

THE HON'BLE SMT. JUSTICE ANIS

SECOND APPEAL No. 1174 OF 1999

JUDGMENT:

This Second Appeal, under Section 100 of the Code of Civil Procedure, 1908 (for short, 'CPC'), is directed against the judgment and decree, dated 21.08.1999, passed in A.S.No.7 of 1992 on the file of the Senior Civil Judge, Bobbili, whereunder and whereby the judgment and decree, dated 29.11.1991, passed in O.S.No.134 of 1982 on the file of the Principal District Munsif, Bobbili, were set aside by allowing the appeal.

2. The appellant is the plaintiff and the respondents are the defendants before the trial Court. For better appreciation of facts, the parties are hereinafter will be referred to, as they are arrayed before the trial court.

3. Plaintiff filed the suit for permanent injunction restraining the defendants and their caste men from interfering with the suit schedule land.

4. The brief averments made in the plaint are as follows:

The suit schedule property is a patta land and the same was granted along with other lands in the name of the great grandfather of the plaintiff by name Gangada Peda Laxmunaidu by the erstwhile Zamindar of Bobbili. The suit schedule property was brought under cultivation for more

than 100 years back. The original grantee raised mango tope in the suit schedule land and realized the produce, and since then, the said land has been called as "Akaram Mokka Thota". The original grantee also used to pay the land revenue for the said land. The great grandfather of the plaintiff had been in continuous possession and enjoyment of the suit schedule property and after his death, the plaintiff succeeded to it and has been cultivating the same. In the year 1960, the plaintiff was informed by the village officers that the suit schedule property was designated as banjara (non-ryoti/waste) land in the revenue accounts and the plaintiff can get 'D' form patta on the ground that he is a small farmer. Later, 'D' form patta bearing No.2001 was granted in favour of the plaintiff in the year 1960 and since then he has been in continuous possession of the suit schedule property. Thereafter, due to a false report given by the village officers, the Tahsildar, Bobbili issued a notice dated 11.09.1981, directing the plaintiff to show cause as to why 'D' form patta granted to him should not be cancelled. On 19.02.1981, the plaintiff gave an explanation stating that he did not contravene any of the conditions of 'D' form patta. The said enquiry is still pending. Further, it is stated that the village officers instigated the defendants and their caste men to trespass into the suit land stating that 'D' form patta issued in favour of the plaintiff was going to be cancelled and it would be assigned to them. Therefore, the defendants are

proclaiming in the village that they would trespass into the suit schedule property. Hence, the plaintiff filed the suit.

5. The second defendant filed Written Statement and the same was adopted by the remaining defendants. The brief averments of the Written Statement are as follows:

The defendant denied that the suit schedule land was assigned to the great grandfather of the plaintiff more than 100 years ago and he had been in continuous possession and enjoyment of the same. It is further denied that the plaintiff has been in continuous possession and enjoyment of the suit schedule property by raising crops, realizing the produce and paying land revenue to the Government. It is further denied that the suit land was registered as banjara land and the plaintiff was advised by the village officers to obtain 'D' form patta instead of going to a settlement Court. It is further denied that 'D' form patta was granted in the year 1960 and subsequently the plaintiff's name was registered in the settlement records and patta was granted to him. It is also denied that the suit schedule property is called as 'Akaram Mokka Thota' and that the plaintiff used to pay the land revenue.

The defendant stated that the plaintiff ought to have filed a petition for ryotwari patta under A.P. Estate Act before the Settlement Officer, Visakhapatnam if really he is in possession and enjoyment of the suit schedule land instead of

accepting the patta from the Government and that the Tahsildar cancelled 'D' form patta granted on 20.10.1981. The plaintiff ought to have preferred an appeal against the said orders, but he did not choose to do so. Therefore, the orders of the Tahsildar canceling the 'D' form patta became final and the Civil Court has no jurisdiction to entertain the suit. On 15.11.1981, a notice was issued calling for objections from the villagers for allotting the resumed lands in favour of the defendants and other harizans. The plaintiff is fully aware of the said proceedings and he did not file any objections before the Tahsildar for issuing 'D' form patta to the defendants 1 to 4 in respect of the suit land and other resumed lands. The plaintiff filed the present suit only to harass the defendants. The plaintiff is not having possession of the suit lands at any time much less the date of filing of the suit. Even if the plaintiff claims to be in possession of the suit lands, it would become unlawful as 'D' form patta was already cancelled. Therefore, prayed the Court to dismiss the suit.

