S.No.447 of 1990 on the file of

I Additional Junior Civil Judge, Kovvur, is restored. There shall be no order as to costs.

As a sequel to the disposal of this appeal, the

Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE

S.RAVI KUMAR

Dated 21-1-2015

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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