

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

SECOND APPEAL No.563 of 2012

JUDGMENT:

Plaintiff Nos. 2 to 7 in O.S.No.60 of 2002 on the file of Principal Junior Civil Judge, Chodavaram, Visakhapatnam District, who are the appellants in A.S.No.12 of 2010 on the file of Senior Civil Judge at Chodavaram, Visakhapatnam District, have preferred this Second Appeal under Section 100 of the Code of Civil Procedure, 1908 ('CPC' for short) challenging the dismissal of the suit filed for grant of permanent injunction.

2. For convenience of reference, the parties to the appeal are ranked as in O.S.No.60 of 2002 by the Principal Junior Civil Judge, Chodavaram, through out the judgment.

3. Plaintiff No.1 filed the suit for bare injunction contending that, as he is a landless poor, occupied the suit schedule land for more than 30 years ago, reclaimed the land after removing shrubs and bushes and raised casuarinas tope in the said land, sold the produce after harvesting. The Government assigned the said land to him by issuing D-Form Patta in the year 1975 and since then he is in exclusive possession and enjoyment of the said land to the knowledge of one and all, including the defendants. He further contended that he paid land revenue to the Government and thus became the absolute owner of the property, as he was in exclusive possession and enjoyment of the said property.

4. Defendant No.1 and his family, who own land in the northern side of the suit schedule property, made a request to sell the schedule property to them, but he refused for the same and hence, they bore grudge against him and started creating troubles. While

so, on 24.03.2002, when he along with his coolies attending the agricultural operations, all the defendants came and obstructed him from attending the agricultural operations. However, the high handed intervention of the defendants was pacified by the intervention of the neighbours. The defendants are openly proclaiming that they would dispossess the plaintiffs on one day or the other. To protect his possession, plaintiff No.1 filed the suit.

5. Defendant No.5 filed Written Statement, which is adopted by D.1 to D.4 and D.6 by filing a Memo:

i) The defendants denied the boundaries, extents, survey number and disclosed the correct boundaries as thus:

East- Land belong to Siripurapu Demudamma, Kolli Rajinaidu and Kolli China Appalanaidu etc;

South—the land in possession of Katapalli Peda Assanna, Chinna Assanna and Sabbavarapu Venkanna etc;

West—the land in possession of Kolli China Appalanaidu, Rayapureddi Appalanaidu etc;

North—the land in possession of Korupolu Tata, Kolli Peda Appalanaidu and Ganivada Narayana Murthy etc.,

(ii) The schedule land is covered by Sy.No 121-1 part and part in Sy.No.120. Thus, the total extent is about Acs.10.00. But, the plaintiff with a view to have unlawful advantage and to encroach the schedule land, filed the present suit suppressing the correct details of the land along with boundaries and extent, on this ground, the suit is liable to be dismissed.

(iii) The suit is bad for non-joinder of necessary parties i.e., Katapalli Pedda Assanna, China Assanna, Katapalli Demudamma, Rayapureddi Appalanaidu, Korupolu Appalanaidu, Korupolu Chandri Naidu and Kolli Rajinaidu, as they are in possession and

enjoyment of two different bits of land within the boundaries specified in the schedule annexed to the plaint, therefore, on this ground also, the suit is also liable to be dismissed.

iv) It is specifically contended that defendant Nos. 2,4 and 5 viz., Korupolu Appalanaidu, Korupolu Chandri Naidu and Kolli Rajinaidu respectively, have been in possession and enjoyment of the suit schedule land and the land abutting to the schedule land in their own right to the knowledge of one and all, including the plaintiffs, thus, the plaintiffs are not in possession and enjoyment of the schedule land as on the date of filing of the suit, that 5th defendant raised Mango garden in a bit of land and the predecessors-in-title of the defendants raised Palmyrah trees in the schedule land, they are now aged 60 years and the defendants are also raising dry crops every year, therefore, the plaintiffs are not in lawful possession and enjoyment of the property, and finally prayed for dismissal of the suit.

6. Basing on the above pleadings, the trial Court framed three issues.

7. During trial, on behalf of plaintiffs, PWs. 1 to 4 were examined and Exs. A.1 to A.4 were marked. On behalf of defendants, DWs. 1 to 3 were examined and Exs. B.1 and X.1 were marked.

8. Pending suit, plaintiff No.1 died and Plaintiff Nos. 2 to 7 were brought on record as his legal representatives.

9. Upon hearing the arguments of both the counsel, the trial Court dismissed the suit with costs holding that the evidence of PWs. 1 to 4 is inconsistent with each other and with the pleadings and thereby the plaintiffs failed to establish that they are in

possession and enjoyment of the schedule land within the boundaries as on the date of filing of the suit and hence declined to grant relief of permanent injunction.

