

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

SECOND APPEAL No.1068 of 1998

JUDGMENT:

This Second Appeal is preferred by the appellant/plaintiff aggrieved by the judgment and decree dated 28.07.1998 in A.S.No.4 of 1993 passed by the Senior Civil Judge, Puttur, confirming the judgment and decree dated 30.04.1992 in O.S.No.250 of 1979 passed by the Principal District Munsif, Puttur.

2) The factual matrix of the case is thus:

a) The case of the plaintiff is that lands in Sy.No.73/2 of an extent of Ac.1-31 cents, Sy.No.127 of an extent of Ac.9-87 cents and Sy.No.130/13 of an extent of Ac.1-00 cents, situated in Parameswaramangalam village are his absolute and ancestral properties. Defendants 1 to 5 are the residents of the said village and they were sued in a representative capacity as they represent all the villagers of Parameswaramangalam village. With regard to land covered by Sy.No.73/2 and Sy.No.127, a Ryotwari patta was issued under A.P.Inams (Abolition and Conversion into Ryotwari) Act, 1956 (Act 37 of 1956) (for short “Inams Abolition Act”) on 14.05.1964 by the Inams Deputy Tahsildar (I.D.Tahsildar), Satyavedu in favour of plaintiff’s father and with regard to land covered by Sy.No.130/13, which forms part of Sy.No.130/12, patta was granted to the plaintiff under Section 11(a) of A.P.(Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Act 26/1948) (for short “Estates Abolition Act”) by Additional Assistant Settlement Officer, Chittoor vide S.R.No.38/11(a)/65 Puttur. The plaintiff

contended that his father was doing self-cultivation and also getting portions of lands cultivated under waram. His father died in 1964 and after his death, he along with his two brothers has been in possession and enjoyment of the schedule lands and no one is entitled to claim any right in them. He submitted that portions of the land were cultivated on waram by some ryots of the village. Plaintiff alone has been paying cists for all the schedule lands covered by patta No.695. For plaintiff schedule lands a passbook was issued to the plaintiff. Plaintiff contended that defendants 1 to 5 along with other villagers attempted to obstruct him and his brothers, when they wanted to plough lands in Sy.No.127 stating that they were Manyam lands in which villagers have some interest and he learnt that the villagers have been egged on by 6th defendant. Plaintiff submitted that Endowments Department has not made any claim or objected to the possession and enjoyment of schedule lands by plaintiff and his father. D.1 to D.5 are mainly responsible for the obstruction but the entire villagers are planning to occupy entire schedule lands and dispossess the plaintiff. Hence the suit for permanent injunction.

b) Defendant No.4 filed written statement and the same was adopted by D.1. D.4 contended that plaintiff allegations are all false and that the suit properties absolutely belong to 'Mottegani Satram' attached to Sri Vinayaka Temple situated in Parameswaramangalam village. He submitted that plaintiff has to obtain permission from the Court to sue the defendants in a representative capacity and it cannot be said that he along with others defendants 1, 2, 3 and 5 represent the villagers of Parameswaramangalam village. The plaintiff, his father and others were

managing the suit lands for and on behalf of the institution without having any beneficial interest in it. It is also contended that in the 3rd item of suit lands, there is a Vinayaka Temple, Koneru and Mottegni Choultry and residential houses of poojaris and hence, 3rd item is not a cultivable land. It is further contended that the allegations that plaintiff and his father have perfected their title by adverse possession is not true and correct and their possession if any is only permissive but not at all adverse. The suit lands were gifted by Sri Bommaraju, Raja of Karvetinagar Samsthanam, who founded Sri Vinayaka Temple and also constructed a Choultry near the temple and also arranged Chalivendra to give water and gruel to the pilgrims and travelers and Prasadam to the carriers of Deities of Sri Agastheeswaraparakeswaraswami of Narayanavaram and Sri Sadasivaswami temple and also deities of surrounding villages during Sankranthi festival. There is also a small 'Koneru' dug by the Raja of Karvetinagar for the use of pilgrims and also worshippers at the temple and also for catering water to the thirsty. To meet the expenses for continuing these acts of charity and 'nithya naivedyam' Deepa Dhooparadhana at the temple, the Raja granted about 12 acres of dry and wet lands to the institution. The Vinayaka Temple 'Mottegni Satram and Chalivendram' are institutions by themselves and all these institutions are attached to each other. Plaintiff's father Lokanadha Mudali was only looking after the management of the temple Choultry and Chalivendram as a trustee and getting the lands being cultivated and utilizing the proceeds to the said purposes. The plaintiff succeeded his father as a person in management of the affairs of the institutions. The patta if any,

