

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Second Appeal No.375 of 2016

JUDGMENT:

The appellants in this second appeal, under Section 100 of the Code of Civil Procedure, 1908, ('the Code' for short) are the plaintiffs 1 to 9, 11, 12 and 13 in OS.no.584 of 1999. The learned Principal Senior Civil Judge, Ranga Reddy District, by a common judgment, dated 28.08.2014, passed in OS.Nos.584 of 1999, 552 of 1999 and 201 of 1999, dismissed the suits, OS.nos.584 and 552 of 1999, but, decreed with costs OS.no.201 of 1999 and granted a perpetual injunction in favour of the plaintiff therein, that is, S.M.A.C.H.S. Limited (Satish Mutually Aided Co-operative Housing Society Limited) represented by its President, I. S. N. Vinod Reddy.

1.1 Aggrieved of the common judgment insofar as the dismissal of OS.no.584 of 1999, the plaintiffs therein including the present appellants preferred A.S.No.272 of 2014 before the Court of the learned XVI Additional District Judge-cum-Judge, III Additional Family Court, Ranga Reddy District at Malkajgiri. The learned Additional District Judge by decree and judgment, dated 07.12.2015, dismissed the said first appeal suit and confirmed the decree of the trial Court in OS.no.584 of 1999. Aggrieved thereof, this second appeal is preferred by the aforementioned plaintiffs.

2. At the stage of admission, I have heard the submissions of Sri A. Venkatesh, learned counsel for the appellants, and of Sri U. Muralidhar Rao, learned counsel on caveat for the respondents 2 to 4, on the limited aspect as to whether any substantial questions of law raised by the appellants or any other substantial questions of law are involved; And, if so, whether the second appeal deserves to be admitted or not. I have perused the material record.

3. Before proceeding further, it is apt to note that though in the grounds of appeal substantial questions 'a' to 'j' were raised, at the hearing, the learned counsel for the appellants submitted that only the questions 'a', 'f', 'g' and 'i' are the substantial questions involved in this second appeal. The said questions verbatim read as under:

- a) Whether both the courts have erred in giving the findings beyond the pleadings of the parties of the Suit?
- f) Whether the courts below are right in deciding that the genuineness of 38-E certificates issued in the name of Appellants in a suit for simplicitor injunction and coming to a conclusion that the appellants are not in possession of the suit scheduled property?
- g) Whether a written statement filed by M/s. Satish Mutually Aided Co-Operative Housing Society can be taken on record without the said society being a party to the suit or in the appeal? Whether the said M/s. Satish Mutually Aided Co-Operative Housing Society has any locus standi to represent respondent/defendant in the suit and appeal without being a party to the suit or appeal?
- i) Having regard to the fact that the suit was filed for bare injunction, whether the courts below mis-directed themselves in not dealing with the factum of possession and irrelevantly going into the issues of title and dismissing the suit on entirely unsustainable premises?

Further, by filing a memo, *vide* USR No.4346 of 2016, certain additional substantial questions are also raised and it is stated that the said questions are also the substantial questions of law involved in this second appeal. The said additional substantial questions verbatim read as under:

1. Whether the courts below were right in holding that the restriction imposed under section 48-A of the A.P.(T.A) Tenancy and Agricultural Lands Act, 1950 is applicable from the date of notification and not from issuance of 38-E certificate under form-II?
2. Whether is it mandatory to seek the relief of declaration of title when admittedly the Appellants are in possession of the property by virtue of 38E certificate under Ex-A7 to A11?
3. Whether the courts below were right in holding that Appellants were required to seek the relief of declaration of title, when the issue of title was already seized by this Hon'ble Court in CRP.no.1368/ 2010?
4. Whether the Appellate Court was right in giving a finding with regard to title of the parties in a suit for injunction when there was no pleadings in this regard; no issue was framed in this regard and when no evidence was let in by the parties in this regard?
5. Whether the First Appellate Court was correct in holding that Ex-A7 to A11 has not mentioned the boundaries of the extent allotted to the Appellants when there is no such requirement under the provisions of A.P (Telangana Area) Tenancy and Agriculture Lands Act, 1950 and Rules framed thereunder?
6. Whether selling away the suit scheduled property by the Appellants during the pendency of the suit to third parties disentitles them for relief of injunction, even though they were in possession of the suit scheduled property on the date of filing of the suit?
7. Whether the First Appellate Court was right in holding that non-examination of all the Plaintiffs is fatal to the case of Appellants?