10. Aggrieved by the said Decree and Judgment of the trial Court, the unsuccessful plaintiff Nos. 2 to 7 preferred first appeal in A.S.No.12 of 2010 on the file of Senior Civil Judge at Chodavaram and the same was also dismissed by decree and judgment dt. 15.02.2012, while confirming the decree and judgment dt. 04.06.2009 passed by the trial Court. Thus, both the trial Court and the Appellate Court recorded concurrent findings of fact with regard to the possession, infringement and invasion of the legal rights of the plaintiffs by the defendants.

11. Aggrieved by the concurrent findings recorded by both the trial Court and the appellant Court, the present second appeal is preferred by appellants/plaintiff Nos. 2 to 7 raising several contentions.

12. The appellants framed six substantial questions of law. Question No.1 is pertaining to confirmation of title by way of D-form patta on Plaintiff No.1 and the second question is whether the pattadar passbook and title deeds marked as Exs. A.1 and A.2 proved possession of plaintiff No.1. The other substantial questions of law framed by the appellants are, in fact, not the substantial questions of law and they are only questions of fact. Therefore, at the stage of admission itself, the second appeal is heard at length with the consent of both Advocates Sri N. Subba Rao, learned counsel for appellants and Sri K.V.Subrahmaynam, learned counsel for respondents on two substantial questions of law, as it is an appeal of the year 2012 and still at the stage of admission, as I find that there is no point to

admit the second appeal after a lapse of 4 years from the date of filing of the second appeal and posted the matter for admission and hearing.

13. During the course of hearing, Sri N. Subba Rao, learned counsel for appellants/plaintiffs, contended that the concurrent finding recorded by both trial Court and the appellate Court that the plaintiffs are not in possession and enjoyment of the land in Sy.No.121/2, is not based on any material and both the trial Court and the appellate Court ignored D-Form patta issued in favour of plaintiff No.1 by the M.R.O., proved possession of plaintiff No.1 by producing of Exs. A.1 and A.2–Title Deed and Pattadar Passbook issued under the A.P. Rights in Land and Pattadar Pass Books Act, 1979, but these two documents were not considered in proper perspective and thereby committed an error in dismissing the suit and the appeal suit by both the Courts below and finally prayed to grant the relief of permanent injunction restraining the defendants from ever interfering with the peaceful possession and enjoyment over the suit schedule property of the plaintiffs.

14. Per contra, Sri K.V.Subrahmanyam, learned counsel for respondents/defendants argued in support of the findings recorded by both the trial Court and the appellate Court regarding title and possession over the suit schedule property and prayed for dismissal of the second appeal.

15. Now the Point is Whether the D-Form patta issued in favour of plaintiff No.1 confers any valid title on the plaintiffs ?

The basis for the claim of the plaintiffs to grant permanent injunction is 'D-Form patta' allegedly issued in the year 1975. But, the plaintiffs did not produce the 'D-Form patta' alleged to have been issued in favour of plaintiff No.1 in the year 1975 and

the plaintiffs are silent as to the details, Viz., date of issue of such D-Form patta, Proceedings Number etc., and it has not seen the light of the day and no explanation was offered in the entire plaint what had happened to D-form patta. Curiously, the plaintiffs obtained a Certificate from the Mandal Revenue Officer, Devarapalli, certifying that an extent of Acs.2.04 cents in S.No.121-2 of Devarapalli Village was assigned in favour of Simma Gondayya, S/o Appanna, by issuing D-Form patta. The Certificate was obtained on 15.02.2002 certifying that Gondayya @ Gundappa was issued D-Form patta. But the plaintiffs are silent as to the date of grant of such D-Form patta and other details, including proceedings number and the basis for issuing such certificate and nothing was disclosed in the certificate. In General, Register is being maintained in the office in its normal course of business regarding the issuance of the pattas with all details in a particular year and nothing prevented the plaintiffs to obtain a duplicate copy of D-Form patta, allegedly issued in favour of Plaintiff No.1. In the absence of any documentary evidence regarding the title of plaintiff No.1 i.e., D-Form Patta, which was allegedly issued in favour of plaintiff No.1 in the year 1975, it is difficult to hold that the plaintiffs are the owners of the suit schedule property. However, in a suit for bare injunction, the Court is not supposed to record a finding on the title of the parties attaching finality, but for a limited purpose, title can be gone into incidentally to decide whether the possession of the property is lawful or not. Therefore, the findings recorded by the trial Court and the Appellate Court that the plaintiffs failed to establish their title and ownership over the schedule property is beyond the scope of trial in a suit for bare injunction. Therefore, the said findings pertaining to the title of the property is hereby set aside.

