

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

APPEAL SUIT No. 1441 OF 1997

JUDGMENT:

1. The defendants 2 to 8 in Original Suit No.133 of 1990, on the file of the Court of District Judge, West Godavari at Eluru (for short, 'the trial Court'), preferred this Appeal, challenging the decree and judgment dated 23.02.1996; wherein the Suit filed by the plaintiff for possession of the plaint schedule property and to grant past mesne profits of Rs.30,000/- including future profits, was decreed.

2. The appellants herein were defendants 2 to 8 and the respondent herein was the plaintiff before the trial Court. During pendency of the appeal, 7th appellant herein was died and appellants 8 to 10 were brought on record as her legal heirs, *vide* order of this Court in A.S.M.P. No.1721 of 2008, dated 20.08.2008.

3. For convenience of reference, the parties hereinafter are referred to as arrayed before the trial Court.

4. The brief facts of the plaint are as follows: Plaintiff and one Amruthavalli are the daughters of the 1st defendant through his 1st wife by name Sarada. Defendants 2 to 6 and 8 are the children of the 1st defendant through his 2nd wife – Sakuntala, 7th defendant. The plaintiff got married in the year 1975 and since then living with her husband at Hyderabad. All the defendants are living together and the 1st defendant, who is karta of the joint family, executed two settlement deeds *i.e.*, one in favour of his 1st wife Sarada, on 16.11.1957, and another in favour of the plaintiff settling Items 1 and 2 of the plaint 'A' schedule property besides other lands with absolute rights. It is further stated that the plaintiff was granted patta in favour of item 3 of Ac.5-00 cents of land in R.S. No.56/1

of Jeelugumilli by Tahsildar, Polavaram, *vide* order dated 30.12.1967. It is further stated that the plaintiff is entitled for 1/3rd share in the lands of her deceased mother Sarada. The 1st defendant filed a declaration suit under Land Ceiling Act showing all the said lands including of the plaintiff; wherein, the Land Reforms Tribunal, Kovvur declared the plaintiff as surplus land holder and took possession of Ac.1.96 cents out of Ac.5.00 cents in R.S. No.56/3 of Jeelugumilli, *vide* proceedings dated 04.02.1986 of the Additional Revenue Divisional Officer (Land Reforms), Eluru and a sum of Rs.107/- was granted towards compensation to the plaintiff. It is further stated in the plaint that the 1st defendant specifically mentioned in his declaration that the lands mentioned in 'A' schedule are the absolute properties of the plaintiff. It is further stated that the plaintiff is living with her husband and her lands are being managed by her father, 1st defendant, as a trustee and he used to make over the income till four years prior to filing of the suit. As the 1st defendant became old and unable to manage things, his sons assumed management of the plaintiff's properties, which are fertile and yielding sufficient income, and have been assisting their father in cultivation of plaint 'A' schedule lands but not paying any amount to the plaintiff, which caused mental agony to the plaintiff including financial loss; misused their position and betrayed the confidence reposed in them by the plaintiff and as such misappropriated the income of the plaintiff and her properties. It is further stated that the defendants enjoying their position as trustees acted detrimental to the interests of the plaintiff and are trying to secrete some of her properties by creating bogus documents, which are invalid and cannot bind the plaintiff. Hence, the defendants are liable to pay at least Rs.10,000/- *p.a.* to the plaintiff towards mesne profits for the last three years prior to filing of the suit. The plaintiff being vexed with the conduct of the 1st defendant, got

issued a legal notice dated 24.01.1986 calling to render proper accounts, on his failure to do so, filed the instant suit.

5. The 3rd defendant filed written statement denying the material allegations of the plaint *inter-alia* contending that execution of two settlement deeds one in favour of his 1st wife and another in favour of plaintiff is not in dispute but the survey number of item 2 of Barrinkalapadu, settled in favour of the plaintiff, is not in R.S. No.97 and its in R.S. No.77, which is an extent of Ac.9.89 cents. It is further stated that the plaintiff has been in possession and enjoyment of the said land for some time and later item 2 of the plaint 'A' schedule property was sold away to Dora Talupulamma under sale deed dated 24.12.1974 and it is in possession of the vendee. It is admitted that item 3 of Ac.5.00 of land in R.S. No.56/3 was granted patta to the plaintiff by the Government and admitted that the plaintiff is also entitled to 1/3rd share of land after the death of her mother Sarada. It is further stated that out of the lands settled in favour of the plaintiff except R.S. No.15, Ac.6.96 cents, the other lands were sold away prior to 24.01.1971 and the remaining lands were in possession and enjoyment of the plaintiff herself. Subsequently, the plaintiff sold away Ac.1.00 cents of land in R.S. No.4/1 to Bommidala Brothers on 09.11.1977 and the same is described by the plaintiff in her other suit in O.P. No.349 of 1987. It is also admitted that the plaintiff surrendered Ac.1.96 cents towards excess land under the Land Ceiling Act and the remaining Ac.3.04 cents is shown as item 3 of plaint 'A' schedule, which is in possession and enjoyment of the plaintiff. It is admitted that item 1 of plaint 'A' schedule property is liable for submersion by a tank every year. It is contended that item 3 of plaint 'A' schedule property is Ac.3.04 cents, which is a waste land and does not yield any income. Till the death of 1st defendant, he used to pay the net yield

realized from item 1 to the plaintiff and the other defendants never managed the lands of the plaintiff, caused any financial loss to her, never acted as trustees of the plaintiff and never tried to secrete any of the properties of the plaintiff; as such the defendants are not liable for payment of any mesne profits and they have no objection for taking possession of the plaint schedule property as it is not in possession of the defendants. The 1st defendant issued a suitable reply dated 11.12.1986 to the legal notice dated 24.11.1986, issued by the plaintiff. This defendant contents that the suit is misconceived and finally requested to dismiss the suit with costs.

