

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND**

THE HON'BLE MRS. JUSTICE ANIS

A.S.No. 609 OF 2015

J U D G M E N T: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

Defendants 2, 4 to 8, 10 to 12, 14, 16, 18 and 19 in the suit are the appellants. The 1st respondent herein is the plaintiff. We prefer to describe, now on, the parties as they are arrayed before the civil Court, for convenience sake.

The suit, O.S. No. 1 of 2011 was originally instituted on the file of the II Additional District Judge's Court at Vijayawada. Subsequently, it came to be transferred to the Court of the XVI Additional District & Sessions Judge at Nandigama, Krishna District on point of jurisdiction, where it was re-numbered as O.S.No. 92 of 2013.

When this Appeal was entertained by this Court, an interlocutory order was passed on 24.08.2015 in A.S.M.P. No. 1758 of 2015, which was moved seeking for stay of execution of the decree, directing the appellants to deposit the suit costs within four weeks. That order has not been complied with, but however, on three different occasions, adjournments were sought for on one ground or the other. On 07.12.2015, entertaining A.S.M.P. No. 2169 of 2015, which was moved seeking extension of time for depositing the suit costs by four more weeks, this Court allowed the said Application permitting the appellants to deposit the suit costs by way of demand draft drawn at par in the name of the 1st respondent herein and to deposit the same before this Court by 14.12.2015, as by then, four weeks' time sought for to comply with the order passed by this Court on 24.08.2015 has already expired. The order passed by us on 07.12.2015 also remained un-implemented. When the matter was taken up on

27.01.2016, there was no representation on behalf of the appellants and none appeared on their behalf either. Hence, we have adjourned the matter by two weeks, on our own, observing that failing to appear in the matter henceforth, the proceedings will be taken up *ex parte*.

Today, when the matter is taken up, none appears on behalf of the appellants and there is also no representation made on behalf of the learned counsel for the appellants. When the appellants' names are called out, there is no representation either. We therefore, infer that they have no objection for us to proceed with the further hearing of the case.

The plaintiff was established as a non-governmental organization by a philanthropist from Belgium by name Prof. Fr. M.A. Windey and it was got registered under the Societies Registration Act, 1860 bearing Registration No. 101 of 1971. It has, as its principal objective, to secure overall development of poor people without any barriers like caste, creed, colour, religion or region, etcetera. The plaintiff has been established with the motto - "better village for a better world". Its principal source of revenue is the donations made by Fr. Windey and others as well. With its own funds, the plaintiff was acquiring lands and developing them as housing colonies and allotting the plots to the eligible beneficiaries, who are essentially persons without having any house of their own.

Sometime during the year 1982, the plaintiff appears to have acquired land from the government near about Vellanki Village of Veerulapadu Mandal, Krishna District, developed the same into a housing colony, got constructed houses and allotted one each to 56 families, which are essentially drawn from the lowest economic and social strata, such as Scheduled Castes and Scheduled Tribes. They have named the colony as 'Dharmapuri Colony'. Subsequent to

establishing the said housing colony and finding its success, the plaintiff has purchased from one Sri Gude Narayana and his three sons land of an extent of Acs. 8.70 cents through Ex.A1 registered sale deed dated 24.09.1982 for a valuable consideration. Since these lands are agricultural lands, it appears, the plaintiff got the same cultivated initially for a period of five or six years, by its volunteers, but however, it appears, one of the elders of the community of Dharmapuri Colony, by name Sri Nandru Yesuratnam, who was also an Ex-Sarpanch of the Village, has taken these lands on lease basis and cultivated the same. Sri Yesuratnam was impleaded as the 1st defendant to the suit. It is the specific case of the plaintiff that Sri Yesuratnam paid land revenue to the lands cultivated by him on lease basis and obtained tax receipts Exs.A24 and A25 in the name of the plaintiff from the local Mandal Revenue Office on 11.12.2006.

However, due to the recent economic slowdown, particularly in Belgium, the flow of donations to the plaintiff has almost dried up. In those circumstances, the plaintiff has taken a decision to sell off some of the assets acquired by it which are not being put to effective use, so that it can still carry on its activities effectively. Consequently, the suit schedule land of Acs.8.70 cents is what has been decided to be sold off. On behalf of the plaintiff, it appears, an offer was made to the residents of Dharmapuri Colony to purchase the suit schedule lands and derive benefit there from by cultivating those lands, but however, finding the response in that regard being not very encouraging, the plaintiff organization has decided to offer the lands for sale by conducting public auction. It is appropriate to notice that at such auctions, the 1st defendant in the suit, Sri Yesuratnam, participated and filed his bid for Rs.75,000/- per acre, whereas another individual, by name Sri Koti Ramayya gave the best offer of Rs.3,25,000/- per