granted in favour of the father of plaintiff or plaintiff is absolutely illegal and void. The orders of I.D.Tahsildar, Satyavedu holding that the Inam in question was not held by an institution is absolutely wrong and opposite to Inam 'A' register and other documents with Revenue Department. The Endowments Department has legally constituted a Trust Board under Section 15 of Andhra Pradesh Charitable & Hindu Religious Institutions & Endowments Act, 1987 (for short "Endowments Act"). The plaintiff has no right to be in management of the institution after constitution of Trust Board in which D.4 and D.1 are members along with others. The Trust Board appointed by the Endowments Department is carrying out the administration of the institution from the date of its constitution and the Endowments Department is supervising the management. The villagers of Parameswaramangalam have sent petition dated 07.04.1979 to the Endowments Department about mismanagement of affairs of the institution. D.6 enquired into the matter and took action for constitution of Trust Board and to set right the mismanagement of the institution. The suit was bad for non-joinder of necessary parties as the brothers of plaintiff who are alleged to have a joint title and possession with that of plaintiff are not added as plaintiffs. Thus, prayed to dismiss the suit.

c) D.5 filed written statement and the same was adopted by D.3. He contended that he do not know whether plaintiff was the owner or whether he is in possession of the suit properties or not. He has nothing to do with the suit property. He denied that he along with others attempted to trespass into the suit lands. He contended that he is an unnecessary party to the suit. Hence he prayed to dismiss the suit.

- d) D.6 filed written statement in the same lines as that of D.4.
- e) Basing on the above pleadings, the trial Court framed the following issues:

- (1) *Whether the plaint schedule properties are the absolute properties of Motteгани Satram attached to Sri Vinayakaswamy Temple situated in Parameswaramangalam village limits?*
- (2) *Whether the suit properties came under A.P.C and H.R.I. and E. Act 17 of 1966?*
- (3) *Whether the plaintiff has right to file a suit against defendant in a representative capacity?*
- (4) *Whether ryotwari patta issued in favour of the plaintiff's father by the Inams Deputy Tahsildar, Sathyavedu is true and if so, is it legal?*
- (5) *Whether the plaintiff and his father were managing the properties of the temple for and on behalf of the institution?*
- (6) *Whether the suit property belongs to Endowments?*
- (7) *Whether the suit lands were gifted by Bommaraju Raju of Karvetinagaram Samastanam who founded Vinayakaswamy temple and Chalivendra?*
- (8) *Whether the said Raja granted 12 Acres of land to the institution 'Vinayakatemple' Motteгани Chandram 'Chalivendra'?*
- (9) *Whether the admission statement dated 30.10.1963 by Lokanadha Mudali, father of the plaintiff is binding on the plaintiff?*
- (10) *Whether the trust created under Section 15 of the A.P.C and H.R.I and E.Act of 1966 by the 6th defendant is true, valid and binding on the plaintiff?*
- (11) *Whether the Board created by the 6th defendant is in possession and management of the suit property?*
- (12) *Whether the plaintiff is entitled to permanent injunction?*
- (13) *To what relief?*

f) During trial, PW.1 was examined and Exs.A1 to A15 were marked on behalf of the plaintiff. On the other hand, DWs.1 to 5 were examined and Exs.B.1 to B.17 were marked on behalf of defendants and Ex.C.1 was marked.

g) On appreciation of facts and evidence, the trial Court dismissed the suit on the observation that the plaintiff failed to prove his title and possession over the suit schedule lands.

h) Aggrieved, the plaintiff filed A.S.No.161 of 2009 before the VI Additional District Judge, Tirupati challenging the Judgment of the trial Court. After hearing both sides, the First Appellate Court dismissed the appeal confirming the judgment and decree passed by the Trial Court.

Hence, the instant Second Appeal by plaintiff.

3) The parties in this appeal are referred as they were arrayed before the Trial Court.

