

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL No.86 OF 1999

JUDGMENT:

The unsuccessful plaintiffs throughout are the appellants in the present second appeal.

2. They laid the suit for declaration of their title over the suit land consisting of Acs.10-32 cents, comprised by Revenue Survey No.45 and T.D. No.75, situate in Kummarigunta village, and for consequential injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the same.

3. The facts necessary for disposal of the present second appeal briefly stated are; that they are the owners of the suit land covered by the settlement minor Inam No.75 of Kumarrigunta village in Parvathipuram Taluq, which was enfranchised by the Inams Commissioner and locally called 'Jangam Banda' land. Since one-third of the said revenue survey number is a shallow land, their predecessors-in-interest used to store water for the purpose of rearing fish and cattle. The said land is also called as 'Jangam Banda', but it is not an irrigation tank. When the said village was abolished and taken over by the Government along with the Estates, and a survey was conducted for the first time, the said survey number was wrongly recorded as a tank *poramboke* and wrong entries were made in the settlement record though, it does not fall within the mischief of the

provisions of the Madras Act XXVI of 1948 (for short 'the Act 1948), since the Inam was not part of the assets of Zamindar at the time of permanent settlement in 1802.

i) The plaintiffs claim that the Settlement Authority under the Act 1948, did not have power to deal with any portion of T.D. No.75; they even preferred an application before the Settlement Officer, Visakhapatnam to correct the wrong entry in the settlement account and to delete it from *poramboke* section, which was dealt with in R.P. No.85 of 1965, but the Settlement Officer rejected the claim of tahsildar, Parvathipuram, holding that the classification of R.C. No.45 as tank *poramboke* was erroneous and ordered for rectification and to classify it as T.D. Inam and even held that Inam Tribunal is competent to grant a ryotwari patta and, thus, partly allowed the R.P., as he could not himself issue a patta as the lands covered by T.D. No.75 are non-ryoti.

ii) The plaintiffs state that Inams Deputy Tahsildar was the Tribunal under the Andhra Inams Abolition Act who made an inquiry and issued ryotwari patta for the entire land covered by T.D. Inams No.75 including Jangam Banda, which is covered by block Survey No.9; thereafter, they filed a petition before the Inams Deputy Tahsildar; he made an inquiry in Rc.No.11 205 of 1975, dated 25-01-1976; observed that the dry land Jangam Banda is block Survey No.9 and part and parcel of T.D. No.75; during survey operations, Jangam Banda was surveyed as *poramboke* in R.S. No.45; the extent

being Acs.10-32 cents as per resurvey; it was treated as Class-III irrigation source; the ayacut lands are Acs.14-50 cents dry, but erroneously classified as wet; the Tahsildar instead of rectifying the mistake himself, he forwarded petition to Inams Deputy Tahsildar for further action; thereafter, the Tribunal under the Inams Abolition Act, made an independent inquiry concerning R.S. No.45 in Rc.No.11205 of 1975-R, dated 25-01-1976 and held that Kummarigunta is a *poramboke* and it is a private land; the Inams Tahsildar held that the classification of the alleged ayacut lands to be changed into dry and a ryotwari patta shall be issued to them under Section 7 of the Inams Abolition Act. Thus, second time an inquiry was conducted by the Inams Tahsildar without being aware of the fact that his predecessor made an inquiry and already granted a ryotwari patta for the land covered by block survey No.9, which is R.S. No.45 in resurvey.

iii) They claim that the Inams Tahsildar, Parvathipuram also passed orders levying assessments for R.S. No.45, and the Collector, Srikakulam as Tribunal under the Andhra Inams Assessment Act of 1955, has also notified his decision that R.S. Nos.45 and other survey numbers of T.D. No.75 are dry lands. The plaintiffs claim that the Collector, thus, was pleased to hold that R.S. No.45, Jangam Banda i.e., the suit land was part of T.D. No.75 of Kummarigunta village and is a dry land, and that dry assessment should be paid by them as Inam Assessment. Thus, they claim ownership over the suit extent and suit

land is not a *poramboke* land and it is not a ryoti land and it is not a *Gayali* land.