acre. In those circumstances, the plaintiff organization has decided to accept the offer made by Sri Koti Ramayya. At that stage, some of the defendants made a false complaint against the plaintiff to the District Collector, Krishna at Machilipatnam that it is indulging in unauthorized sale of lands. With a view to protect the interests of all concerned, the Collector reacted and directed the Office of the Sub-Registrar not to entertain registration of any conveyance/sale deed that would be presented by or on behalf of the plaintiff for transferring the title over the suit schedule property. Coming to know of the said development, the plaintiff has moved the District Collector and also the local Mandal Revenue Officer-cum-Tahsildar, who upon perusing Ex.A1 sale deed, realized that the suit schedule lands are private patta lands purchased by the plaintiff from out of its own funds and they have nothing to do with the lands earlier secured by it from the government for developing the housing colony known as Dharmapuri Colony in the village. As a consequence of the inquiries conducted by the State machinery, the pattadar pass book, Ex.A2, granted in favour of the plaintiff under Section 6-A(2) of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971, the title deed, Ex.A3 and the entries in 10(1) Adangal, Ex.A4, are found to be in order and accurate and hence, the Tahsildar, through Ex.A5 letter dated 08.07.2010, has lifted the ban earlier imposed for registering any conveyance. It will also be appropriate to note that under Section 6 of the aforementioned Act, 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 the said Act. It will also be important to notice that for the purpose of making a record of rights, the competent authority/appellate authority/revisional authority exercises the same powers as that of the civil Court, thus, signifying that grant of Ex.A2

pattadar pass book and Ex.A3 title deed is not the result of any mechanical exercise indulged in, but is the result of an exercise under a statute.

Realizing that the revenue administration of the State has lifted the ban and the plaintiff is likely to transfer the suit schedule lands in favour of the highest bidder, Sri Koti Ramayya, the defendants have encroached upon the suit schedule land and got constructed a flag stand in the middle of it overnight. In those circumstances, the plaintiff has approached the Superintendent of Police of the District and the local Tahsildar to provide them the necessary assistance for removing the flag stand illegally got constructed in the suit schedule land. Though a couple of constables from the local police station and the Revenue Inspector came to the suit schedule land for extending the necessary assistance to the plaintiff in removing the flag stand, but nonetheless, because of the tense situation prevailing at the suit schedule land, the helpless plaintiff together with the police and the Revenue Inspector retreated from the suit schedule land. In view of the encroachment, the plaintiff got issued the legal notice Ex.A8 on 18.11.2010, requiring the defendants to remove immediately the encroachments from the suit schedule land. Finding that there is no response and the earlier correspondence made by the plaintiff through Ex.A7 dated 11.11.2010 with the Superintendent of Police and Ex.A6 dated 12.11.2010 with the District Collector, Krishna at Machilipatnam has not produced the desired result, a detailed legal notice has been got drawn through Ex.A9 dated 24.11.2010 and got served not only on the defendants but also on the District Collector. Excepting defendants No. 3 and 11, all other defendants have received the legal notice and the District Collector also received the said Ex.A9 legal notice. The respective postal acknowledgment cards in respect thereof

were got marked as Exs.A10 to A20. The registered postal covers addressed to defendants No. 3 and 11 have been returned with an endorsement by the Post Office that 'the addressees were continuously absent for more than one week and hence, returned to the sender'. They were marked as Ex.A21.

At the stage when Exs.A6 to A9 were got issued by the plaintiff, the defendants have trespassed into the entire schedule land comprising Acs.8.70 cents and started raising thatched houses in a skeleton form thereon. The plaintiff organization, which is wedded to the concept of promoting the welfare of the downtrodden, has gone to the extent of offering Acs.1.70 cents of this land, free of cost, to be developed as a housing colony in extension of the existing Dharmapuri Colony, when it was brought to the notice of the plaintiff that the size of the 56 families for whom houses were got constructed by the plaintiff at Dharmapuri Colony has grown in the meantime, and consequently, more than one family is forced to reside in one house. Therefore, with a view to meet the needs of the community, the plaintiff organization has agreed to set apart Ac.1.70 cents of land and allot it to the eligible beneficiaries, free of cost, as well, but even that attempt has not produced the desired result and the encroachers were not relenting to vacate the suit schedule land. On the other hand, they have taken a stand that the plaintiff organization does not have any right whatsoever to alienate the suit schedule land and to make profit out of it. Since the efforts made by the plaintiff organization to impress upon one and all that its activities are no longer feasible of being carried out in view of the meager flow of donations and therefore, its resources have got to be augmented for carrying out its objectives, have turned futile and the defendants kept on representing that as Fr. Windey has died some time during the year 2009, the plaintiff

organization is not authorized to carry on the activity of selling the suit schedule land. In those compelling circumstances, the civil suit came to be instituted seeking a declaration of title and a consequential mandatory injunction for removing the encroachments from the suit schedule land and for delivery thereof.