4. Now the points for determination at this stage of admission of this second appeal are - Whether all or any of the questions being sought to be raised by the appellants are in deed substantial questions of law? And, if so, whether any such questions or other questions are involved in this second appeal? And, if so, whether the second appeal deserves admission for hearing on merits?

5. Before proceeding further, it is necessary to mention, in brief, the case of the plaintiffs in the instant suit, OS.Nos.584 of 1999, which is as follows:

They are the owners and possessors of agricultural lands bearing survey nos.253, 254, 255, 256, 257, 265, 266 and 269 of a total extent of Ac.23.13 guntas situate at Bowrampet village, Quthbullapur Mandal, Ranga Reddy District, morefully described in items 1 to 5 of the schedule annexed to the plaint. The plaint schedule property is in peaceful possession and enjoyment of the plaintiffs since the time of their ancestors. The plaintiffs' forefathers and fathers cultivated the plaint schedule lands. One late B.V. Prakash Reddy was the pattedar of the suit schedule lands. He possessed hundreds of acres of agricultural lands in Bowrampet and surrounding villages. He thus possessed more than the standard holding prescribed under the land reforms laws. Therefore, he was a surplus land holder. The plaintiffs' forefathers and fathers cultivated the schedule lands as tenants of the said late B.V. Prakash Reddy. In view of the long standing possession from the year 1950-51 onwards and in consideration of the fact that the plaintiffs were in possession of the suit schedule lands as on the crucial date of vesting of tenancy rights, the Government initiated enquiry *vide* proceedings no.HY/ 5314/ 77 for conferring the tenancy rights in favour of the plaintiffs. The Revenue Divisional Officer, Hyderabad East, Ranga Reddy District, issued certificate of ownership, dated 26.12.1979, under Section 38-E of the A.P. Telangana Area (Tenancy & Agricultural) Act, 1950 ('the 1950 Act', for short). After conducting due

enquiry, the revenue authorities, issued pattadar pass books and ownership patta pass books in favour of the plaintiffs as per the provisions of ROR Act and the plaintiffs names are recorded in the revenue records as possessors. The forefathers of the plaintiffs and later the plaintiffs with their hard work levelled the land and made it fit for cultivation and they have been raising Jawar, Greengram, Maize and other crops. The defendants have no manner of right, title or any interest over the suit schedule lands. Taking advantage of illiteracy and backwardness of the plaintiffs, the 5th defendant, at the instigation of the other defendants, is harassing the plaintiffs. The defendants are trying to interfere with the peaceful possession and enjoyment of the plaintiffs over the suit schedule properties. Defendant no.5, who was the Sarpanch of the village and the Vice-President of Mandal Praja Parishad at present, is an influential person in the village. Defendant no.5 is instigating the other defendants to dispossess the plaintiffs and occupy the suit schedule properties. While so, on 23.10.1999, the defendants 1 to 4 along with the 5th defendant and their musclemen came to the suit schedule properties and tried to illegally occupy the same. The plaintiffs protested and thwarted the said illegal attempts with great difficulty and with the help of neighbours. Again, on 25.10.1999, the defendants came to the suit schedule properties with unsocial elements and tried to dispossess the plaintiffs. The said attempt was also resisted with great difficulty. While leaving the lands, the defendants threatened that they will come with big force and occupy the suit schedule lands. Thereafter, the plaintiffs approached the Dundigal Police Station and made a complaint requesting to take action against the defendants. However, the police expressed their inability stating that the case is of civil nature and advised to approach a civil Court. The plaintiffs are uneducated and poor farmers depending solely on agriculture. If the defendants succeed in their illegal attempts, the plaintiffs will suffer grave and irreparable loss which cannot be compensated in any manner. Hence, the suit is filed.

