

**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**SECOND APPEAL No.1107 OF 1999**

**JUDGMENT:**

Defendant No.9 in original suit No.28 of 1990 on the file of the Subordinate Judge, Tirupati, filed the instant second appeal. Since he died during the pendency of this appeal, his legal representatives have been brought on record as appellant Nos.2 to 4.

2. The aforesaid suit was originally instituted by respondent No.1 herein against defendant Nos.1 to 9. Since defendant No.4 - Chamarthi Rama Raju died during the pendency of the suit, his legal representatives were brought on record as defendant Nos.10 to 14 by trial Court.

3. The plaintiff - R.S. Venkateswarlu sought the relief of declaration of title and consequential perpetual injunction over an extent of 10 acres of land showing it as the first bit, within specific boundaries and 4 acres of land as second bit also within specific boundaries located in Survey No.32, situate in Venkatamambapuram village, Elakatur group of Nagari Taluk in Chittoor District, and delineated in plaint schedule specifically showing as HIKL and ABDM, respectively.

4. It is stated that originally a vast extent was standing in the name of one Maneni Bangaru Naidu, son of Munaswami Naidu in

Paimash No.216, and when the said extent was converted to acres, it worked out to Acs.104-17 cents and the said M. Bangaru Naidu was in possession and enjoyment of Acs.150-00, and the plaint schedule land forms part of the said total extent of Acs.150-00. When the survey was done, the said extent and also the extents in Survey Nos.212 to 216 were given the Survey No.32.

a) He states that the said M. Bangaru Naidu filed O.S. No.64 of 1959 on the file of the District Munsif, Tirupati against 31 persons seeking relief of mandatory injunction for removal of the road running from north to south laid by the defendants therein which road starts from Palamangalam Dakshinapur Kandriga village and leads to M.S.V. Puram. The said suit was contested and it was ultimately decreed. Subsequent thereto, some of the village elders when requested the said M. Bangaru Naidu not to take further action pursuant to the decree passed in his favour, for removal of the said road, he had agreed for the same and, thus, the road formed then is shown in the rough sketch to the east of the suit land and even a finding was recorded in the said suit that “plaint sketch is only an approximate one intended to give the location of the road in relation to his other land”. Thus, the said land including the plaint schedule property herein belonged to M. Bangaru naidu.

b) In paragraph No.8 of the plaint, it is stated that some of the defendants herein, who are relations of the defendants therein were figuring as defendants in O.S. No.64 of 1959 and, therefore, it is

pleaded that the judgment and decree passed in O.S.No.64 of 1959 operates *res judicata* against the defendants, since the defendants therein taken a plea that they have nothing to do with the suit land belonging to M. Bangaru naidu in Sy.No.32.

c) Subsequent to disposal of O.S. No.64 of 1959, the father of defendant No.1, Dasaraju Chinna Venkataraju and some others purchased 3 acres of land situated to the west of the plaint schedule item No.1 shown as KJHI under an agreement of sale for Rs.300/- from the said M. Bangaru Naidu and, M. Bangaru Naidu also sold 5 acres of land located in between item Nos.1 and 2 of suit schedule property to one Somasundara Raju under a registered sale deed in the year 1980 which sales, according to the plaintiff, were within the knowledge of the defendants. When the said M. Bangaru Naidu was in sound state of disposition, and out of his free will, had executed a Will on 10-01-1981, bequeathing item Nos.1 and 2 of the plaint schedule to the plaintiff along with some other properties, and, though, the said M. Bangaru Naidu was signatory, he affixed his left thumb impression in the said Will due to his incapacity caused by the paralytic stroke he suffered since about 3 or 4 years prior to the execution of the said Will and he died on 18-01-1981. Consequently, the plaintiff became the absolute owner of the plaint schedule property with other property with possession and he has been in continuous possession and enjoyment by raising crops therein, paying cist therefor. Since defendants attempted to interfere with his possession and

apprehending that they would dispossess him, he filed the aforesaid suit.

