

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

SECOND APPEAL No.875 of 2012

JUDGMENT:

First defendant in O.S.No.232 of 2005 on the file of Senior Civil Judge, Ramachandrapuram, who is appellant in A.S.No.202 of 2009 on the file of Judge, Family Court-cum-Addl. District Judge, East Godavari at Rajahmundry, preferred this appeal under Section 100 of Code of Civil Procedure ('CPC' for brevity) challenging the concurrent findings recorded by the Courts below declaring that the defendant Temple has no title to the schedule property.

2. For convenience of reference, the ranks given to the parties before the trial Court in O.S.No.232 of 2005 will be adopted through out the Judgment.

3 . The plaintiff filed the suit to declare that defendant No.1/Temple represented by its Management/defendant No.2, has no title to the schedule property of an extent of Ac.0.50 cents bearing RS No.347/2 situated in Narasapurapupeta Village and for restoration of possession in his favour.

4. It is the case of the plaintiff that the schedule property is the ancestral property of the plaintiff and as he being the absolute owner of the property, continued in possession and enjoyment of the schedule property for more than 60 years. While so, defendant No.1 got issued registered Notice on 26.06.2004 for the first time contending that the schedule property belongs to Sri Subrahmaneswara Temple, a sub temple of defendant No.1 i.e., Sri Bhavani Sankara Swamy Temple, Narasapurapupeta and that he encroached the said property high handedly and demanded to

vacate the schedule property. Thereupon, the plaintiff got issued reply Notice on 1.08.04 requesting defendant No.1 to furnish the details of dedication of the property to the temple along with other details, but defendant No.1 did not furnish any details by way of any reply. Thereupon, defendant No.2 filed an application under Section 83(2) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (AP Act No.30/1987) before Deputy Commissioner, Endowments, Kakinada, for eviction of the plaintiff, on the ground that he is an encroacher and the said application was registered as O.A.No.56 of 2004 and the Deputy Commissioner allowed the said application by his Order dt. 15.03.2005 ordering eviction of the plaintiff from the schedule property. Aggrieved by the said Order, the plaintiff preferred Revision in RP No.198 of 2005 on the file of Regional Joint Commissioner (Endowments), Kakinada and during pendency of the revision, defendant No.1 conducted auction of lease hold rights of the schedule property, in the said auction, defendant No.3 was declared as highest bidder and the same was confirmed by the Deputy Commissioner, Endowments, in the month of August, 2005, he was forcibly dispossessed from the schedule property by due process of law. Hence, the suit.

5. Defendant Nos. 2,3 and 4 remained *ex parte*. Defendant No.1 filed Written Statement denying the material allegations of the plaint, *inter alia* contending that the plaintiff is not in exclusive possession and enjoyment over the schedule property for more than 60 years while contending that one Neduri Krishna Murthy dedicated the schedule property to the temple and necessary mutation took place in the revenue records and as per the revenue record and the Orders of Deputy Commissioner in an application filed by Defendant No.1 under Section 83(2) of A.P. Act 30/87,

defendant No.1/ Temple is alone the owner of the schedule property and the plaintiff has no right to claim any title to the property and prayed for dismissal of the suit.

6. Basing on the above pleadings, the trial Court framed four issues as follows:

1. Whether the plaintiff is entitled for declaration that the defendant has no title over the plaint schedule property ?

2. Whether the plaintiff is entitled for possession of plaint schedule property ?

7. During trial, on behalf of plaintiff, PWs. 1 to 4 were examined and Exs. A.1 and A.11 were marked. On behalf of contesting defendant No.1, none were examined and no documents were marked.

8. Upon hearing argument of both counsel, the trial Court decreed the suit, holding that Defendant No.1/Temple has no title to the schedule property and directed the defendant No.1 to deliver vacant possession of the property and other consequential reliefs in favour of the plaintiff.

9. Aggrieved by the decree and judgment of the trial Court, Defendant No.1 preferred appeal in A.S.No.202 of 2009 on the file of Judge, Family Court-Cum-Additional District Court, East Godavari at Rajahmundry, which ended in dismissal by its decree and judgment dt. 20.12.2010 confirming the decree and judgment passed by the trial Court. Thus, the Courts below recorded concurrent findings that Defendant No.1 has no title to the schedule property.