6. Basing on the above pleadings, the following issues have been settled by the trial Court for trial:

1. Whether the plaintiff is in lawful possession of the suit land by the date of the suit?
2. Whether the plaintiff is entitled for injunction as prayed for?

3. Whether the cause of action as alleged in plaint is true?
4. To what relief?

The trial Court also framed the following additional issue:

Whether the resumption proceedings in R.C.No.2640/81-C1 dated 20.10.1981 are true and binding on the plaintiff?

7. To substantiate the case of the plaintiff, PWs 1 and 2 were examined and got marked Exs.A.1 to A.20. On behalf of the defendants, DWs 1 and 2 were examined and got marked Exs.B.1 to B.11.

8. After considering the oral and documentary evidence, the trial Court having held that the plaintiff is in possession of the suit schedule property and the orders passed by the Tahsildar are not binding on the plaintiff, granted permanent injunction restraining the defendants from interfering with the peaceful possession of the suit schedule property.

9. Aggrieved by the judgment and decree of the trial Court, the defendants filed A.S.No.7 of 1992 on the file of the Senior Civil Judge, Bobbili. On 21st August, 1999, the first appellate Court set aside the judgment and decree of the trial Court and allowed the appeal on the ground that the documentary evidence filed by the plaintiff is not helpful to prove his possession of the suit land as on the date of the

filing of the suit. It is further held that in the land revenue receipts neither 'D' form patta No.2001 nor the Patta No.725 find a place and that as per Ex.B.5 proceedings, the land has been resumed by the Tahsildar, Bobbili and that the plaintiff failed to file 'D' form patta which was granted to him in the year 1960 before the trial Court as well as before it. It is also held that the plaintiff admittedly received the show cause notice dated 11.09.1981 on 19.09.1981, but he did not care to submit his explanation either written or oral, but chose to send the explanation on 10.02.1982 which is more than five months after receiving the show cause notice though the time granted to him in the show cause notice was only seven days and that the plaintiff casually and leisurely sent the explanation after time granted was expired. It is further held that the plaintiff gave the said explanation only after the land was resumed by the Tahsildar and when the process to issue 'D' form pattas to the defendants was initiated. It is also held that the initiation of the said process by the revenue authorities is established through Exs.B.3 and B.4. It is further held that the plaintiff did not choose to prefer an appeal to the Revenue Divisional Officer within 30 days from the date of the orders of resumption and the plaintiff failed to file an appeal before proper authorities instead of knocking the door of the Civil Court and that the plaintiff failed to prove that as on the date of filing of the suit, he was in possession of the suit property. The first appellate Court also held that

the plaintiff did not challenge the resumption proceedings by way of declaratory relief but simply filed the suit for injunction without challenging the validity of the resumption proceedings.

10. Aggrieved by the reversal judgment of the first appellate Court, the plaintiff preferred the present Second Appeal.

11. This Court vide its orders dated 04.02.2000, admitted the Second Appeal on the substantial questions of law raised in the grounds of appeal, which are as follows:

“1. Whether the appellate court was correct in reversing the well considered order of the trial court without meeting the reasoning of that court.

2. Whether the appellate court was correct in holding that the appellant was not in possession of the land on the date of the suit when the appellant has been in possession from 1960 onwards and further Ex.B.11 the No.2 Adangal itself shows that the appellant was in possession during Fasli 1390 ie., 1980-81 and the presumption is that he continues to be in possession unless the respondents show that the appellant was dispossessed and there is nothing on record to show that the appellant was dispossessed subsequent to 1981.

3. Whether the appellate court was correct in holding that the suit is not maintainable as no appeal was filed before the authorities against the cancellation of Patta, when the question of filing an appeal does not arise as the order of cancellation was not served on the appellant.”

This Court vide its order dated 02.08.2016, passed in S.A.M.P.No.1622 of 2015, permitted to raise the following additional ground of appeal:

“Whether the lower appellate court was correct in law in allowing the appeal filed by respondents 1 to 12 who had no locus standi to file the appeal in as much as they have no interest in the suit land.”

12. The learned counsel for the appellant/plaintiff argued that the suit schedule property is a Government land and the

plaintiff was granted 'D' form patta in the year 1960 and prior to that his forefathers were in possession of the suit schedule property and used to cultivate the same. It is further argued that after the death of the great grandfather of the plaintiff, the plaintiff has been in possession and enjoyment of the suit schedule property and the trial Court, after considering the oral and documentary evidence, rightly granted injunction in his favour, whereas the first appellate Court without considering the possession of the plaintiff as on the date of filing of the suit, allowed the appeal without assigning proper reasons. It is further argued that the first appellate Court held that the suit is not maintainable on the ground that the plaintiff ought to have filed an appeal before the Revenue Divisional Officer and the said finding is wholly erroneous. Therefore, prayed the Court to allow the second appeal.

