

HON'BLE SRI JUSTICE R. KANTHA RAO

+ Appeal Suit No. 50 of 2016

%06.01.2016

Mohan Singh & others

...Appellants

VERSUS

\$ K.Suryanarayana & others

...Respondents

< GIST:

> HEAD NOTE:

!Counsel for Appellants: Sri G.K. Deshpande

^Counsel for Respondents: Sri K. Durga Prasad (for R.1)

? Cases referred

1. (1994) 4 SCC 349

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

Appeal Suit No.50 of 2016

Between:

Mohan Singh & others

..Appellants

And

K. Suryanarayan & others

.. Respondents

JUDGMENT PRONOUNCED ON : 06.01.2016

HON'BLE SRI JUSTICE

: R. KANTHA RAO

1. Whether Reporters of local newspapers :
may be allowed to see the Judgments?
2. Whether the copies of judgment may be :
marked to Law Reporters/Journals?
3. Whether their Ladyship/Lordship wish to :
see the fair copy of the Judgment?

HON'BLE SRI JUSTICE R. KANTHA RAO

A.S. No.50 of 2016

JUDGMENT:

Heard Sri G.K. Deshpande, learned counsel appearing for the appellants/R.1 to R.7/plaintiffs and Sri K. Durga Prasad, learned counsel appearing for the respondent/petitioner/D.18 & D.33.

2. This appeal is directed against the order dated 02.12.2015 in IA No.2397 of 2014 in OS No.782 of 2012 passed by the XIV Additional District Judge, Ranga Reddy District, wherein it was held that the plaintiffs have undervalued the relief of claim to pay the court fee in the plaint, that the plaintiffs have to pay the court fee under Section 24(b) of AP CF & SV Act, but not under Section 24(d) of the said Act and consequently directed the plaintiffs to pay the court fee on one-half of the market value of the property i.e., on Rs.33,09,60,000/-, as per Section 24(b) of the APCF & SV Act, as the market value of the suit property as per Ex.A.1 was Rs.66,19,20,000/-, and they have to pay the court fee after deducting the court fee which has already been paid, within a period of 30 days and it was also held that in the event of not paying the court fee as directed, the plaint shall be rejected as per Order VII rule 11(b) of CPC.

3. The appellants/plaintiffs have instituted the suit praying for the following reliefs:

“(1) to pass a decree of declaration that the entries in the revenue records/pahanies reflecting the names of the defendant Nos.3 to 39 as possessor are illegal, incorrect, null and void and for correction of the said entries by entering the name of the plaintiffs as possessors in respect of the suit schedule property;

(2) to pass a decree for correction of the entries in the revenue records/pahanis thereby inserting the names of the plaintiffs in the possessor column by deleting the names of the defendants in respect of the suit schedule property.

(3) to grant the relief of perpetual injunction in favour of the plaintiffs and against the defendants No.3 to 39, thereby restraining the defendants No.3 to 39 their servants, agents, or anybody claiming under them or through them from interfering with the peaceful, physical, actual possession of the plaintiffs over the suit schedule property;

(4) to award the costs of the suit to the plaintiffs;

(5) to grant any other relief or reliefs which the Honourable court deems fit and proper in the circumstances of the case.”

4. The brief averments of the plaint, which are relevant for the disposal of the present appeal, may be stated as follows:

The father of the plaintiffs late Sri Narayan Singh was the possessor of the suit lands. The certified copies of the Adangal for the years 1984-85 and 1985-86 indicate the name of late Sri Narayan Singh, as possessor of the suit land. The Rythu Passbook was also issued to him for the suit land. He was also paying the land revenue for the suit land. The name of the father of the plaintiffs continuously appeared in the possessor column of the pahanis till the year 1994-95 and the name of one Smt. Jeshi Bai appeared in the pattedar column. The plaintiffs are the legal heirs of late Narayan Singh and after the demise of Narayan Singh, the plaintiffs are in possession of the suit property. At no point of time, the pattedar Smt. Jeshi Bai or any other person claiming on her behalf interfered with the possession of late Narayan Singh or plaintiffs herein and late Narayan Singh and the plaintiffs are enjoying the suit property as absolute owners and have perfected their title even by adverse possession.

ii) In the month of February 2008, when the plaintiffs have noticed certain illegal interference over the suit schedule property and over heard the rumours of some third parties claiming certain parts of the suit schedule property, they applied for the pahanis for all the survey numbers and came to know that the names of certain irrelevant persons i.e., Defendants 3 to 39 are appearing in the possessors column of the pahanis. The plaintiffs verified the revenue records and also the records at the District Registrar, Ranga Reddy District and found certain transactions under registered documents in respect of certain parts of the suit schedule property. Immediately, the plaintiffs made an application to the 2nd defendant for the correction of entries in the pahanis and on 30.01.2009, the 2nd defendant issued Memo stating that the 2nd defendant is not competent to make or order for correction of entries, in the pahanis. Then the plaintiffs preferred an appeal against the said letter dated 30.01.2009. In the month of