16. When the plaintiffs did not produce 'D-Form patta', in view of the limited scope of the trial in a suit for bare injunction, this Court is not required to examine the issue whether the alleged 'D-Form patta' confers any right and title in favour of the plaintiffs or not. Hence, I find that it is unnecessary to examine and record any finding as to the title in a suit for bare injunction. Accordingly, this point is decided.

17. Second Point is *whether the plaintiff No.1 proved his possession and enjoyment over the suit schedule property as on the date of filing the suit by producing Exs. A.1 and A.2?*

One of the major contentions urged before this Court is whether Exs. A.1 to A.3 establish that the plaintiffs are in possession and enjoyment over the suit schedule property as on the date of filing of the suit. In Ex.A.1, the owner's name was recorded in the title deed as Simma Gundayya for the patta No.394 and it is under the cultivation of the owner of the land in column No.6 of page 3 and the survey number of the land is 121-2 and it is classified as dry land of an extent of Acs.2.04 cents. Similarly, Ex.A.2 was issued in the name of Simma Gundayya for patta No.394 with all details. At best, these two documents could establish that by the date of issuance of Exs. A.1 and A.2, the property is in possession and enjoyment of Simma Gondayya, the alleged beneficiary of 'D-Form patta' issued in the year 1975. There is a presumption under Section 6 of the A.P. Rights in Land and Pattadar Pass Books Act, 1989 ('1989 Act' for short) that every entry therein is presumed to be correct, unless contrary is proved till amended in accordance with the provisions of the Act.

Even assuming for a moment, that the presumption contained under Section 6 of 1989 Act is applicable, at best, Exs. A.1 and

A.2 are helpful to prove possession of the plaintiffs as on the date of issuance of such documents i.e., in the year 1991. But, the suit is filed in the year 2002, almost after a lapse of 11 years. If really the plaintiffs are continuing in possession and enjoyment of the property as on the date of issuance of Exs. A.1 and A.2, their names would have been mutated in the Adangals i.e, cultivation account of the village, noting the actual cultivation and possession of the land. At present, No.3 Account is an important piece of evidence to show that plaintiffs are in exclusive possession and enjoyment of the property by raising agricultural crop or any other dry crops in the land. But, no piece of evidence is brought on record to establish that the plaintiffs are in possession and enjoyment of the property as on the date of filing of the suit.

18. On the other hand, the defendants produced certain documents in support of their claim that they are in possession and enjoyment of the schedule property including No.3-Adangal. Ex.B.1 is for the fasli No.14/3, which shows that the defendants are cultivating the land and it disproved the alleged cultivation, possession and enjoyment of the plaintiffs raising any crop in the schedule property. Therefore, the defendants could dispel the presumption contained in Section 6 of the Act regarding the possession. Curiously, the defendants also produced Ex.X.1—Pattadar Passbook issued in the name of Koruprolu Appalanaidu, which shows that the schedule land is in possession of defendants. Thus, Exs. A.4 and X.1 were issued by the M.R.O, certifying the title and ownership of the parties, exercising the power under Section 5 of 1989 Act. Thus, there is any amount of conflict regarding the possession of the property in view of Exs. A.4 and X.1 and neither of the documents can be accepted to grant the relief in the suit. However, Ex.B.1 is an important piece of

evidence, which shows that the defendants are in possession and enjoyment of the property and disproved the possession of the plaintiffs on the date of filing of the suit. Therefore, based on Exs. A.1 to A.3, it is difficult to record a finding that the plaintiffs are in possession and enjoyment of the property, as the defendants established that the plaintiffs are not in possession and enjoyment of the property in S.No.121-1 of Devarapalli as on the date of filing of the suit. Hence, I find no illegality in the concurrent findings recorded by both the trial Court and the appellate Court, hence, I find no grounds warranting interference with the concurrent findings recorded by both the trial Court and the appellate Court, while holding that the plaintiffs miserably failed to establish their lawful possession of the property in S.No.121-1 as on the date of filing suit, though they are able to prove that the defendants made an attempt to invade or infringe their legal rights. Accordingly, the point is answered.

19. In the result, this Second Appeal is dismissed at the stage of admission itself, with the consent of both counsel, but without costs in the circumstances of the case. The plaintiffs are at liberty to approach the proper authority for appropriate relief and the findings whatever recorded in the second appeal, will have no bearing on the issue of title in any suit or proceedings pending or to be filed by the plaintiffs.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 26-07-2016.

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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SA No. 563 of 2012

Dt. 26-07-2016

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