iv) The plaintiffs claim that in the last week of April, 1978, the village Karanam entertained an idea of leasing out portions of the suit land to the landless poor, on which, they made an application to the Tahsildar and brought to his notice about the proceedings of the Settlement Officer as well as the Inams Tribunal, on which, the Tahsildar refrained from casting any cloud over their title to the suit land and stopped leasing out the portions of the suit land to the landless poor. Despite the same, Village Officers have been demanding them to pay water rate amount of Rs.946.93 paise alleging that the Water Cess was levied in respect of their lands surrounding R.S. No.45 on the ground that R.C. No.45 is a tank *poramboke* and they have been irrigating their other lands in T.D. No.75 with the water of R.S. No.45 and even demand notices were prepared.

v) Stating that they reliably learnt that the Revenue Authorities are preparing notices under Section 7 of the Land Encroachment Act, they filed the suit seeking the aforesaid reliefs.

4. The State of Andhra Pradesh represented by the District Collector, Vizianagaram is shown as defendant No.1, whereas, private persons are shown as defendant Nos.2 and 3, who have been impleaded at a subsequent stage by filing I.A. No.232 of 1982, which was allowed on 30-06-1982.

5. The District Collector filed written statement stating that the village, Kummarigunta was taken over by the Government under the provisions of the Act 1948 on 20-12-1954, and a survey was done and settlement rates were introduced with effect from 01-07-1962. The T.D. No.75 is a personal service Inam as per the Inam B-Register, which comprised a total extent of Acs.36-93 cents, and all the T.D. Inams granted by the Inams Commissioner were surveyed and settled. The lands were Taram assessment of Rs.60-1-10 and quit rent of Rs.45-2.0 was fixed as per Inam B-Register of T.D.No.75.

i) The Collector states that during survey and settlement of Kummarigunta village, T.D. No.75 was correlated to some R.S. numbers, and T.D. No.75 has nothing to do with R.S. No.45, and the land in R.S. No.45 is non-ryoti and is a tank on ground known as Jangam Bunda, and classified as *poramboke* and treated as Class-III minor irrigation source with an ayacut of Acs.14-50 cents, and all the dry lands under the ayacut of Jangam Banda are irrigated by its water, and water rate is levied. The Collector claims that the plaintiffs, who possessed dry land under the said ayacut of Jangam Banda tank, which are irrigated by the aid of the water of the said tank, are charged with water rate, and all the lands covered by T.D. No.75 were classified as dry lands during survey and settlement, and water rate was charged for taking the water of Jangam Banda, and the lands covered by T.D. No.75 were never treated as wet lands as contended by the plaintiffs.

ii) The Collector also states that according to the Settlement Fair Adangal of suit village, all the lands correlated to T.D. No.75 stand registered as dry lands, and block survey No.9, which was included in T.D.No.75 was already granted with ryotwari patta by the Settlement Officer, and the land in R.s.No.45 is not correlated to block survey No.9 of T.D.No.75. Thus, the Collector states that the disposal of R.P. No.85 of 1965 by the Settlement Officer, Visakhapatnam, has no relevance to the disputed land in R.S.No.45, and the Inams Deputy Tahsildar, Parvathipuram also did not grant any patta to the lands in R.S.No.45, and the plaintiffs themselves even not clear as in one breath they state that the Inams Deputy Tahsildar granted a ryotwari patta to them for the lands in R.S.No.45, and in another breath state that issue of a ryotwari patta was deferred till the classification of the lands is changed. Thus, the Collector asserts that the lands in R.S.No.45 are only *poramboke* lands vesting in the Government, and no ryotwari patta was issued.

iii) Lastly, the Collector states that jurisdiction of Civil Court is expressly barred in view of the decision of the Hon'ble Supreme Court in CAS 1760/73/79, dated 14-02-1979 [APLJ 1979 (2) page 35], and such a relief is exclusively within the purview of either Settlement Officer or the Inams Deputy Tahsildar, hence, sought to dismiss the suit.

