

HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.1043 OF 2009

Dated 19-1-2015

Between:

Manthina Narasimha Raju (died) and others.

..Appellants.

And:

State of Andhra Pradesh, represented by District
Collector, Visakhapatnam.

..Respondent.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.1043 OF 2009

JUDGMENT:

This appeal is against judgment and decree dated 13-8-2009 in A.S.No.333 of 2006 on the file of Principal District Judge, Visakhapatnam whereunder judgment dated 17-6-2005 in O.S.No.702 of 1993 on the file of II Additional Senior Civil Judge, Visakhapatnam, is set aside.

Appellants herein are plaintiffs and respondent is defendant in the above referred O.S.No.702 of 1993 and parties are hereinafter referred to as "plaintiffs and defendant" as arrayed in the suit for convenience and better understanding.

Brief facts leading to this appeal are as follows:

Originally, suit is filed by sole plaintiff for declaration and injunction and trial court decreed the suit. Challenging the same, defendant preferred appeal and during pendency of appeal, sole plaintiff died and plaintiffs 2 and 3 i.e. appellants herein are impleaded as legal representatives of sole plaintiff.

Sole plaintiff contended that he is absolute owner of the suit schedule property which was his ancestral

property and it was under cultivation of plaintiff since several decades and that he raised trees which are of the age of more than 50 years. According to the plaintiff, the schedule property was originally in the estate of Vizianagram and on account of abolition of Estate under provisions of Estates Abolition Act, plaintiff claimed and asserted his right on the schedule property during survey operations, but settlement authorities by ignoring nature of land and possession of plaintiff erroneously recorded the schedule property as a hill poromboke and as the revenue officials are threatening with dispossession, plaintiff is constrained to file the suit for declaration and injunction.

Defendant resisted claim of plaintiff and contended that plaintiff is an encroacher and he entered into the properties in the year 1960 and B.Memos were booked against him and that the Civil Court has no jurisdiction in view of the provisions of Section 11 A of Estate Abolition Act. Defendant further contended that as per the records, the schedule property is recorded as hill poramboke and that there is no evidence to show that plaintiff was inducted into possession by Zamindar and that the plaintiff has no right over the suit schedule property and he is not entitled for declaration and injunction.

On these pleadings, trial is conducted, during which, three witnesses are examined and eighteen documents are marked on behalf of plaintiff and one witness is examined and seven documents are marked on behalf of defendant.

On an over all consideration of oral and documentary evidence, trial court decreed the suit granting reliefs as claimed in the plaint and aggrieved by the same, defendant preferred appeal and the appellate court on a reappraisal of evidence reversed findings of the trial court and consequently, allowed the appeal and dismissed the suit. Aggrieved by the same, present

appeal is preferred.

Heard both sides.

Advocate for plaintiffs submitted that as per settled legal position, plaintiffs can maintain a suit in Civil Court in respect of rejection of his request for grant of patta. He further submitted that appellate judge took the enquiry material before the Settlement Officer into consideration ignoring evidence that was recorded in the suit. He also submitted that the entire findings of the appellate court are not based on the evidence that was recorded in the suit but they were based on the material that was collected by Settlement Officer during enquiry, which is not permissible. He submitted that the original plaintiff is a poor ryot and he filed the suit in forma of pauperies and though defendant was set exparte, trial court dismissed the suit of plaintiff which was challenged in the appeal and appellate court, as per orders in A.S.No.251 of 1997, remanded the matter to the trial court and on remand, trial was conducted and witnesses were examined on the basis of which a decree is passed in favour of plaintiff. He further submitted that in order to claim ryotwari patta under Section 11-A of the Estate Abolition Act, the claimant has to prove in the first instance that he is a ryot and has been inducted into possession before the date of notification of Act i.e., 1-7-1945.

