

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Second Appeal No.584 of 1999

JUDGMENT:

This Second Appeal is filed by the unsuccessful plaintiff questioning the judgment and decree dated 15.10.1997 in A.S.No.20 of 1989 passed by the Subordinate Judge, Bhimavaram, whereby and whereunder the learned Judge dismissed the appeal filed by him and confirmed the judgment and decree dated 05.06.1989 passed in O.S.No.93 of 1988 by the I Additional District Munsif, Bhimavaram.

2) The brief facts of the case are thus:

a) The suit is for permanent injunction restraining the defendants and their men from interfering with the plaint schedule property and coal ash thereon.

b) The case of the plaintiff is that plaint schedule property belongs to his father and he is in possession and enjoyment of the same; he was the contractor for coal ash of Railway to collect coal ash from Nidadavolu to Narsapur during 1984-85; 1985-86 and 1986-87 in G-Section; he stored the coal ash in plaint schedule property while he was the contractor; he maintained accounts for that purpose and also obtained sales tax certificates; on the date of filing suit there was 25,145 baskets of coal ash in the plaint schedule property; there was boundary dispute between him and D1; D2 to D4 are his supporters; when all the defendants tried to trespass into the plaint schedule property and attempted to take away the

coal ash from the plaint schedule site he objected, then they went away proclaiming that they would trespass and take away the coal ash.

Hence the suit.

c) The 4th defendant—society filed written statement. While denying all the material averments it is contended, D1 has got some site adjacent to the plaint schedule site on the East; the plaint schedule site of Ac.0.20 cts. and another Ac.0.20 cts. to its East were purchased by the plaintiff's father and D1 jointly from Bupathiraju Ramamurthy Raju, Bhupathiraju Appal Raju and Bhupathiraju Sundara Rama Raju under two different sale deeds dated 07.06.1973, but the two plots are situated as a single plot on the ground; while so, 4th defendant—society took the total extent of Ac.0.40 cts. from the plaintiff and D1 on lease on 26.07.1987 for storing its coal ash on a month rent of Rs.100/- and ever since the society is storing coal ash collected from G-Section; D4—society entrusted the contract of storing coal ash in the plaint schedule site to D1 to D3; D4 stored 40 lorries of coal ash in the plaint schedule site and the plaintiff had no right whatsoever over the said stock much less 25,145 baskets as alleged; DCTO, Bhimavaram never verified the coal stock of plaintiff; D4 entrusted the work of storing coal ash in F2-Section to the plaintiff and in that connection, he misappropriated the amounts therefore D4 demanded to render accounts of F2-Section; hence plaintiff bore grudge against D4 and to knock away the stock of coal ash stored in plaint schedule site filed the present suit with all frivolous allegations.

d) D1 to D3 filed a memo adopting the written statement filed by D4.

e) Basing on the above pleadings, the trial Court framed the following issues:

(1) *Whether the plaintiff is entitled to permanent injunction as prayed for?*

(2) *To what relief?*

f) During trial, PWs.1 to 3 were examined and Exs.A1 to A12 were marked on behalf of plaintiff. On the other hand, DWs.1 to 4 were examined and Exs.B1 to B5 were marked on behalf of defendants.

g) On appreciation of facts and evidence, the trial Court observed that plaintiff was ceased to be a contractor by 07.06.1987 and from 08.06.1987 onwards D4 is the contractor; Exs.A9 to A12—day books and ledgers filed by the plaintiff pertains to the years 1985-86 and 1987-88 and Railway Department has not authorized him to do the contract for the year 1987-88; a perusal of Exs.A9 to A12 clearly shows that they are purchased on one day and they are written at a time. The trial Court also observed that D4 is the contractor from 08.06.1987 to 31.03.1988 and plaintiff is not the contractor as on 10.03.1988 and there is no evidence to show that D1 to D3 are the supporters of D4 and accordingly dismissed the suit.

h) Aggrieved, the plaintiff filed A.S.No.20 of 1989 before the Subordinate Judge, Bhimavaram challenging the Judgment of the trial Court.

i) After hearing both sides, the First Appellate Court observed that D4 is the contractor from 08.06.198 onwards and plaintiff ceased to be a contractor from 07.06.1987 and hence he cannot claim that coal ash lying

on the plaint schedule site as on 10.03.1988 belongs to him. It also observed that merely because the plaint schedule site belongs to plaintiff and there is no document to prove that the said site was leased out to D4, it cannot be said that coal ash stored on the plaint schedule site belongs to plaintiff. Accordingly, the appellate Court dismissed the appeal filed by the plaintiff confirming the judgment of the trial Court.

Hence, the Second Appeal at the instance of the aggrieved plaintiff.