On behalf of the plaintiff, its Secretary, one Dr. T. Nagender Swamy was examined as P.W.1. One of the three sons of Sri Gude Narayana, by name Sri Gude Srinivasa Rao has been examined as P.W.2 for the purpose of establishing the title of the plaintiff over the suit schedule land. It is Sri Narayana, his son P.W.2 and his other two sons, who jointly sold the suit schedule land through Ex.A1 registered sale deed dated 24.09.1982. A 3rd party to the entire *lis*, by name Sri Lanka Venkateswara Rao was examined as P.W.3 on behalf of the plaintiff to establish that it is Sri Nandru Yesuratnam, the 1st defendant in the suit, who cultivated the land for sometime on behalf of the plaintiff and that encroachments have been made over the suit schedule land only after the plaintiff has initiated steps for disposing of the suit schedule land by conducting public auction.

The 2nd defendant in the suit filed a detailed written statement. Defendants, 4, 5, 6, 7, 8, 10, 11, 12, 14, 16, 18 and 19 adopted the said written statement filed by the 2nd defendant by filing a memo to that effect on 17.06.2011, before the trial Court. In the written statement, the 2nd defendant has taken the stand that the plaintiff has no authority to dispose of the property, inasmuch as Fr. Windey has intended the lands to be used for constructing houses for the poorer segments of the society. The 2nd defendant has also taken the stand that the suit, as instituted by the Secretary of the plaintiff organization, is unauthorized and is not maintainable also. An extravagant stand was also taken

that since Fr. Windey died in the year 2009, the plaintiff is not entitled to deal with the land in such a manner to deny peaceful possession and enjoyment of the suit schedule land which is allotted in favour of the defendants by Fr. Windey.

Dr. T. Nagender Swamy, P.W.1 has filed the affidavit in lieu of his chief-examination, which, virtually, reiterates the suit claim. P.W.1 has categorically deposed that because of the economic slowdown, particularly in Belgium, the funding of the plaintiff organization has suffered a great setback, as the flow of donations has considerably become negligible. He has filed Ex.A27, copy of the minutes of the meeting of the plaintiff held on 29.08.2010, whereat, he was elected as the Secretary of the plaintiff organization. He has also filed a copy of the byelaws of the plaintiff as Ex.A26 to vouch for the fact that it is the Secretary of the plaintiff organization, who is authorized to sue and be sued on behalf of the plaintiff. He has been cross-examined extensively on behalf of the defendants. During the course of his cross-examination, the scheme of the defence of the defendants unfolds clearly. P.W.1 has clearly deposed that he was elected as the Secretary of the plaintiff organization and the resolution passed to that effect in the minutes of the meeting held on 29.08.2010 was already marked as Ex.A27. He therefore, denied the suggestion that he has not been empowered to prosecute the suit. In fact, P.W.1 has reiterated the earlier stand of making available Ac.1.70 cents, free of cost, to be developed as a housing colony as a measure of extension of the existing Dharmapuri Colony. In paragraph 4 of the plaint, the following statements have also been made:

“ The plaintiff invited tenders for the sale of schedule property of Ac.8.70 cents and the 1st defendant participated in tenders. Nearly 6 persons submitted their tenders. One Mr. Koti Ramaiah stood as highest bidder by quoting Rs.3,25,000/- per acre and 1st defendant stood as least

bidder by quoting Rs.75,000/- per acre. So the plaintiff decided to accept the highest bid and he paid earnest money. Some of the beneficiaries of "Dharmapuri" including the defendants met the plaintiff's functionaries, appealed them that their families have increased and two or more families are staying in one house and so to allot some place for their houses. The functionaries of plaintiff asked them to provide a list of houseless people with their residence proof, so that they may discuss the matter in the Governing Body and inform them. The defendants and others submitted the list. The matter was discussed with Governing Body and the Governing Body was kind enough to consider their request and agreed to allot Ac.1.70 cents and the same was informed to the defendants and others. In the meantime, all the defendants and their yes men joined hands with criminal intent to grab the entire schedule land. All the defendants formed into an unlawful assembly. Out of their evil plans they submitted an application No. 8931 to the District Collector in *Praja Vani* which was held on 08.04.2010 at Vijayawada stating that the officials of Plaintiff for their selfish ends are selling the schedule lands and to stop registration of it. Accordingly, the Tahsildar, Veerulapadu issued a letter to Sub-Registrar, Kanchikacharla to stop the registration of the schedule land....."