He also submitted that as per the evidence on record, plaintiffs' father was in possession and enjoyment of the schedule property since November, 1944 which is evident from Ex.A.1, an entry in 'A' Register of Vizianagaram Samsthanam and it is further supported by land revenue receipt dated 10-11-1944 paid by father of plaintiffs to Vizianagaram Estate marked as Ex.A.7 which are further supported by Exs.A.8 to A.14. He also submitted that evidence of P.W.1 is supported and corroborated by two independent witnesses who are neighbours of plaintiff schedule property examined as

P.Ws.2 and 3 and the fact that cashew trees, mango trees, casurana trees and teak wood trees existing in the schedule property are more than 60 years age and all these aspects clearly establish continuous possession and enjoyment of the plaintiff over the plaint schedule property and when such a clinching and convincing evidence is placed before the court, the appellate court without any valid grounds discarded this evidence by taking into consideration the material collected by Settlement Officer during his enquiry under Section 11 of the Estates Abolition Act, which was not marked in the suit.

He also submitted that the findings of the appellate court are only on surmises and presumptions and not based on material evidence therefore, such findings would amount to perverse findings and they are liable to be set aside in a second appeal by treating them as substantial questions of law.

He submitted that objection of the defendant that the orders of the Settlement Officer passed under Section 11 of the Estates Abolition Act, would operate as res judicata cannot be sustained, so also the objection with regard to Civil Court jurisdiction. He also submitted that enquiry by Settlement Officer is only a summary enquiry whereas enquiry conducted by the trial court for declaration of title is a full-fledged enquiry and evidence of P.Ws.1 to 3, which is supported and corroborated with documentary evidence is not at all rebutted but the appellate court simply discarded such convincing evidence. He further submitted that appellate court accepted the plea of the defendant that possession was taken back from the plaintiff on 26-5-1998. He further submitted that the suit is filed in forma pauperies in the year 1992 and after conducting enquiry, the suit was registered in the year 1993 and it was finally disposed of in June, 2006 and when the proceedings are pending before a Civil Court,

for relief of possession and injunction, the plea of defendant that possession was taken back on 26-5-1998 cannot be accepted.

He submitted if really possession was taken on 26-5-1998, defendant ought to have informed trial court of such an important fact and get the same recorded but no such steps are taken and in spite of that, appellate court accepted that version. He further submitted that trial court gave cogent and convincing reasons for accepting the evidence of P.Ws.1 to 3 and such a well reasoned judgment was reversed on presumptions and surmises and therefore, the order of the appellate court has to be set aside.

Learned Government Pleader submitted that appellate judge was right in reversing the findings of the trial court. He further submitted that the evidence of D.W.1 which is supported and corroborated by documents Exs.B1 to B.7 would clearly show that plaintiff is only an encroacher and as such, he is not entitled for relief of declaration and that there are no grounds to interfere with the findings of the appellate court.

One of the questions of law that was raised in the grounds of appeal is about jurisdiction of Civil Court. Now it has to be seen whether the Civil Court has got jurisdiction.

The objection of the defendant is that when the plaintiff approached Settlement Officer for grant of patta and the same is not granted, Civil Court has no jurisdiction to entertain the claim of such person.

In the *STATE OF TAMILNADU v. RAMALINGA SAMIGAL MADAM* (^[1]), Honourable Supreme Court held that "Civil court jurisdiction is not barred, even though the Settlement Officer refused to grant ryotwari patta under Section 11 of the Estates Abolition Act, in that case, Honourable Supreme Court held as follows:

"The Civil Court's jurisdiction to

adjudicate on the real nature of the land is not ousted under Section 64-C by reason of the Settlement Officer's decision to grant or refuse to grant a patta under Section 11 read with the Proviso to Section 3 (d) of the Act."

This court in *NALLIPATTU RAMAKRISHNA REDDY AND ANOTHER vs. KASALA BALAIAH AND ANTOHER*

(^[2]) held as follows:

"The Civil Court has jurisdiction to decide the questions arising under Section 11 of the Act, notwithstanding, any earlier decision of the Settlement Authority as to the persons entitlement to the grant of patta under Section 11 of the Act."

From the above two decisions, it is clear that Civil Court has jurisdiction in spite of the fact whether patta is granted or not under Section 11 of the Estates Abolition Act and therefore, as rightly pointed out by advocate for plaintiff, the suit filed by plaintiff is perfectly maintainable since the Civil Court has got jurisdiction.