4) While admitting the instant appeal, this Court framed the following substantial questions of law:

- 1) *Having regard to the express bar with regard to the jurisdiction of the Civil Court under the provisions of the Inams Abolition Act whether the Civil Court have jurisdiction to go into the validity of patta granted by the Settlement Officers under the provisions of Inams Abolition Act?*
- 2) *Whether the judgment and decree of the lower Appellate Court is in conformity with Order 41 Rule 31 especially when no point of determination has been framed?*

3) *Having regard to the fact that the suit is filed for permanent injunction and the Court has to see with regard to the possession of the property as on the date of filing of the suit whether the Courts below acted legally in determining the inter-se rights of the parties?*

5) Heard arguments of Sri O.Manohar Reddy, learned counsel for appellant and learned Government Pleader for Endowments (AP) for respondent No.4. Case against respondent No.2 was dismissed for default vide Court Order dated 26.03.2008. Though notice to respondents 1 and 3 was served, there is no representation on their behalf.

6) Severely fulminating the judgment of the Courts below, Sri O.Manohar Reddy, learned counsel for appellant would argue that both the Courts committed grave error in dismissing the plaintiff's suit.

In expatiation, he would submit, plaintiff filed the suit seeking perpetual injunction on the plea that suit schedule properties are his ancestral properties inasmuch as I.D.Tahsildar, Satyavedu granted patta under Ex.B10 in respect of items 1 and 2 of plaint schedule and Assistant Settlement Officer, Chittoor granted patta under Ex.A12 in respect of item No.3 to plaintiff under Section 11(a) of Estates Abolition Act and moreover, plaintiff was granted Ex.A14—pattadar pass book in respect of the above lands by the revenue authorities and thus it is a clear manifestation of plaintiff and his ancestors possessing the suit lands in their own right but the lands do not belong to Motteгани Satram as contended by the defendants. Therefore, the Courts below ought to have granted perpetual injunction decree in favour of plaintiff. However, they

committed severe jurisdictional error by holding that the pattas granted in favour of plaintiff and his father are not valid and on that untenable ground dismissed the suit. He would vehemently argue that when Assistant Settlement Officer and I.D.Tahsildar issued pattas, Civil Court is barred from deciding the validity and correctness of the pattas as its jurisdiction ousted in that regard. So, the dismissal of the suit by the Courts below on that ground is a severe legal aberration and perverse. He would thus pray to allow the appeal and set aside the judgments of the Courts below and decree the suit.

7) Per contra, opposing the appeal, learned Government Pleader would argue as per Inam-B Register covered by Exs.B2 and B3 the suit lands are noted as Bandila Manyam which was granted by Raja of K.Nagaram to Sri Vinayakaswami temple situated at Parameswaramangalam village, Puttur Mandal and plaintiff's father was only a care taker to perform nitya Deeparadhana and other Kainkaryams apart from providing water and gruel to tourists and devotees and to do other incidental activities ordained in grant and therefore, the grant is absolutely in favour of institution but not a service inam in favour of an individual. In that view, plaintiff and his father cannot claim any right over the suit properties and they have to perform the aforesaid acts and enjoy the suit lands. However, plaintiff and his father neglected their duties thereby, villagers complained to the Government and D6 created Trust Board with the other defendants who are now in possession of some of the suit lands and managing the temple. Hence, plaintiff cannot claim title or injunction in respect of suit properties. e would further argue, plaintiff's father approached

I.D.Tahsildar, Satyavedu and misrepresented the facts and obtained Ex.B10—patta. No enquiry was conducted by the I.D.Tahsildar which is evident from the fact, he did not verify Inam-B register which clearly shows suit land is Bandila Manyam. Tahsildar without issuing notice and following due procedure contemplated under law, issued patta to plaintiff's father which is vitiated by misrepresentation and fraud. Therefore, the Courts below have rightly ignored the said patta. He would argue that under Section 14 of Inams Abolition Act when issuance of patta is vitiated by misrepresentation and fraud, the Civil Court can decide the validity of the patta and hence civil court's jurisdiction in that regard is not ousted. He would further argue the suit is mainly one for perpetual injunction. However, except filing Ex.A12—order issued by Assistant Settlement Officer, Chittoor and Ex.A14—pattadar pass book, the plaintiff has not produced No.3 Adangal and 10(1) account pertaining to the suit year showing his legal possession by the date of filing the suit. Further, on his own admission, plaintiff and his brothers have already alienated item 2 of plaint schedule property. Therefore, the plaintiff has no right to claim perpetual injunction and the suit was rightly dismissed and therefore, the appeal may also be dismissed as no substantial questions of law are involved.

8) Before discussing the substantial questions of law framed in this Second Appeal, it is apposite to narrate in nutshell the findings on which the Courts below dismissed the suit.

