

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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SECOND APPEAL.NO.930 OF 2012

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JUDGMENT:

The plaintiffs in O.S.No.114 of 2002 on the file of the Junior Civil Judge at Kaikalur filed this appeal under Section 100 of Civil Procedure Code, aggrieved by the decree and judgment in A.S.No.281 of 2010 on the file of the XI Addl. District and Sessions Judge, Gudivada, Krishna District.

For convenience of reference, the parties to the appeal will be referred to as plaintiffs and defendants as arrayed before the Trial Court.

The plaintiffs filed suit for permanent injunction simplicitor alleging that the first plaintiff is the absolute owner of Ac.1-07 cents in R.S.No.229/2 situated at Mandavalli Village. The first plaintiff became the owner of the property under the testamentary succession i.e. will dated 05.05.1996, allegedly executed by his father Adepalli Satyanarayana, who died about 23 years ago. Since then the first plaintiff was in possession and enjoyment of the property. During his lifetime, he paid land revenue to the government and obtained pattadar passbooks and title deed to the property in his favour. However, the defendants claimed title over the property and made an attempt to interfere with the possession and enjoyment of the property. Therefore, the first plaintiff sought for permanent injunction.

During pendency of the suit, the first plaintiff died and his legal representatives were brought on record as plaintiffs 2 to 4 vide order in I.A.No.833 of 2003 dated 24.01.2008.

The defendants 1 to 3 filed common written statement raising a specific contention that the plaint schedule property was gifted by the father of the first plaintiff to Gandhi Sevashram which is under the control of the Endowments Department and that the property was

included in the property register maintained by the Endowments Department. In the general body meeting of the Gandhi Sevasram, a resolution dated 22.05.2002 was passed by the defendants to cart earth into the plaint schedule property to avoid submersion during rainy season and they developed the property.

Thus, the defendants 1 to 3 alone are in possession and enjoyment of the property. The fourth defendant in his written statement specifically contended that the land of an extent of Ac.1-07 cents in R.S.No.229/2 is the absolute property of Gandhi Sevashram under the control of the Endowments Department. It is further stated that the Gandhi Sevashram is in possession and enjoyment of the schedule property and specifically raised a contention that the endowments department conducted public auction of the leasehold rights of the schedule property and other property several times and for several periods and in two of such actions held in the year 1980 and 1986 the first plaintiff participated in the said auction. Even according to the revenue records, the suit property is recorded in the name of Gandhi Sevashram. It is further contended that the alleged pattedar passbooks allegedly obtained were fabricated by the defendants and they do not confer any title over the property and prayed to dismiss the suit.

Basing on the above pleadings, the Trial Court framed following three issues:

1. Whether the plaintiff is entitled for a permanent injunction as prayed for?
2. Whether the plaint schedule property belongs to Gandhi Sevashram as contended by the defendant?
3. To what relief?

During Trial, on behalf of the plaintiffs P.W.1 was examined and Exs.A-1 to A-10 were marked. On behalf of the defendants D.W.1 was examined and Exs.B-1 to B-25 were marked.

Upon hearing argument of both the counsel, the Trial Court decreed the suit in favour of the plaintiffs, disbelieving the contention of the defendants.

Aggrieved by the decree and judgment of the Trial Court, the fourth defendant, person-in-management preferred an appeal in A.S.No.281 of 2010, which was allowed by the Appellate Court by judgment dated 29.06.2012 setting aside the decree passed by the Trial Court on 11.09.2008 in O.S.No.114 of 2002.

Aggrieved by the decree and judgment of the Appellate Court, the present appeal is filed raising a substantial question of law regarding presumption under Section 6 of the A.P. Rights in Land and Pattadar Pass Books Act, 1989 and jurisdiction of the Civil Court without approaching the competent authority for adjudication under Section 87 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987.

During hearing, learned counsel for the plaintiffs contended that the presumption of correctness of entries in record of rights under Section 6 of the Andhra Pradesh Rights in Land Pattadar Pass Books Act, 1989, which permits the Court to draw a presumption that every entry made in the record of rights are presumed to be true until the contrary is proved or until it is otherwise amended in accordance with the provisions of this Act. Thereby, the first plaintiff is able to establish that he is in possession and enjoyment of the property and there is a threat to interfere with the possession and enjoyment by the defendants claiming title to the property.

