

HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.1016 of 2000

JUDGMENT:

This second appeal is preferred challenging judgment and decree dated 08.09.2000 in A.S.No.90 of 1997 on the file of Additional District Judge, Vizianagaram, whereunder judgment and decree dated 06.09.1997 in O.S.No.62 of 1991 on the file of District Munsif (presently Junior Civil Judge), Cheepurupalli, is confirmed.

2. Appellants herein are defendants and respondents herein are plaintiffs in O.S.No.62 of 1991. The suit was originally filed by one Majji Appalanaidu and on his death, his legal representatives were added as plaintiff Nos.2 and 3 and thereafter on the death of 3rd plaintiff, her legal representatives were added as plaintiff Nos.4 to 8. The suit is filed seeking declaration that plaintiff is absolute owner of plaint schedule land and for consequential relief of permanent injunction restraining defendants, their subordinates, agents from interfering with peaceful possession and enjoyment of plaint schedule land. According to plaintiffs, the plaint schedule property was originally belong to Naigapula Gurayya, the original pattader and the property was purchased from his legal representatives in the year 1939 through registered sale deed dated 18.04.1939 under Ex.A.1 for a valuable

consideration of Rs.200/- and since then the property was under the personal cultivation of 1st plaintiff. It is contended that in the month of November, 1971, Regana Magayya, Regana Appala Ramulu, Regana Vasanthi, Kanulu Paidayya and Regana Mukka Appayya tried for forcible trespass into the plaint schedule land on the ground that they were granted D-Form pattas by the Government and on that 1st plaintiff filed O.S.No.48 of 1972 for permanent injunction and that suit was decreed in favour of 1st plaintiff and that decree has become final and at that stage, 1st plaintiff received show-cause notice dated 26.12.1990 under Rule 3 of the A.P. Assigned Lands (Prohibition of Transfer) Rules, 1977, to explain as to why 1st plaintiff should not be summarily evicted from the plaint schedule land, for which he submitted explanation giving all details as to how acquired the land, title and contended that he cannot be evicted. According to 1st plaintiff, Revenue Divional Officer (RDO) passed order on 06.07.1991 for resumption of the land and directed Mandal Revenue Officer (MRO), Garividi, to take possession and that made 1st plaintiff to file the suit seeking declaration and injunction.

3. Defendants resisted the claim of plaintiffs and contended that the suit land is in Kapusambham Village, which is in a Zamindari Estate of Vizianagaram Zamindar and that the village was abolished under the Estate

Abolition Act and settlement rates were introduced. It is contended that during survey and settlement operations, plaint schedule land was classified as 'Gayalu' or 'Assessed Waste Dry' and as it is a Government banjar land, no body has any right in the said land and that the Government assigned this land to Regana Vasanthu, Regana Appalaramulu, Regana Nagayya and Kavulu Pydiyya and that plaintiff is not entitled for any relief. It is also contended that Civil Court has no jurisdiction to grant any relief without getting any Ryotwari patta. On these contentions, trial Court framed the following issues:

1. Whether the plaintiff is entitled for a declaration?
2. Whether the suit land is a Gayalu?
3. Whether the claim of the plaintiff was negated by the Settlement Officer?
4. Whether the plaintiff was evicted from the suit land and the land was resumed by the Government on 20.07.1991?
5. Whether this court has no pecuniary jurisdiction?
6. To what relief?

4. During trial, two witnesses are examined and thirteen documents are marked on behalf of plaintiff, whereas two witnesses are examined and five documents are marked on behalf of defendants. On a over all consideration of oral and documentary evidence, trial Court has not accepted the objection of defendants both on the jurisdictional aspect and also the plea that suit land is a Government land and decreed the suit in favour of

plaintiffs. Aggrieved by the decree and judgment of the trial Court, defendants preferred appeal to the District Court and Additional District Judge, Vizianagaram, on a reappraisal of entire oral and documentary evidence of both parties, confirmed the findings of trial Court and dismissed the appeal. Aggrieved by the concurrent findings of trial Court and first appellate Court, present second appeal is preferred.

5. This Court admitted this second appeal on 07.12.2000 treating the following grounds as substantial questions of law:

1. When the Revenue records show that the suit land is a poramboke, whether the Civil Courts have jurisdiction to decide as to the correctness of the entries in Revenue Records and nature of the land?
2. When the respondents failed to obtain patta on abolition of the Estate, whether Civil Courts have jurisdiction to declare title in their favour dehors the provisions of Estate Abolition Act?
3. In view of Section 4(2) and 10 of A.P. Assigned Land (Prohibition of Transfer) Act, 1977, whether the Civil Courts have jurisdiction to declare title when Revenue Divisional Officer passed eviction order and when no appeal was preferred against it?
4. When Revenue Records of 1938 show that the suit land is poramboke and when there is no eviction to show that it was assigned to predecessor in title of the respondents, whether the sale deed in favour of the respondents by the alleged assignee confer any right to the land and that too as against Government?

