

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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SECOND APPEAL Nos.1042, 1043, 1044, 1132, 1261 and 1305 of 2012

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COMMON JUDGMENT:

The appellants in this batch of second appeals are the unsuccessful defendants in the suits in OS.Nos.840 of 2003, 216 of 2004, 50 of 2004, 54 of 2004, 134 of 2004 and 136 of 2004 on the file of the learned I Additional Junior Civil Judge, Machilipatnam. All those suits and some other suits were filed by the same sole plaintiff/sole respondent herein for recovery of possessions of the respective suit schedule properties from the respective sole defendants in all the suits. When all the suits of the plaintiff were decreed by the trial Court, the appellants herein and some other defendants in the other suits had preferred first appeals. The said first appeals including the first appeals of the present defendants in AS.Nos.61, 67, 75, 68, 66 and 73 of 2008 were dismissed by the learned VI Additional District Judge (Judge, Fast Track Court), Krishna at Machilipatnam *vide* a common judgment dated 28.06.2012.

2. Since all these appeals arise out of common judgments of the Courts below, all these appeals are taken up together for hearing at the admission stage.

3. I have heard the submissions of the learned counsel for the appellants/defendants and the learned counsel for the respondent/plaintiff. I have perused the material record. Since the contentions of all the appellants (sole defendants) in these second appeals are common and as the respondent/plaintiff is one and the same person, the parties in these appeals shall hereinafter be referred to as 'the defendants' and 'the plaintiff' for convenience and clarity.

4. It is apt to mention that the learned counsel for the defendants/appellants in all the second appeals would contend that the batch of suits for recovery of possession of respective suit schedule properties from the respective defendants without seeking the relief of declaration of title in the respect of the respective suit schedule properties are not maintainable and that, therefore, the following substantial

questions of law are involved.

1. **Whether the batch of suits filed for recovery of possession by the plaintiff against the respective defendants/appellants herein are not maintainable and are liable to be dismissed for not seeking the relief of declaration of title?**
2. **Whether the courts below were in error in decreeing the suits ignoring the fact that the defendant in each suit is continuing in possession of the suit schedule property since a long time and that the defendant in each suit had perfected title by adverse possession and that the suit properties are Government lands?**

5. On the other hand, the learned counsel for the plaintiff/the sole respondent in all the appeals had argued that no such substantial questions of law or any other questions are involved in these appeals and that the second appeals are liable to be dismissed at the admission stage.

6. Now, this Court has to examine as to whether or not any substantial questions of law are involved in these second appeals and whether the appeals deserve admission for disposal on merits or are liable to be dismissed at the stage of the admission.

7. Before proceeding further, it is necessary to refer to *infra*, the facts that lead to the filing of these appeals by the unsuccessful defendants in the batch of suits and also the common contentions of the plaintiff and the rival common contentions of the defendants.

7.1 The common case of the plaintiff, in brief, is this:

The plaintiff had purchased Ac.1.89 ½ cents of land covered by S.Nos.184/1 and 184/2 situate in revenue ward no.4 near by-pass road besides Temple colony, Municipal Ward No.14 of Edepalli, Machilipatnam from Madireddi Nageswara Rao and others under a registered sale deed dated 02.05.1978 and has been in uninterrupted and exclusive possession and enjoyment of the said property in his capacity as absolute owner. Out of the said total extent, the following extents respectively mentioned in the various suits i.e., extents of 80, 115, 50, 50, 100, 80, 55, 60, 70, 50, 85, 80, 85, 55, 90, 60 and 140 Square yards are in possession of the

respective defendants in the suits. The defendants had failed to vacate the said respective extents of properties occupied by them inspite of repeated demands by the plaintiff. The defendants in the batch of suits had no manner of right whatsoever over the occupied properties. The defendants along with six others who also are unauthorised occupants of some portions of the site of a total extent of Ac.1.89½ cents belonging to the plaintiff had filed OS.No.148 of 2003 on the file of the Court of the Senior Civil Judge, Machilipatnam seeking a decree of perpetual injunction restraining the plaintiff herein from dispossessing them from the respective sites in their possession except under due process of law. Since the defendants herein had joined as plaintiffs in the before-mentioned suit-OS.No.148 of 2003, the plaintiff herein was constrained to file these suits for recovery of vacant possession of the plaint schedule properties in the respective suits by ejecting the respective defendants there from and for delivery of the properties after removing the structures which existed thereon.