Whereas, the learned counsel for the respondent supported of the judgment of the Appellate Court.

Considering rival contentions and perusing the decree and judgment by the First Appellate Court in A.S.No. 281 of 2010 the points that arise for consideration are as follows:

- 1. Whether a presumption shall be drawn that the first plaintiff**

and the other plaintiffs became the owners of the property and are in possession of the same, in view of Section 6 of the A.P. Pattedar Pass Books Act, 1989;

- 2. Whether the defendants can maintain an appeal without approaching the competent authority under Section 87 of the Endowments Act for adjudication of the title to the property.**

Point No.1

The plaintiffs while claiming title over the property sought for a permanent injunction simplicitor alleging that the defendants threatened to interfere with their possession and enjoyment of the property. The scope of trial in a suit for injunction is limited and this Court cannot go into title of the property except for limited purpose of deciding lawful possession as on the date of filing the suit and record a finding as to interference or infringement or invasion of the legal right of the plaintiff by the defendants.

In the present suit, both the plaintiffs and defendants are claiming title over the property but the defendants only relied on the entries made in the pattedar passbooks issued under Section 5 of the A.P. Rights in Land and Pattadar Pass Books Act, 1989 and framed a substantial question of law as required under Section 100 of C.P.C. Therefore, the duty of this Court is to decide whether a presumption of correctness of entries in record of rights is rebuttable. If so, based on such entries, the possession pleaded by the plaintiffs be accepted.

Section 6 deals with presumption of correctness of entries in record of rights and according to it, every 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 this Act. In view of the language used in Section 6 of the pattedar passbooks act, the presumption is rebuttable, but *prima facie* presumption would arise

as to the correctness of entries, if the defendants are able to dispel the statutory presumption under Section 6 of the Act, the presumption disappears. Every entry in the record of rights shall be presumed to be true only until the contrary is proved or it is otherwise amended in accordance with the provisions of the Act, as held by this Court in **Chanumolu Nirmal v. Chanumolu Indira Devi**^[1], **Baleshwar Tewari v. Sheo Tiwary**^[2] and **Balwant Singh v. Daulat Singh**^[3].

Thus it is clear that the presumption under Section 6 of the Act is only a rebuttable presumption. To draw such presumption, learned counsel for the appellants has drawn the attention of this Court to Exs.A-1 to A-5 land revenue receipts and Ex.A-6-pattedar passbooks, Ex.A-7-settlement register, Ex.A-8-Registered Will, Ex.A-9-Attested copy of sketch in R.S.No.229 and Ex.A-10 pattedar passbook. While, Ex.A-1 is the land revenue receipt pertaining to the year 1987, Exs.A-2, A-3,A-4, A-5, A-6, A-7, A-8, A-9 & A-10 corresponds to the years 1998,2002,1997,1971,1964,1984,1966, 1985 and 1978 respectively. Further, all revenue receipts at best show that the plaintiffs have paid land revenue, but the Trial Court recorded a fact finding that those documents pertain to other land but not to this land. So far as pattadar passbooks are concerned, Ex.A-6 and A-10 are issued under the Act, 1971 and new Act i.e. 1989 respectively, the entries therein can be presumed to be true until they are rebutted by adducing evidence by the defendant. The case of the defendants, mainly based on Ex.B-1 copy of register maintained under Section 38 of the Endowments Act if is presumed to be a title to the property. Though, the defendants claiming that the property was gifted to Gandhi Sevashram by father of the first plaintiff, no piece of evidence is brought on record.