Appellate court was under the view that the Civil Court judgment would amount to setting aside the order of the Settlement Officer but that view is not at all correct in view of observations of this court in the decision second cited. Therefore, order of the appellate court with regard to jurisdiction of the Civil Court is not at all correct. In fact, this objection was also raised before trial court and the learned trial Judge by considering the following decisions, i.e, in *STATE OF A.P. Vs. B. VENKATAMMA AND OTHERS* (^[3]), *SAJANA GRANITES, MADRAS AND ANOTHER Vs. MANDUVA SRINIVASA RAO AND OTHERS* (^[4]), and *SRI KRISHNA SALT WORKS, WALTAIR, VISAKHAPATNAM, Vs. STATE OF A.P.* (^[5]), negatived the objection of the defendant with regard to

civil court jurisdiction. Such considered finding was not properly dealt with by the appellate court and simply reversed findings of trial court on the ground that Civil Court order would amount to setting aside the order of the Settlement Officer. But as already observed above, such observations of the appellate court is not at all correct.

Plaintiff claimed for the relief of declaration and injunction and to decide this aspect, it is to be seen whether plaintiffs' father was inducted into possession of the plaint schedule property which is a crucial aspect for deciding the relief claimed in the suit. It is an admitted fact that schedule property originally belongs to Vizianagaram Zamin Estate. To prove that plaintiff's predecessor has been in continuous possession and enjoyment of schedule property crucial date is 1-7-1945.

Plaintiff mainly relied on Ex.A.1 which is an entry in Form 'A' Register pertaining to Vizianagaram Samsthanam. In this document, father of plaintiff by name DURGARAJU was shown as kowldar for plaint schedule property. One of the contentions of defendant is that this Ex.A.1 is a fabricated document. On behalf of defendant, D.W.1 is examined and he stated in his evidence that he verified Estate 'A' Register but there was no entry showing name of Durga Raju in the Register. But defendant has not produced that register before the Court to substantiate statement of D.W.1 that there is no entry in the Register showing the name of plaintiffs' father. If really, the contention of defendant is correct, nothing prevented them from producing register which would have been clinched the issue but the very fact that they intentionally not produced would speak volumes. It is not the case of defendant that this Ex.A.1 is not issued by Vizianagaram Samstanam. Their contention is that it is a fabricated one. This document is of the year 1945 and it is marked as document through P.W.1 in the year 2004 i.e. after more than 50 years. When the defendant is having original 'A'

register and if really, there is no entry showing the name of the plaintiff's father as kowldar, defendant need not shirk in producing such register. Further, when this Ex.A.1 is supported by nazarana receipt dated 10.11.44 issued by Vizianagaram Estate marked as Ex.A.7 supports and corroborates the claim of the plaintiffs in respect of plaint scheduled property, the burden is heavy on defendant.

As seen from the material, contention of defendant is not consistent. One of the contentions of the defendant is that plaintiff and his father were never in possession and enjoyment of the suit schedule property. The other contention of the defendant is that plaintiff encroached into plaint schedule property in or about 1960 and B.Memos were booked against him. The third defendant contention is that possession was taken from plaintiff on 26-5-1998. The last two contentions contradict first contention because if really plaintiff and his father were not in possession of suit property, there is no point in taking delivery from plaintiff on 26-5-1998 and also issue of B.Memos treating the plaintiff as encroacher.

As already referred above, this Ex.A.7 revenue Nazarana receipt dated 10-11-1944 in the name of plaintiff's father. P.W.1 in his evidence categorically stated that the suit property and the property mentioned in Exs.A.1 and A.7 are one and the same and this aspect is not disputed by defendant during cross-examination of P.W.1. Further there is no dispute with regard to the identity of the property. Even D.W.1 deposed in his evidence that he physically verified the plaint schedule property about 20 years back and found that plaintiff was residing in a small house in the plaint schedule property and admitted that Exs.A.3 and A.4 photographs are in respect of the house of the plaintiff. From this, it is clear that there is no dispute with regard to identity of the property,

When plaintiff assertively stated that Exs.A.1 and A.7

are issued by Vizianagaram Samsthanam, non-production of the original records relating to Vizianagaram Samsthanam which are in the custody of the defendant, is a strong circumstance to draw adverse inference against the defendant. It is clear from the evidence that a small house was raised in the suit schedule property and power supply was given to the said house property and that there is also a bore well in front of the house. This house with power supply etc., was in existence even by 1994, which is clear from the admission of D.W.1 in the cross-examination.

