THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

SECOND APPEAL No.222 OF 2016

JUDGMENT:

The plaintiff in O.S.No.9 of 2003 on the file of the Junior Civil Judge, Tekkali preferred this second appeal aggrieved by the decree and judgment passed by the Trial Court dated 04.02.2009, which was confirmed by the First Appellate Court (VI Additional District Judge, Sompeta) by judgment dated 29.06.2015 in A.S.No.207 of 2014, whereby the suit filed by the petitioner for declaration of the title of the property was dismissed.

The plaintiff filed the suit for declaration of title over the suit schedule property and perpetual injunction. It is alleged that the schedule property originally belonged to the estate of Raja of Tekkali. In recognition to the serves rendered by Mallapragada Sivaji Rao and his cousin Satyanarayana, the suit schedule property was gifted to them by the Rajas of Tekkali. The beneficiaries Sivaji Rao and Satyanarayana reclaimed the property by investing huge amount, excavated a into a tank called 'Narappa Tank'. Besides developing the tank, they also raised babul, coconut trees and other plants. Subsequently, the beneficiaries sold half of the property to the mother of the plaintiff by name Bade Venkamma @ Venkatama @ Suramma and executed a registered sale deed dated 03.07.1939 and the other half of the property was given away orally by Satyanarayana to the plaintiff's mother. Since then, the plaintiff's mother was in possession and enjoyment of the property. Consequent upon the death of the plaintiff's mother, the property devolved upon the plaintiff. Since then, the plaintiff is in possession and enjoyment of the said property. The plaintiff obtained pattedar passbook No.T.D.No.964 from the Tahsildar for the suit schedule property and also after duly paying land revenue to the Revenue Department.

While the plaintiff was continuing in possession and enjoyment of the property, he engaged workers for removing filth in the tank situated in the suit scheduled property on 19.08.2004. While the process was going on, the second defendant through his henchmen directed the plaintiff not to use water from the tank, contending that the property belongs to the Government and thus the second defendant interrupted cleaning of the tank.

It is specifically contended that the plaintiff is the absolute owner of the property and he is in possession and enjoyment of the property for the last 70 years. But, the defendant made an entry in the Field Measurement Book (FMB) mentioning the said land as poramboke. Since, the defendants openly claimed right over the property denying the right of the petitioner over the suit schedule property, the plaintiff filed the suit for declaration of his title over the suit schedule property and permanent injunction.

The defendants filed written statement denying material allegations of the plaint, *interalia* contending that the suit schedule property i.e. 'Narappa Tank' is in an extent of Ac.2.14 cents covered by Survey No.50/4 of Ravivalasa Village in Tekkali Mandal, which is classified as poramboke in the settlement register of Ravivalasa, as such the plaintiff has no right over the suit schedule property. It is contended that there is a variation in 1-B ROR register of Ravivalasa Village. The T.D.No.964 which was endorsed by the plaintiff as an assigned number in the suit property was denoted against the survey Nos.72/14, 50/13, 51/6, 48/01, 48/02, 48/4, 47/9, 47/10, 52/8B, 47/11P, 52/9BP, 48/4BP and 48/1e, registered in the name of the plaintiff and his wife Padmavathi, but the suit schedule property is not the same in Sy.No.50/4 and it is totally a different property. It is alleged that obtaining of pattedar passbook by the plaintiff from the then Tahsildar over the suit schedule property and the entries made therein are incorrect. It is also alleged that the pattedar passbook and land revenue receipts would not confer any title to the immovable property and that the plaintiff was never in possession and enjoyment of the property for the last 70 years.

The second defendant further submitted that, if the plaintiff or his alleged predecessor in title, has really any interest over the suit schedule property, the remedy available to them to claim right over the property is under Section 11 of the A.P. Estate (Abolition and Conversion into Rythwari) Act, 1948 for issuance of Rythwari patta. In fact, the plaintiff approached the Settlement Officer, but the same was dismissed holding that the land, to which the plaintiff is claiming Rythwari Patta is a poramboke land and not Rythwari Land. Neither the plaintiff nor his alleged predecessor is entitled to claim any right over the suit schedule property, as the plaintiff was moribund for almost 43 years and claiming at a belated stage. The said fact was also obtained by the Director of Settlements, Hyderabad in Circle No. RIG/2922, 2292/94 dated 29.09.2000 and he also observed that the belated claim of the plaintiff should not be considered under Section 9(3) of A.P.M. (A&CR) Register, 1969 and APSARS Register 970 (2/10).