6. The case of the defendants 2 to 4, apart from the denial of the case of the plaintiffs, in brief, is this:

The defendant Societies are not in existence. All the members of the said three societies formed into M/s. Satish Mutually Aided Co-Operative Housing Society Ltd., (hereinafter, 'SMACHS'). The written statement is being filed on behalf of the said Society. The documents mentioned in the pleadings of the plaintiffs are concocted. The litigation is a vexatious litigation. The documents given to the plaintiffs under ROR Act are questioned by the defendants by proceedings before the statutory authorities and the said documents were set aside. The suit schedule lands originally belonged to B.V. Prakash Reddy, the pattadar and owner. His lands were comprised in Sy.nos.246 to 269. There used to be number of tenants in the said lands. There were disputes regarding eligibility for 38-E certificates between the original pattadar and those tenants. Subsequently, on intervention of elders, both sides compromised the matter. The original owner got 40% of the land and tenants got 60% of the land. The tenants were issued 38-E certificates under the provisions of the 1950 Act. Subsequently, those tenants and pattadars jointly sold the entire land vide registered GPA documents viz., GPA.No.1447/ 1982, dated 05.11.1982, registered in the Office of the Sub-Registrar, Hyderabad; GPA.Nos.351/ 84 and 400/ 84, respectively dated 20.06.1984 and 05.07.1984, registered in the Office of the Sub-Registrar, Medchal; GPA.No.1453/ 82 in favour of P. Laxma Reddy and T. Gopala Reddy and GPA.no.99/ 85 in favour of S. Venkat Reddy. The tenants, who are the vendors of the members of the defendant societies herein also executed agreements of sales in favour of M/s Balaji Enterprises and M/s Tirumala Enterprises and in turn the GPA holders and the agreement holders got the said lands laid out into plots under different lay outs. The allegations that the members of the defendant societies have no manner of right, title and interest over the suit schedule lands are all false. The plaintiffs suppressed the real

facts from the Court. The plaintiffs are in neither possession nor enjoyment of the suit schedule lands. They have come to Court with unclean hands. No attempts to dispossess the plaintiffs from the plaint schedule lands were ever made as alleged in the plaint. When the plaintiffs are not in possession of the suit schedule lands, the question of their dispossession from the suit lands does not arise. Sale deeds pertaining to the members of the defendant societies were executed between 1983 and 1987 and all the purchasers of the plots are in possession of their respective properties since the dates of the execution of respective sale deeds. Subsequently, all the purchasers formed themselves into various housing co-operative societies with a view to develop their plots and provide common facilities and to protect their plots from land grabbers. The various societies are (1) HAL Employees Welfare Society; (2) Aeronautics Welfare Society; and, (3) Surya Nagar Housing Welfare Association. Majority members of the said societies joined together and formed into one Society, SMACHS. Several land grabbers made several attempts to grab the plots. However, the members of the Societies successfully resisted such illegal activities with the help of all the members of the Society. Later, the facts were brought to the notice of the Mandal Revenue Officer, Qutbullapur, and District Collector, Ranga Reddy District, and various Government authorities and a request was made to take action against the land grabbers. Prior to this suit the members of the defendants' Society filed two suits; OS.No.596 of 1996 was filed against some of the plaintiffs and others and the said suit is decreed *ex parte* against plaintiffs 3 and 4 and others. The plaintiffs are the persons who had already sold their lands long time back. Therefore, they have no title and possession over the suit lands. However, once again, without the knowledge of the members of the Society (plot owners) the plaintiffs stealthily and fraudulently obtained pattadar pass books, which do not confer title. Later, when the facts were brought to the notice of the MRO, their pass books were cancelled. Against the orders of the MRO, an appeal was preferred

before the RDO. He suspended the order of the MRO on the ground that the MRO did not issue notice to 38-E holders before mutation of the names of the Societies in the revenue records. Against the said orders an appeal was preferred before the Joint Collector, Ranga Reddy District. The same was dismissed upholding the possession of the plot owners and the Joint Collector declined to recognize the pattadar passbooks in favour of the plaintiffs and left open the issue to be decided by a civil Court. On the strength of the false passbooks and spurious documents, the plaintiffs are trying to interfere with the peaceful possession and enjoyment of the plot owners and are trying to grab the lands of the plot owners. The suit is filed with a view to blackmail the members of the Society. On 23.04.1996 when the land grabbers tried to occupy the plots, which belonged to the members of the defendant societies, a joint action committee was formed with 8 welfare housing societies and they all represented the matter to the Chief Minister, District Collector, RDO, MRO and the police of Dundigal. On 09.09.1996 and 24.01.1996, a common representation was also made to the District Collector, Ranga Reddy District. On 30.10.1996, 07.11.1996 and 13.11.1996 responding to the representations made by the Societies, the MRO wrote a letter to the Sub-Registrar, Medchal, not to register any plots in Sy.Nos.246 to 269 of Bowrampet village, Qutbullapur Mandal, Ranga Reddy District. In the said letter it stated that 38-E certificate holders are trying to do double registrations and that the said lands are already sold by them. Basing on the enquiry held, on 13.03.1997, the MRO, Qutbullapur, mutated the names of the societies and cancelled the pattadar passbooks in favour of 38-E holders. The land in the said survey numbers is converted into plots; this was done through proceedings No.A/ 746/ 96, A/ 146/ 96 and A/ 1329/ 96 dated 13.03.1997. On 13.03.1997, the MRO had written a letter to Surya Nagar Welfare Society intimating them that the names of the members of it are being incorporated in the revenue records. On 18.03.1997, Aeronatuic Welfare Society wrote a letter to the VAO to issue