6. Heard arguments.

7. Now the point that would arise for my consideration in this second appeal is

Whether substantial questions of law as raised by appellants in respect of Civil Court's jurisdiction and the provisions of A.P. Assigned Land (Prohibition of Transfer) Act, 1977, are tenable?

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POINT :

8. Learned counsel for appellants contended that plaintiffs have not obtained any Ryotwari patta as required under the provisions of Estate Abolition Act and the provisions of A.P. Assigned Land (Prohibition of Transfers) Act and the suit land is a Government land and plaintiffs have no manner of right over the said property, but both the Courts without considering these aspects have carried away with oral and documentary evidence produced on behalf of plaintiffs. It is further submitted that when the suit land is an assigned land situated in Zamindari estate, Civil Court has no jurisdiction to give any declaration.

9. On the other hand, learned counsel for plaintiffs submitted that the very same objections were raised before both the trial Court and first appellate Court and both the Courts have elaborately considered these

aspects and negated them with sound and convincing reasons and there is no question of law involved leave alone substantial question of law for determination by this Court. He further submitted plaintiffs have established that the suit property originally belonged to one Naigapula Gurayya and the same was purchased from the legal heirs of Gurayya under Ex.A.1 sale deed in the year 1939 and ever since 1st plaintiff in the beginning and after him the other plaintiffs have been in continuous possession and enjoyment over the plaint schedule land and these aspects were rightly considered by the trial Court and appellate Court.

10. I have perused the material papers including the judgments of both the Courts and the evidence on record. As rightly pointed out by advocate for plaintiffs as per the recitals of Ex.A.1 sale deed the suit property belong to Naigapula Gurayya and in fact one of the witnesses examined on behalf of defendants as DW.2, who is no other than the Village Talayari, clearly deposed in his evidence that the suit property is popularly known as Naigapula Podu and this Naigapula is the surname of Gurayya and Podu means land, which ultimately mean that the suit property is the land of Naigapula people. This DW.2 at a later stage of his evidence made a categorical admission that this land belongs to Naigapula Gurayya, which is in support of plaintiffs' claim. Considering such

important admissions, which are supported and corroborated with the evidence of plaintiff and the documents produced on behalf of plaintiffs particularly Ex.A.1 sale deed of the year 1939, both trial Court and first appellate Court held that the suit property is not a Government poramboke and it is the private property belonging to Naigapula Gurayya. One of the contentions of the defendants is that D-Form pattas were issued in favour of Regana people in the year 1970, but no resumption proceedings were initiated against plaintiffs. It is also evident from the record that 1st plaintiff when came to know about issue of D-Form pattas in favour of Regana people, filed O.S.No.48 of 1972 and that suit was decreed in favour of 1st plaintiff and that decree has become final long prior to filing of this suit. Therefore, the objection of the appellants with regard to nature of the land cannot be accepted in view of the clinching oral and documentary evidence available on record.

11. The other contention of appellants is that Civil Court has no jurisdiction to entertain the suit and in fact this objection was also raised both before trial Court and appellate Court and both the Courts on a elaborate discussion and consideration of the provisions of Estate Abolition Act and the provisions of A.P. Assigned Land (Prohibition of Transfers) Act, held that the objection of defendants with regard to the jurisdiction of the Civil Court

is not tenable and as the property is a private property, Civil Court has got jurisdiction, I do not find any wrong in the approach of Courts below or wrong appreciation of facts and law by the Courts below including the jurisdiction aspect and nature of the land. As rightly pointed out by advocate for plaintiffs the grounds now urged as substantial questions of law were already considered by both the Courts and rightly negated the objection of defendants. On a close scrutiny of the entire material, I am of the considered view that both trial Court and first appellate Court have elaborately dealt each and every aspect with reference to evidence on record and came to a right conclusion and that there are no grounds to interfere with such concurrent findings based on sound reasons. For these reasons, I am of the view that no substantial question of law is involved and the substantial questions of law raised by appellants are not at all tenable and second appeal is devoid of merits.

12. Accordingly, second appeal is dismissed.

13. Miscellaneous petitions pending, if any, shall stand closed. No costs.

S. RAVI KUMAR, J

5th February 2016.

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