

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

SECOND APPEAL No.542 of 2014

JUDGMENT:

Heard Sri V.R.Reddy Kovvuri, learned counsel for appellants and Sri T.V.S.Kumar, learned counsel for respondents.

2. This appeal is filed questioning the judgment and decree dt.28-04-2014 in A.S.No.89 of 2008 of the Principal District Judge, Kadapa reversing the judgment and decree dt.31-03-2008 in O.S.No.122 of 2005 of the Additional Senior Civil Judge, Fast Track Court, Rajampet at Badvel.

3. The appellants herein are defendant Nos.1 and 3 in the suit.

4. The 1st respondent/plaintiff filed the suit for declaration of her title to the plaint schedule property and recovery of vacant possession of the same apart from damages of Rs.15,000/- and costs. It was her case that she was gifted an extent of Ac.4.70 cents in Sy.No.327 at Vathatipalli village by her son Syed Ali Basha pursuant to a registered gift deed d.23-06-2004 and she was delivered possession of the land. She alleged that defendant Nos.1 and 3 (appellants herein) encroached an extent of Ac 0.80 cents in the said land, dug earth and

also put mud heaps with an evil intention that she cannot remove it and reoccupy the land. She alleged that she was a gosha lady and although she approached the police and revenue authorities and the revenue officials directed defendant Nos.1 and 3 to remove the huge heaps of mud and stones and redeliver the encroached land to her, they did not do so, and therefore, she filed the suit.

5. Defendant Nos.1 and 3 contested the suit by filing separate written statements. The 1st defendant contended in his written statement that the plaint schedule property was of extent of Ac.0.73 cents only and had been in possession and enjoyment of his wife by name Kousalya for past 70 years by raising crops; about two years back his wife raised 30 mango trees in the land and plaintiff was never in possession and enjoyment thereof; even her son Syed Ali Basha was never in possession and enjoyment of the land; mud mound and kathva separating the plaint schedule property and the land of the plaintiff is of 5 feet height; and so the suit be dismissed.

6. The 3rd defendant also filed a written statement stating that 1st defendant is her husband and is the owner of the land adjacent to the plaint schedule property; the 1st defendant had purchased an extent of Ac.4.91 cents in Sy.No.244 from one K.Ramakrishna Rao, S/o.Seshaiah on 15-10-1998 under registered sale deed

for valuable consideration and possession was also handed over to him; by the time the said extent was handed over to 1st defendant, there was already a big heap of mud running across as a bund in between the land of plaintiff and the plaint schedule property. She alleged that the plaint schedule property is an extent of Ac.0.73 cents and is situated to the South of the bund and it is part and parcel of the land purchased by 1st defendant. She also stated that there is a big mound of mud along with plaint schedule land to its North to the height more than 5 feet and said bund did not come into existence over night. She also denied possession of plaintiff and her son in respect of the said land.

7. The Court below framed the following issues:

- “1. Whether the plaintiff is entitled to declaration of her title to the suit schedule property and for consequential possession?*
- 2. Whether the plaintiff is entitled to claim damages from the defendant and if so how much?*
- 3. Whether the plaintiff is entitled for mandatory injunction as prayed for?*
- 4. To what relief?”*

8. The plaintiff examined P.Ws.1 to 5 and marked Exs.A-1 to A-6. Defendant Nos.1 and 3 examined D.Ws.1 to 3 and marked Exs.B-1 and B-2. The 2nd

defendant remained *exparte*.

9. By judgment and decree dt.31-03-2008 the trial Court dismissed the suit. It held that the land was an assigned land originally ; it was purchased by the son of plaintiff in an auction; and he had then gifted it under the original of Ex.A-4 to plaintiff. It held that the said auction was conducted by the Kadapa District Cooperative Credit Society Limited, Sidhout since the person who mortgaged it to the said bank had committed default in repayment of the loan; and that the said bank was not entitled to sell the mortgaged property if it is an assigned land. It therefore held that the plaintiff's son did not get any better title and since the land in question was an assigned land, the sale in his favour is void. It therefore held that plaintiff is not entitled to the relief of declaration of title. In view of the said finding, it held that the plaintiff is also not entitled to the relief of damages or mandatory injunction.