pahanies and accordingly pahanies were issued; the same clearly show that the land was converted into plots and that the names of the members of the societies are incorporated in the revenue records. On 28.05.1997, three welfare housing societies issued a public notice in Eenadu newspaper warning the general public not to purchase any properties in the above said survey numbers as the properties belong to the members of the societies. On 22.11.1997, when some persons made a false claim and tried to trespass into the plots of the societies and tried to remove the stones planted therein, the members of the society filed criminal complaint before the Court of the learned Additional Judicial Magistrate of First Class, Medchal, and the said case was numbered as C.C.No.563 of 1996 and the Court imposed a fine of Rs.500-00 on the accused in the calendar case and the said judgment has become final as no appeal was preferred. Later, all the members of the three defendant societies formed into one present society, SMACHS. When certain earlier tenants once again tried to interfere with the possession of the plots by the members of the defendant societies, SMACHS filed OS.no.201 of 1999; and in IA.No.521 of 1999 ad interim injunction was granted in favour of the Society (SMACHS) initially. Subsequently, injunction application was dismissed. The Society filed CMA.Nos.2423 of 2000 and 2868 of 2000 and status quo orders were granted directing the suits to be disposed of within three months. When certain alleged tenant tried to interfere with the possession of the plots of HAL Employees and others, they had approached the Land Grabbing Court and filed LGC.no.20 of 1994. In the said LGC, the alleged tenant was declared as a land grabber and in the matter before the High court the order of the Special Land Grabbing Court was upheld. Some of the tenants have given sworn affidavits and executed bonds acknowledging the sales in favour of the members of the defendant societies. When some of the members of the societies of the defendants approached the District Collector he found the lay outs to be genuine *vide* his proceedings No.A2/ 1979/ 85, dated 26.07.1989. The

proceedings were issued as per the instructions of the Lak Ayukta and after an enquiry made by the revenue authorities and Divisional Panchayat Officer. The chronology of events clearly shows that the land is converted into house plots from 1984 onwards and the said facts establish the title and possession of the members of the defendant societies. Hence, the suit may be dismissed.

7. It is pertinent to note that apart from the instant suit viz., OS.no.584 of 1999, there were two other suits, OS.no.552 of 1999 and 201 of 1999 originally on the file of the trial Court. OS.no.552 of 1999 was filed by A.P. Government Gazetted Officers Co-operative House Building Society Ltd., against M/ s. Satish Mutually Aided Co-operative Housing Society Ltd.;; Aeronautics Welfare Society; HAL Employees Welfare Society; and, Surya Nagar Housing Welfare Association for perpetual injunction in respect of lands in Sy.nos.247, 248, 249, 250 to 256, 265 and 266 situate in Bowrampet village, as could be seen from the pleadings extracted in the common judgment of the trial Court. OS.no.201 of 1999 is filed by SMACHS against Talari China Pentaiah and others for a perpetual injunction in respect of Ac.15.25 guntas of land in Sy.nos.247, 248,249 and 250. All these three suits were consolidated and common evidence was recorded by the trial Court. During course of trial, PWs1 to 4 and DWs1 to 5 were examined and exhibits A1 to A15 and B1 to B200 were marked. After full fledged trial and on merits, the trial Court decreed the suit, OS.no.201 of 1999, and dismissed the other two suits, OS.no.552 of 1999 and 584 of 1999. The aggrieved plaintiffs in the instant suit, OS.no.584 of 1999, filed AS.no.272 of 2014 assailing the common judgment insofar as the dismissal of their suit, OS.no.584 of 1999, and did not challenge the common judgment insofar as decreeing the suit, OS.no.201 of 1999, and the decree in the said suit which was drafted pursuant to the common judgment has become final. The above said first appeal preferred by the present appellants was dismissed confirming the decree in OS.no.584 of 1999 and the common judgment of the

trial Court. Aggrieved thereby, some of the unsuccessful plaintiffs preferred this second appeal.