(Emphasis is brought out now)

All we need to observe from the above is that the plaintiff is very truthful and faithful to the hilt to the cause for which it was established as a non-governmental organization. As was already noticed supra, P.W.2 is one of the vendors through whom the suit schedule land was purchased by the plaintiff through Ex.A1. Hence, the right, title and interest of the plaintiff over the suit schedule land are held as established by virtue of Exs.A1, A2 and A3. Therefore, the civil Court had found that the plaintiff has the title and right over the suit schedule land and accordingly, held that it is entitled for declaration of its right over the suit schedule land. We affirm this finding of the civil Court as it is in accord with the principles enshrined behind Sections 61, 62 and 91 of the Indian Evidence Act.

So far as the defence of the defendants that the suit schedule

land has been acquired only for purposes of allotting to them by the plaintiff organization is plainly meritless, for the 2nd defendant, who was examined as D.W.1, in his affidavit filed in lieu of the chief-examination, on 23.08.2014, has described himself in the following words:

“ I, Nandru Ramesh @ Dasu, S/o Nageswara Rao, Hindu, aged about 29 years, resident of Dharmapuri, Veerulapadu Mandal, Krishna District, do hereby solemnly affirm and state on oath as follows.”

The 2nd defendant is hardly of 30 years age, whereas Ex.A1, conveyance deed, through which the plaintiff has acquired title to the suit schedule land, was dated 24.09.1982, thus, signifying that by the time of Ex.A1, the 2nd defendant, perhaps, may not have been born. Notwithstanding the above, in paragraph 2 of his affidavit filed in lieu of his chief-examination, the 2nd defendant would depose that he and other defendants are in peaceful possession and enjoyment of their respective houses since 1984 as they were allotted to them by the plaintiff organization. He proceeds thereafter and makes the following statement:

“ The erstwhile authority allotted the land to myself and other defendants and others who are belongs to Scheduled Castes. At that time, myself and other defendants and other occupants also paid some considerations to the plaintiff organization and they allotted to poor and houseless people for living.....”

During the course of cross-examination, the first question that has been put to D.W.1 was about his date of birth. He feigned ignorance but added that he was about 25 or 26 years and studied up to IX class. He admitted that Dharmapuri Colony was established in the year 1983 by the plaintiff organization. He also admitted that the plaint schedule property is that of the plaintiff and that it has purchased the said

property from the villagers and he also knows the sellers of the suit schedule property as Sri Gude Narayana and his sons. D.W.1 admitted that there is no written permission from the plaintiff organization permitting the defendants to live in the suit schedule property. D.W.1, when confronted about the alleged statement of payment of consideration for the suit schedule property to the plaintiff organization, has this to say:

“An amount of Rs.1,25,000/- was given to Mikhel Anthony for purchase of the schedule property. There is no documentary proof to that effect.”

But, D.W.1 has failed to talk, much less establish, any relationship which the said Michel Anthony has with the plaintiff. Therefore, the extravagant stand adopted by the defendants in the written statement and sought to be reiterated in the affidavit filed in lieu of chief-examination by D.W.1 that the suit schedule land was allotted to the defendants that too for a consideration has been completely nailed during the course of his cross-examination. When D.W.1 was confronted that it is the 1st defendant Sri Yesuratnam, who has remitted the land revenue to the local government on behalf of the plaintiff organization, as is evidenced by Exs.A24 and A25, dated 11.12.2006, he feigned ignorance of it. Exs. A24 and 25 are found clearly coming in his way when D.W.1 said that they are in possession of the land for the past 8 or 9 years. From Exs.A24 and A25, it has clearly emerged that the 1st defendant has cultivated the suit schedule land sometime, at least up to 2006, on behalf of the plaintiff organization. It is therefore, a clear case where the defendants have tried to encroach upon the suit schedule land sometime only after the year 2006 possibly to thwart the plaintiff organization from disposing it of by way of public auction undertaken by it during the year 2009. In

this context, it will be relevant to take note of the cross-examination of D.W.2. Defendant No. 7 has been examined as D.W.2. Though in the affidavit filed in lieu of his examination-in-chief, D.W.2 made certain statements against the plaintiff organization, but however, when he was cross-examined on 14.11.2014, he has admitted that the house where he was residing in Dharmapuri Colony was got constructed by the plaintiff and that the plaint schedule property is located on the Southern side of the said Dharmapuri Colony. The next statement of fact acquires lot of significance in the present context and hence, we prefer to quote it:

“ It is true till the year 2009, the plaint schedule property was cultivated by Sri Nandru Yesuratnam. There is no documentary evidence to show that I am residing in the plaint schedule property.”