10. Challenging the same, A.S.No.89 of 2008 was filed by plaintiff before the Principal District Judge, Kadapa. The said appeal was allowed by the said Court on 28-04-2014.

11. The lower appellate court held that the property was mortgaged in favour of the District Cooperative Credit Society Limited branch Sidhout by one Karimulla, that he committed default in payment of loan to the said Society; therefore it was brought to sale by way of

auction and in the said auction, the plaintiff's son Syed Ali Basha purchased it and he became absolute owner of it. It held that the mortgage of assigned land in favour of Cooperative Credit Society Limited, Kadapa is not an "alienation" and the sale of property by the said Society of the land mortgaged to it (in view of default of payment of loan by the mortgager) is not hit by the A.P. (Assigned Lands Prohibition of Transfers) Act, 1977 and the purchaser of the property would get absolute title. It relied upon the judgment of a Division Bench of this Court in **Sub-Registrar, Srikalahasti, Chittoor District and another Vs. K.Guruvaiah and another**^[1]. It held that Syed Ali Basha has got every right to give it to his mother and the gift Ex.A4 is valid in the eye of law and confers absolute rights on plaintiff. It held that the evidence on record establish that defendant Nos.1 and 3 had occupied the plaint schedule property without any title and as per a plan Ex.A-6 drawn by the Mandal Revenue Officer of Sidhout Mandal with the help of P.W.5 Mandal Surveyor of the said Mandal, the encroached portion is Ac.0.73 cents; that the evidence of D.Ws.1 and 2 indicated that they had encroached this portion; that they did not own any land in Sy.No.327 and the sale deed Ex.B-1 filed by the defendants did not pertain to the plaint schedule property. It therefore held that plaintiff is entitled to recover possession of the suit schedule property and directed the

defendants to remove the mud dumped by them. It declined to award damages to plaintiff in the absence of specific evidence lead in regard thereto.

12. Questioning the same, this Second Appeal is filed by defendant nos.1 and 3.

13. The main contention of the leaned counsel for appellants is that the lower appellate Court could not have directed the appellants/defendant Nos.1 and 3 to remove the mud dumped by them in the plaint schedule property; that no finding is given that they dumped the mud in the said property; and without there being any pleading that they had dumped the mud, the lower appellate Court could not have directed them to remove the mud more particularly when such a relief was not specifically sought for by the plaintiff.

14. I am unable to agree with the said submission.

15. The learned counsel for appellants specifically stated that the correctness of the grant of relief of declaration of title and recovery of possession by the lower appellate Court is not being questioned in this appeal.

16. It was the specific pleading of plaintiff that defendant Nos.1 and 3 had encroached her land to an extent of Ac 0.80 cents and dug earth and put mud heaps

therein with an evil intention that she would not be able to remove the mud and reoccupy her land. The plaint schedule property is located admittedly in Sy.No.327. It was the case of defendants that the plaintiff is actually claiming portion of the land in Sy.No.244 of extent Ac.4.91 cents which had been purchased by 1st defendant from one K.Ramakrishna Rao, S/o.Seshaiah on 15-10-1998 and by the time possession of the said property was hand over to 1st defendant, there was already a big heap of mud run across as a bund in between the land of plaintiff and the plaint schedule property. It was their specific plea that the plaint schedule property of extent Ac.0.73 cents was situated to the South of the bund and it is part and parcel of the land purchased by 1st defendant.

17. There is no dispute that during trial, the Mandal Surveyor had prepared a sketch Ex.A-6 at the instance of the Mandal Revenue Officer and this plan clearly indicated that Ac 0.73 cents of encroached property belonged to the plaintiff. The lower appellate Court specifically held that defendants did not claim to own any land in the plaint schedule Sy.No.327 and they had not purchased any land in that survey number from anybody. The 3rd defendant, who was examined as D.W.3, had stated clearly that the extent of Ac.0.73 cents of land of plaintiff was in their possession and enjoyment. The lower appellate Court also found that Ex.B-1 sale

deed filed by defendant Nos.1 and 3 did not pertain to the plaint schedule property and Ex.B-2 adangal filed by defendants showed the extent Ac. 0.73 cents belonging to plaintiff was in occupation of 3rd defendant. In this view of the matter, the lower appellate Court had rightly held that defendants had occupied Ac.0.73 cents belonging to plaintiff without any valid title and they had also not set up any plea of adverse possession. It therefore held that plaintiff is entitled to recover possession of the property.