8. Learned counsel for the plaintiffs while reiterating the pleaded case of the plaintiffs, which is already stated supra, contended as follows:

The Courts below failed to properly appreciate the oral and documentary evidence, particularly exhibits A1 to A15, in proper perspective and also the entries in pahani patrikas and pattadar pass books, which were issued in the names of the plaintiffs and which established not only possession but also title of the plaintiffs over the suit schedule lands. The Courts below, without appreciating the evidence brought on record, particularly that of PW1, dismissed the suit only on the ground that plaintiffs 5 and 6 were not examined. The Courts below ought to have seen that mutation proceedings in favour of the members of the defendant societies have been set aside by the Supreme Court and the said fact itself shows that the defendants are not in possession of the suit schedule lands. The Courts below ought to have seen that the defendants failed to file any link documents and also failed to explain and establish the sub division of the survey numbers by producing the documentary evidence. The Courts below ought to have seen that DW1 admitted that the members of the defendant Societies are not in possession of the suit schedule lands; and, hence, the suit of the plaintiffs ought to have been decreed. The Courts below ought to have seen that the names of the plaintiffs are consistently recorded in the revenue records and that the possession of the plaintiffs and their predecessors in interest is continuous for a considerable time of more than 40 years to the knowledge of one and all including the defendants. The Courts below ought to have seen that the defendants have not filed any documents to show their possession over the suit schedule lands as on the date of the filing of the suit or prior thereto. The Courts below ought to have evaluated the claims of the parties on a relative

scale and on such comparison ought to have come to a conclusion that plaintiffs established ownership and possession over the suit schedule property. The Courts below ought to have presumed that the lawful owners, the plaintiffs, were and are in possession of the suit schedule lands. The Courts below erred in holding that the plaintiffs failed to establish their possession over the suit schedule lands. The Courts below ought to have seen that exhibits B26 to B34 that were taken for the purpose of taking loan on agricultural lands were mis-utilised by the defendants; and the defendants are not supposed to purchase the plots on the basis of such GPAs. The title of the defendants, if any, is bad. The Courts below ought to have disbelieved the claims of the defendants based on such documents, which did not confer title; the documents of the defendants are mutually contradictory. The Courts below ought not to have travelled beyond the pleadings of the parties and ought not to have drawn adverse inference, without considering the evidence on record in proper perspective. The inference drawn by the Courts below is untenable. The Courts below ought to have considered the possession of the parties as on the date of the suit and the Courts below were not right in deciding the genuine nature of 38-E certificate issued in the name of the plaintiffs in a suit for injunction simpliciter. The Courts below ought not to have considered the defence of SMACHS in the instant suit as the said Society was not made a party by the plaintiffs to the suit. The Courts below ought to have drawn presumptions and inferences in favour of the plaintiffs based on the provisions of the A.P. Rights in Land and Pattadar Pass Book Act, 1971. The Courts below erred in not considering the factum of possession and in going into the issue of title and dismissing the suit on unsustainable premises. The 1st appellate court failed to dispose of the appeal on merits and in accordance with the procedure established by law and, therefore, the decree and judgment of the 1st appellate court are vitiated. The Courts below were in error in holding that the restriction imposed under Section 48-A of the 1950 Act is applicable from

the date of notification and not from the issuance of 38-E certificate under Form-II. The Courts below ought to have seen that law does not mandate that declaration of title should be sought even when the plaintiffs are in possession of the property by virtue of 38-E certificates under exhibits A7 to 11. The courts below were in error in holding that in exhibits A7 to 11 boundaries are not mentioned, as there is no requirement of mentioning boundaries in 38-E certificate as per the provisions of the 1950 Act and the Rules framed thereunder. The Courts below ought to have examined whether the sale of the lands by the plaintiffs to third parties disentitles them for the relief of injunction though they were in possession of the suit schedule lands.

9. Per contra, learned counsel for the successful contesting defendants while supporting the concurrent judgments of the Courts below would contend as follows:

On a question of fact, after appreciation of facts correctly and evidence in proper perspective, both the Courts recorded concurrent findings supported by valid reasons. None of the questions and additional questions being sought to be raised as substantial questions of law in this second appeal are not at all substantial questions of law and all such questions are either pure questions of fact or mixed questions of fact and law. Therefore, there are no grounds much less valid grounds even to admit the second appeal. The trial court disposed of three suits by a common judgment and drafted three separate decrees. While dismissing the suit of the present plaintiffs the trial court decreed the suit, OS.no.201 of 1999 of SMACHS. The said society comprises members of the societies, which are arraigned as defendants 2 to 4 in the instant suit. Despite the fact that the members of the three societies constituted the plaintiff society in OS.no.201 of 1999 and the suit of the said plaintiff society was decreed, the plaintiffs to the instant suit did not challenge the decree in the said suit and the common judgment of the trial court insofar as it related to