Sri Nandru Yesuratnam, as was already noticed supra, was the 1st defendant to the suit. Thus, even by the version of the defendants, the suit schedule lands were cultivated by the 1st defendant on behalf of the plaintiff organization till the year 2009 and it is thereafter, the suit schedule lands suffered encroachments. D.W.2 has this to say further in his cross-examination:

“It is not true to suggest that in the year 2010, we erected thatched huts on plaint schedule property. Witness adds 30 years back we erected thatched huts. I erected my thatched hut either in the year 2010 or 2011 on plaint schedule property. I know that the plaint schedule property belongs to the plaintiff society. Witness adds Fr. Windey told to us that the property was purchased for us. It is true there is no documentary evidence with regard to the said fact.....”

The claim of the defendants that the suit schedule property was purchased for their benefit is a totally irrelevant aspect of the matter for deciding/declaring the title of the plaintiff over the suit schedule property. Such a stand was developed because of a recital in Ex.A1

that the suit schedule property has been purchased by the plaintiff for the purpose of construction of houses. Such a recital reflecting the purpose for which the plaint schedule property was purchased by the plaintiff in 1982 for a valuable consideration does not dither the plaintiff from putting it to an effective utilization, as considered appropriate and desired by it for carrying forward the objectives for which it is established. The purpose for which the suit schedule lands are acquired does not firstly mention the cause of the defendants in the suit nor does it clothe them with any right to encroach upon it.

We are clearly of the view that there is no justification whatever behind the resistance offered by the defendants to the suit claim. The trial Court is fully justified in decreeing the suit as prayed for.

Though the appellants have not chosen to appear and make their submissions before us, but nonetheless, we consider that it is our duty to do complete justice to the cause of the parties.

The plaintiff organization has been rendering great service for the cause of the downtrodden. It has been serving the poorer segments of the society with the sole motto of securing a better village for a better world to prevail. The plaintiff was very honest in making a candid disclosure of the negotiations, which it entertained with some of the defendants and other elders of Dharmapuri Colony during the year 2009. In fact, there was no such necessity for it to do so, as there was never any written assurance held out by the plaintiff that they will part with valuable land to the extent of Acs.1.70 cents, but nonetheless, the plaintiff, as was already noticed by us earlier in this judgment, made a very honest and truthful statement in the plaint itself that the Governing Body of the plaintiff has decided to set apart Ac.1.70 cents so as to form an extension for the existing Dharmapuri Colony. P.W.1 has reiterated the commitment of the plaintiff to that effect when he was

cross-examined.

We therefore, modify the decree and judgment passed by the trial Court by directing the plaintiff to set apart land of a total extent of Ac.1.70 cents from out of the suit schedule land adjoining the existing Dharmapuri Colony, Vellanki Village, Veerulapadu Mandal, Krishna District, though the said land is a very valuable piece of land. The plaintiff organization is also entitled to allot house sites to the eligible beneficiaries considered appropriate by them in this land of Ac.1.70 cents and it is not necessary that any or all of the defendants must be so included in the list of beneficiaries. It is for the plaintiff to take a decision entirely on its terms and out of its free will and volition. The suit schedule land, comprising of Acs.8.70 cents shall forthwith be vacated by the defendants, duly removing whatever huts that they have constructed thereon and deliver vacant and peaceful possession thereof to the plaintiff organization, under a proper acknowledgment, within a maximum period of 30 days from today, failing which, the plaintiff is entitled to get the decree executed. In the process of such execution, the defendants have no manner of right to continue to occupy the land of an extent of Ac.1.70 cents either, entirely on their own, unless, in the meantime, the plaintiff organization has granted them allotment letters of house sites. The plaintiff is further entitled to deal with the balance Acs.7.00 of land, as is considered appropriate by it, entirely on its own, including the right of disposition.

In view of the conduct of the defendants, which is completely blameworthy, we are of the opinion that costs of this Appeal are also liable to be recovered from them. We quantify the hearing fee of this Appeal at Rs.50,000/- (Rupees fifty thousand only).

With this, the Appeal stands dismissed with costs.

Consequently, the miscellaneous applications, if any shall also

stand dismissed.

NOOTY RAMAMOHANA RAO, J

ANIS, J

10th February 2016

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