6. Defendant No.2 also filed written statement adopted by defendant No.3 by filing a memo.

i) They sailed with defendant No.1 claiming that the plaintiffs attempting to take shelter to convert the tank into land under the proceedings of various Tribunals and thereby affecting their water rights and the rights of various ayacutdars and, therefore, sought to dismiss the suit.

7. On the aforesaid pleadings, the trial Court framed the following issues:

“

1. Whether the plaintiffs have title to and possession of the suit lands covered by R.S.No.45 of T.D.No.75?
2. Whether the suit lands are tank poramboke or a ryotwari dry?
3. Whether this court has no jurisdiction to entertain the suit?
4. Whether the plaintiffs are entitled to the relief of declaration and injunction as prayed for?
5. Whether the plaintiffs' claim to the title to the suit land is barred by Sec.2 (A) of Andhra Inams Abolition Act?
6. Whether the defendants 2 and 3 have acquired easementary rights to take water from Jangam Banda?
7. To what relief? ”

8. The 1st plaintiff examined himself as PW.1 and marked Exs.A-1 to A-6 to prove their case. Whereas, on behalf of the defendants, Mandal Revenue Officer, Komarada, examined himself as DW.1 on behalf of defendant No.1, and defendant No.2 examined himself as DW.2 and marked Exs.B-1 to 11 in order to prove that the land covered by R.S. No.45 is *poramboke* land.

9. On issue No.1, the trial Court having elaborately dealt with respective stands taken by the rival parties in the light of documentary evidence, held that the plaintiffs have no title and possession to the suit land covered by R.S. No.45 of T.D.No.75. On issue No.2, held that Exs.A-1 to A-3 do not reflect that any ryotwari patta was issued to the plaintiffs and basing on the admission made by PW.1 that defendant No.2 and other ryots have been cultivating their lands from the water of the suit tank, recorded a finding that the suit lands are rightly classified as tank *poramboke*, but not ryotwari dry and held it against the plaintiffs.

i) On issue No.3, the trial Court referring to the relevant provisions of Andhra Inams Abolition Act i.e., A.P. Act 37/56, more particularly, Section 14 specifically barring the jurisdiction of Civil Court and relying on the rulings of this Court in **Veerayya v. Punnamma**¹ and **Seethal Singh v. Mahmood Shariff**², held that the Civil Court has no jurisdiction to entertain the cause of action and, accordingly, answered it against the plaintiffs. On issue No.4, in view of the findings tendered on issue Nos.1 to 3, held the present issue also against the plaintiffs.

ii) On issue No.5, recorded a finding that the provisions of Section 2 (A) of A.P. Inams Abolition Act disentitles the plaintiffs to claim title to an irrigation tank and held it against the plaintiffs. On issue No.6, holding that the compromise effected between the

plaintiffs and defendant Nos.2 and 3 is immaterial, held this issue in favour of defendant Nos.2 and 3 by recording a finding that Exs.B-9 to B-11 will establish that defendant Nos.2 and 3 have acquired easementary right to irrigate their ayacut lands with the water of Jangam Banda. In view of the findings recorded by the trial Court, holding all the issues against the plaintiffs, dismissed the suit against defendant No.1 with costs and defendant Nos.2 and 3 without costs.

10. Assailing the judgment and decree of the trial Court, dated 30-12-1987, passed in the aforesaid suit in O.S. No.3 of 1982, they preferred the appeal suit No.25 of 1988 on the file of Additional District Judge at Vizianagaram.

11. The appellate Court having referred to the factual aspect, issues settled for trial and findings recorded thereon, formulated the following point for consideration as hereunder:

“Whether the appellants-plaintiffs have right, title to and possession in the suit property and entitled for any declaration of their title in the property?”

