

HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.966 OF 2006

Dated 19-1-2015

Between:

Vuppul Mallaiah and another.

_____...Appellant.

And:

Narlagir Ramalingam and others.

_____...Respondents.

-

-

HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.966 OF 2006

JUDGMENT:

-

This appeal is against judgment and decree dated 3-1-2006 in A.S.No.93 of 2003 on the file of V Additional District Judge, Warangal whereunder judgment and decree dated 1-9-2003 in O.S.No.1200 of 1998 is set aside.

Appellants herein are plaintiffs and respondents herein are defendants in the above referred O.S.No.1200 of 1998 and parties hereinafter are referred to as 'plaintiff' and 'defendant' as arrayed in the suit.

Brief facts leading to this appeal are as follows:

Plaintiffs filed a suit for injunction initially against D.1 to D.4 restraining them from interfering with possession and enjoyment of the land in Survey No.46 at Bapujinagar, Kadipikonda village, Hanamkonda Mandal, Warangal District and subsequently, D.5 and D.6 are added as per orders in I.A.No.1729 of 1999.

According to plaintiffs, in the year 1957, Government acquired their land from their father V.Veeraiah in Survey No.14 and in lieu of the

acquisition, allotted suit schedule land in S.No.46 and since then, they are in possession and enjoyment of the suit schedule property. They further contended that their father died about 15 years prior to the filing of the suit and after the death of their father, they became absolute owners and paid land revenue for the said land till 1991-92 and thereafter, Government discontinued collection of land revenue. They also contended that their father was issued a rytwari pass book and defendants 1 to 4 are land grabbers and strangers and they tried to encroach into the suit schedule land on 20-2-1998, on that, plaintiffs lodged a complaint with the police and in view of the threat, they constrained to file the suit for injunction.

Defendants 1 to 4 remained ex parte and after D.5 and D.6 are impleaded and they filed written statement contending that the suit property is not a Government poramboke and that as per the records, one N.Katta Mallayya was pattadar for S.Nos.44 and 45 but he was mistakenly shown as pattadar for the suit schedule land also but he was never in occupation of the suit schedule land and that name of plaintiffs' father is entered in Khasra Pahani in respect of suit land without any authority and that steps are being taken for rectification of entries and proposals were submitted to District Collector, thereafter, after due notice to the plaintiffs and also after due hearing, pahanies have been rectified and that the plaintiffs have no right in the suit schedule property and that suit is liable to be dismissed.

On these allegations, trial court examined two witnesses on plaintiffs' side and marked 17 documents, examined one witness on defendants' side and marked 2 documents besides marking C.1 to C.29 as court documents.

On an overall consideration of oral and documentary evidence, trial court decreed the suit and granted injunction restraining the defendants from interfering with possession and enjoyment of the suit schedule property till the plaintiffs are evicted under the due process of law. Aggrieved by the same, defendants preferred appeal and the appellate court, on a reappraisal of evidence, set aside the decree granted by the trial court. Aggrieved by the same, present appeal is preferred.

According to the plaintiffs, the following are the substantial questions of law:

- A. *Whether the First Appellate Court is justified in not considering the document Ex.A.17 in the light of Section 90 of the Indian Evidence Act, whereunder, if any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume as to its genuineness?*
- B. *Whether the First Appellate Court is justified in not appreciating the statutory presumption under Section 6 of A.P.Rights in land and pattedar pass book Act 1971, whereunder it is mandated that every entry in the record of rights shall be presumed to be true until the contrary is proved.?*
- C. *Whether the First Appellate Court is justified in not observing the true object of Section 166-B of A.P.(T.A.) Land Revenue Act 1317.F and not following the principles laid down by this Honourable High Court that revisional powers of the Government under 166-B though no period of limitation is prescribed for exercising provisional power, such power be exercised within the reasonable time, revision after lapse of several years is unreasonable and arbitrary?*

Heard both sides.

Advocate for plaintiff argued only on factual aspects and has not touched the questions of law that was urged in the grounds of appeal. He submitted that the trial court by giving cogent and convincing reasons accepted that plaintiffs are in possession and enjoyment of plaint schedule property but the appellate court without any valid reason reversed findings of the trial court. He further submitted that when the own documents of defendants 5 and 6 i.e., revenue records disclose and establish possession of plaintiff, ignoring those documents without any valid reasons is not at all correct and the appellate court committed error in reversing the findings of the trial court. He also submitted that interference of plaintiffs possession is duly proved with convincing evidence and order of the appellate court is quite illegal.