The second defendant further submitted that, since the plaintiff is claiming that originally the land was part of estate of Raja of Tekkeli, the remedy available to him is to seek appropriate remedy under A.P. Estate (Abolition and Conversion into Rythwari) Act, 1948, and not by instituting a suit in a Civil Court. As per the basic value register and revenue records, the plaintiff is not entitled to claim any right over the property, since the land is classified as government poramboke,

Based on the above pleadings, the Trial Court framed as many as four issues.

During Trial, on behalf of the plaintiffs, PWs 1 & 2 were examined and Exs.A-1 to A-10 were marked and on behalf of the respondents DW.1 was examined and Ex.B-1 to B-3 were marked.

Upon hearing the argument of both the counsel, the Trial Court dismissed the suit, holding that the plaintiff failed to prove that he is the owner of the property and the claim of the plaintiff was disbelieved since the pattedar passbook and land revenue receipts would not confer any title on the plaintiff over the suit schedule property and that the property covered by Ex.A-1, Certified copy of registered sale deed dated 03.07.1939 is not the schedule property on ground.

Aggrieved by the decree and judgment passed by the Trial Court, the plaintiff being unsuccessful before the Trial Court preferred the Appeal Suit No.207 of 2014, raising several contentions. The Appellate Court in most casual manner, by extracting all the grounds urged in the memorandum of appeal in paragraph 6, framed two points for consideration and dismissed the appeal concurring with the findings recorded by the Trial Court.

Aggrieved by the decree and judgment in A.S.No.207 of 2014 dated 29.06.2015, the present appeal is filed raising several contentions, more particularly, with regard to the legality of the judgment of the Appellate Court confirming the decree and judgment of the Trial Court ignoring Exs.A-1, A-2, A-3 to A-10 for non-consideration of the evidence on record by the Appellate Court and discharge of the initial onus of proof that rests on the plaintiff to prove his title.

Learned counsel for the appellant/plaintiff during hearing, almost reiterated the substantial questions of law urged in the grounds of appeal and contended that the plaintiff was able to discharge the initial onus of proof, to substantiate his claim over the suit schedule property and both the Trial Court and the Appellate Court did not consider the said fact in proper perspective.

Apart from that, it is contended that the petitioner is in continuous possession and enjoyment of the property without interruption for the past 70 years, which itself is sufficient to establish the title of the plaintiff over the property. But the Trial Court erroneously held the issues against the appellant/plaintiff by setting-aside the decree and judgment which was confirmed by the Appellate Court.

At the stage of admission, heard the learned counsel for the plaintiff/appellant at length.

Admittedly, the plaintiff filed the suit for declaration of title over the suit schedule property and the plaintiff claimed right of title through plaintiff's mother, who allegedly purchased the property under Ex.A-1 from Sri Sivaji Rao and Satyanarayana in T.D.No.964 and part of the property was given by Satyanarayana orally to the plaintiff's mother. Thus, the basis for claim of the plaintiff is original of Ex.A-1 and oral grant. Per contra, it is contended that the plaintiff and his wife are the owners of different survey numbers of land covered by Sy.Nos.72/14, 50/13, 51/6, 48/01, 48/02, 48/4, 47/9, 47/10, 52/8B, 47/11P, 52/9BP, 48/4BP and 48/1e, which is corresponding to T.D.No.964 and the names of the plaintiff and his wife were registered as pattedars/owners in the 1-B Register. The land in Sy.No.50/4 is the government poramboke, but not the land covered by the registered document. Ex.B-3 is the attested copy of 1-B record of rights and the entries therein clearly establish that the land covered by original of Ex.B-1 is not the same as in Sy.No.50/4 of Ravivalasa Village and whereas the land in T.D.No.964 was assigned to different survey numbers referred above, which is in occupation of the plaintiff and his wife Padmavathi. But now, the plaintiff is claiming right over the land in Sy.No.50/4 based on the original of Ex.A-1 and oral grant. In fact, the details of land mentioned in the original Ex.A-1 are not correlating with the land on ground but, correlating with the Sy.Nos.72/14, 50/13, 51/6, 48/01, 48/02, 48/4, 47/9, 47/10, 52/8B, 47/11P, 52/9BP, 48/4BP and 48/1e. Therefore, the plaintiff is not entitled to claim right over the property in Sy.No.50/4, since it is classified as government poramboke, as per the original of Exs.B-1 and B-2, i.e. copy of Field Measurement Book and copy of Poramboke and all unoccupied lands. All these three documents cumulatively establish that the schedule property in Sy.No.50/4 which is known as Narappa Tank is the government poramboke.