10. Challenging the concurrent findings of the Courts below, the present Second Appeal is filed by the Defendant No.1 under Section 100 of CPC raising several contentions. The appellant formulated six substantial questions of law and out of them, Q.Nos.1,2 and 3 are alone are substantial questions of law and the other three questions are not substantial questions of law much less questions of law.

11. Heard, counsel for both Appellant/defendant and respondent/plaintiff at the stage of admission with their consent.

11. **Question No.1:** First and foremost contention raised by the counsel for appellant--Sri N. Siva Reddy is that Civil Court has no jurisdiction to entertain the suit in respect of the property belonging to charitable or religious institution or endowment.

12. The proceedings for eviction were initiated before Deputy Commissioner of Endowment in O.A.No.56 of 2004 and by the date of institution of proceedings, the Civil Court has got jurisdiction, in view of Section 84(2) of the Act, which reads as follows:

“Nothing in Sub-Section (1) shall prevent any person aggrieved by the Order of the Deputy Commissioner under Sub Section (4) of Section 83 from instituting a suit in a Court to establish that the Charitable or religious institution or endowment has no title to the land, building or space”.

Thus, the contention raised by the learned counsel for appellant has no substance, since, a suit is permitted under Section 84 (2) of AP 30 of 1987, but later the Act was amended, which took away the jurisdiction of the Civil Court, conferring power on the Tribunal established under the Act with effect from 03.01.2008. Thus, as on the date of institution of proceedings in

O.A.No.56 of 2004 and even by the date of filing of the suit before Senior Civil Judge, the remedy available to the appellant, aggrieved by an Order of Deputy Commissioner, is a civil suit to declare that Defendant No.1 has no title to the property being a charitable institution. Hence, I find no substance in the contention of learned counsel for appellant, hence, this question is answered against the appellant.

13. **Question No.2:** One of the major contentions of the learned counsel for appellant is that when negative declaration is claimed, the plaintiff has to prove that Defendant No.1 has no title to the property. A similar question came up before this Court in **Narsing Raj v. Government of Andhra Pradesh**^[1] wherein this Court discussed about the scope of Section 84 (2) r/w 83(4) of the Act and concluded that civil suit is maintainable and held that it is for the plaintiff to prove that Defendant No.1 has no title to the property. Even in the earlier judgment of this Court reported in **Narhar Raj (died) by Lrs. And others v. Tirupathybibi and another**^[2], this Court specifically held that unless the jurisdiction of the Civil Court is barred under Section 9 of CPC, the Civil Court is competent to pass negative declaration. But, only the contention urged before this Court is that it is for the plaintiff to establish that Defendant No.1 has no title to the schedule property by adducing negative evidence. Normally, the plaintiff's used to claim relief that he/she is the absolute owner of the property by way of positive declaration. However, under specific statute under Section 84 (2) of AP Act, 30 of 1987 Act, such declaration is permissible and the plaintiff can establish that Defendant No.1 has no title to the schedule property.

14. Curiously, in the present suit before the trial Court, the

plaintiff filed I.A.No.424 of 2006 under Section 151 CPC seeking direction against Defendant No.1 to deposit the value of maktha/rent of 15 ½ bags of paddy every year during pendency of the suit, but the Order was not complied. Thereupon, the plaintiff moved an application in I.A.No.1024 of 2008 to striken off the defence of Defendant No.1. Upon hearing both the counsel, the trial Court striken off the defence of Defendant No.1 in the said suit and the Defendant No.1 prosecuted the suit silently even without challenging the same in the revision or appeal. This is a classic example as to how the officials of Endowment Department exhibiting their callousness or non-chalant approach in prosecuting the proceedings since the property belonging to the deity/Defendant No.1 temple.

15. More curiously, Defendant No.1 did not produce any scrap of paper in support of his claim though the plaintiff produced voluminous documentary evidence besides examining PWs. 1 to 4 to establish that the Defendant No.1/Temple has no title to the schedule property while proving that the plaintiff has got title to the property. In such a case, it is the duty of the defendants to adduce evidence in support of their claim that the property was dedicated to the deity by Sri Neduri Krishna Murthy.

16. For the reasons best known to the officials of Endowment Department, they kept quiet and proceeded with the trial of the suit and allowed the trial Court to pass a decree and Judgment. Therefore, whatever evidence available on record adduced by the plaintiff is suffice to hold that Defendant No.1/ Temple has no title to the property since the evidence of plaintiff was not disputed by adducing any evidence by the defendants to prove their title.

