

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

SECOND APPEAL No.685 of 2014

JUDGMENT:

This Second Appeal under Section 100 of Code of Civil Procedure (for short 'CPC') is filed challenging the concurrent findings recorded in O.S.No.318 of 2007 on the file of Principal Junior Civil Judge, Dhone and the appellate Court in A.S.No.78 of 2012 on the file of VI Additional District Judge, Kurnool, holding that the plaintiffs failed to establish their lawful possession and enjoyment on the date of filing of suit and dismissed the suit filed by them before the trial Court, which was confirmed by the Appellate Court.

2. For convenience of reference, the parties to the appeal will herein be referred, as ranked in O.S.No.318 of 2007 by Principal Junior Civil Judge, Dhone, through out the judgment.

3. The Appellants/Plaintiffs filed the suit for injunction simplicitor to restrain the defendants/respondents herein from interfering with their possession and enjoyment of the schedule property of an extent of Ac.1.80 cents in Sy.No.21/2, Ac.5.00 cents in Sy.No.21/2 and Ac.1.08 cents in Sy.No.331 situated at Potudoddi village Panchayat Limits of Peapully Mandal, which is within the boundaries mentioned in the schedule annexed to the plaint.

4. Originally the property belonged to Kesagani Lachanna @ Pedda Latchanna. The plaintiffs' grand mother was the kept mistress of Latchanna. The said Latchanna bequeathed the schedule property to the plaintiffs under registered Will dt. 6.3.1992, which is his last testament. After the death of Latchanna, the plaintiffs succeeded the property under testamentary dis-possession and obtained pattadar pass books and title deeds from the revenue authorities, raised ground nut, Saddalu and red gram crops etc., in the schedule property. After some time, the schedule property was sub-divided and the plaintiffs' names were mutated in the revenue records and they are cultivating the same in their own right.

5. The defendants are the children of deserted wife of Latchanna in the year 1960. There is a political rivalry between plaintiffs and defendants. While so, on 31.07.2007, the defendants along with their henchmen entered into the schedule property and objected the plaintiff's possession. However, with the help of neighbourers, the plaintiffs could resist the high handed acts of the defendants, but they openly declared that they will sell the property and threatened to interfere with their possession and enjoyment. Hence, the suit.

6. Defendant No.2 contested the suit raising a specific plea that the Will said to have been executed by Latchanna bequeathing the property to the plaintiffs is a forged one and that Latchanna had no right over the schedule property to execute the Will since the property belongs to their ancestors i.e., co-parsenery property. However, the title deeds and pattadar passbooks filed by the plaintiffs are concocted for the purpose of the present suit and they never in possession and enjoyment of the property while claiming that the defendants are in possession and enjoyment of the property and denied the allegation about their interference with the possession and enjoyment of the plaintiffs' over the schedule property and prayed for dismissal of the suit.

7. Defendant Nos. 1 to 3 filed a memo adopting the Written Statement of Defendant No.2.

8. Basing on the above pleadings, the trial Court framed the following issues for trial :

i) Whether the plaintiffs are entitled for grant of permanent injunction against the defendants as prayed for?

ii) To what relief ?

9. During trial, on behalf of plaintiffs, PWs. 1 to 4 were examined and Exs. A.1 to A 12 were marked. On behalf of

defendants, DWs. 1 to 4 were examined and no documents were marked.

10. Upon hearing argument of both the counsel, the trial Court disbelieved lawful possession and enjoyment of the schedule property by the plaintiffs and declined to grant perpetual injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the property of the plaintiffs.

11. Aggrieved by the said Decree and Judgment of the trial Court in O.S.No.318 of 2007, dt. 30.04.2012, the plaintiffs, being unsuccessful before the trial Court, preferred first appeal in A.S.No.78 of 2012 before VI Additional District Judge, Kurnool, which was ended in dismissal by its decree and judgment dt.01.07.2014 Confirming the decree and judgment of the trial Court in O.S.No.318 of 2007.

12. Aggrieved by the concurrent findings of the Courts below, the present appeal is filed raising several contentions regarding proof of possession, so also, threat to interfere with the possession and enjoyment of the plaintiffs by the defendants.

13. The main contention of the appellants/plaintiffs is that the pattadar passbooks and other revenue records, are sufficient to establish that the plaintiffs are in possession

and enjoyment of the property, but the Courts below declined to grant the perpetual injunction and the findings recorded by the trial Court regarding failure to prove Ex.A.1—Will is beyond the scope of the suit. Therefore, requested this Court to set aside the order passed by the trial Court, which was confirmed by the Appellate Court, and grant a permanent injunction in favour of plaintiffs restraining the defendants from interfering with their peaceful possession and enjoyment of the property.

14. Heard Sri J. Janaki Rami Reddy, learned counsel for appellants/plaintiffs at the stage of admission itself.

15. Learned counsel for the appellants/plaintiffs mainly contended that failure to prove Ex.A.1—Will is only on account of death of scribe and attestors and their failure to prove Ex.A.1, in terms of Section 68 of Evidence Act, is not a ground to reject the claim of the plaintiffs and apart from that voluminous documentary evidence is produced before the trial Court, which would suffice to establish that the plaintiffs are in lawful possession and enjoyment as on the date of filing of the suit., but the trial Court did not consider these documents in proper perspective and committed an error.

16. A bare look at the allegations made in the plaint, the plaintiffs are claiming title to the property based on

Ex.A.1—Will allegedly executed by Latchanna in their favour and the suit is filed only for injunction simplicitor where the plaintiffs are required to establish their lawful possession and enjoyment of the property as on the date of suit and that title to the property cannot be gone into in a suit for bare injunction and therefore, the findings recorded by the trial Court, confirmed by the Appellate Court, that the plaintiffs failed to establish their title under Ex.A.1—Will by examining the attestors or scribe, as required under Section 68 of Evidence Act, is erroneous and the findings recorded by the trial Court and the Appellate Court are hereby set aside.