The learned counsel in support of his contentions relied on a case-law reported in *Duraiswamy Reddiar and others Vs. Chidambara Reddiar*¹, wherein the Division Bench of the Madras High Court held as follows:

“It is not, therefore, a bare easementary right alone that he has claimed. It may be that such possession has not been perfected into one of title as against the Government. But a person in possession of another's property can always maintain such possession as against everybody except the true owner. So long as the Government has not challenged the respondents' possession of the area of the well, it must be held that it cannot be open to any person not in possession to interfere with the respondents' possession of the property.”

¹ AIR 1965 Madras 348

13. On the other hand, the learned counsel for the respondents/defendants argued that the bare injunction without declaration is not maintainable and that the plaintiff at one instance claimed that the suit schedule property is a patta land and it is an ancestral property and at another instance claimed that it is a Government banjara land and 'D' form patta was granted to him, and therefore, the plaintiff is not in a position to say that what is the exact nature of the suit land. It is also argued that the land was resumed by the Tahsildar, Bobbili vide its orders dated 20.10.1981 and thereafter the land was allotted to the respondents/defendants besides other harizans and to that effect a gazette notification was also given and that the plaintiff without challenging the resumption orders as well as the allotment orders to the defendants, filed the suit for injunction simplicitor, which is not maintainable. It is also argued that the plaintiff has not challenged the resumption order by way of declaratory suit and finally prayed the Court to dismiss the second appeal.

14. Now, the point that would arise for consideration in this appeal is whether the appellant proved the substantial questions of law framed by this Court on 04.02.2000 and 02.08.2016?

15. **POINT:**

A perusal of the proceedings of this Court show that the substantial questions of law framed are only related to the factual aspects, but no substantial question has been raised by the appellant. A perusal of the record shows that the plaintiff, who is the appellant herein, filed the suit for injunction simplicitor against the respondents/defendants basing on the documentary evidence i.e., cist receipts and copies of some sale deeds.

16. The plaintiff claimed that the suit schedule property was acquired by his great grandfather about 100 years ago and on the other hand he raised the plea that suit land is a Government banjara land and 'D' form patta was granted to him for the suit schedule property. Though the trial Court believed that the plaintiff is in possession of the suit property, the first appellate Court after perusing the documentary evidence held that the cist receipts filed by the plaintiff do not contain survey number of the suit land, patta number or 'D' form patta number, and thereby held that as on the date of filing of the suit, the plaintiff is not in possession of the suit schedule property and moreover the cist receipts also stand in the name of Gongada Lakshmi Naidu for the agricultural year 1970, 1971, 1972, etc. These receipts are not at all helpful to the plaintiff to prove his possession over the suit land as on the date of filing of the suit.

16. It is the specific case of the defendants that the suit schedule land was resumed by the Tahsildar and possession was taken as the plaintiff contravened the conditions of 'D' form patta, and therefore, simple suit for injunction is not maintainable and that the plaintiff has not challenged the resumption order of the Tahsildar before the appellate authority i.e. Revenue Divisional Officer, Bobbili. After perusing Ex.B.5, the first appellate Court rightly held that the suit land was resumed by the Tahsildar, Bobbili. The plaintiff did not choose to file the 'D' form patta before the trial Court to show that the suit land was assigned to him in the year 1960. The plaintiff has not filed any documentary evidence including pahani patrikas to prove his possession as on the date of filing of the suit. Therefore, the first appellate Court, after considering the oral and documentary evidence, rightly reversed the judgment of the trial Court. Further, the plaintiff has not challenged the resumption orders, as such simple suit for injunction is not maintainable.

17. The additional ground raised by the appellant is that the appellant who filed the appeal in A.S.No.7 of 1992 have no *locus standi* to file the said appeal. Admittedly, the appellant/plaintiff filed the suit against the respondents. Now, the appellant cannot say in the second appeal that they have no *locus standi* to file the appeal in A.S.No.7 of 1992. Therefore, the appellant failed to prove that there exists any substantial question of law in the second appeal.

18. Accordingly, the Second Appeal is dismissed. No costs. Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

ANIS, J

APRIL 28, 2017.

Anr



THE HON'BLE SMT.JUSTICE ANIS



SECOND APPEAL No. 1174 OF 1999

28.04.2017

Anr