

HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.185 OF 2000

Dated 10-3-2016

Between:

Sunkari Apparao and others.

..Appellants.

And:

Niddana Sanyasappadu and others.

..Respondents.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.185 OF 2000

JUDGMENT:

This appeal is preferred challenging judgment and decree dated 4-10-1996 in A.S.No.50 of 1995 on the file of District Judge, Vizianagaram whereunder judgment and decree dated 4-3-1994 in O.S.No.22 of 1989 on the file of District Munsif, Cheepurupalli, is confirmed.

Appellants herein are unsuccessful plaintiffs in both the courts. Plaintiffs filed suit in O.S.No.22 of 1989 seeking relief of permanent injunction restraining defendants from any way interfering with the suit tank and for mandatory injunction directing the defendants to remove the pipes illegally fixed by them to the southern bund of the suit tank.

Parties are hereinafter referred to as "plaintiffs and defendants" as arrayed in the suit for convenience and better understanding.

In the plaint, plaintiffs contended that they are absolute owners of lands covered by survey numbers 12/8, 13/1, 13/2, 14/1 and 14/2 and that they are the ancestral properties of the plaintiffs. They contended that to feed these lands, plaintiffs' ancestors have dug a private banda (tank) in S.No.12/8 which is dry land

measuring Ac. 7.62 cents. They contended that the said banda is purely a private banda under exclusive possession and control of the plaintiffs and they used to attend repairs of the said banda and using water to irrigate their land situated towards eastern side of the said banda. According to the plaintiffs, there are two sluices on the eastern side banda through which, they are taking water and raising wet crops is in a total extent of Ac.24.93 cents. They contended that there is a Gedda on the western side of plaintiffs' banda which feeds water into the banda and that the village Purraivalasa was in the Erstwhile Estate of Vizianagaram which was in the estate till 1948 and zeroyathi pattas were granted in favour of plaintiffs even after taking over. They contended that survey and settlement operations were conducted in the year 1959 and patta was granted in favour of the plaintiffs and certified copy of survey and settlement register would show that plaintiffs are absolute owners of the banda in S.No.12/8. They contended that defendants are having a bit of land to the south of banda and they lowered down the level of their dry land with a view to draw water from the said banda though the land was little bit higher in level than the tank. They contended that on 4-7-1987, defendants have cut the Southern bund of tank and attempted to draw water from the tank with a view to cause diminution of water supplied to the plaintiffs' land. Plaintiffs contended that the defendants have to be restrained by way of injunction and a mandatory injunction is to be granted directing them to remove sluice that were fixed by them to the southern bund.

Defendants resisted the claim of plaintiffs and they contended that the suit tank is a source of water both to their lands and lands of plaintiffs and that they have been drawing water through the southern sluice fixed to the tank since times immemorial. They also contended that southern sluice is higher in level than the other sluices

and only when water is in higher level the water flows into the lands of defendants and tank is not the exclusive property of plaintiffs as claimed by them. It is further contended that plaintiffs never deprived the right of defendants to draw water and there is no change in the sluices fixed both on southern and northern bunds of the tank. It is further contended that the plaintiffs cannot interfere with the right of the defendants to draw water to their land through the southern sluice and that the suit is liable to be dismissed.

On these contentions and pleadings trial court framed issues and thereafter, conducted trial during which only one witness is examined on plaintiffs' side besides marking six documents whereas three witnesses are examined on behalf of defendants and no documents are marked on their side. On an over all consideration of oral and documentary evidence, trial court dismissed the suit holding that the suit tank is not the exclusive property of plaintiffs. Aggrieved by the same, defendants preferred appeal to the District Court and the District court on a reappraisal of entire evidence confirmed the findings of the trial court and dismissed the appeal. Now aggrieved by the concurrent findings, plaintiffs preferred the present appeal.

This court admitted second appeal treating the following grounds as substantial questions of law.

(a) Whether the lower appellate Court is right in invoking Section 3(16) of the Estate Abolition Act and in holding that the land is not a ryoti land?

(b) In the absence of specific plea in the written statement that the property is a Government property and without framing an issue, whether the courts below are right in holding that the property belongs to the Government.?"

Heard arguments.

Now the point that would arise for my consideration

in this appeal is whether the plaintiffs have made out any case attracting above referred two grounds?

POINT:

Plaintiffs have mainly relied on the documentary evidence to support their claim over the disputed tank out of six documents. Ex.A.1 is certified copy of survey and settlement register in respect of survey number 12/8. According to plaintiffs, the entire land covered by this survey number is Ac.7.62 cents. This aspect was considered by both courts and observed that the claim of plaintiffs over the entire extent cannot be accepted. Exs.A.2 to A.5 are only cist receipts in the name of plaintiffs. In these cist receipts, there is no reference to survey number and as the plaintiffs have got other lands adjacent to this survey number, both courts held that those documents are no way helpful to the plaintiffs for their claim in respect of survey No.12/8. Ex,A,6 is the field map of entire survey No.12. According to this document, total extent of this survey number is Ac.11.89 cents and no sluices are shown in this map in the area covered by survey number 12/8. Plaintiffs have not examined any one connected with this document to know their exact area covered by water spread in S.No.12 and the subdivision of this survey number where the tank is situated. When there is ambiguity in Ex.A.6 showing that entire subdivision of 12 /8 is not covered by tank which is contrary to the claim of plaintiffs, both courts did not agree with the case as pleaded by plaintiffs. Now the grievance of plaintiffs is that both trial court and appellate court have refused relief of plaintiffs mainly on the ground that the suit property is a Government property.

The other objection of the plaintiffs is that the lower appellate court by invoking Section 3 (16) of Estate Abolition Act held that this land is not ryotwari land. As seen from the record, the village Purraivalasa was estate village and this estate was abolished under Estate

Abolition Act and ryotwari Act, 1948. As this piece of land even according to plaintiffs is tank and the appellate court by referring to Section 3 (16) of Andhra Pradesh (Andhra Area) Estates Land Act held that land cannot be treated as ryotwari land and that being the tank vested with the Government as per the above referred Act. I do not find any wrong in the approach of the first appellate court as the land was in Erstwhile Estate of Vizianagaram Maharaja and court rightly invoked provisions of Estate Abolition Act.

Both trial court and appellate court have elaborately discussed entire evidence of both parties and came to a right conclusion and rightly refused the relief claimed by the plaintiffs. There is nothing wrong in the findings of the trial court in respect of disputed tank and those findings are only based on the entries recorded in Exs.A.1 and A.6 and the substantial questions of law raised by the appellants-plaintiffs are not at all tenable and that there is absolutely no question of law involved in this case leave alone substantial question of law and that the 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 10-3-2016.

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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