7.2 The defendants in the respective suits filed their written statements and the common defence of the defendants is as follows:

The material allegations in the plaint are false. The averments that the plaintiff had purchased Ac.1.89 ½ cents and that since the date of purchase he has been in uninterrupted exclusive possession and that the defendants had occupied the respective extents of site as stated in the plaint are all false. The defendants never promised to vacate the property as alleged in the plaint. The plaintiff is not the owner of the plaint schedule properties. The vendors of the plaintiff have no title to the property as the plaint schedule properties do not belong to the vendors of the plaintiff. The said property is a Government vacant site and is accessible to people at large of the society. The defendants who are having no shelter for their residence had occupied the plaint schedule mentioned extents in each suit about 22 years prior to the suits and are continuing in possession and enjoyment of the respective extents without any interruptions from any corner and by raising permanent structures thereon. They are also paying electricity consumption charges having obtained electricity service connections and also property tax since 15 years prior to the filing of the suits. The enjoyment of the plaint schedule properties by the respective defendants in the respective suits is open, continuous and to the knowledge of all concerned including the plaintiff and the plaintiff knows the hostility

of the title but never questioned the enjoyment of the defendants over the respective plaint schedule properties and had never asked them to vacate the respective plaint schedule properties. The sale deed dated 02.05.1978 does not pertain to the plaint schedule property. The plaintiff was never in possession of the plaint schedule properties. The antecedent title deeds of the plaintiff are not filed along with the suits. Since the defendants had perfected title to the respective plaint schedule properties in the respective suits by way of adverse possession and are enjoying the said properties to the knowledge of the plaintiff since a long time, the question of eviction of the defendants from the respective plaint schedule properties does not arise. The suits are not maintainable and the same may be dismissed.

7.3 Having regard to the above pleadings, in OS.Nos.840 of 2003, 50 of 2004, 54 of 2004, 136 of 2004 and 216 of 2004 the following issues were framed by the trial Court.

1. **Whether the defendant perfected his title by way of adverse possession?**
2. **Whether the plaintiff is entitled for possession of suit schedule property by ejecting the defendant?**
3. **To what relief?**

In OS.No.134 of 2004 the following issues were framed by the trial Court.

1. **Whether the plaintiff is absolute owner of suit schedule property?**
2. **Whether the defendant perfected his title of suit schedule property by way of adverse possession?**
3. **Whether the plaintiff is entitled to decree sought in the plaint?**
4. **To what relief?**

7.4 All the present suits along with some other suits filed by the plaintiff are consolidated and common evidence was recorded in OS.No.844 of 2003. The plaintiff and his supporting witness were examined as PWs1 and 2 and exhibits A1 to A9 were marked on the side of the plaintiff. On the side of the defendants, DWs1 to 13 were examined and exhibits B1 to B13 were marked.

7.5 As already noted, on merits, the trial Court had decreed all the suits of the

plaintiff as prayed for. Feeling aggrieved the defendants herein preferred the aforementioned batch of first appeals. By the common judgment, which is impugned in these appeals, all the said first appeals were dismissed confirming the decrees and the common judgment of the trial Court.

8. The learned counsel for the defendants had submitted as follows:

All the suits are filed based on a sale deed dated 02.05.1978. The defendant in each suit denied the title of the vendors of the plaintiff and also the title of the plaintiff. No link documents or antecedent title deeds of the vendors of the plaintiff are exhibited. Mere filing of the title deed of the plaintiff i.e., exhibit A1 dated 02.05.1978 does not establish the right of the plaintiff to seek recovery of possession of the respective plaint schedule properties in the respective suits from the respective defendants. The law is well settled that the revenue records do not confer title. The defendants are continuing in possession since a long time i.e., 22 years prior to the present suits and they had made permanent constructions in their respective extents of properties about 15 years prior to the present suits. Some of the defendants had obtained electricity service connections and are paying electricity consumption charges and municipal taxes as the properties which are constructed over the respective sites are being assessed to municipal taxes. The plaintiff is aware of the continuous, long and uninterrupted possession of the defendants in the respective suits and that they had asserted title in themselves. Therefore, the possession of each defendant over the plaint schedule site in each suit is adverse to the plaintiff. Accordingly, the defendants had perfected title to the respective properties in the respective suits. The suits for bare recovery of possession without seeking declaration of title are not maintainable. Admissions in the plaint in the former suit relied upon by the Courts below do not confer title in immovable property. In the absence of establishment of title of the plaintiff over the respective plaint schedule properties in the various suits, the Courts below ought not to have decreed the suits in favour of the plaintiff. The suit property is a Government vacant land. The Government is a necessary party.