18. Since this finding of the lower appellate Court is not being questioned by defendant Nos.1 and 3 in this appeal, it would follow that the finding of the lower appellate Court that Ac.0.73 cents was encroached by defendants and it forms part of plaintiff's land has attained a finality. The defendants had only pleaded that the mud heaps were in the land purchased by 1st defendant in Sy.No.244 and they form a bund between the land of plaintiff and their land. They had also pleaded that the extent of land Ac.0.73 cents is situated to the South of bund, that it is part and parcel of the land purchased by 1st defendant and that there is also a mound of mud to the North of the suit land of 5 feet height. These pleas having been negatived by the lower appellate court and its finding that the extent of Ac.0.73 cents found encroached was within the land gifted to plaintiff and not within the land purchased by 1st defendant, it has to be presumed that

the mud mounds put in this land were created by them since there is no specific denial of this allegation by them.

19. Even otherwise, since the relief claimed by plaintiff is for recovery of vacant possession of the land in Sy.No.327 encroached by defendant no.s 1 and 3, and since immediately prior to filing of the suit it has been found that defendant Nos.1 and 3 have been in occupation thereof, it has to be presumed that the mud mounds in the encroached land were created by defendant Nos.1 and 3 only. So as part of grant of relief of recovery of vacant possession of the land, the lower appellate Court was entitled to direct removal of mud mounds by defendant Nos.1 and 3.

20. When a party like the plaintiff is able to get substantial relief viz., decree for declaration of title and also recovery of vacant possession, it is the duty of the Court to mould the relief so as to do substantial justice between the parties and ensure that the plaintiff is in a position to enjoy the fruits of the decree obtained by her.

21. Order 7 Rule 7 CPC states:

***“7. Relief to be specifically stated.** Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief*

claimed by the defendant in his written statement”

22. In my considered opinion the relief granted by the lower appellate Court in so far as directing defendant Nos.1 and 3 to remove the mud mounds in the encroached land is ancillary to the grant of relief of recovery of vacant possession, that it was not necessary to plaintiff to specifically ask for the said relief, and it was just and equitable for the lower appellate Court to grant that relief also as if it had been asked for.

23. A Division Bench of this Court in **Kusam Satyanarayana Reddy and others Vs. Kusam Sambrajjamma (Died) By L.Rs. and others**^[2], held that under Order VII Rule 7 CPC although Court grant a relief which has not been asked for, it cannot grant a relief which is larger than the relief claimed by the plaintiff. It held that where the relief claimed by the plaintiff is larger and the Court grants a relief which is smaller than the one claimed, it would be legal. In that case the plaintiffs claimed whole of the plaint schedule property, but on facts the trial Court found that they could claim part of the property as legal representatives of the original owner along with some of the defendants and therefore granted a decree for partition. This Court upheld the said decree by applying order VII Rule 7 CPC. It declared that order VII Rule 7 CPC clothes the Court with inherent power to grant

either general relief or other relief which appears to be just, legitimate and proper in any case even though such reliefs have not been specifically asked for.

24. This principle has been reiterated by the Supreme Court recently in **J.P. Builders and another** ^[3] **Vs. A.Ramadas Rao and another** .

