

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEALS No.330 of 1998 and 496 of 1998

COMMON JUDGMENT:

S.A.No.330 of 1998:

This appeal is filed by the appellant-defendant assailing the decree and judgment dated 01.01.1998 in A.S.No.24 of 1991 on the file of the Court of Additional District Judge, Mahaboobnagar, wherein whereby the decree and judgment dated 30.01.1987 in O.S.No.147 of 1980 on the file of the Court of District Munsiff, Kollapur, decreeing the suit filed by the plaintiff for perpetual injunction, was confirmed.

S.A.No.496 of 1998:

This appeal is filed by the appellant-plaintiff assailing the decree and judgment dated 01.01.1998 in A.S.No.108 of 1985 on the file of the Court of Additional District Judge, Mahaboobnagar, wherein whereby the decree and judgment dated 28.10.1985 in O.S.No.45 of 1984 on the file of the Court of Subordinate Judge, Wanaparthi, dismissing the suit filed by the plaintiff for declaration, was confirmed.

The parties in both the appeals are one and the same and the original suits were filed by both parties against each other in respect of same property, hence this Court is inclined to decide both the appeals together by passing common judgment.

2. For the sake of convenience, the parties hereinafter will be referred to as they were arrayed in the suit O.S.No.45 of 1984 to avoid confusion.

3. The facts leading to filing of the present second appeals are briefly as follows:

O.S.No.45 of 1984 is filed by the plaintiff for declaration to declare the orders of the first defendant dated 26.11.1974 and 23.04.1983 in file No.B6/14/ROR/74 as null and void and not binding on the plaintiff. The plaintiff and the third defendant are the sons of C.Ramachander Rao. The plaintiff was given in adoption to late Ramakishan Rao, his paternal uncle. Late Ramakishan Rao, C.Rama Chander Rao and C.Kodanda Rama Rao, who are own brothers have partitioned their properties by metes and bounds. The lands bearing Sy.Nos.4, 5, 6, 14, 28 and 76 are Kattugutta Inam lands belonging to late Kodanda Rama Rao. Late Kodanda Rama Rao died in the year 1952 without marriage. In the compromise between C.Ramachander Rao and late Ramakishan Rao, the above lands fell to the share of Ramakishan Rao. In the Khasra Pahani also, these lands are shown in the name of Ramakishan Rao. Ramachander Rao has not raised any objection at the time of mutation and preparation of Khasra. Ramakishan Rao had been in possession and enjoyment of the above lands. C.Ramachander Rao had relinquished his rights in the above lands and as such he has no interest in the above lands. The adoptive father of plaintiff i.e. Ramakishan Rao died on 06.10.1956, therefore, the plaintiff has become the absolute owner of the property of Ramakishan Rao and Inamdar of the above lands. Later, in the enquiry under Atiyat Enquiries Act 1952, R.D.O. Nagarkurnool granted succession for the above lands in favour of the plaintiff in the

year 1965. In view of the succession, the plaintiff alone is Inamdar of the above lands. Therefore, the other family members Ramachander Rao, Sitarama Rao and defendant No.3 managed the properties. One Narayana Reddy son of Ranga Reddy was supervising the agricultural operations on their behalf, therefore, the name of defendant No.3 was recorded in Col.No.16 of the pahanies for some years. In some of the pahanies, the name of defendant No.3 and plaintiff were recorded for some of the years. On account of these entries, defendant No.3 made attempts to take advantage and claimed interest in these lands. The plaintiff is the absolute owner of Sy.Nos.185 and 198 as his name was mutated in the record of rights for the year 1971-72. The lands in Sy.Nos.152, 206 and 207 are maktha inam lands belonging to late Ramakishan Rao. Taking advantage of entries in Col.No.16 of pahanies with an ulterior motive, defendant No.3 filed a petition under Section 15(2) of A.P.(Hyderabad) Record of Rights and Land Regulation 1355 fasli claiming half share in Sy.Nos.4,5,6,14,28 and 76 and rectification of Khasra pahani and subsequent pahanies. D3 has impleaded Ramachander Rao and the plaintiff as respondents. He managed Ramachander Rao to file a counter admitting that he has given his half share to D3 in the year 1953 in oral partition. The plaintiff was set *ex parte* and the defendant obtained an order from the Additional Collector, Mahabubnagar for rectification. The plaintiff has come to know the orders and attempted to seek remedy in the High Court. He came to know that Additional Collector has no original

jurisdiction to pass orders under Section 15(2) of the regulations. The plaintiff has given notice under Section 80 CPC to the Collector on 14.02.1980 questioning the jurisdiction and validity of the orders. Therefore, the suit for declaration.

