

***HON'BLE SRI JUSTICE SAMUDRALA**

GOVINDARAJULU

+SECOND APPEAL No. 777 of 1999
and 98 of 2000

% 07.06.2013

S.A.No.777 of 1999

Laxmaiah

....Appellant

Vs.

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The Nizamabad Co-operative Sugar
Factory Limited, Nizamabad at Jankampet
Rep.by its Managing Director

.... Respondent

S.A.No.98 of 2000

Dondiba

... Appellant

Vs.

The Nizamabad Co-operative Sugar
Factory Limited, Nizamabad at Jankampet
Rep.by its Managing Director

... Respondent

!Counsel for the appellant: Sri K.Raghuveer Reddy

Counsel for the Respondent: Sri Vedula Srinivas

<Gist :

>Head Note:

? Cases referred:

**HONOURABLE SRI JUSTICE SAMUDRALA
GOVINDARAJULU**

**SECOND APPEAL Nos.777 of 1999
and 98 of 2000**

COMMON JUDGMENT:

These two second appeals raise common and similar questions to be determined by this Court. The defendant in the respective suits is the appellant in the respective second appeals herein. Two suits are filed by the plaintiff-respondent namely the Nizamabad Co-operative Sugar Factory Limited, Nizamabad against the respective defendants separately for eviction from the respective plaint schedule sites and for vacant possession of the same together with past and future profits on the ground that the schedule sites in S.No.482/5 belong to the plaintiff and that the respective defendants encroached respective portions of the site without any manner of right. The respective defendants/appellants opposed the suit mainly on the

ground that the respective schedule sites are not in S.No.482/5 of Jankampet village and that they are in S.No.479/7 of the same village and that they acquired title to the property by adverse possession and that they have been in possession of the sites having purchased the same under agreements for sale which culminated into registered sale deeds marked as Ex.B.1. After trial, the trial Court decreed the suits; and on appeals filed by the respective defendants, the lower appellate Court dismissed both the appeals, resulting in the respective defendants approaching this Court with these second appeals.

2. These two second appeals were admitted by the then learned Judge of this Court on the ground that ground Nos.3 and 4 of the memorandum of grounds of second appeal raise substantive questions of law. They are as follows:

“In case of boundary dispute with regard to survey numbers, can the boundary be determined without issuing notice to the affected parties?

Whether a document brought up, which is *ex facie* contrary to the provisions under Section 10(i) & (ii) of A.P.Survey and Boundaries Act, can be relied on to adjudicate the boundary dispute?”

3. Apart from the said grounds, questioning survey conducted by PW.2, the appellant's counsel further contended that in the absence of proof of the plaintiff being entitled to the land in S.No.482/5 by way of filing title deed, the Courts below could not have decreed the suits. Main dispute between the parties is not relating to ownership of the land in S.No.482/5. The dispute between the parties is whether the suit site is lying in S.No.482/5 or is lying in S.No.479/7. There is no specific dispute by the respective defendants of the ownership of the plaintiff of S.No.482/5. Therefore, this additional ground urged by the appellant's counsel does not hold water.

4. The Courts below held that the respective suit sites in both the suits is in S.No.482/5 and not in S.No.479/7 on the basis of evidence of PW.2 who is the survey official, and Ex.A.4 panchanama prepared at the time of survey by PW.2 in the presence of mediators. It is further evidence of PW.2 that at the time of measurement of the land by him, apart from mediators, the respective defendants was also present. This fact was not challenged in cross-examination of PW.2, as noticed by the Courts below.

5. It has to be seen whether measurement of land in S.No.482/5 by PW.2 is in accordance with Section 10 of the Andhra Pradesh Survey and Boundaries Act, 1923 (in short, the Act). No doubt, PW.2 went to the land and measured the land on application filed by the plaintiff and on deputation by the Director of Survey and Settlements. But, it is contended by the respondent's counsel that the said survey was not under the Act muchless under Section 10 of the Act. A reading of provisions of the Act shows that Section 10 occurs under Chapter II relating to the survey of Government land. Section 5 indicates the instances where the provisions relating to Chapter II are applicable. It says that they are applicable for survey of 1) any Government land, or of 2) any boundary of such land, or of 3) the boundary forming the common limit of Government land and land that is not Government land. It is only in relation to survey of those three instances, provisions under Chapter II including notification under Section 6 and notice under Section 10(2) are applicable. In the case on hand, PW.2 neither conducted any survey of any Government land under Chapter II nor conducted survey under Chapter III relating to resettlement operations after notifying estates

lands. Therefore, provisions of the Act have no application to the case of measurements taken by PW.2 and determination made by PW.2 in Ex.A.4 panchanama as to whether the land is in S.No.482/5 or not. The substantial questions of law framed at the time of admission are answered accordingly.

6. Evidence of PW.2 and Ex.A.4 are only pieces of evidence in support of the plaintiff's contention. Since the measurements were made by an Official Surveyor and Ex.A.4 panchanama was prepared by such Surveyor, they do not stand on any higher footing than any other piece of evidence let in by both the parties. They have to be read along with other pieces of evidence let in by both the parties. It is contended by the appellant's counsel that no mediator in Ex.A.4 panchanama is examined. When the Official Surveyor himself was examined as PW.2, there is no more obligation for the plaintiff to examine any of the mediators in Ex.A.4 panchanama to vouch-safe truth of the same. As pointed out by the Courts below, evidence of PW.2 and Ex.A.4 could not be challenged. There is no contra evidence on behalf of the respective defendants by examining any of the mediators in Ex.A.4. There is no

contra evidence of any other Surveyor and Measurements by him to show that the respective suit sites are in S.No.479/7 as contended by the defendants. Therefore, Ex.B.1 sale deeds dated 02.02.1979 and 27.01.1989 in each case do not confer any rights on the respective defendants for the respective suit lands in S.No.482/5. At best, the said sale deeds may confer rights in the respective defendants for the sites in S.No.479/7 which is not the subject matter herein. This Court finds that those sale deeds relate to property which is other than the suit property.

7. With regard to possession of the respective defendants of the respective suit sites, the appellant in S.A.No.98 of 2000 let in evidence to show his possession from the year 1972, whereas the appellant in S.A.No.772/1999 filed material to show his possession since the year 1974. The suits in the trial Court were filed in the year 1981. Therefore, the respective appellants could not have acquired title to the respective suit sites by way of adverse possession. On consideration of entire material let in by both the parties and contentions raised by both the counsel, this Court is of the opinion that the Courts below

came to the right conclusion both on facts and in law in favour of the plaintiff. I do not find any error on facts or in law committed by the Courts below.

8. In the result, both the second appeals are dismissed with costs.

SAMUDRALA GOVINDARAJULU,J

Dt.07.06.2013

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