(i) Sofaras possession and enjoyment of the plaintiff is concerned, the trial Court observed that oral and documentary evidence adduced by the defendants would clearly disclose that the then Raja of K.Nagaram granted suit land to Vinayaka Temple and also constructed Choultry and Koneru and he appointed Mottippa or Mottigadu the ancestor of plaintiff for performing poojas in temple and that was how the ancestor of plaintiff was inducted into possession of suit property as trustee only and he was performing poojas during his life time and distributing water and gruel during summer season and Prasadam on the eve of Kondachuttu festival. The evidence of Dws.1 to 5 categorically concludes that plaintiff and his father did not perform the aforesaid acts for the purpose for which the institution was found and thereby, the defendants aggrieved by the attitude of plaintiff's father, reported to Assistant Commissioner of Endowments, Chittoor who in turn responded to the representation of the other defendants and villagers and constituted a Trust Board for the maintenance of Vinayaka Temple, Choultry and Koneru. Even on his own admission of plaintiff, there was no such Choultry and he never performed any of the Kainkaryams, but his family has been in possession and enjoyment of the suit property. The plaintiff has not produced any relevant records like 10(1) Account or No.2 (now No.3) Cultivation Adangal or Inam-B Register or Pre-settlement Record to show that his ancestors were in possession and enjoyment of the suit property for over 100 years.

(ii) With regard to title of the plaintiff, the trial Court having been convinced with the argument of the defendants held that in a suit for perpetual injunction title can be incidentally looked into. Particularly in

this suit, the plaintiff though claimed injunction, but that claim is based on his title which is staunchly denied by the defendants and hence issue of title can be looked into.

Then, commenting on Ex.B10—order issued by I.D.Tahsildar, Satyavedu the trial Court observed that the said order cannot be deemed to be a document of title and moreover there was no evidence forthcoming that an enquiry was duly held by I.D.Tahsildar before passing the said order. The only enquiry held, as seen from the record, was at Satyavedu but not either at Puttur, the Taluk Head Quarter of suit village or Parameswaramangalam, where the suit property was situated. Added to it, as per the evidence of DWs.2 and 3 there was no notification in the village prior to granting of patta in favour of father of plaintiff. Therefore, the defendants have absolutely no knowledge about the enquiry. The act of I.D.Tahsildar in holding enquiry at Satyavedu instead of Puttur the suit village, in the opinion of the trial Court, gave scope for suspicion and held that the said authority did not conduct enquiry in good faith. The trial Court further held, father of the plaintiff also contributed his dubious part in obtaining patta from I.D.Tahsildar. Thus, there is clear violation of judicial process and thereby the patta cannot be said to be a valid one and therefore, it would not confer any title upon plaintiff. Above all, the plaintiff had not produced any patta said to be granted in favour of his father for items 1 and 2.

Regarding item No.3, the trial Court observed Ex.A12—order issued by the Assistant Settlement Officer, Chittoor cannot be regarded as

a document of title and in spite of granting patta, the other party can approach the civil court seeking declaration of title and other reliefs. Hence, the Civil Court jurisdiction is not ousted. The record produced by defendants such as Exs.B1 to B8 would amply show that suit lands are Chalivendra Manyam lands. In addition, there was another strong piece of evidence in the form of statement given by the father of the plaintiff before the revenue authorities (vide Ex.B9) admitting that suit lands were Chalivendra Manyam lands. Further, Exs.B6 and B12 registers maintained by the Trust Board would also show the suit lands are Manyam lands. Due to the aforesaid strong documentary evidence, the trial Court observed, the suit properties belonged to Vinayaka Temple and Motteгани Satram constituting an institution donated by Raja of K.Nagaram. The plaintiff and his ancestors enjoyed the suit property on behalf of institution but not as absolute owners and their possession was only a permissive one. Their mere possession, which is a permissive one, will not entail them to get injunction. More so, plaintiff has sold away item No.2. Hence, plaintiff had no title. On the other hand, the suit property comes under Endowments Act.

The First Appellate Court also determined the appeal in similar lines as that of trial Court and therefore, the said judgment needs no elaboration.