9. On the other hand, the learned counsel for the plaintiff having supported the concurrent findings in the judgments of the courts below had stated that there is no necessity to interfere with the judgments of the courts below which are rendered

after recording concurrent findings and conclusions supported by cogent and valid reasons and that the appeals are devoid of merit and are liable to be dismissed.

10. Let it be reiterated that at the time of hearing, it is stated that the following substantial questions are involved.

1. **Whether the batch of suits filed for recovery of possession by the plaintiff against the respective defendants/appellants herein are not maintainable and are liable to be dismissed for not seeking the relief of declaration of title?**
2. **Whether the courts below were in error in decreeing the suits ignoring the fact that the defendant in each suit is continuing in possession of the suit schedule property since a long time and that the defendant in each suit had perfected title by adverse possession and that the suit properties are Government lands?**

11. Now the following important aspects have to be incidentally considered.

(1) Whether the Courts below were in error in relying upon the admissions made by the defendants herein and others in the plaint in the former suit filed by them? (2) Whether the defendant's long possession can be considered as adverse possession? And, if so, whether the plaintiff is to be non suited accepting the contention that the defendants in the respective suits have perfected title by adverse possession to the respective properties in the suits? (3) Whether the suits for bare recovery of possession without seeking declaration of title are not maintainable? (4) Whether the Government is a necessary party and for not impleading the Government the suits are liable to be dismissed?

11.1 A perusal of the material record would show that the plaintiff was examined as PW1 and while asserting his pleaded case in the suits he had exhibited a copy of his registered sale deed dated 02.05.1978 and also the certified copies of re-settlement register and the field measurement book besides cist receipt and municipal tax receipt to prove his entitlement to seek recovery of possession of the respective plaint schedule properties. Similarly, the defendants, who are examined as DWs 1 to 13 had asserted their defence in their testimonies and had exhibited their documents. Their documents are photo election identity cards of some of the defendants, documents showing their occupation like the receipt issued by the Municipal Corporation of Machilipatnam (exhibit B6), e-seva electricity bills and the property tax certificates issued by the municipality (exhibits B9 and B12). The defendants are not claiming title but, they are only claiming long possession by stating that the Government is the owner of the property. Their documents only show

their possession which is admitted by the plaintiff. PW2-Madireddy Seetharamarao is one of the vendors being the second executant of the registered sale deed dated 02.05.1978 in favour of PW1. Exhibit A1 is the registration extract of the same. Exhibit A1 was executed by the general power of attorney holder of the vendors. PW2 had fully corroborated the version of the plaintiff/PW1 and had stated that PW1 had purchased from him and others, the land in an extent of Ac.1.89 ½ cents in Sy.No.184/1 and 184/2 under the original of exhibit A1. PW2 had further stated that they have got the said property by way of partition through the process of the Court in OS.No.16/1958 on the file of the Court of the Principal District Munsif, Machilipatnam and that the said suit for partition was preliminarily decreed in the year 1961 and that the final decree proceedings had taken place in the year 1967 and that under the said partition he and the other vendors under the original of exhibit A1 had acquired title to the property covered by the original of exhibit A1. It is not in dispute that it was not suggested on behalf of the defendants to PW2 in his cross examination that he and the other vendors under the original of exhibit A1 have no right and competency to alienate the property covered by the said document to the plaintiff herein. PW2 had further stated that in the year 1968, his brother Viswanadha Rao, his junior paternal uncle Nageswara Rao and he (PW2) had executed a general power of attorney in favour of Pillarisetty Raghava Rao Naidu in respect of the property and that the said power of attorney holder had executed a possessory agreement of sale in favour of the plaintiff in the year 1974 and that the plaintiff had obtained possession of the land from them by way of possessory agreement of sale through GPA and that pursuant to the said agreement of sale, the GPA holder had further executed the registered sale deed in favour of the plaintiff in the year 1978 under the original of exhibit A1 and that the entire property admeasuring Ac.1.89 ½ cents was sold away in favour of PW1 for consideration. Having considered the evidence, the Courts below had held that the evidence brought on record is sufficient to safely conclude that the plaintiff is the absolute owner of the land in a total extent of Ac.1.89 ½ cents of which the present suit schedule properties are parts. Exhibit A2, the re-settlement register in respect of Sy.No.184/1 and 184/2, also shows that the land originally stood in the name of Madireddy Sarayya, one of the vendors. Exhibit A7 is the certified copy of the decree in OS.No.16 of 1958 on the file of Principal District Munsif, Machilipatnam and the contents of the same support the version of PW2 insofar as the suit for partition and acquisition of title by the vendors including him. Exhibit A8 is the final decree in the