February 2010, some unknown persons tried to interfere with the possession of the plaintiffs, they thwarted the said attempt. Immediately, they got issued public notice through their advocate, which was published in Eenadu daily News Paper dated 16.02.2010. They made discrete enquiry and learnt that the 2nd defendant has entered the names of defendants 3 to 39 in the revenue records without any valid documents and that the said act of the 2nd defendant is totally illegal, null and void. Aggrieved by the orders passed in the appeal, the plaintiffs made a revision before the District Collector under Section 9 of the A.P. Rights in Land and Pattadar Pass Books Act 1979. Basing on the revision application filed by the plaintiffs, the 1st defendant issued proceedings dated 15.03.2012 to the 2nd defendant to send a detailed report. It is submitted by the plaintiffs that still the revision is pending. It is under these circumstances, they filed the present suit stating that they have been in possession and enjoyment of the suit schedule property and defendants 1 and 2 in collusion with the other defendants, have created false, fabricated and concocted documents and thereby changed the entries in the revenue records/ pahanis, which is totally incorrect. In the plaint, they valued the suit for the purpose of court fee and jurisdiction i.e., for the relief of correction of the entries made in the pahanis for the years 1995-96 to 2006-07 at Rs.15/- per year as per Sections 43 and for the relief of declaration that the plaintiffs are the possessors of the suit schedule property and the consequential relief of perpetual injunction at Rs.11,00,000/- and paid the court fee under Section 24(d) of the AP CF & SV Act.

5. Basing on the prayers, as well as the valuation of the suit for the purpose of court fee and jurisdiction, the learned court below passed the impugned order, which is under challenge in the present appeal.

6. Learned counsel appearing for the appellants would submit

that the plaintiffs merely sought the correction of the entries in the revenue records and they have rightly paid the court fee under Section 43 of the AP CF & SV Act.

7. Section 43 of the AP CF & SV Act reads as under:

“43.Suits to alter or cancel entry in a register:- In a suit to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates, the fee payable shall be fifteen rupees.’

8. According to the learned counsel appearing for the appellants, they did not in fact seek any relief of declaration and the declaration mentioned in the plaint only is in relation to the correction of the entries and therefore, the learned trial court misdirected itself in directing the plaintiffs to pay the court fee under Section 24(b) of the AP CF & SV Act.

9. On the other hand, learned counsel appearing for the 1st respondent would submit that the entire averments in the plaint, obviously, indicate that they sought declaration as they have been in possession and enjoyment of the suit property and therefore, the trial court rightly directed them to pay the court fee under Section 24(b) of the AP CF & SV Act and that the order passed by the trial court needs no interference in the present appeal.

10. It is the contention of the learned counsel appearing for the appellants that the trial court can only for the purpose of determining the court fee has to look in to the averments of the plaint and it shall not determine the court fee basing on the contentions put-forth by the opposite party. In this context, it requires to be mentioned that the order passed by the trial court came to be passed in an application filed by the respondent herein under Order VII Rule 11(b) of CPC to reject the plaint filed by the plaintiffs for not valuing the suit correctly and not paying the proper court fee. In support of his contention, the learned counsel for the appellant relied on a decision reported in ‘**Ram Narain**

Prasad vs. Atul Chander Mitra^[1], wherein the Supreme Court took the view that the court fee has to be computed on the basis of averment made and relief sought in the plaint and not on the basis of written statement. The Supreme Court further held that merely because of respondent's denial of landlord-tenant relationship, courts below erred in taking the view that since title of the appellants had to be decided not incidentally but in full-fledged manner, the plaintiffs-appellants should pay *ad-valorem* court fee on the market value of the suit property.

11. Now it has to be seen that the judgment relied on by the learned counsel appearing for the appellants is applicable to the facts of the present case or not. It is true that the court, for the purpose of computing the court fee, has to look into the averments of the plaint, but not the contentions urged by the opposite party. At the same time, the court has to take a decision basing on the material facts averred in the plaint and the relief prayed for. It is under the duty to carefully examine the plaint so as to find out whether any attempt was made by the plaintiffs to avoid the court fee by twisting the facts.

12. The contention urged on behalf of the appellants/plaintiffs is that the declaration referred to in the court fee and jurisdiction para relates only to correct the entries in the revenue records, but not for declaration of any legal right or status. Learned counsel appearing for the appellants has drawn the attention of this court to the prayer portion, wherein no declaration has been asked for. Learned counsel for the appellants would further submit that under Section 8 of the A.P. Rights in Land and Pattadar Pass Books Act, 1971, if any person is aggrieved of any entry made in the revenue record, may institute a suit under Chapter VI of the Specific Relief Act, 1963.