17. The scope of trial in a suit for bare injunction is limited and the Court is required to record a finding as to lawful possession and enjoyment of the property of the plaintiffs as on the date of filing of the suit, besides proof of infringement or invasion of legal rights of the plaintiffs by the defendants to grant perpetual injunction in favour of plaintiffs.

18. The basis for claiming possession over the property as on the date of filing the suit are Exs. A.2 and A.3—Pattadar Passbook and Title Deed respectively, issued under Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for Short 'the Act') and other documents are adangal and

certified copies of judgments in other suits. The learned counsel for plaintiffs mainly based their claim on Ex.A.2 and Ex.A.3—Pattadar Passbook and Title Deed, and the entries made therein are the conclusive proof as to the title and possession. Section 6 of the Act, there is a presumption that the entries in the revenue record are generally to be accepted at their face value and any entry in record of rights shall be presumed to be true until the contrary is proved or until it is otherwise amended in accordance with the provisions of the Act. Thus, the presumption is attached regarding correctness of the entries in pattadar passbooks issued under the Act, but the trial Court and Appellate Court, after thorough examination of the documents based on the plea raised by the defendants about correctness of entries in those two documents, concluded that those two documents Exs. A.2 and A.3 are suspicious, it is a fact finding of trial court, and on the strength of those documents, it is difficult to hold that the plaintiffs are in lawful possession and enjoyment of the schedule property. Thus, the findings recorded by the trial Court regarding Exs. A.2 and Ex.A.3 are based on the facts and that it would not give rise to any substantial question of law.

19. The learned counsel for the plaintiffs further contended that the documents produced before the trial

Court i.e., Adangal, marked as Ex.A.3, would normally establish lawful possession of the plaintiffs as on the date of filing of Ex.A.3 as he is in possession and enjoyment over the suit schedule property. But, it pertains to subsequent period, according to findings of the trial Court. The other documents are only Death Certificate, copies of decree and judgments in other suits, which are not having any bearing on the issue of lawful possession and enjoyment over the schedule property as on the date of filing of the suit. At best, the entries in the revenue records may be relevant to decide lawful possession, but they are not conclusive proof of title to the property and the Courts time and again in *Baleshwar Tewari (dead) by L.Rs and others v. Sheo Jatan Tiwary and others*¹ and *Balwant Singh and another v. Daulat Singh (Dead) By L.Rs.*², held that the entries in the revenue records would not confer any title over the property. The only basis for the present claim is the Adangal. But, in one of the Judgments, referred to above, *Baleshwar Tewari's* case, the Apex Court held that entries in the revenue records is the paradise of the patwari and the tiller of the soil is rarely concerned with the same. So long as his possession and enjoyment is not interdicted by due process and Course of law, he is least concerned with entries. It is common knowledge in rural India that a raiyat

¹ AIR 1997 SC 2089

² AIR 1997 SC 2719

always regards the land he ploughs, as his domain and generally obeys, with moral fiber the command of the intermediary so long as his possession is not disturbed. Therefore, creation of records is a camouflage to defeat just and legal right or claim and interest of the raiyat, the tiller of the soil on whom the Act confers title to the land he tills”.

20. In view of the law laid down by the Apex Court, no credence can be given to such pahanis, as the ryoth is really concerned with the entries, except when his enjoyment was disputed. Therefore, it is difficult to conclude that the plaintiffs are in possession and enjoyment of the property basing on the documents which they produced before the trial Court and this Court.

21. The other contention of the learned counsel for plaintiffs is that the defendants did not adduce any evidence in support of their claim, but in a suit filed for bare injunction, it is the duty of the plaintiffs to establish their lawful possession and enjoyment over the property besides proof of threat to infringe or invade the legal right of the plaintiffs, as required under Section 38 of Specific Relief Act and cannot take advantage of weakness in the defence set up by the defendants, since the plaintiffs stand or fall on the strength in his own case. But, the plaintiffs failed to establish their lawful possession by satisfactory evidence

and both the Courts below rightly concluded that the appellants/plaintiffs failed to establish their lawful possession as on the date of filing the suit. Therefore, I am constrained to interfere with the finding recorded by the trial Court, confirmed by the Appellate Court, with regard to possession and enjoyment of the plaintiffs over the schedule property.

22. It is the specific case of the plaintiffs that they became the owners as legatee under Ex.A.1--Will, but the defendants disputed the same raising several contentions. However, it is brought to the notice of this Court that a suit in O.S.No.235 of 2004 filed for partition of the property is pending on the file of Principal Junior Civil Judge's Court, Dhone. When a suit for partition of the property is pending, the plaintiffs are at liberty to establish their title to the property under Ex.A.1 and claim his right independently in the suit in O.S.no.235 of 2004 based on the Will or any other document or by filing any independent suit for declaration of title, in view of the principle laid down by the Apex Court in Anathula Sudhakar vs P. Buchi Reddy (Dead) By Lrs & Ors³.

23. The observations, if any, recorded regarding title or possession either by trial Court or appellate Court or by this

³ (2008) 4 Supreme Court Cases 594

Court will have no bearing on the pending suit or any suit to be filed and the Courts are directed to decide the issues involved in those suits uninfluenced by the observations or findings recorded by the Courts below.

24. With the above observation, the Appeal is dismissed at the stage of admission.

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

Date: 17-09-2016.

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M. SATYANARAYANA MURTHY, J



HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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