The main grievance of the plaintiff is that the plaintiff has obtained pattedar passbook and paying land revenue for the land in Sy.No.50/4 and produced Exs.A-1 to A-10. Ex.A-1 is copy of registered sale deed dated 03.07.1939, Ex.A-2 is the pattedar passbook, Exs.A-3 to A-10 are the land revenue receipts. These documents Exs.A-3 to A-10 discloses that the pattedar passbooks were obtained for the land in Sy.No.50/4 and thus paying land revenue to the government. But, mere obtaining pattedar passbook and payment of land revenue would not confer any title on the property.

In **Chief Executive Officer vs. Surendra Kumar Vakil**[1] and **Union of India and Ors vs. Kamala Verma**[2] the Supreme Court held that, it is a settled legal position that the entries made in General Land Register maintained under Cantonment Land Administration Rules is conclusive evidence of title and the same principle was reiterated by the Apex Court in **Union of India vs. Ibrahim Uddin and Anr.**[3] as under:

> “68. The appellate courts examined the title of government instead of the Plaintiff/respondent No.1. Such a course was not warranted. The title of government cannot be disputed. In any event possession of government for decades is not disputed. The Plaintiff shifted the case from time to time but failed to prove his title.

In the present case, originals of Exs.B-1 to B-3 are the land revenue records maintained in the course of their official duties and their authenticity was not questioned before the Trial Court and the First Appellate Court. Therefore, by applying the principle laid down in the above judgments, the Court can conclude that those documents are conclusive proof of title of the government.

This Apex Court and this Court in perspective judgments consistently held that revenue records i.e. pattedar passbooks and tax receipts do not confer any title to the property. In **Corporation of the City of Bangalore vs. M. Papaiah and Anr.**[4], the Apex Court observed as follows:

> "….it is firmly established that revenue records are not documents of title, and the question of interpretation of document not being a document of title is not a question of law."

In **Guru Amarjit Singh vs. Rattan Chand and Ors.**[5], the Apex Court held that the entries in jamabandi are not proof of title. Similarly, in **State of Himachal Pradesh vs. Keshav Ram and Ors.**[6], the Apex Court held that the entries in the revenue papers, by no stretch of imagination can form the basis for declaration of title in favour of the plaintiff.

The plaintiff also maintained the stand that his predecessor-in-interest was the pattedar of the suit schedule property, who purchased the property from the original grantees, which inturn was gifted by the Rajas of Tekkali and the same was not evidenced by any document. However, the plaintiff sold part of the property under original Ex.A-1 and part of it by oral grant, but, he failed to establish the purchase from Sivaji Rao and Satyanarayana, the alleged original grantees from Raja of Tekkeli and in the absence of any such ground, the sale if any, in favour of the plaintiff's mother is not valid on the basis of the principle that no one can convey better title than what they possess in the immovable property. The petitioner has exhibited Exs.A-1 to A-10. Ex.A-1 is the certified copy of registered sale deed dated 03.07.1939, for the part of the property covered by T.D.No.964 corresponding to Sy.Nos.72/14, 50/13, 51/6, 48/01, 48/02, 48/4, 47/9, 47/10, 52/8B, 47/11P, 52/9BP, 48/4BP and 48/1e, as discussed by me in the earlier paragraphs. However, the land in dispute is in Sy.No.50/4. Therefore, the title deed is in respect of the land in different survey numbers and not even relating with the survey number of the schedule property. Hence, no title over the schedule property i.e. Narappa Tank was conferred by Ex.A-1. Similarly, the grant of immovable property which is more than Rs.100/- in value is not valid, since such grant is compulsorily registerable under Section 17 of the Indian Registration Act. The other document is the pattedar passbook and revenue records to claim right over the property.

The Apex Court in **Syndicate Bank vs. Estate officer and Manager, APIIC Ltd and Ors**[7] a n d **Vatticherukuru Village Panchayat vs. Nori Venkatarama Deekshitulu and Ors.**[8] held that conferment of pattedar passbook, which is a document of *prima facie* title, would not confer any title. Therefore, in view of the law declared by the Apex Court, I am of the view that even if entries in the revenue record of rights carry evidentiary value, that itself would not confer any title on the plaintiff on the suit land in question, partly covered by original of Ex.A-1, sale deed and partly by the oral grant. On the other hand, the documents produced by the defendants i.e. originals of Exs.B-1 to B-3 establish *prima facie* that the land in question is a government poramboke land and it is vested on the government. A similar question came up before the Apex Court in **Union of India vs. Vasavi Co-op. Housing Society Ltd. And Ors**[9], wherein, the Apex

Court reiterated the principles regarding evidentiary value of revenue records, including entries in the pattedar passbooks .