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

4) While admitting the Second Appeal the following substantial questions are framed for consideration:

1. Whether in respect of the oral lease pleaded by respondent No.4-defendant No.4, despite the appellant-plaintiff emphatically denying it, the findings recorded by the Courts below are proper?

2. Having accepted the evidence of PWs.1 and 2, that the appellant-plaintiff having contract for coal ash from 1985 upto 07.06.1987 and collected the same in the plaint schedule property, whether Courts below can ignore the same and make a different observation and dismiss the suit basing on it?

5) Heard arguments of Sri M.Gunneswara Rao, learned counsel for appellant/plaintiff. Sri S.Rama Chandra Prasad, learned counsel for R2 to R4. R1 died vide cause title. R3 dismissed for default vide Court order dated 26.09.2016. Though notice sent to R5 to R13 served, but none appeared on their behalf.

6) **POINT Nos.1 and 2:** Since both the substantial questions of law are interrelated, they are taken up together. Before discussing the substantial questions of law framed, it is to be noted since the plaintiff filed the suit for injunction on the plea that he was the Railway contractor for collecting coal ash for the period—1984-85; 1985-96 and 1987-88 from Nidadavolu to Narsapur in G-Section and stored the coal ash in the plaint schedule site and defendants tried to meddle with the same, the burden is on him to establish that plaint schedule site belong to him and he stored the coal ash thereon. In the process of establishing his case, he cannot shore upon the weakness of the defendants' case if any. With this trite law, the substantial questions of law framed have to be determined.

7) Admittedly, plaintiff's father purchased plaint schedule site under Ex.A1—sale deed and eastern part of the said site was admittedly purchased by D1. The total extent comprises Ac.0.40 and odd cts. That plaintiff's father purchased plaint schedule site is not disputed except the fact that he has been exclusively enjoying the same. The case of defendants is that both plaintiff and D1 have leased out the said site to D4 for storing his coal ash, as D4—society obtained the contract for collecting coal ash for the years 1987-88 and 1988-89 for G-Section. Thus, the coal ash lying in the plaint schedule site by the date of site belonged to D4 as he authorized D1 to D3 to store the coal ash in the plaint schedule site. It was their emphatic case that plaintiff has nothing to do with the said coal ash. The suit was filed on 10.03.1988. So, in this back drop, the crucial question is whether the plaintiff had indeed stored the coal ash by the date of filing the suit. The evidence placed on record

both oral and documentary would no doubt show the plaintiff was a Railway contractor for collection of the coal ash for the period 1984-85; 1985-86 and 1986-87 for G-Section. Ex.A4—Experience Certificate issued by the Divisional Engineer, SCR, Vijayawada would manifest that plaintiff executed contract work of removal of purchased coal ash in G-Section for the year 1985-86; 1986-87 (Extended upto 07.06.1987). Thus, by the date of suit, the plaintiff was not undertaking Railway contract works of removal and purchase of coal ash. On the other hand, Ex.B3—letter and permit issued by Divisional Manager, SCR, Vijayawada would show that the Railway contract work of removal of coal ash was entrusted to D4 from 08.06.1987 to 31.03.1988. In that view of the matter, plaintiff's storing the coal ash in the plaint schedule site as on the date of suit seems highly improbable. No doubt, learned counsel for appellant argued since he was the contractor for previous years, the coal ash collected by him during that period was stored in the suit schedule site which was lying by the date of suit and therefore, the said coal ash belonged to him. It must be said, it is only a fertile imagination because it is highly unbelievable that coal ash could remain in tact in open air for years together. Even PW3, who is said to have worked under plaintiff and doing grading of coal and storing it in the plaintiff's site, did not specifically state during which period he stored the coal ash in the plaint schedule site. Further, there is no documentary proof that he worked under the plaintiff. So, at any rate, there is no reliable material to hold that the plaintiff stored the coal ash in the plaint schedule site during the relevant period of the suit. On the other hand, since D4 was given contract work

with effect from 08.06.1987 there was every possibility of his storing the coal ash in the plaint schedule site. This fact was spoken DWs.1 to 3 apart from DW4. It is true that there is no written lease deed. However, when entire facts and evidence are taken into consideration, they probablise that plaintiff and D1 leased out their site for storing coal ash collected by D4. The suit site is very near to loco shed which fact also gives strength to the lease spoken by D4. So, the Courts below were right in believing the lease propounded by D4.

8) I find no perversity or illegality in the judgments of the Courts below. There are no merits in the Second Appeal and accordingly the same is dismissed by confirming the judgments of the Courts blow. No costs.

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

Date: 06.10.2017
Murthy

**U. DURGA PRASAD RAO, J**