P.W.1 is aged 85 years as on the date of his examination i.e., 26-8-2004 and he was examined on commission. P.W.2 was 75 years old as on the date of his examination i.e., September, 2004 and P.W.3 is 60 years old. Both P.Ws.2 and 3 clearly deposed in their evidence that the suit property was under possession and enjoyment of the plaintiff and that plaintiff raised cashew trees, mango trees, casurana trees and teak wood trees. Though these two witnesses were cross-examined at length on behalf of defendant, except putting suggestions nothing could be elicited from them to doubt their testimony. The evidence of these two witnesses would falsify the contention of defendant that plaintiff and his predecessor were not in possession of the suit schedule property. It also falsify the contention of defendant that the plaintiff encroached into the suit property in or about 1960. But the learned appellate judge ignoring this important evidence of P.Ws.2 and 3 and documents Exs.A.1 and A.7, relied on the material before the Settlement Officer which was not marked as exhibit during trial, for discarding such important evidence which, in my view, is not correct.

In *BONDAR SINGH AND OTHERS v. NIHAL SINGH AND OTHERS* (^[6]), the Honourable Supreme Court observed as follows:

“An appeal under Section 100 C.P.C. can be entertained by the High Court only on a substantial question of law. There can be no quarrel with this legal position. The scope of powers of High Court under Section 100 C.P.C. is a matter of settled law. The learned counsel for the appellant cited several judgments in support of his contention. We do not consider it necessary to discuss these decisions because so far as the question of powers of High Courts under 100 C.P.C. is concerned, it needs no discussion. If the findings of the subordinate Courts on facts are contrary to evidence on record and are perverse, such finding can be set aside by the High Court in appeal under Section 100 C.P.C. A High Court cannot shut its eyes to perverse findings of the Courts below”.

So while exercising powers under Section 100 C.P.C., this court has to verify whether findings of the subordinate courts are in accordance with the evidence on record or contrary to evidence on record.

In the present case, the learned trial judge has rightly appreciated the evidence on record and gave findings on the basis of such evidence. But first appellate court excluded such evidence and gave a finding contrary to the material on record and in the process reversed the findings of the trial court. When the findings of the appellate court are contrary to the evidence on record, I am of the view that such findings can be interfered by this court exercising the powers under Section 100 C.P.C. as observed by the Honourable Supreme Court in the above referred decision.

On a scrutiny of entire material and the evidence on record, I am of the view that appellate court committed error in reversing findings of the trial court which are based on record and supported by clinching evidence. In my view, learned District Judge reversed a

well reasoned judgment of the trial court on mere surmises and by considering a foreign material i.e., the material collected by Settlement Officer during enquiry under Section 11 of the Estates Abolition Act and as such, the judgment of the District Judge is liable to set aside.

Accordingly, this Second Appeal is allowed and impugned judgment and decree dated 13-8-2009 in A.S.No.333 of 2006 on the file of Principal District Judge, Visakhapatnam, is set aside and judgment and decree dated 17-6-2005 in O.S.No.702 of 1993 on the file of II Additional Senior Civil Judge, Visakhapatnam, is confirmed. Both parties shall bear their own 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.

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Dated 19-1-2015

Dvs

[\[1\]](#) AIR 1986 SC 794

[\[2\]](#) 1987 (1) ALT 120

[\[3\]](#) 2004(5) A.L.D. 605

[\[4\]](#) 2002 (2) ALD 436 (DB)

[\[5\]](#) 2003 (5) ALD 484 (DB)

[\[6\]](#) AIR 2003 SC 1905 (1)