9) **Substantial Question No.3:** Since the plaintiff in the suit seeks only perpetual injunction but not other reliefs such as declaration and, as the substantial question No.3 deals with the aspect of perpetual injunction, it

is, in my considered view, appropriate to discuss this question at the first instance.

a) In a suit for perpetual injunction, it is trite law that plaintiff has to independently establish his lawful possession over the plaint schedule property as on the date of filing of the suit without depending on the weakness if any in the case of the defendants to deserve for a decree. As discussed supra, the Courts below on a threadbare analysis of facts and evidence have held, plaintiff's possession if any, is only a permissive one burdened with service to the institution and therefore, he does not deserve perpetual injunction. They have also held, since admittedly he sold away most of the land comprising in item No.2, he does not deserve decree on that ground also. This finding is the subject matter of scrutiny now.

b) I have gone through the evidence placed on record by either party. No doubt, plaintiff in his evidence deposed in tune with his pleadings as if plaint schedule property is his ancestral property and his father was granted patta for items 1 and 2 by the I.D.Tahsildar, Satyavedu and plaintiff was granted patta in respect of item No.3 by Assistant Settlement Officer, Chittoor and therefore, they are enjoying the suit schedule property in their own right and not as care takers of Motteгани Satram as contended by the defendants. In support of his case, he produced Exs.A1 to A15. In a suit of this nature, more than the oral evidence, documentary evidence assumes greater importance. Whether these documents prove his title will be discussed while dealing with substantial question No.1 infra.

But, at present, I will discuss these documents to know whether they manifest plaintiff's lawful possession as on the date of suit or not.

c) Exs.A1 to A11 are cist receipts issued in favour of plaintiff. It is a known fact that cist receipts are not direct manifestation of possession of an agricultural land. In the presence of cultivation Adangals like No.3 (No.2 old) and 10(1) account, the cist receipts may play a supporting role to show the possession. Thus, the cist receipts are only revenue receipts issued by revenue department on payment of the taxes. Further, in Exs.A1 to A11 the suit survey numbers are not mentioned but patta No.695 alone is mentioned. Hence, it is not known whether cist receipts were obtained in respect of suit lands or different lands. Hence, Exs.A1 to A11 are not much significance.

d) Then, Ex.A12 (B17) is the order dated 18.10.1965 issued by Assistant Settlement Officer, Chittoor in his proceedings No.38/11-A/PTR. It would reveal as if an order was passed pursuant to enquiry under Section 11(a) of Estates Abolition Act. Under this order, it would appear, patta was granted in favour of plaintiff in respect of Sy.No.130/12P in an extent of Ac.1.00 i.e. item No.3. The probative value of this document in conferring title will be discussed later as stated supra. This document at best may serve the purpose to show his title but not possession. Further, from the evidence of PW1 and also DWs.1 to 5, it would appear, there is a well, Tamarind tree, Vinayaka Temple, Koneru and Choultry are located in item No.3 which is in an extent of Ac.1.00. PW1 clearly stated this fact. Therefore, item No.3 not an agricultural land.

According to plaintiff, there is a threshing floor in item 3 which is used by him. His claim is that his grand-father constructed Vinayaka Temple some 70 or 80 years back and dug Koneru. According to him, there is no Satram but plaintiff's house is located in item 3. However, as per the evidence of DWs.1 to 5 the temple and Satram were constructed by Raja of K.Nagaram and he dug koneru for the temple. The Satram was constructed for the tourists, travelers and other passes by to take rest. The open space is meant for placing the deities of Agastewaraswamy of Puttur during Kondachuttu festival held after Sankranthi.

DW3, who owns his house by the side of house of Jangama Poojari, who performs pooja in the Vinayaka temple, deposed that items 1 and 2 of the plaint schedule belonged to Chalivendra Manyam; Vinayaka Temple and Choultry are there and the Choultry is called as Motteгани Satram; there is vacant place on the west and north of Satram and to the south Koneru is situated; Choultry, Temple and Koneru were built by K.Nagaram Raja for the benefit of pilgrims and sanyasis; in the Satram Motteppa family members were providing gruel and water to the pilgrims and other passes by on the date of Kanuma festival; all the deities of Puttur, Narayanavanam and Kalyanapuram are brought to Nagara Mantapam and there will be a festival at that place; thereafter, the deities will be taken to Motteppa Satram and to the temple, where, they will be kept for 2 or 3 hours; Motteppa family members supply prasadam, food and other articles to the persons who carry the deities and follows the deities. He stated that to his knowledge plaintiff and his father never cultivated the plaint schedule land and they do not know cultivation and