12. The learned appellate Court found that the plaintiffs failed to prove the connecting link between Exs.A-4 and A-5 original and further held that they failed to prove that R.S.No.45 is part of T.D.No.75 under Ex.A-5, which is the registration extract of the sale deed, but original was not filed, besides the plaintiffs failing to

¹. 1958 (2) An.W.R. 134

². 1984 (2) ALT 199

examine the executants and has not laid foundation for leading secondary evidence by showing that original of Ex.A-5 was scribed by such and such person and attested by such and such person, and thereby held that the plaintiffs failed to prove Ex.A-5.

i) The learned appellate Court then adverted to whether R.S.No.45 is part of T.D.No.75 or not and looking at the order of the Settlement Officer, Visakhapatnam in R.P. No.85 of 1965 under Ex.A-1, and that it relates to T.D.No.75 which correlates to R.S. Nos.75, 43, 81, 80, 46, 47 and 48, thus, the appellate Court held that R.S.No.45 is not part of T.D.No.75 and expressed surprise as to how the Settlement Officer came to the conclusion that R.S.No.45 is not a *poramboke* and thereby held that Ex.A-1 does not confer any title in respect of the suit land over the plaintiffs. Referring to Ex.A-2, the appellate Court found that the Deputy Tahsildar, Parvathipuram, stated that ryotwari patta should not be issued to R.S.No.45 unless the classification was changed and the plaintiffs have not let in any evidence that the classification of the land was changed. The learned appellate Court held that Settlement Officer himself has no jurisdiction to entertain R.P. No.85 of 1965 and was not authorized to direct to rectify the mistake and even Ex.A-3 does not contain R.S.No.45 and, therefore, held that Ex.A-3 also does not help the plaintiffs.

ii) The learned appellate Court thereafter, having found from the evidence let in by the plaintiffs, while appreciating Ex.A-5 as to

how far it would assist them to prove their claim, adverted to the proceedings in O.S. No.214 of 1958 on the file of the Additional District Munsif, Parvatipuram and disbelieved the ignorance expressed by the plaintiffs that they learnt that the private property was described as Jangam Banda *poramboke* though, even as early as in 1960 itself, they were aware that Jangam Banda is a tank *poramboke*. The appellate Court basing on the admission of PW.1 on which also the trial Court relied, held that Exs.A-1 to A-3 do not correlate to R.s.No.45, which fact is established by Ex.B-1 and the plaintiffs, therefore, do not have any right, title in the plaint schedule property and thereby dismissed the appeal.

13. Aggrieved over the judgment and decree of the learned appellate Court, the plaintiffs preferred the instant second appeal. During pendency of this appeal, defendant No.3 died. Her legal representatives were brought on record as respondent Nos.5 and 6. In the memorandum of grounds, as many as (12) grounds have been agitated, but, however, it is stated that ground Nos.2, 3, 4 and 5 would form the substantial questions of law. Therefore, it would be relevant to refer to ground Nos.2, 3, 4 and 5, which are thus:

“ 2. Whether the lower appellate court is right in holding that Ex.A.5 registered sale deed is not proved on the ground that the attestors are not examined when the said finding is contrary to the provision of Section 72 of evidence Act and whether Ex.a.5 is required to be proved as per provisions of law in Section 68 of evidence Act.

3. Whether the lower appellate court is justified in giving adverse finding that the suit property is not covered by Ex.A.5 when the recitals of Ex.A.5 clearly show that the suit property is carried by Ex.A.5. This finding is perverse as the question of fact is determined contrary to documentary evidence.

4. the courts below erred in holding that the settlement officer has no jurisdiction to entertain R.P. when it is the settlement officer who has wrongly classified the suit land as tank poramboke had alone is competent to rectify the same.

5. Whether the settlement officer, Visakhapatnam has no jurisdiction to entertain R.P. No.85/65 which is filed by the appellants to rectify the mistake in classification of suit tank when the settlement officer has wrongly classified it under the A.P. Estates Abolition Act, 1948.”

14. Heard Smt. M. Bhaskara Lakshmi, learned senior counsel for the appellants, and the learned Government Pleaders for Appeals and for Arbitration.