13. Section 8 of the A.P. Rights in Land and Pattadar Pass Books Act, 1971, reads as under:

“8.Bar of suits:- (1) No suit shall lie against the

Government or any officer of Government in respect of a claim to have an entry made or in relation to any entry made in any record of rights or to have any such entry omitted or amended.

(2) If any person is aggrieved as to any rights of which he is in possession by an entry made in any record of rights he may institute a suit against any person denying or interested to deny his title to such right for declaration of his right under Chapter VI of the Specific Relief Act, 1963 (Central Act 47 of 1963) and the entry in the record of rights shall be amended in accordance with any such declaration.”

14. Plain reading of Section 8, clearly shows that if any person is aggrieved as to any right of possession by any entry in the record of rights, he may institute a suit against the person denying or interested to deny his title to such right under Chapter VI of the Specific Relief Act, 1963 and the entry in the record of rights have to be amended in accordance with the above provision.

15. In the instant case, the appellants/plaintiffs sought correction of entries in the record of rights against the Government officials as well as private defendants. They sought relief of permanent injunction only as an ancillary relief. By virtue of the provisions of Section 8 of the A.P. Rights in Land and Pattadar Pass Books Act, 1971, if any person is aggrieved of the entries made in the revenue records in relation to the property, can file a suit against the persons denying or interested to deny his title or possession but not against the Government or its officials and the entries in the record of rights shall be amended in accordance with any such declaration ultimately granted by a competent-civil court. In the court fee and jurisdiction para, the plaintiffs clearly mentioned about the declaratory relief sought in respect of the entries made in the revenue records and also the relief of permanent injunction as ancillary relief. A conjoint reading of court fee and jurisdiction and also prayer paras, in consonance with the material averments made in the plaint, clearly shows that they are seeking declaration of their possession to the suit schedule land in respect of the entries made in the record of rights for a period of more than 12

years. The court has to take into account the entire material averments made in the plaint. The court should not allow the party to twist the facts to avoid the court fee. The plaint, therefore, filed is essentially for a declaration that the plaintiffs are in possession of the suit property for over a period of more than 12 years and for consequential relief of injunction. The averments of the plaint should be clear and unambiguous in relation to the court fee and jurisdiction and the reliefs prayed for.

16. Section 8 of the A.P. Rights in Land & Pattadar Pass Books Act, 1971 enacts a bar in respect of a suit against the government or any officer of Government in respect of a claim to have an entry made when a party disputes the genuineness of the entry made in the record of rights. However, it provides that if a person is aggrieved as to any rights of which he is in possession by an entry made in any record of rights he may institute a suit against any person denying or interested to deny his title to such right for declaration of his right under Chapter VI of the Specific Relief Act, 1963. It further lays down that the entry in the records of rights shall be amended only in accordance with any such declaratory decree passed by a competent Court. Therefore, the remedy available to the petitioner under Section 8 of the A.P. Rights in Land & Pattadar Pass Books Act, 1971 is only to file a declaratory suit under Chapter VI of the Specific Relief Act, 1963. They cannot maintain a suit against the government or any officer of the government on the ground that the entry in the record of rights is incorrectly made. The nature of the suit which can be filed under Chapter VI of the Specific Relief Act is for a declaration of title of the plaintiff whenever a cloud is cast upon the title by denial of his legal character or right. The declaration which can be granted under Chapter VI is as to the plaintiff's entitlement to any legal character or any right as to any property.

17. In the instant case, virtually the relief sought for by the

appellants is for a declaration of title basing on their long possession over and above 12 years. Such a relief has to be asked specifically and directly but not by an indirect method by twisting the facts for the sole purpose of avoiding court fee. As already said, for the correction of entries in the record of rights on the ground that they were not properly made cannot be instituted against the government or its officials. Such a relief cannot be granted by the court in view of the specific bar enacted in Section 8 of the A.P. Rights in Land & Pattadar Pass Books Act, 1971.

18. The learned trial court thus considering the material averments in the plaint, rightly held that the plaintiffs have to pay the court fee under Section 24(b) of the AP CF & SV Act and they cannot value the suit separately under Sections 43 and 24(d) of the AP CF & SV Act.

19. In view of the facts and circumstances of the case, the order of the learned trial court does not require any interference of this court in the present appeal. Consequently, the appeal is dismissed. No order as to costs. Miscellaneous petitions, if any, in this appeal, shall stand closed.

R. KANTHA RAO, J

Date: 06.01.2016
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