17. When once the Plaintiff discharged his burden by producing

satisfactory and cogent evidence to prove that Defendant No.1 temple has no title to the property, it is for the defendants to substantiate its contention, more particularly, dedication of the property to the deity by Sri Neduri Krishna Murthy. Though the defendants contended that the property was dedicated and an entry was made in the revenue record in the name of the temple, even Temple Authorities did not take any steps to produce the said document i.e., entries in revenue record to substantiate that it belongs to the temple. In the absence of evidence with regard to the title of the property, the Courts below has no option except to conclude that Defendant No.1/Temple has no title to the property.

18. The trial Court while placing reliance on the judgments of this Court in ***K. Papadu v. Golagana Surya Narayana***^[3], ***in which the decision of privy council ‘Syed Md. Mazaffaralmusavi v. Bibi Jabeda Khatun AIR 1930 PC 103’*** was followed, to held that the fair adangals are sufficient to prove the title of the parties to the property but strangely in the present suit the plaintiff produced No.3—Village Account i.e., Adangal to prove the cultivation of the land by the plaintiff, such conclusion of the trial Court may be not in accordance with law. However, there is satisfactory evidence to establish that the temple is not the owner and the temple itself failed to adduce any evidence to substantiate its contentions. In those circumstances, the trial Court and the Appellate Court have no option except to place reliance on the evidence of plaintiff and pass a decree in favour of plaintiff, more particularly, when the defendants did not take any steps to set aside the Order passed by the trial in I.A.No.1024 of 2008 striking off the evidence of defendants, by exercising power under Section 151 of CPC.

19. One of the contentions of Sri N. Siva Reddy, learned counsel

for appellant is that a negative declaration cannot be granted. But, this contention is without any substance, in view of the decisions referred supra. This is not a suit filed under the provisions of Specific Relief Act, more particularly, Section 34 of the Act seeking declaration of title. But, it is under Special Enactment Act i.e., A.P.Act 30 of 1987, which empowered filing of such suits for declaration claiming negative declaration that temple has no title to the property. Hence, I find no illegality in the finding recorded by the trial Court regarding maintainability of the suit.

20. **Question No.3:** The appellant/defendant's counsel questioned grant of injunction against the defendant No.1 by the trial Court even after dispossession of the plaintiff by the Order of Deputy Commissioner under Section 83(2) of AP Act No.30/1987, it is an admitted fact that the plaintiff was dispossessed in view of the Order passed in O.A.No.56 of 2004 passed by the Deputy Commissioner Endowments and while claiming declaration that defendant has no title to the property, the plaintiff sought for an Order for restoration of possession and consequential injunction. If the injunction is an independent relief from the declaratory relief, then the plaintiff is not entitled to claim such injunction after his dispossession, but here, the plaintiff claimed not only declaratory relief to declare that Defendant No.1 has no title but also for restoration of possession and also for consequential permanent injunction restraining defendants and their men from ever interfering with his peaceful possession and enjoyment of the schedule property.

21. When the suit is filed for declaratory relief and recovery of possession and for consequential permanent injunction after restoration of possession, this Court can exercise power under

Section 38 of Specific Relief Act, which is purely discretionary, and grant appropriate relief when the plaintiff is able to establish that there is a threat to infringe or invade the legal rights of the plaintiff after restoration of possession. Here, there is voluminous evidence to establish the said fact, but the defendants did not adduce any evidence in support of their claim and allowed the Court to strike off its defence. In those circumstances, the Decree and Judgment of Appellate Court cannot be found fault. Hence, I find that the contention raised by the appellant/Defendant No.1 does not stand to legal scrutiny.

22. On over all consideration of entire evidence on record, I find no error much less illegality warranting interference of the concurrent findings of the Courts below and hence, the second appeal is liable to be dismissed. Accordingly, the Point is answered.

23. In the result, this Second Appeal is dismissed confirming the Decree and Judgment passed in O.S.No.232 of 2005 on the file of Senior Civil Judge, Ramachandrapuram, which was confirmed by the Appellate Court in A.S.202 of 2009 on the file of Judge, Family Court-cum-Additional District Judge, East Godavari at Rajahmundry. But without costs in the circumstances of the case.

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

M. SATYANARAYANA MURTHY, J

Date: 04-08-2016.

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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[\[1\]](#) 2004(1) ALD 67

[\[2\]](#) 2002 CJ (AP) 913

[\[3\]](#) 2006 (1) ALD 318