15. In the light of the submissions made by the learned counsel for the appellants and the learned Government Pleaders, the only point that requires for consideration in the present second appeal is:

Whether Revenue Survey No.45 constitutes part and parcel of old T.D. No.75, and whether the appellants – plaintiffs could establish their title over the suit land?

16. In fact, there is absolutely no need to probe into the factual aspect since the findings recorded by the Court at the first instance and the first appellate Court are consistent and, thus, unless the plaintiffs are successful in showing that the findings recorded by the

trial Court and the first appellate Court are so patently perverse that they cannot sustain, certainly, the factual aspect need not be examined. It is not in dispute that the concurrent findings are recorded and there is absolutely no deviation in regard to any of the findings recorded by the trial Court while appreciating the same by the appellate Court by formulating the relevant points as required by Order 41 Rule 31 C.P.C.

17. Therefore, viewed from the substantial questions of law adverted to in the above while narrating the grounds of appeal, the same needs no advertence in view of the concurrent judgments rendered by the Courts below. However, viewing from the factual side also, since arguments were advanced though, it is unnecessary, still, on an examination of Exs.A-1 to A-6 and the evidence of PW.1, and even the documentary evidence marked on behalf of the defendants as Exs.B-1 to B-11, certainly, would not aid the plaintiffs in proving that they were issued ryotwari patta over the suit land covered by R.S. No.45.

18. A perusal of certain answers given by PW.1 would show that despite his assertion that 1/3rd of the suit land was kept for collection of water and utilization thereof for cultivating other lands, but the answers given in his cross-examination would clearly destroy the said assertions. Except asserting in his chief examination that they have been using 1/3rd of suit land for collection of water as their ancestors used to do, no other material is forthcoming except the order

of the Settlement Officer and the order of the Inams Deputy Tahsildar. However, even in the chief examination, he states that they have been raising dry crops, and admittedly, T.D. No.75 from which other survey numbers have carved out are dry lands only, but not wet lands and that itself shows that the Settlement Officer and the Inams Deputy Tahsildar went wrong in showing it as wet land.

19. Be that as it may, his answers to the effect that he does not know whether Kummarigunta estate was abolished or not, and again stating that it was abolished on survey being held and whether Jangambanda was shown as irrigation tank in the first page of Fair Adangal and he does not know how it was surveyed and he does not know whether the survey number mentioned in the ryotwari patta in Ex.A-3 and he was “not aware about the stature resting all the tanks in the Government”, would all reflect that he has no comprehension at all except laying a claim over the suit land that it is a private tank belonging to them.

20. Now, turning to the documentary evidence, Ex.A-5 would clinchingly establish that for the land purchased thereunder, the source of cultivation was the water that flows from ‘Jangam Banda’, thus, indicating the lands covered by Ex.A-5 would exclude Jangam Banda, which is the suit land and they are situate under the Jangam Banda covered by old T.D. No.75. Thus, that recital, certainly, cuts at the root of the case of the plaintiffs in claiming Jangam Banda land as their private property. When he was cross-examined on Ex.A-5, he

states that he purchased land under Ex.A-5 within a boundary shown therein and though, he volunteered that the land purchased under Ex.A-5 includes Gunnamamidi Thota, but he gives an unequivocal admission that they purchased land under Ex.A-5 situated under Jangam Banda and irrigated by the water of Jangam Banda. Therefore, certainly, the plaintiffs with an oblique motive, approached the Court to get title through the Court without having any semblance of case. In fact, the findings recorded by the trial Court on all five issues, referred to in the above, do not suffer from any legal infirmity including the bar of jurisdiction of Civil Court confirmed by the appellate Court and, therefore, even on factual side, absolutely no case being made out by the appellants and, therefore, the second appeal fails.

21. Accordingly, the present second appeal is dismissed, confirming the judgment and decree passed by the Courts below in dismissing the suit of the plaintiffs. No order as to costs.

As a sequel thereto, miscellaneous applications, if any pending in the second appeal stand closed.

October 21, 2016.
Mgr

A. SHANKAR NARAYANA, J