5. Before the Court below, in the written statement filed by defendant No.1, he has denied the operation of bar of principle of *res judicata* and would contend that the sketch and the judgment in O.S. No.64 of 1959, on the file of the District Munsif, Tirupati, would not aid the plaintiff. He has denied the allegation that late Bangaru Naidu sold some extent to his father and also denied the possession of the plaintiff over the plaint schedule property.

i) According to the defendants, they alleged that they are the joint pattadars of the land bearing Survey No.32, and they have been in possession and enjoyment of the same, and even perfected their title to the property by adverse possession also and, thus, there is no cause of action to file the suit and, of course, even disputed the valuation of the relief and, finally, sought to dismiss the suit with costs.

6. Original defendant Nos.2 to 9 adopted the said written statement by filing a memo.

7. The learned trial Court framed as many as six issues as follows:

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i) Whether the Plaintiff is the absolute owner of the suit lands?

- ii) Whether O.S.64/59 on the file of District Munsif's Court, Tirupati operates as resjudicate?
- iii) Whether the plaintiff is entitled for perpetual injunction in respect of schedule marked land?
- iv) Whether the defendants have perfected their title by adverse possession as alleged in the written statement?
- v) Whether the suit is not properly valued and court fee paid is not in sufficient?
- vi) To what relief? ”

8. To substantiate their respective cases, the plaintiff examined PWs.1 to 5 and marked Exs.A-1 to A-17, whereas, DWS.1 to 4 were examined and Exs.B-1 and B-2 were marked on behalf of the defendants.

9. The learned trial Court having tendered findings on the aforesaid issues arrived at the conclusion that the plaintiff failed to prove his title over the property and thereby dismissed the suit for declaration of title as well as for consequential relief of perpetual injunction.

10. Assailing the said judgment and decree, the plaintiff preferred the Appeal Suit No.8 of 1995, on the file of the V Additional District Judge, Tirupati, Chittoor District, raising various grounds.

11. The learned appellate Court formulated the point for consideration as to whether the appellant is entitled for setting aside the judgment and decree assailed?

12. Having heard the arguments tendered by both sides and on re-appraisal of evidence on record and finding that the sale deeds executed by late Bangaru Naidu over some of the extents of very same survey number i.e. Sy.No.32, and referring to the rulings relied on by both sides and observing that respondent No.8 alone argued the case, but not other respondents and holding on the stand taken by the defendant that a joint patta was given does not mean that the joint pattadar had undivided interest and undivided possession over the land mentioned in the joint patta, arrived at the conclusion that the appellant has probalilized that late Bangaru Naidu owned and possessed Acs.150-00 and case of the plaintiff as regards title derived by him under Will and also placing reliance on the judgment rendered in O.S. No.64 of 1959 and examining the boundaries of the land therein and the boundaries found in the sale deeds executed by late Bangaru Naidu upheld Ex.A-6 Will and set aside the judgment and decree passed by the trial Court by allowing the appeal.

13. Having got aggrieved over the same, respondent No.8 - defendant No.9 preferred the present appeal, as mentioned in the above. In the grounds of appeal, besides agitating various grounds in paragraph No.11 set out the following substantial questions of law.

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- a) Whether a plaintiff in a suit for declaration and possession can depend upon the weakness of the defendants' case.

- b) Whether O.S. No.64/59 which was filed for Mandatory Injunction operates as *res judicata* in a subsequent suit filed for declaration and injunction.
- c) Whether the conclusion of the Lower Appellate Court that even though joint patta was granted, it would not take away the pre-existing separate rights and enjoyment of the previous owner is vitiated.
- d) Whether the judgment of the Lower Appellate Court is in accordance with the Order 41 Rule 31 C.P.C.
- e) Whether an admission made by the party is binding on the party under Sec.58 of the Indian Evidence Act. ”

14. Heard Sri V.L.N. Gopala Krishna Murthy, learned counsel for the appellants, and Sri M.P. Chandramouli, learned counsel for respondent No.1 - Plaintiff. None appears for other respondents except respondent Nos.5 and 6, though, notices served on them. No representation for respondent Nos.5 and 6.