they does weaving; one Madiga Dharmaiah, Vasantha Rangaiah Naidu and Jangam people were cultivating the suit lands on lease; the produce given to the share of temple would be kept in the room in the Choultry and the same will be used at the time of Kanuma festival; the plaintiff was not using the income from the lands for the temple purpose and temple became dilapidated; plaintiff was not performing poojas and Deeparadhana and so the villagers reported the matter to the Assistant Commissioner, Chittoor about 9 years ago; the Assistant Commissioner came to the village and formed a committee for the temple and Choultry. In the cross-examination he clearly stated that vacant place in item No.3 is being used for placing the deities there and it was never used as threshing floor. The evidence of other witnesses is more or less in similar lines. Thus, item 3 is concerned, it is a vacant place on which temple, Satram, Koneru and well etc. are located and there is no record to show plaintiff's ancestors had constructed them. On the other hand, the evidence would clearly shows that Temple, Satram and Koneru were all constructed by Raja of K.Nagaram. PW1 stated that his father's name is Lokanadha Mudali and his senior paternal uncle's name is Motteppa Mudali. Therefore, it appears that since plaintiff's ancestors were care taking the Temple, Satram and Koneru and performing kainkaryams and poojas, the Satram was prominently known as 'Motteгани Satram'. Therefore, the possession of the plaintiff if any in respect of item 3 can be traced to the institution and said possession is permissive possession.

e) Then, items 1 and 2 are concerned, plaintiff in his cross-examination admitted that himself and his brothers jointly sold away the

suit properties to one Chavadi Ganapathi Mudali by retaining 2 acres and now he is not in possession and enjoyment of 2nd item of plaint schedule property and he has no interest therein. Thus, on his own admission, he cannot seek injunction in respect of item No.2.

f) Apart from this, plaintiff has not produced cultivation Adangal for the suit year in respect of items 1 and 2. The other documents which he filed are Ex.A13 i.e. proceedings of RDO, Chittoor. This document is in a torn condition. What could be discernible from the available content is that the temple authorities preferred an appeal belatedly against the order of I.D.Tahsildar and the same was dismissed. It is to be noted that as per Ex.B10 order dated 30.04.1964 the I.D.Tahsildar, Satyavedu directed that plaintiff's father be given ryotwari patta under Section 4(1) of Inams Abolition Act. in respect of items 1 and 2 of plaint schedule. The belated appeal filed by temple authorities under Ex.A13 was dismissed. The validity of Ex.B10 will be discussed later. However, Exs.B10 and A13 are of no use to show possession of the plaintiff in respect of items 1 and 2 by the date of suit because, as admittedly, item 2 was sold away by the plaintiff and no cultivation adangals are filed in respect of remaining items.

g) Ex.A14 is the pattadar pass book issued in favour of plaintiff in respect of items 1 to 3. Ex.A14 may at best show title but not possession. Then, Ex.A15 is the letter of Settlement Officer, Nellore to Tahsildar, Puttur intimating that necessary changes have been incorporated in the Settlement Accounts of Parameswaramangalam village maintained in his

office in respect of Sy.No.130/12P. It is needless to say this document is not in respect of possession of the plaintiff.

h) Thus, on a careful scrutiny of the documentary evidence produced by the plaintiff, most of them are touching his title but not possession which is *sine qua non* for granting injunction. The evidence on record shows his earlier possession was based only on the permission granted by the institution but not an independent one. A person who is in permissible possession cannot claim perpetual injunction against the true owner. It is so held in *Balineni Sivoni Devi vs. Boddula Kommaiah and another*¹ as under:

“.....But in case of permissive possession the licensee is in possession by virtue of the permission granted by the real owner. He cannot be allowed to turn round and say that even if the permission is withdrawn he will not vacate the land is entitled to protect his possession by obtaining injunction against the real owner on the ground that owner's only remedy is to file a suit and evict the licensee. As stated above, there is no legal or equitable right in a licensee after licence is withdrawn to remain in possession of the land and the owner has right of re-entry. Equitable relief of injunction is granted to protect a legal right or an equitable right, but not to defeat them. The plaintiff who is in permissive possession, cannot be granted injunction against the true owner....”

Thus, this question is decided against the plaintiff.

10) **Substantial Question No.1:** It is to be noted that in the point supra it is observed that though some documents were produced, the plaintiff failed to produce documents showing his possession as on the date of suit

¹ 1990 (4) Civil CC (AP) = MANU/AP/0279/1990

and his possession if any was only a permissive one on behalf of institution and he does not deserve perpetual injunction. It is to be further noted that plaintiff also based his possession on the strength of title which is staunchly denied by the defendants. In that view, whether the Court can decide the title though incidentally or collaterally as did by the Courts below is the question.