the suit, OS.no.201 of 1999 of the said society. Therefore, the 1st appeal and the second appeal are liable to be dismissed on that sole ground without going into the merits of the matter. If the present suit is to be decreed, the said decree that may be granted in the present suit would be quite contrary to the decree in OS.no.201 of 1999 and the observations in the common judgment insofar as the observations related to OS.no.201 of 1999 and it would amount to granting two conflicting perpetual injunctions in respect of the same property between the same parties. Therefore, it is impermissible for the plaintiffs to seek an injunction in their suit having not challenged the decree in OS.no.201 of 1999 and the common judgment of the trial court, which has become final insofar as OS.no.201 of 1999. Some of the plaintiffs who are parties to the earlier suits are very much aware of the earlier litigation but suppressing the earlier suits and litigations, the instant suit for perpetual injunction is filed even though the possession of the plaintiffs as well as their title in respect of the suit schedule property was denied even prior to the institution of the present suit by the plaintiffs. Therefore, the plaintiffs ought to have filed a suit for declaration of title and the suit for perpetual injunction simpliciter is not maintainable. Further, the suit is filed by the plaintiffs against the non-existent societies though the plaintiffs are aware that the members of the said societies formed into SMACHS, which is the plaintiff in OS.no.201 of 1999. Therefore, the plaintiffs' suit is bad for mis-joinder and non-joinder of necessary parties. Admittedly, the plaintiffs have sold away the suit lands in favour of 3rd parties. Therefore, the present litigation of the plaintiffs is proxy litigation. Earlier, 38-E certificates were issued. The plaintiffs sold away the property along with others; and, after such sales, the property was laid out into plots; now, the plaintiffs are falsely claiming that the said certificate is a provisional certificate though in fact it is a 38-E certificate. The rules do not contemplate a provisional certificate and a final certificate. Therefore, the plaintiffs' claiming a second certificate or the

question of issuing a second certificate for the very same lands again in the year 2000 does not arise. Therefore, the certificate issued in the year 1979 is conclusive evidence; but, the conferment of rights is from the date of notification, that is, 01.01.1973. Therefore, the sales in favour of the plot owners commencing from 1984 onwards being beyond 8 years from 1973 are valid.

10. Now this Court shall examine the material issues to arrive at a just decision on the point as to whether any substantial question/s of law is/are involved; and, if so, whether the second appeal deserves admission for hearing on merits.

10.1 To begin with, it is to be noted that the suit of the plaintiffs is a suit for perpetual injunction simpliciter. It is settled law and it is also undisputed that the plaintiffs have to establish their possession over the suit schedule lands as on the date of the suit and that the said possession, if any, is lawful and that, under the facts and circumstances of the case, they are entitled to the equitable relief of perpetual injunction. The claim of the plaintiffs is based on protected tenancy and a certificate issued under Section 38-E of the 1950 Act. Their claim is that the plaintiffs and their predecessors/fathers/forefathers being the protected tenants of the suit schedule lands, the plaintiffs were granted requisite certificate under section 38-E of the said Act of 1950 and that the Mandal Revenue Officer in exercise of the powers under ROR Act and the pattadar pass books Act issued pattadar pass books and ownership books to them in respect of the suit lands. However, the case of the defendant Societies as stated through SMACHS is that the societies arraigned as defendants 2 to 4 are non existent societies and that the members of the said societies and some other members of the other societies to protect the common interest formed into SMACHS and that the plaintiffs and some of their predecessors and some other tenants and legal heirs of some other protected