15. Perused the judgment and the material on record, both, oral and documentary, let in by the parties.

16. The ruling referred to by the learned counsel for respondent No.1 - Plaintiff in **Gurdev Kaur and others v. Kaki and others**<sup>1</sup>, explains the meaning of question of law and the word ‘substantial’. The Hon’ble Supreme Court in paragraph No.51 held thus:

“51. Again in *Santosh Hazari v. Purushottam Tiwari* [(2001) 3 SCC 179], another three-Judge

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<sup>1</sup>. (2007) 1 SCC 546

Bench of this Court correctly delineated the scope of Section 100 C.P.C.. The Court observed that an obligation is cast on the appellant to precisely state in the memorandum of appeal the substantial question of law involved in the appeal and which the appellant proposes to urge before the Court. In the said judgment, it was further mentioned that the High Court must be satisfied that a substantial question of law is involved in the case and such question has then to be formulated by the High Court. According to the Court the word substantial, as qualifying "question of law", means - of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with -technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of "substantial question of law" by suffixing the words "of general importance" as has been done in many other provisions such as Section 109 of the Code and Article 133(1)(a) of the Constitution."

17. Except clause (b) in the grounds of appeal that whether O.S. No.64 of 1959 filed for mandatory injunction operates as *res judicata* in a subsequent suit filed for declaration and injunction, the other clauses, which are formulated as questions of law, afore-extracted, do not really reflect that they are questions of law, much less substantial questions of law. They relate to factual findings tendered by the appellate Court and, in fact, they are to be brushed aside without adverting thereto in deciding the controversy in the

present second appeal, unless the appellant herein is successful in establishing that the findings recorded are utterly perverse and warrant interference invariably.

18. Therefore, initially, the question of law relating to whether the judgment in O.S. No.64 of 1959 operates as *res judicata* needs advertence.

19. It is, no doubt true, the relief claimed in O.S. No.64 of 1959 is for mandatory injunction, whereas the relief claimed in the present suit is for declaration and injunction for two bits of land shown in the schedule described in the above. This particular aspect has been dealt with by the appellate Court referring to the contentions raised by the learned counsel for the plaintiff and the learned counsel for defendant No.8 extensively. It is unnecessary to refer to what was contended in the appellate Court by the respective learned counsel and it would suffice if the finding recorded by the appellate Court is evaluated. Though, apparently, the relief claimed in O.S. No.64 of 1959 appears to be a suit for mandatory injunction against villagers numbering 31, but, in fact, one of the additional issues framed relates to the title and possession over the extent owned by late Bangaru Naidu. Thus, the additional issues, in fact, deal with the title of late Bangaru Naidu, from whom, the plaintiff herein got the plaint schedule property under a Will (Ex.A-6). Ex.A-15 was also marked as Ex.A-8 in the said suit which was considered by the concerned Court and tendered positive findings as regards title and possession of late Bangaru Naidu over the

extent shown by him. This apart, the appellate Court, in fact, narrated that most of the defendants in the present suit were also parties to the said suit, either directly or the predecessor-in-interest of legal representatives being parties herein. The relevant details have been meticulously mentioned by the appellate Court in paragraph No.19. It is unnecessary, once again, to repeat the same, but it is needless to mention that substantially the parties herein were also the parties therein directly or represented by their predecessor in interest. When once the title and possession were also deliberated in O.S. No.64 of 1959, though, the relief sought therein was for permanent mandatory injunction for removal of the road laid in the land belonging to late Bangaru Naidu affirming his title by recording a definite finding, certainly, it cannot be said that the judgment and decree therein would not operate as *res judicata* and bar of present suit. In fact, the appellate Court referred to the relevant rulings governing the principle of *res judicata* and its application or bar of *res judicata* and tendered a positive finding that the present suit is barred by Ex.A-3 judgment. Though, the point of law is framed, but, in my view, the learned counsel for the appellants in the present second appeal is unable to distinguish and to point out in what way Ex.A-3 does not bar the present suit proceedings. There would have been merit in the argument of the learned counsel for the appellants, in case what was decided through Ex.A-3 related to only the relief of mandatory injunction without any issue touching either the title or the possession of late Bangaru Naidu. Hence, there is no merit in the submission of

the learned counsel for the appellants and the question of law now framed touching the present aspect cannot be held in favour of the appellant.