said partition suit. Exhibit A9 is the certified copy of the Commissioner's report and the same on a perusal would show that the Advocate Commissioner divided the properties, which are subject matter of that suit for partition including the present subject matter of the present suits. Exhibits A7 to A9 sufficiently prove the title of the vendors under the original of exhibit A1, the title deed of PW1. Therefore, it can safely be held that the plaintiff/PW1 is the absolute owner having right, title and interest in the plaint schedule property.

11.2 Now coming to the admissions made by the defendants herein in the former suit and the probative value of those admissions in the present batch of suits of the plaintiff and also the contention that on the admissions made by the defendants herein in the former suit it cannot be held that the plaintiff's title is established, what is to be noted is that the former suit-OS.No.148 of 2003 on the file of Senior Civil Judge, Machilipatnam was filed by the defendants in all these suits herein along with six others against the plaintiff herein. The certified copy of the plaint in the said suit is exhibit A6. The same on a perusal shows that the defendants and others had averred in the said plaint as follows:

“The plaintiffs submit that they are in possession and enjoyment of the schedule property, since last 20 years though they have not perfected the title, the fact is that they are in possession of the property since last 20 years. As such, the defendant though happens to be the landlord, he is supposed to follow due process of law, before evicting the plaintiffs and he is not supposed to dispossess the plaintiffs high handedly by using broot force. Hence, the plaintiffs submit that the defendant may at any time using broot force, may evict them without following due process of law, by violating the principles of nature justice and also by causing damage to the structures of the plaintiffs in lakhs. Hence, the suit for permanent injunction by restraining the defendant, his men, followers etc., from interfere into the peaceful possession and enjoyment of the schedule property, unless following due process of law. Hence, this suit.”

[Reproduced verbatim]

From these candid admissions, it is clear that the defendants herein had admitted in their plaint in the former suit that the plaintiff herein is the owner of the property and that they had occupied certain extents which are in their respective possessions and that they have also not perfected title by adverse possession and that the plaintiff

herein is obliged to evict them only by following the due process of law and not otherwise. In the well considered view of this court, the Courts below are justified in placing reliance on the said admissions and in concluding that the plaintiff is the owner of Ac.1.89 ½ cents i.e., respective suit properties and that the defendants in the respective suits had not perfected title by adverse possession; but, they are having only long possession. Moreover, even assuming that the admissions need not be considered still the evidence brought on record which is already discussed supra sufficiently established the title of the plaintiff in respect of the plaint schedule properties in all the suits, which are parts of the property covered by the original of exhibit A1. Thus, the Courts below were justified in accepting the evidence brought on record including the admissions of the defendants herein in their plaint in the former suit and holding that the plaintiff established his entitlement to recover possession of the respective plaint schedule properties from the respective defendants. Hence, this Court finds that there is no merit in the contention that the plaintiff has no title to the plaint schedule property and he cannot seek eviction of the defendants in the respective suits.