tenants executed general powers of attorney in favour of various persons and that the original owners of the land who got 40% share in the land of a vast extent and such powers of attorney holders alienated the properties between the years 1982 and 1985 and that the lands of various extents are laid out into plots under various lay outs and that the laid out plots were purchased by various persons and that the members of the present SMACHS also purchased plots under various sale deeds and that the said Society obtained orders, dated 13.03.1997, from the MRO concerned deleting the names of the plaintiffs from the revenue records and got the names of the members of the society inserted in the possessor's column in the revenue records and that the pattadar pass books earlier granted in favour of the plaintiffs were cancelled. However, it is borne out by record that the plaintiffs preferred appeal before the RDO and that the RDO has set aside the order, dated 13.03.1997, passed by the MRO and, therefore, the Society challenged the said order before the Joint Collector by filing three revision petitions and that during the pendency of those revisions, the RDO conferred the final certificate of ownership, on 26.04.2000, in favour of the plaintiffs under Section 38-E of 1950 Act declaring them to be the owners in respect of the plaint schedule lands with effect from 01.01.1973 and that the said certificate was also challenged before the Joint Collector by way of an appeal in F2/3809/2000 and that the Joint Collector by common order, dated 30.07.2001, dismissed the revisions filed by the Society holding that the Society nor its members have *locus standi* to agitate the matter and, therefore, the Society and its members are not entitled to any relief under the Records of Rights Act and that the Joint Collector also dismissed the appeal of the Society holding that there is no infirmity in the order of the RDO granting the final certificate to the plaintiffs. However, the Joint Collector's order, dated 30.07.2001, was challenged by the Society before this Court in WP.no.7893 of 2002 and a learned single Judge of this Court allowed the writ petition by orders dated 11.04.2005. The said order was assailed in writ appeal

nos.2219 and 2304 of 2005. The Joint Collector's order confirming the grant of final certificate to the plaintiffs was also challenged in CRP.no.1368 of 2010. This instant civil suit is filed before the civil court even though the justifiability of the final certificate in favour of the plaintiffs was subject matter of adjudication. In the meanwhile, a Division Bench of this Court heard the writ appeals and the revision petition and disposed of the writ appeals as well as the revision petition by common order and set aside the order of the single Judge in the writ petition and dismissed the CRP. However, in Civil Appeal nos.7909-7911 of 2013 the Supreme Court directed that the present civil suit and OS.no.201 of 1999 pending before the trial Judge shall be disposed of uninfluenced by the observations of the High Court and remitted the CRP to the learned Single Judge of this Court directing for disposal of the same on its own merit. Therefore, while remitting the CRP, the Supreme Court has set aside the order, dated 13.03.1997, of the Mandal Revenue Officer. It is undisputed that unless 38-E certificate is granted in favour of the plaintiffs in a competent proceeding and such certificate attains finality, the plaintiffs cannot base their claim on any such certificate. In the plaint in the present suit there was no reference to any of the other pending proceeding and the suit was filed suppressing the proceedings.

10.2 One of the contentions of the contesting defendants, which requires reference, is that after the compromise between the owners and protected tenants under them in respect of various vast lands of the owners, the protected tenants have earlier got certificate of protected tenancy. Thereafter, according to the defendants, protected tenants executed GPAs. It is being *inter alia* contended by the plaintiffs in the instant proceedings that the GPAs were given for obtaining agricultural loans but not for the purpose of alienation and that, therefore, the sales done by the powers of attorney holders are invalid and that such sales are also hit by the provisions of the Tenancy Act. The defendants, *inter alia*, contend that the plaintiffs having

once obtained the certificate are once again claiming the certificate, belatedly in the year 2000, by falsely claiming that the earlier proceedings are provisional in nature. Be that as it may. The said aspects concerning the plaintiffs' entitlement to or not for certificate under Section 38-E of the Act is sub-judice and it has to be adjudicated in the appropriate pending proceedings but not in the civil suit, which is a bare suit for perpetual injunction and the civil Court is not having jurisdiction to decide the issue in regard to the entitlement or not for grant or otherwise of any such certificate and the said jurisdiction is vested with the revenue authorities and the matter is now sub-judice before this Court in an appropriate proceeding.

10.3 Though a contention is raised as to when the 38-E certificate takes effect, there is no need to go into the said question for the reasons afore-stated and also for the reason that the justifiability of the granting of the certificate is not yet finalised. Thus, the claim based on a 38-E certificate of the plaintiffs is not based on a certificate which has become final whereas the defendants contend that the property is no longer an agricultural land and it is laid out in plots; and in fact some of the members of the Society produced their sale deeds in respect of the plots laid out from out of the suit schedule lands and exhibited them. Thus, even before the present suit for bare perpetual injunction was filed, the very right of the plaintiffs to lay a claim in respect of the suit lands by virtue of the protected tenancy is in dispute in the appropriate other proceedings and thus, a cloud is cast on the title of the plaintiffs in that view of the matter; however, the present suit for perpetual injunction simpliciter was filed by suppressing the fact that appropriate other proceedings are pending.