4. First defendant filed memo adopting the written statement of defendant No.2. Defendant No.2 filed written statement denying all the averments made in the plaint *inter alia* contending that as per pahanies for the year 1953-54, the name of Kodanda Rama Rao is recorded in Col.No.13. The name of Ramakishan Rao is noted as Inamdar in Col.No.8 and 13 of Khasra Pahani for the year 1954-55. As per the records of succession, the plaintiff appears to be the adopted son of Ramakishan Rao. After the death of Ramakishan Rao, the plaintiff on the strength of adoption deed appeared before R.D.O., Nagarkurnool, and vide proceedings in L.R.No.R.Dis.No.H/394/73 dated 21.04.1973 the plaintiff was declared as Inamdar of the suit land. Before declaring him as Inamdar, all steps were taken as contemplated under law. In the Khasra in Col.Nos.15 and 17, Sy.Nos.4, 5, 6 and 14 were registered in the name of D3. The name of the plaintiff was recorded in Col.No.11 of the Pahani for the year 1972-73 in respect of Sy.No.4, 5, 6, 14, 26 and 76, as per the orders of R.D.O. at the time of Jamabandhi. So also the name of the plaintiff is recorded in Col.No.11 of the pahanies in the Jamabandhi held in the year 1971-72. The name of the plaintiff was registered in respect of Sy.Nos.185 and 198 of Chikkapally village, in Col.No.11 and 13 of the Khasra Pahani. Against the

orders of Additional Collector, Mahabubnagar dated 26.11.1974, the plaintiff has preferred an appeal under Section 158 of Lands and Revenue Act before the Commissioner of Survey and Settlement and the same was dismissed on 13.12.1976. Hence, the suit is liable to be dismissed.

5. Defendant No.3 filed written statement denying all the averments made in the plaint admitting the inter se relationship between the parties inter alia contending that the lands in Sy.Nos.4, 5, 6, 14, 28 and 76 of Chikkapally village belong to Kodanda Rama Rao. After succession enquiry under Atiyath the name of the plaintiff has been recorded in the pahanies as Inamdar and occupant of Sy.Nos.4, 5, 6, 14, 28 and 76 in the year 1973 contrary to the succession certificate granted by the Revenue Divisional Officer, Nagarkurnool, dated 26.10.1965. Any entries made contrary to the orders passed by the competent authority cannot confer right on the plaintiff exclusively to claim any right in the above said lands. Sy.No.185 of Chikkepalli village is patta land of Kodanda Rama Rao in which this defendant is also having share. So also the lands in Sy.Nos.132, 206 and 207 situated at Chikkepally village are not Inam lands held by Ramakishan Rao as these lands are situated in Ex-jagir village. After abolition of Jagirs the said lands have not been recognized by Khalsa Deputy Collector under circular – 4 of 1952. All lands are in joint possession and enjoyment of defendant No.3 and late Ramakishan Rao. After the death of Ramakishan Rao, the plaintiff and third defendant have been in continuous

possession and enjoyment of the said lands. In view of wrong entries in pahanies, D3 filed a petition under Section 15(2) of Andhra Pradesh (T.A.) Record of Rights Regulation of 1358 fasli for rectification of the entries in khasra pahanies and subsequent pahanies in respect of the said lands and other lands before the Additional Collector, Mahabubnagar. The plaintiff was set *ex parte*. The plaintiff has carried the matter in appeal before the Board of Revenue, A.P., Hyderabad. The Commissioner of Survey and Settlement by his orders dated 13.12.1976 in File No.U3/525/75 has dismissed the appeal. In view of Article 113 of the Limitation Act, the suit is barred by limitation. Hence, the suit is liable to be dismissed.

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

1. Whether the order of the Additional Collector, dated 26.11.1974 in File No.B6/14/ROR/74 is null and void and without jurisdiction?
2. Whether the suit is barred by limitation?
3. Whether the Court fee paid is correct?
4. To what relief?

7. During the course of trial, on behalf of the plaintiff P.Ws.1 to 3 were examined and Exs.A1 to A49 and Ex.X1 to X8 were marked. On behalf of the defendants, D.Ws.1 to 3 were examined and Exs.B1 to B29 were marked. After having a thoughtful consideration to the oral, documentary evidence and other material available on record, the trial Court dismissed the suit filed by the plaintiff for declaration on the ground that the

suit is barred by limitation. Feeling aggrieved by the judgment and decree dated 28.10.1985 in O.S.No.45 of 1984, the unsuccessful plaintiff preferred A.S.No.108 of 1985 on the file of the Additional District Judge, Mahabubnagar. The appellate Court, after having a thoughtful consideration to the oral and documentary evidence available on record arrived at the conclusion that the plaintiff has not approached the Court within the period of limitation and confirmed the findings of the court below by dismissing the appeal. Challenging the decree and judgment in O.S.No.147 of 1980 the unsuccessful defendant preferred A.S.No.24 of 1991 on the file of the Court of Additional District Judge, Mahabubnagar. The appellate Court, after reappraising the oral, documentary evidence and other material on record, being not influenced by the findings recorded by the Court below, arrived at a conclusion that the plaintiff is entitled for perpetual injunction and dismissed the appeal.

8. Heard the learned counsel for the appellant-plaintiff and the learned counsel for the respondents-defendants and perused the record.

9. The questions of law that arise for consideration in these appeals are:

1. Whether the suit filed by the plaintiff in O.S.No.45 of 1984 is barred by limitation? and
2. Whether the finding recorded by the Courts below that the plaintiff in O.S.No.147 of 1980 was in possession of the suit schedule property as on the date of filing of the suit is perverse and is liable to be set aside?