11) The Honourable Apex Court had exhaustively dealt with the aspect when a party can file a suit for mere prohibitory injunction and when he needs to claim other reliefs such as declaration of title, possession etc. Depending upon the nature of the pleas taken by the defendant, the Apex Court categorized whether plaintiff can maintain a suit for mere injunction or necessarily to claim declaration, possession etc. In that process, in ***Anathula Sudhakar vs. P.Buchi Reddy (dead) by LRs. and others***² the Apex Court observed thus:

“....Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.”

a) In the instant case, as against the claim of plaintiff that suit property as his ancestral property, the defendants took a counter plea that the suit property was a grant made by Raja of K.Nagaram for Vinayaka Temple and grant is in favour of institution but not individual. The ancestors of plaintiff were merely care takers of Temple, Choultry, Koneru and suit properties and they were burdened with services of performing

² (2008) 4 SCC 594 = AIR 2008 SC 2033

Kainkaryam to Lord Vinayakaswami and distribute water and gruel and Prasadam on the eve of festivals. It is further pleaded since plaintiff and his father did not take care of temple and as they left the Satram to be dilapidated, the villagers made a complaint against them to the Endowments Department whereupon the department constituted Trust Board to look after the activities. It is also the case of the defendants that pattas were obtained by the plaintiff and his father by misrepresenting the facts to I.D.Tahsildar, Satyavedu and Assistant Settlement Officer, Chittoor and they (pattas) do not confer any title on them. In fact, issues 1, 2, 4 to 10 framed by the trial Court relate to the title of the plaintiff over suit properties. In spite of the above said pleadings of the defendant and nature of issues touching the title, the plaintiff has not chosen to convert the suit into a title suit. Be that it may, the Courts below incidentally dealt with his title and held pattas obtained by the plaintiff and his father are not valid ones and they do not confer any title on them. It should be noted that, should their finding on the aspect of title is upheld, the plaintiff's suit will be defeated also for the reason of his not seeking relief of declaration of his title besides not establishing his legal possession on the date of suit.

b) Now, coming to the title, plaintiff claimed title over suit properties by virtue of Exs.A12 and B10. His contention is that civil court has no jurisdiction to decide the validity of the pattas particularly Ex.B10. It must be said, this argument does not hold conviction. Ex.B10 is the patta issued by I.D.Tahsildar to plaintiff's father in respect of items 1 and 2 of plaint schedule. Ex.B10 reads that Sy.Nos.73/2 and 127 were classified as Chalivendala Manyam and it is a charitable grant and services were

rendered and hence under Section 3(3) of Inams Abolition Act those lands were decided as Inam lands in a Zamindari village and not held by institution and they were under the possession and enjoyment of A.Lokanatha Mudali and there was nothing on record to show that it is charitable endowment and the present enjoyer and his ancestors were doing services and hence Ryotwari pattas could be ordered to be issued as per Section 4(1) of Inams Abolition Act. Learned counsel for appellant vehemently argued since the patta was granted under Section 3(3), Section 14 is an interdict for the civil court to decide the validity of the patta.

c) Section 14 of Inams Abolition Act reads thus:

14. Bar of jurisdiction of Civil Courts:

“No suit or other proceeding shall be instituted in any Civil Court to set aside or modify any decision of the Tahsildar, the Revenue Court, or the Collector under this Act, except where such decision is obtained by misrepresentation, fraud or collusion of parties.”

d) As can be seen, Section 14 does not place total embargo on the jurisdiction of the Civil Courts, but it carved out an exception to assume jurisdiction in case the decision was obtained from the Tahsildar by misrepresentation, fraud or collusion of parties.

e) In this regard, coupled with oral evidence of DW1, the documentary evidence such as Exs.B1 to B4 would show that items 1 and 2 of suit lands are noted in Inam-B register as Bandila Manyam. Exs.B6 and B12—registers maintained under Section 38 of Endowments Act would show about the history of Vinayaka Temple. It is noted that the Raja of

K.Nagaram constructed the temple for Lord Vinayaka and established Satram and dug Koneru for travelers and also donated plaint schedule lands for performing daily rites in the Temple and also to distribute gruel to tourists and supply Prasadam on the eve of Kondachuttu festival held during Sankranthi days. Exs.B7 and B8 would show the quit rent fixed to the suit lands. Ex.B9 is the statement of plaintiff's father wherein he admitted suit lands as Bandila Manyam and he has been enjoying the same subject to doing services as mentioned by him in his statement. Exs.B11 and B15 are the Survey and Settlement Registers showing the suit land as Chalivendala Manyam. Exs.B13 and B14 are the proceedings of Assistant Commissioner, Endowments appointing Trust Board for the suit Temple.