11.3 Coming to the issue of adverse possession, it is not a pure question of law and it is a blend of fact and law. Both the Courts below had concurrently held that the possession of each defendant of his/her respective site is only long possession and possession however long is not enough to claim adverse possession and that in the facts and circumstances of the case, the plea of adverse possession is not available to the defendants as the ingredients of the adverse possession are not established. In the former suit plaint, the defendants as plaintiffs therein had admitted the ownership of the plaintiff herein. For the first time, they had denied the title of the plaintiff in the written statements in the present batch of suits. Therefore, their mere possession however long does not constitute possession adverse to the real owner i.e., plaintiff as their possession was not accompanied by an assertion of hostile title. In view of the categorical admission in the former suit that their possession is only long possession and that the plaintiff is the owner of the property and in the absence of proof of necessary ingredients of adverse possession, the contentions of the defendants cannot be countenanced.

11.4 Dealing with the contention that the suits for recovery of possession without seeking the relief of declaration of title are not maintainable, it is necessary to refer to

the following decision of the Supreme Court. In **Anathula Sudhakar v. P. Buchi Reddy** the Supreme Court had summarised the position in regard to suits for prohibitory injunction relating to immovable property as under:

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in *Annaimuthu Thevar* (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.

A reading of the ratio of the decision of the Supreme Court would show that where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession with or without consequential injunction is the remedy. However, in this instant case, the defendants herein had admitted in the former suit, the title of the plaintiff. As per the ratio in the decision where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Therefore, in view of the settled legal position, the suits for recovery of possession are perfectly maintainable.

11.5 Coming to the last contention that the entire extent of Ac.1.89 ½ cents being claimed by the plaintiff is a Government vacant land, be it noted that in the former suit the defendants herein who are the plaintiffs therein along with some others had

categorically admitted that the plaintiff herein is the landlord and is entitled to recover possession of the properties in their respective possession by following procedure established by law but not by force. Thus, the defendants herein did not take a specific stand in the former suit that the properties in their respective occupations which are compromised in a total extent of Ac.1.89 ½ cents in Sy.No.184/1 and 184/2 is a Government poramboke and that PW1 has no right over the same. On the other hand, they had admitted that the plaintiff is the landlord. Therefore, this defence is only an after thought. They did not file any documents to show that the suits lands are Government lands. If the Government were to be the owner, it is for the Government to take steps and the defendants, who had admitted the title of the plaintiff and pleaded that the plaintiff cannot evict them except under due process of law, cannot prevaricate and now contend that the property is a Government property. If the Government feels that it is the owner, it is for the Government to take steps against the plaintiff. It is not for the defendants to plead the cause of the Government and resist the plaintiff's right to recover possession from the defendants.

11.6 To sum up, in these actions of the plaintiff for recovery of possession of immovable properties in the respective suits from the respective defendants, both the Courts had held that the plaintiff had established his title and/or right and entitlement to recover possession of the said properties. When once, by recording concurrent findings of fact, the Courts below had held that the plaintiff is entitled to the reliefs of recovery of possession, the defendants, who are the occupants of the respective properties having no legal title and whose right to remain in possession is sub-ordinate to the legal title of the plaintiff, cannot resist the claims for recovery of possession unless such a right to remain in possession is pleaded and established. There is neither pleading nor proof in regard to the defendants' right to continue in possession. Be that as it may.

11.7 Having thus analysed the oral and documentary evidence, this Court finds that the well reasoned findings of the Courts below, which are concurrent do not call for interference and that there is no substance in the substantial questions of law raised and that, therefore, there is no merit in the second appeals and the second appeals being devoid of merit are liable for dismissal at the admission stage. The law is well settled that a second appeal shall not be admitted if no substantial question of law arises for consideration and when no substantial question of law is involved. In the

case on hand, as this Court finds that no substantial questions of law are involved, these second appeals are liable for dismissal at the stage of admission in view of the settled legal position and in view of the narrow compass of Section 100 of the Code. Accordingly this Court finds that no case is made out for admitting the second appeals.

12. In the result, all the Second Appeals are dismissed. There shall be no order as to costs. Each of the defendants in batch of these second appeals are granted three months time from the date of receipt of a copy of this common judgment for vacating and delivering the respective plaint schedule properties in their respective occupations to the plaintiff. Failing compliance, the plaintiff is at liberty to execute the decrees in the suits and obtain possession of the respective plaint schedule properties from the respective defendants in accordance with the procedure established by law.

Miscellaneous petitions, pending if any, in these second appeals shall stand closed.

M. SEETHARAMA MURTI, J

12th October, 2015

Vj/