10. It is not in dispute that the plaintiff and defendant No.3 are own brothers. The plaintiff is the adopted son of Ramakishan Rao. Originally the suit schedule property and some other properties belong to late Ramakishan Rao, Ramachander Rao and Kodanda Rama Rao. The above said three persons have partitioned their properties.

11. It is the case of the plaintiff that defendant No.3 approached Additional Collector and filed an application under Section 15(2) of the ROR Regulations Act 1358 fasli. The Additional Collector passed orders on 26.11.1974 in favour of third defendant. The plaintiff being aggrieved with the orders dated 26.11.1974 passed by the Additional Collector, filed an appeal before the Commissioner of Survey and Settlement. The Survey and Settlement Officer after affording reasonable opportunity to both parties dismissed the appeal filed by the plaintiff on 13.12.1976.

12. The crucial question that falls for consideration is whether the plaintiff filed the suit within the period of limitation or not. It is not in dispute that the plaintiff filed a suit for declaration to declare the orders of the Additional Collector dated 26.11.1974 as illegal and void. It is a settled principle of law that in the suit for declaration, the plaintiff may succeed or fail basing on the strength or weaknesses of his case. It is also a settled principle of law that one has to file a suit for declaration within a period of three years from the date of denying his right. O.S. No.45 of

1984 was filed to declare the orders of the Additional Collector dated 26.11.1974 as null and void, and not binding on the plaintiff. The suit was filed in the year 1984. By following mathematical formula, the Court can safely arrive at a conclusion that the suit was filed ten years after passing of the impugned order.

13. Another interesting aspect is that the plaintiff preferred the appeal challenging the orders of the Additional Collector dated 26.11.1974 before the Commissioner of Survey and Settlement. The appeal filed by the plaintiff was dismissed on 13.12.1976. The order passed by the Additional Collector was merged with the orders of the Survey and Settlement Officer dated 13.12.1976. The material placed before the Court clinchingly establishes that the plaintiff has availed the alternative remedy available to him under ROR Act. At the same time, the plaintiff approached the civil Court for declaration. This Court is unable to understand how the plaintiff has challenged the orders of the Additional Collector dated 26.11.1974 even though the same merged with the orders dated 13.12.1976 passed by the Survey and Settlement Officer. In fact the plaintiff ought to have challenged the orders dated 13.12.1976 passed by the Survey and Settlement Officer.

14. In order to appreciate the contention of the learned counsel for the appellant, it is not out of place to extract Article 58 of the Limitation Act.

	Description of suit	Period of limitation	Time from which period begins to run
58.	To obtain any other declaration	Three years	When the right to sue first accrues.

15. As per the above article, a suit for declaration has to be filed within three years from the date when the right to sue first accrues.

16. A perusal of the above rule clearly demonstrates that one has to file a suit within the period of three years from the date of accruing right or denying the right. It is the case of the plaintiff the orders passed by the Additional Collector on 26.11.1974 would amounts to denial of his right over the suit schedule property. The plaintiff ought to have filed the suit on or before 25.11.1977, whereas the plaintiff filed the suit in the year 1984. In the absence of a specific provision under the Limitation Act, the aggrieved party has to file a suit within the period of three years from the date of accruing of cause of action in view of Article 113 of the Limitation Act. The facts placed before the Court clinchingly establish that the plaintiff filed the suit after expiry of the period of limitation as contemplated under Rule 58 of the Limitation Act.

17. Whether the Additional Collector has passed the order without jurisdiction or not can be considered if the suit is filed within the period of limitation. When the suit itself is barred by limitation, the Court cannot go into the merits of the main case. The Courts below have considered the Articles 58 and 113 of the

Limitation Act in right perspective and arrived at a just and reasonable conclusion. The Courts below considered the material available on record in right perspective and arrived at a conclusion that the suit filed by the plaintiff was barred by limitation.

18. Basing on the oral and documentary evidence available on record, the trial Court rightly arrived at a conclusion that the plaintiff in O.S.No.147 of 1980 has been in possession and enjoyment of the property much less as on the date of filing of the suit. The finding recorded by the trial Court is based on oral and documentary evidence. The first appellate Court, after reappraising the oral and documentary evidence, arrived at a conclusion that the plaintiff in O.S.No.147 of 1980 was in possession of the property as on the date of filing of the suit. Both the Courts concurrently held that the plaintiff was in possession of the property at the relevant point of time. The first appellate Court is fact finding final Court. The findings recorded by the Courts below are not contrary to the provisions of the Limitation Act. I am fully endorsing with the concurrent findings of fact recorded by the Courts below. This Court while exercising the jurisdiction under Section 100 CPC shall not lightly to interfere with the concurrent finding of fact recorded by the Courts below. The first appellate Court is the fact finding final Court. There is no question of law much less substantial question of law in these appeals and as such, the second appeals are liable to be dismissed.

19. In the result, both the second appeals are dismissed at the admission stage. The miscellaneous petitions, if any, pending in these two appeals shall stand closed.

T.SUNIL CHOWDARY, J

5th December 2017.

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