20. Now, turning to, though, it is not *sine qua non*, to deliberate on the factual aspect, even when looked at the findings recorded by the appellate Court and also the learned trial Court, certain positive findings are tendered on Ex.A-6 and other main aspects. So far as Ex.A-6 is concerned, the finding recorded by the trial Court upholding the Will in favour of the plaintiff by late Bangaru Naidu stood unchallenged by filing any cross-objection or preferring any appeal. Therefore, that finding attained finality.

21. The trial Court, though, tendered yet another positive finding that the defendants failed to establish their possession and the factum of perfecting their title by adverse possession over item Nos.1 and 2, still, they did not choose either to file cross-objection or to prefer any appeal. Thus, even the said findings recorded by the trial Court attained finality.

22. The appellate Court has reappraised the evidentiary value of Exs.A-9 and A-15 and on appreciation of evidence on record, more particularly, Ex.A-9, a letter, dated 05-05-1967 containing the signature of DW.1 which was admitted in categorical terms by DW.1 in his cross-examination, and even further admission made by DW.1 that DW.3 signed in it and even the signatures have been marked as

Exs.A-10 and A-17 respectively, are sufficient to hold that the entire extent of Ac.148-00 in survey No.32 of the suit village was held by late Bangaru Naidu. This finding recorded by the appellate Court and the other extent of Ac.2-00 set apart for the purpose of laying the road which was a disputed question in O.S. No.64 of 1959 owned by late Bangaru Naidu cannot at all be interfered since the findings are based on proper appreciation of evidence in accordance with evidentiary rule and has to be sustained as process of reasoning cannot at all be faulted.

23. Touching Ex.A-15, in fact, constitutes trump card to establish title of late Bagaru Naidu and the sequence of events that led to passing Ex.A-15 order has been dealt with mathematical precision. Thus, Ex.A-15 completely condemns the case of the defendants substantiating the case of the plaintiff. The finding recorded by the appellate Court taking aid of Ex.A-15, certainly, cannot at all be upset since the stand taken by the defendants with reference to the joint patta alleged by them was thoroughly discussed. Therefore, on factual side, there is absolutely no merit favouring the appellant.

24. One of the grounds agitated is that the judgment of the appellate Court which is under challenge herein is not in accordance with Order XLI Rule 31 CPC. The appellate Court, no doubt, formulated one point and dealt with all aspects under the said point but it is a comprehensive one in nature. In fact, when the findings tendered by the trial Court which stood adverse to the case of the

defendants remained unchallenged and attained finality as referred to in the above, mere formulation of a single point by the appellate Court cannot be viewed as not in strict adherence to Order XLI Rule 31 CPC. Further, the judgment rendered by the appellate Court was on 21-07-1999, and 17 years already elapsed, at this distance of time, remitting the matter to the appellate Court on mere technicality would invariably cause miscarriage of justice and, certainly, does not meet the demand of justice. Therefore, even touching the said point which is formulated as question of law, is of any avail to advance the case of the appellants herein to withhold the judgment of the appellate Court. Hence, there is no merit in the present second appeal.

25. Therefore, the present second appeal is dismissed, confirming the judgment and decree, dated 21-07-1999, passed by the learned appellate Court in A.S. No.8 of 1995 setting aside the judgment and decree, dated 31-12-1994, passed by the trial court in O.S. No.28 of 1990 and decreeing the suit of respondent No.1 - plaintiff for the reliefs of declaration and permanent injunction as prayed for. There shall be no order as to costs.

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

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**A. SHANKAR NARAYANA, J**

**September 30, 2016.**  
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