Ex.B-1 is the property register and Exs.B-2 to B-25 are the true copy of pamphlets, auction conducted DCB and LR receipts, Adangal copy for the year 2001-2002, auction lists and approval of auction etcetera therefore the presumption was rebutted defendants and consequently this Court need not draw a presumption as to correctness of the entries made therein. All the more, the title of the parties need not be gone into as discussed in the earlier paragraphs in suit for bare injunction. At best, the lawful possession is relevant to decide the real controversy between the parties in the present suit. Learned counsel for the defendants contended that various documents produced before the Court and more particularly, the auction proceedings, the plaintiffs were not in possession of the property, as on the date of filing the suit. Plaintiff did not produce Adangal copy for relevant year 2001-2002 to believe the possession and enjoyment where the enjoyment used to be recorded to establish cultivation of the property or possession of the property by the plaintiff, which is a best piece of evidence to establish lawful possession as on the date of filing the suit.

On the other hand, the defendants produced Adangal copy for the fasli 2001-2002, marked as Ex.B-16 which established that the first plaintiff was out of possession and the auction purchasers are in possession of the schedule property by the date of filing suit. Therefore, the plaintiffs miserably failed to establish actual possession of property as on the date of filing a suit, while claiming to be the owners of the property by virtue of will marked as Ex.A-8. Since the suit is for injunction simplicitor, this Court or any other Court need not examine the title attaining finality, except for limited purpose of deciding lawful possession. Since the plaintiffs miserably failed to establish their possession as on the date of filing suit, the presumption under Section 6 of the Act has no relevance at all.

It is the case of the defendants that the Gandhi Sevashram is the

owner of the property, but their title cannot be decided in a suit for injunction and when the title of the parties is not disputed, the suit for injunction is not maintainable, in view of the principle laid down by the Apex Court in **Anathula Sudhakar v. P. Buchi Reddy**^[4]. In paragraph 11.3 of the judgment of the Apex Court held that when there is a dispute with regard to title or cloud over the title of the parties, the remedy open to the parties is to approach competent Court to file a suit for declaration and a suit for bare injunction is not maintainable, since, both parties are claiming title to the property and the plaintiff miserably failed to establish lawful possession over the property as on the date of filing the suit, thereby the question of interference or threat to interfere with the alleged possession and enjoyment of the plaintiff by the defendants does not arise.

Hence, I find that the entries made in pattedar passbooks under Section 6 of the Act are only presumed to be true and correct till it is a rebuttable presumption and on the strength of such documents, the Court cannot grant any decree for permanent injunction. Accordingly, the point is answered.

Point No.2

- One of the contentions of the plaintiffs is that if the property is Endowment Property, such claim has to be adjudicated by the parties before the authorities under the Endowments Act. Section 87 of the Act deals with removal of encroachments from the endowment property and the parties who are claiming right over the property can approach the Deputy Commissioner for removal of encroachments. But here, it is not the case of the defendants that any person encroached into the property of the defendant. In such a case, question of approaching the Deputy Commissioner of Endowments for removal of encroachment does not arise. In fact, it is the case when the plaintiff claimed right over the property and sought for permanent

injunction restraining the defendant from interfering with his alleged possession, the Trial Court granted decree in favour of the plaintiff, the remedy open to the defendant is to avail an appeal under Order 41 of C.P.C, since the defendants are the persons aggrieved. Therefore to set-aside the decree and judgment of the Trial Court, the petitioner need not approach the Deputy Commissioner of Endowments under Section 87 for redressal or adjudication of the claim and this contention is without any substance. Hence, I hold that this point against the plaintiffs and in favour of the defendants.

As the Appellate Court, based on the facts and circumstances of the case, disbelieved the possession and enjoyment of the property by the plaintiffs as on the date of filing the suit, on appreciation of entire evidence, the fact finding does not call for interference of this Court, while exercising power under 100 of Civil Procedure Code. That apart, the suit is not maintainable, in view of the judgment in **Anantula Sudhakar's** case.

In view of the foregoing discussion and findings in 1 & 2, I find that the appeal is devoid of any merit and in the result, the appeal is dismissed at the stage of admission.

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

JUSTICE M. SATYANARAYANA MURTHY

Date:22.07.2016

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[\[1\]](#) 1994 (1) ALT 673

[\[2\]](#) AIR 1997 SC 2089

[\[3\]](#) (1997) 7 SCC 137

[\[4\]](#) AIR 2008 SC 2033