6. The defendants 2 and 4 to 8 filed a memo adopting the written statement filed by the 3rd defendant.

7. On the basis of above pleadings, the trial Court framed the following issues:

1. Whether the plaint schedule is correct?
2. Whether the plaint schedule item No.2 in R.S. No.77, Ac.9.89 cents, of Barrinkalapadu was sold away by the plaintiff to Smt. Dora Talupulamma as per sale deed dated 24.12.1974 and whether the said item is in her possession?
3. Whether the land settled upon the plaintiff except R.S. No.15, Ac.6.09 cents, was sold away prior to 24.01.1971 and whether the remaining lands are in the possession and enjoyment of the plaintiff?
4. Whether the Ac.1.00 cents on the western side in R.S. No.4/1 was sold away to Bommidala Brothers on 09.11.1977?
5. Whether the plaintiff who was granted land covered by R.S. No.56/3 Ac.5.00 cents of Jeelugumilli by the Government and whether Ac.1.96 cents out of it was

surrendered by the plaintiff to the Government towards the excess land declared in her land ceiling case?

6. Whether the remaining land of Ac.3.04 cents shown as item No.3 of the plaint schedule has been in possession of the plaintiff?

7. Whether the plaintiff's lands are valuable and fertile and the yields alleged by the plaintiff are correct?

8. To what relief?

8. The issues recasted on 05.02.1996 are as follows:

1. Whether the plaintiff is entitled to recover the possession of the plaint schedule properties?

2. Whether the survey number of item 2 of the plaint 'A' schedule property is wrongly noted as 97 instead of 77?

3. Whether the plaintiff is entitled for past and future profits?

4. To what relief?

9. During course of trial, the plaintiff herself was examined as P.W.1 and marked Exs.A-1 to A-3 on her behalf. On behalf of the defendants, 3rd defendant himself was examined as D.W.1 and Exs.B-1 and B-2 were marked.

10. Upon hearing the arguments of both the counsel, considering the oral and documentary evidence available on record, the trial Court decreed the suit for possession of an extent of Ac.2.73 cents of item 1 and Ac.3.04 cents of item 3 of the plaint schedule properties from the defendants holding that the plaintiff is entitled for recovery of mesne profits from the said land since three years prior to filing of the suit. Further, the plaintiff is directed to file a separate application for determination of mesne profits.

11. Aggrieved by the impugned decree and judgment, dated 23.02.1996, passed in O.S. No.133 of 1990, by the trial Court, the defendants-appellants preferred this Appeal.

12. Heard both sides and perused the record. It has to be considered by both the sides that the subject property of the suit is situated within the notified scheduled area in Polavaram Taluq, Jeelugumilli Revenue Mandal and the decision rendered by this Court in **Ashifaquddin and others Vs. Mohd. Azizuddin and others**¹ is not holding ground in view of the judgment rendered by the Hon'ble Supreme Court in **Nagarjuna Grameena Bank and others Vs. Medi Narayana and others**² and the plaintiff is required to lay her claim before the Agency Court. In such event of claim being laid before the Agency Court, the same has to be decided by the Agency Court un-influenced by any judgment, decree or order passed by the Civil Courts.

13. In the circumstances narrated above, it is appropriate to reproduce Para 11 of the judgment rendered by the Supreme Court in **Nagarjuna Grameena Bank**², wherein it was held as follows:

“11. It is, however, clarified that those persons who have decrees, orders or judgments in their favour passed by the Civil Court(s) may lay their claim before the agency court(s). In the event of such claims being laid before the agency court(s), the same shall be decided by the agency court(s) un-influenced by any judgment, decree or order passed by the Civil Court(s).”

14. In view of the judgment rendered by the Supreme Court in **Nagarjuna Grameena Bank**², this Court has no jurisdiction to entertain the appeal so also the trial Court (civil court), which passed the impugned decree and judgment. The course available to the plaintiff-decree holder

¹ AIR 1978 (354) DB

² Decided on 25.09.2012 in Civil Appeal No.5030 of 2004 and Batch

(respondent) is that she has to lay her claim in tune with the judgment of the Supreme Court in ***Nagarjuna Grameena Bank***².

15. Accordingly, with this observation, the Appeal Suit is disposed of.
No order as to costs.

16. As a sequel, pending miscellaneous petitions, if any, shall stand closed as infructuous.

Dr. SHAMEEM AKTHER, J

Date: 16-06-2017.
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