As the case of the plaintiff is based on Exs.A-1 to A-10 and the plaintiff failed to establish that the land is covered by the originals of Ex.A-1 corresponding to the land in dispute, i.e in Sy.No.50/4 on ground, the defendants established that the land in the suit schedule property is Narappa Tank which is a poramboke vested in the government. The documents produced by the defendants were not disputed in the entire cross-examination of D.W.1. Therefore, the unrebutted testimony of D.W.1, coupled with originals of Exs.B-1 & B-2 are suffice to conclude that the land in dispute is not the land covered by the original of Ex.A-1 and the oral grant is allegedly given in favour of Bade Venkamma @ Venkatama @ Suramma, mother of the plaintiff by Satyanarayana.

In a suit for declaration of title and injunction, initial onus of proof is on the plaintiff who approached this Court seeking a discretionary relief under Section 34 of the Specific Relief Act.

Thus, if the discretion is not exercised by the Trial Court, the spirit of the statute is that the High Court being the Second Appellate Court has to exercise it's the jurisdiction, if the Court finds that the findings recorded by the Trial Court and the First Appellate Court are perverse.

In the present facts, there is absolutely no perversity in the judgment of the Trial Court and the First Appellate Court, since the plaintiff failed to discharge the initial onus of proof rested on him by producing satisfactory evidence. Therefore, the Trial Court and the First Appellate Court rightly exercised discretion that conferred on the Court by Section 34 of the Specific Relief Act and declined the relief rightly.

The jurisdiction of the High Court in the second appeal is only limited. If the appellant who approached the Court is able to establish that there is substantial question of law to be decided by this Court or the judgment of both the Trial Court and the First Appellate Court are perverse, the High Court can interfere with such findings. What is substantial question of law depends upon each case. In the present case, the plaintiffs raised six substantial questions of law. Upon a bare look at those substantial questions of law, it appears that they are not in fact substantial questions of law, but they are questions of fact based on appreciation of evidence. In **State Bank of India and Ors. vs. S.N.Goyal**[10], the Apex Court has explained the words 'substantial question of law' and held that the word 'substantial' prefixed to 'question of law' does not refer to stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the *lis* between the parties. 'Substantial question of law' means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties. It is also stated that any question of law which affects the final decision in a case is a substantial question of law as between the parties. A question of law which arises incidentally or collaterally, having no bearing on the final outcome, will not be a substantial question of law. There cannot, therefore, be a straitjacket definition as to when a substantial question of law arises in a case.

Similarly, in **Sir Chunilal v. Mehta & Sons Ltd. v. Century Spinning and Manufacturing Company Ltd.**[11], the Apex Court for the purpose of determining the issue held as under:

> *The proper test for determining whether a question of law raises in the case is substantial, would, in our opinion, be whether it is of general public importance or* ***whether it directly and***

***substantially affects the rights of the parties*.**

In **Vijay Kumar Talwar v. Commissioner of Income Tax, New Delhi**[12], the Apex Court held that, a point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be 'substantial' a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law 'involving in the case' there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. It will, therefore, depend on the facts and circumstance of each case, whether a question of law is a substantial one or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis."

The Court, for the reasons to be recorded, may also entertain a second appeal even on any other substantial question of law, not formulated by it, if the Court is satisfied that the case involves such a question. Therefore, the existence of a substantial question of law is a sine-qua-non for the exercise of jurisdiction under the provisions of Section 100 Code of Civil Procedure. The second appeal does not lie on the ground of erroneous findings of facts based on appreciation of the relevant evidence.

There may be a question, which may be a "question of fact", "question of law", "mixed question of fact and law" and "substantial question of law." Question means anything inquired; an issue to be decided. The "question of fact" is whether a particular factual situation exists or not. A question of fact, in the Realm of Jurisprudence, has been explained as a question of fact is one capable of being answered by way of demonstration. A question of opinion is one that cannot be so answered. An answer to it is a matter of speculation which cannot be proved by any available evidence to be right or wrong. (Vide: Salmond, on Jurisprudence, 12th Edn. page 69, cited in **Gadakh Yashwant rao Kankar rao v. E.V. alias Balasaheb Vikhe Patil and Ors.**[13]

By following the principles laid down in the above judgments and also in **Ibrahimuddin's** case (referred supra), the Apex Court held that there must be a question which is already decided is not a substantial question of law.