On the other hand, learned Government Pleader submitted that when the plaintiffs failed to substantiate their main plea that the suit property was given to them in lieu of acquisition of land in Survey No.14 in the year 1957, the appellate court has rightly reversed findings of the trial court and that there are no grounds to interfere with the appellate court's findings. He further submitted that even the points that are urged on behalf of plaintiffs are in respect of factual aspects and no question of law is involved and therefore, the Second Appeal is liable to be dismissed.

Now the point that would arise for my consideration in this appeal is whether there is any substantial question of law to be decided by this court?

POINT:

Plaintiffs are sons of one Veerayya. It is the specific case of plaintiffs that their father was owner of

land in S.No.14 and the Government acquired that land in the year 1957 and in lieu of said acquisition, Government allotted land in S.No.46 i.e., suit schedule property and that their father enjoyed the property during his life time and after his death, plaintiffs continued to enjoy it. So even according to plaintiffs, the suit schedule land belongs to Government and the same was given to them in exchange of land acquired from them in S.No.14. Plaintiffs have not placed any evidence to support their version that their land in S.No.14 was acquired by Government in the year 1957 and in turn the suit schedule land was allotted to them. Plaintiffs mainly relied on certain entries in the records of Government to support their contention that they are in possession and enjoyment of suit schedule land. They produced pahanies to support their plea but the Government contended that those entries were made by mistake or they were rectified after due enquiry.

As seen from the record, D.R.O. conducted enquiry after due notice to the plaintiffs and as a result of enquiry, he ordered for rectification of entries and issued proceedings which is marked as Ex.B.1. Plaintiffs have not filed any appeal challenging the proceedings of D.R.O. under Ex.B.1. During evidence, plaintiffs pleaded ignorance of Ex.B.1 proceedings but as seen from the record, their ignorance cannot be accepted for the simple reason that they were defended in the proceedings before D.R.O. by the same counsel who appeared for them in the suit before civil court. When the entries in the pahanis are rectified by way of separate proceedings which became final, plaintiffs cannot lay foundation to prove their possession on such documents. Except these documents, they have not produced any independent

evidence to prove their claim on the suit property. The other documents like Land Revenue Receipts, Pattedar Pass Books which were issued on the basis of wrong entries in the pahanies. When the plaintiffs failed to show that this land in S.No.46 was given to them by Government in lieu of land acquired from them in S.No.14, all these documents cannot have any force to prove their contentions. If really, the land in S.No.14 was acquired, nothing prevented plaintiffs from producing the award passed by the authorities for such acquisition and allotment of this land in lieu of acquisition.

So far as oral evidence is concerned, one of the plaintiffs is examined as P.W.1 and one Ex-counsellor is examined as P.W.2. He deposed that this land in S.No.46 was offered by plaintiff for establishment of market area and as there was no sufficient amount, that proposal was postponed. If really, version of P.W.2 was correct, there shall be record in the Municipal Office for the alleged proposal of taking land in S.No.43 to 45 and 46 for establishment of market area and also about the offer of plaintiffs. In the trial court, a court Commissioner was appointed and the Commissioner after visiting suit property took photographs, which disclose existence of huts in the suit property which falsifies the contention of plaintiffs about cultivation of this land.

So considering all these aspects, appellate court reversed findings of the trial court and there is absolutely no material to support the version of plaintiffs as to the allotment of this land to their father in lieu of acquisition. As rightly pointed out by learned Government Pleader, all the submissions made on behalf of plaintiffs are on factual aspects and no question of law leave alone substantial question of law

is shown and argued before this court for determination.

In a Second Appeal, unless there is substantial question law, this court cannot interfere with the findings of the trial court which are based on factual aspects.

On a scrutiny of material, I am of the considered view that no question of law is involved in this case leave alone substantial question of law and therefore, Second Appeal is devoid of merits.

For these reasons, this Second Appeal is dismissed but under the circumstances, without costs.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI
KUMAR

Dated 19-1-2015

Dvs

HONOURABLE SRI JUSTICE S.RAVI
KUMAR

-
-
-
-
-
-
-
-
-
-
-
-

-
-
-
-
-
-
-

SECOND APPEAL No.966 OF 2006

Dated 19-1-2015

Dvs