f) The above oral and documentary evidence clinchingly establish the suit property as a grant of Raja of K.Nagaram for the institution i.e. Lord Vinayakaswami and it is not the personal property of the plaintiff and his ancestors. Plaintiff's father himself has admitted the suit land as Bandila Manyam. If it is the ancestral property of the plaintiff, there is no need for the plaintiff to perform the services to the Temple and travelers. Therefore, plaintiff's claim that suit property is his ancestral property has no legs to stand.

g) Then, Ex.B10 is concerned, it is quite strange how the I.D.Tahsildar in spite of voluminous record showing the suit lands as the property of the institution, gave a finding that the lands are not held by institution. It manifests that Tahsildar was thoroughly misrepresented by the father of the plaintiff. No notice was also issued prior to the enquiry. Above all,

when the suit lands are situated at Parameswaramangalam which is the revenue mandal of Puttur, it is not known how the I.D.Tahsildar, Satyavedu conducted enquiry. Thus, as rightly observed by the Courts below, Ex.B10 is vitiated by fraud and misrepresentation and plaintiff and his ancestors cannot derive any title through such an invalid document.

h) Then, Ex.A12 (Ex.B17) is the order passed by the Assistant Settlement Officer, Chittoor under Estate Abolition Act including item No.3 in the holding of plaintiff. Now the question is whether the said order passed under Section 11(a) of Estates Abolition Act is amenable to scrutiny of the civil court. The said question was considered by the Honourable Apex Court in *State of Tamil Nadu vs. Ramalinga Samigal Madam*³. The question with which the Apex Court engaged was whether a Civil Court's jurisdiction to determine the nature of the land in respect whereof a Ryot has sought a Ryotwari Patta under Section 11 of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 is ousted or barred under Section 64-C of the Act. The Apex Court ultimately held that the enquiry contemplated under Section 11, unlike enquiry contemplated under Sections 12 to 15, is a summary enquiry which does not involve any enquiry of nature or character of the land before granting or refusing to grant patta under Section 11. Therefore, Civil Courts' jurisdiction to adjudicate on the real nature of the land is not ousted under Section 64-C by reason of the Settlement Officer's decision to grant or refuse to grant a patta under Section 11 read with the proviso to Section 3(d) of the Act. The said decision was followed by this High

³ AIR 1986 SC 794

Court in *Nallipattu Ramakrishna Reddy vs. Kasala Balaiah*⁴; *Chakala Anjappa vs. Betappagari Anjaneya @ Anjappa*⁵ and *Kosura Venkata Krishnaiah vs. Molakala Sidda Reddy*⁶.

So, from the above precedential jurisprudence, it is clear that Civil Court will have jurisdiction to decide the nature of the land despite Settlement Officer granting or refusing to grant patta under Section 11 of the Act.

i) In the instant case, plaintiff claimed Ryotwari patta on the plea that suit land is his ancestral property whereas the defendants claimed that the land is held by the institution by virtue of the grant made in its favour by Raja K.Nagaram. Obviously, before granting patta under Ex.A12 (Ex.B17) the nature of the land was not determined by the Assistant Settlement Officer, Chittoor and no notice was issued to the Endowments Department despite the property is shown as the grant in the Endowments register maintained under Section 38 of Endowments Act. Therefore, on the face of the voluminous record, showing the nature of item No.3 as grant in favour of institution, Ex.A12 (Ex.B17) can't be accepted to have conferred title on plaintiff.

j) Thus, plaintiff failed to establish his title in respect of all the items of plaint schedule property. The Courts have rightly held so.

This question is answered accordingly.

⁴ 1987 (1) ALT 20

⁵ 1990 (2) APLJ (HC) 141

⁶ 1990 (1) ALT 163

12) **Substantial Question No.2:** It is true the Appellate Court has not framed a substantial point for determination of appeal. However, it has exhaustively dealt with the correctness of the judgment of the trial Court and gave its finding of approval. Therefore, the said judgment cannot be said to be legally invalid.

This question is answered accordingly.

13) In the result, this Second Appeal fails and is accordingly dismissed by confirming the judgments of the Courts below. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date: 23.10.2017
SCS/Murthy

U. DURGA PRASAD RAO, J

