

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

SECOND APPEAL No. 793 of 2015

JUDGMENT:

Aggrieved by the judgment and decree dated 30.08.2016 in O.S. No.37 of 1996 on the file of the Junior Civil Judge, Metpally, declaring the plaintiff as the owner and possessor of the suit land, as confirmed by the appellate Court vide judgment, dated 20.07.2010, passed in A.S. No.02 of 2007 by the II Additional District Judge, Karimnagar at Jagtial, the present Second Appeal filed.

The parties will hereinafter be referred to as arrayed in the suit.

The brief facts of the case of the plaintiff are as follows :

One Edamala Muthamma, mother of the plaintiff was the owner and possessor of Ac.3.00 guntas in Sy.No.871 by virtue of the patta certificate dated 26.06.1984 issued by the Tahasildar Metpally. She was inducted into possession of the assigned land and a phodi No.871/1 was issued in respect of that land. After preparation of Sethwar, the land was assigned survey number as 871/6. The mother of the plaintiff developed the land and erected stone wall around the land; enjoyed the land by raising crops such as green gram, turmeric

and maize. She died in the year 1984 leaving behind the plaintiff as her legal heir. After the death of her mother, the plaintiff became the owner and possessor of the land by way of succession. The Mandal Revenue Officer, Mallapur assigned Ac.2-00 guntas in Sy.No.871 to the plaintiff by issuing patta certificate dated 15.07.1991 and inducted her into possession of the land. After preparation of Sethwar the land was assigned vide certificate No.871/2005. The plaintiff developed the land by erecting a stone wall around it. The said two acres of land is situated adjacent to the above said Ac.3-00 guntas of land on the northern side. While so, the defendants without any manner of right whatsoever tried to interfere with the possession of the schedule land on 25.06.1996 alleging that the schedule land is part of Reserve Forest area and denied her title over the land. Hence, the suit.

The defendant No.2 filed written statement, while defendant No.1 adopted the said written statement by filing a memo. The defendants stated that the total extent of land in Sy.No.871 is Ac.243.09 guntas and it is Government land (poramboke). He denied that the mother of the plaintiff was assigned Ac.3-00 guntas in that Survey number by virtue of patta certificate dated 10.06.2004 and that she was in possession and enjoyment of that land till her death and thereafter the plaintiff being her sole legal heir succeeded to that property and that the plaintiff was

also assigned Acs.2.00 in the same survey number by issuance of patta certificate dated 15.07.1991 and thus she has been in possession and enjoyment of schedule land as true owner. It is also denied that on 25.06.1996 they tried to dispossess her from the land by denying her title. According to him, out of the total extent of land in Sy.No.871 about Ac.130.00 guntas is reserve forest and as the suit land is part and parcel of the reserve forest the plaintiff has no right to claim any title over the land and that if she is in possession of the land she is an encroacher of the forest land. He lastly alleged that the suit is not maintainable for want of issuance of notice under Section 80 C.P.C.

The respondent/plaintiff examined herself as P.W.1 and in support of her evidence she also got examined P.Ws.2 to 4 and Exs.A-1 to A-13 were marked. On behalf of the appellants/defendants, D-2 was examined as D.W.1 but no documents were marked on his behalf. The trial court on appreciating the oral and documentary evidence on record, decreed the suit declaring that the plaintiff as the owner and possessor of the suit land i.e., Ac.3.00 of land in Sy.No.871/6 and Ac.2.00 of land in Sy.No.871/5 situated at Mallapur and the defendants were restrained by a perpetual injunction from interfering with the possession of the plaintiff over the suit land.

As against the said judgment and decree, the

matter was carried in appeal before the II Additional District Judge, Karimnagar at Jagtial, in A.S. No.02 of 2007. The appellate court after re-appreciating the evidence on record, recorded a finding that the suit land is not part of the Reserve Forest area and the appellants/defendants have failed to establish any ground to set-aside the decree and judgment of the trial court.

Heard the learned Government Pleader for the appellants and Sri P.V.Narayana Rao, learned counsel for respondent.

In this appeal, it is contended by the learned Government Pleader for Arbitration that the courts below should have seen that about Ac.103-00 out of Ac.243.09 falls in a reserve forest area which is a Government land and that the suit schedule land is part of it. As such it is urged that the appellant is not precluded from cancelling the patta if any granted and seek redelivery of possession of the land from the respondent herein. It is further submitted that first appellate court dismissed the appeal without considering the material facts and evidence on record, holding that the correspondence that emanated from the appellant is subsequent to filing of the suit and that the documents now filed by way of additional evidence petition before the appellate court were rejected on the ground that the appellants were not diligent enough to mark them during the course of trial and that none of the grounds enumerated under Order 41 Rule 27 of

C.P.C., have been made out for receiving the additional evidence.

The evidence available on record clearly shows that the suit land is separate and it does not form part of the forest land. If really the suit land is part of the Reserve Forest Area nothing prevented them to take steps for survey of the land to show that it is part of the Reserve Forest area. Further, D.W.1 did not specifically deny the issuance of patta certificate in favour of the plaintiff and her mother for the suit land and when questioned he said that he did not see as to where the suit land is situated. The said admission of D.W.1 show that he never visited the suit land and he is not competent to say as to whether it forms part of the Reserve Forest Area or not. Moreover, he specifically deposed that the suit land was never a forest land and that inside the reserve forest there is revenue land, but cannot give the survey numbers of those lands. From the above, it is clear that there is no legal evidence to show that the suit land is part of the reserve forest area. A perusal of the record show that no substantial question of law is involved in the second appeal warranting interference with the order of both the courts below.

For the aforesaid reasons, the present second appeal sans merit and the same is accordingly dismissed. There shall be no order as to costs.

Miscellaneous petitions pending if any, in this Second Appeal, shall stand dismissed.

JUSTICE C. PRAVEEN KUMAR

Date: 19.02.2016

GM