25. In the said case, the appellants before the Supreme Court, who were owners of the suit property, mortgaged the same along with other properties to a Bank as security for the amounts payable by a borrower from the said bank. Later they entered into a memorandum of understanding with the respondent for sale of the property. The respondent paid Rs.1.00 lakh as advance on the same day and the balance was to be paid within 3 months from the date of obtaining confirmation letter from the Bank. Four and half months later the respondent entered into the sale agreement with the appellants for purchase of property for enhanced price of Rs.5.50 crores. Under that document, the appellants had undertaken to discharge the loans and handover original title deeds of property to the respondent. The respondent undertook to pay further advances, if any, required by the appellants for release of documents by the Bank. Within next one and half months, respondent made additional advance payments making a total of Rs.74 lakhs. During the said 6 months, the appellants made several attempts

to reach One Time Settlement with the Bank but could not succeed. The Bank rejected their OTS offer and approached Debt Recovery Tribunal for recovery of its dues. Three months thereafter the respondent, by a notice, required the appellants to liquidate the loans and retrieve the original documents from the Bank in order to execute the sale deed. However, alleging default on the part of respondent in paying the balance sale consideration, the appellants instead demanded a certain sum from the respondent as liquidated damages. The respondent filed a suit against the appellants and Bank. The trial Court decreed the suit partly directing the appellant/defendant specifically perform their part of obligation arising out of the agreement for sale by executing sale deed in favour of respondent on receipt of the balance sale consideration of Rs.4.8 crores subject to the mortgage of the Bank and it also restrained the appellant/defendants from alienating the suit property. It however, refused to grant mandatory injunction for directing the respondent to discharge the loan in respect of D.R.T. proceedings and thereby retrieve the documents and deliver the same to respondent at the time of execution and registration of the sale deed. The D.R.T. allowed the Bank's application and consequentially steps were initiated for sale of suit property.

The respondent therein filed an appeal against the

trial Court's rejection of the prayer of mandatory injunction and failure to award costs. He also filed Writ Petition before the High Court praying a Writ of Mandamus for certain directions in respect of the suit property. Challenging the decree for specific performance granted by the trial Court, the appellants therein filed an appeal before the High Court.

By a common judgment, a Division Bench of the High Court directed the respondent to deposit the balance sale consideration together with interest and also directed the respondents/appellants therein to execute sale deed conveying the suit property to respondent. It also directed the bank to proceed against various other properties of respondents and recover the amount from the DRT. It dismissed the appellants' appeal. Then the appellants came before the Supreme Court by Special Leave.

Although the appellants contended that directions issued by the High Court are contrary to law and that the plea of marshalling and applicability of Section 56 of the Transfer of Property Act, 1882 were not raised before the trial Court and therefore could not have been raised for the first time before the appellate Court, the Court held that there was nothing wrong in the judgment of the High Court in taking into account the entire plaint and holding that the plaintiff had claimed a larger relief; the plea of marshalling is a pure question of law and could not have

been thrown out on the ground that it was not specifically pleaded. *It held that when a party is able to secure substantial relief, viz., decree of specific relief with clearance of mortgage amount, it is the duty of the Court to mould the relief so as to render substantial justice between the parties.* It also held that merely because for recovery of the loan secured by the banks, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 has been enacted, it is not a bar for the Civil Court to apply to other relief such as Section 56 of the Transfer of Property Act, 1882.

26. In my opinion the principle laid down in the said decisions would clearly apply to the present case. Once the defendant Nos.1 and 3 had admitted that they had encroached the extent of Ac.0.73 cents belonging to plaintiff, and the plaintiff had sought relief of delivery of vacant possession and the lower appellate Court had decreed it, I am of the opinion that the lower appellate Court was entitled to grant a further direction to the said defendants to remove the mud mounds in the land.

27. It is pertinent to note that in the plaint the relief of claim of damages was sought by plaintiff in respect of the dumping of mud and its removal. The damages sought in the plaint were Rs.15,000/- for dumping the mud in the land. Instead of granting damages by way of Rs.15,000/-, which would have

helped the plaintiff to remove the mud, the lower appellate Court moulded the relief by directing the defendant Nos.1 and 3 themselves to remove the mud and denied the claim of damages of Rs.15,000/- on the ground that the evidence in regard to quantum of damages was not lead by plaintiff.

28. I therefore do not find any illegality in moulding of the relief by the lower appellate Court. I also do not find any substantial question of law arise for consideration in the appeal.

29. Therefore, the Second Appeal is dismissed at the stage of admission. No costs.

30. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 11-02-2015

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[\[1\]](#) 2009(2) ALD 250 (DB)

[\[2\]](#) 2004(2) ALD 635

[\[3\]](#) (2011) 1 SCC 429