In the present case, the questions raised by the plaintiff/appellant in the memorandum of grounds of appeal are purely a question of fact and do not give rise to any substantial question of law to exercise jurisdiction of this Court under Section 100 of Civil Procedure Code. When this Court found no substantial question of law, this Court cannot interfere with the findings recorded by the Trial Court, which is confirmed by the First Appellate Court. Hence, I find no question of law, muchless, substantial question of law to interfere with the decree and judgment of the Trial Court, which is confirmed by the First Appellate Court in the appeal.

In **Ram Saran and Anr. v. Smt. Ganga Devi** [14], this Court had categorically held that the suit seeking for declaration of title of ownership but where possession is not sought, is hit by the proviso of Section 34 of Specific Relief Act, 1963 (hereinafter called 'Specific Relief Act') and, thus, not maintainable.

In **Vinay Krishna v. Keshav Chandra and Anr.**[15] , this Court dealt with a similar issue where the Plaintiff was not in exclusive possession of property and had filed a suit seeking declaration of title or ownership. Similar view has been reiterated observing that the suit was not maintainable, if barred by the proviso to Section 34 of the Specific Relief Act.

In view of above, the law becomes crystal clear that it is not permissible to claim the relief of declaration without seeking consequential relief. In the instant case, suit for declaration of title or ownership had been filed though, the Plaintiff/respondent No. 1 was admittedly not in possession of the suit property. Thus, the suit was barred by the provisio of Section 34 of the Specific Relief Act and, therefore, ought to have been dismissed solely on this ground.

One of the specific contention raised before the Trial Court is that the plaintiff is in possession and enjoyment of the property from the date of death of his mother and whereas, the predecessors were in possession and enjoyment of the property for more than seven decades and thereby entitled to declaration and title to the property. In fact, there is no factual foundation in the plaint to rest the claim on the adverse possession and it was never the case that the plaintiff and predecessor are not in possession and enjoyment of the property, claiming adverse title to the knowledge of the defendants. In the absence of perfecting title of adverse possession based on allowing continuous possession, the title of the plaintiff cannot be declared. A suit for declaration of ownership by adverse possession is not maintainable.

In **Gurudwara Sahib vs. Gram Panchayat Village Sirthala and Anr.**[16] the Supreme Court had held that the plaintiff, even if found to be in adverse possession, cannot seek declaration to the effect that adverse possession is ripened into ownership. But, in a suit filed by owner for recovery of possession, such plea can be set up as defense and the same principle was reiterated in In **Mohini & others vs. B. Thimmappa & another**[17].

Therefore, by applying law declared by the Apex Court, on this ground also, the plaintiff is not entitled to claim declaratory relief.

The plaintiff claimed consequential permanent injunction to restrain the respondents from interfering with the possession and enjoyment of the property which is purely discretionary in nature under Section 38 of the Specific Relief Act. When the relief of permanent injunction is consequential, the declaration of title which was denied by both the Trial Court and the first Appellate Courts and also by this High Court in this second appeal, the question of examination of entitlement of the plaintiff to claim permanent injunction against the defendant is wholly unnecessary.

In view of my foregoing discussion, I find no legal infirmity in the judgment and decree of the Trial Court which is confirmed by the First Appellate Court in A.S.No. 207 of 2014 dated 29.06.2015 warranting interference by this Court and by exercising power under Section 100 of Civil Procedure Code, since, I find no substantial question of law. Hence, the second appeal is liable to be dismissed.

In the result, the second appeal is dismissed confirming the decree and judgment of the Trial Court.

Consequently, miscellaneous applications pending if any shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Dated 21.07.2016
SP

---

[1] AIR 1999 SC 2294
[2] (2010) 13 SCC 511
[3] 2013 (4) ALJ 66
[4] (1989) 3 SCC 612
[5] (1993) 4 SCC 349
[6] (1996) 11 SCC 257
[7] (2007) 8 SCC 361
[8] (1991) Supp. (2) SCC 228
[9] AIR 2014 SC 937
[10] AIR 2008 SC 2594
[11] AIR 1962 SC 1314
[12] (2011) 1 SCC 673
[13] AIR 1994 SC 678
[14] AIR 1972 SC 2685
[15] AIR 1993 SC 957
[16] (2014) 1 SCC 669
[17] AIR 2016 (NOC) 368 (KER.)