10.4 Further, as already noted, the Society, SMACHS, filed an independent suit, OS.NO.201 of 1999, for a perpetual injunction against Talari China Pentaiah and several others. Though the present plaintiffs are not parties to

the said suit, the instant suit, the said suit-OS NO.201 of 1999 and another suit of another society in OS.no.552 of 1999 were jointly tried by the trial Court and the trial Court, while dismissing the present suit of the plaintiffs/appellants herein and the other suit of the other Society, decreed the suit in OS.no.201 of 1999 filed by SMACHS. Thus, the said Society-SMACHS, which is contesting the second appeal of the plaintiffs/appellants herein, has thus obtained a decree for perpetual injunction in respect of the very same subject matter in its suit and that judgment and decree have become final as the plaintiffs herein/appellants herein failed to question the said decree and the common judgment insofar as the findings in the common judgment decreeing the said suit. In the circumstances, if the present plaintiffs' suit is to be decreed in respect of the same property there will be two conflicting perpetual injunction decrees; one in the instant suit and the other in the suit, OS.no.201 of 1999, in favour of SMACHS, which has become final. Admittedly, the plaintiffs filed the suit without mentioning all the earlier case proceedings. No explanation is forthcoming as to why the plaintiffs suppressed the said facts. Even though SMACHS is a party to the parallel litigation, which is referred to supra, as rightly being contended by the defendants, the plaintiffs purposefully did not join the said Society-SMACHS as a party defendant and filed the suit against the other Societies, which are stated to be non-existing as the members of the societies arraigned as defendants 2 to 4 became the members of the SMACHS, which is the successful plaintiff in O.S.no.201 of 1999.

10.5 For all the above said reasons, it can safely be held that the plaintiffs are not entitled to the relief of perpetual injunction, which is an equitable relief. If the plaintiffs' suit is to be now decreed for one reason or the other, there will be clear conflicting decrees for perpetual injunction leading to chaos and scramble for possession and, therefore, on that ground also the plaintiffs are not entitled to a decree in this suit.

10.6 What is to be further noted is that both the courts below recorded concurrent findings of fact that the plaintiffs failed to establish their possession, much less lawful possession, over the plaint schedule properties. A careful perusal of the material record would show that the said findings of fact were arrived at after appreciation of the facts correctly and the oral and documentary evidence in proper perspective and that there are no infirmities or flaws in marshalling the facts or evaluating the evidence on record and that, therefore, the said concurrent findings of fact, which are founded on sustainable reasoning need no interference in this second appeal in view of the settled legal position.

10.7 There is one more aspect to be seen. The plaintiffs admittedly are not presently having any interest in the plaint schedule property as they have admittedly alienated the property to 3rd parties and the 3rd parties have not taken steps to come on record pursuant to such alienations made by the plaintiffs in their favour. Though under certain circumstances it is possible to hold that the plaintiffs who alienate the property do not lose the right to prosecute the matter, in the facts and circumstances of the case, the suit being one for perpetual injunction and the plaintiffs being now not having interest in the property are not entitled to hold lawful possession of the property even assuming for a moment that they are in possession of the property and that, therefore, they cannot claim a relief of perpetual injunction. Further, the plaintiffs having alienated the property cannot make a claim that they are continuing in possession, much less lawful possession of the property. On this aspect, learned counsel for the plaintiffs relied upon a decision in P.B. Kotturbasappa and others v. K.B. Veerappa¹ of the Karnataka High Court in support of the contention that the plaintiff who had a right to property on the date of the filing of the suit will not lose his right to prosecute the matter in the event he loses interest in the property during the pendency

¹ 2001(3) KCCRSN129

of the proceedings by alienation or otherwise. The facts of the cited case show that it is a suit for partition and one of the sharers alienated his share in the property during the pendency of the proceedings and on facts of that case it was held that such alienation does not make that sharer lose his right to prosecute the matter despite losing his interest in the property during the pendency of the proceedings. In a suit for partition, when a sharer alienates his share, which is undivided, the purchaser has got a right to claim equities and, therefore, is entitled to be heard before the proceedings culminate in a final decree. Therefore, on facts of the present case, the ruling is not helpful to the plaintiffs.

10.8 Now I shall deal with certain decisions cited by the learned counsel for the plaintiffs.

(i) The decision in Ponam Bai and others v. A. Jameer Bhikku² is relied upon in support of the contention that any sale deeds evidencing alienation of parts of the land by a protected tenant in favour of the purchasers within (8) years of conferment of ownership certificate are void being opposed to public policy and that in the case on hand though the certificate was granted long after the lapse of (8) years of such sales, the sales in favour of the purchasers by the protected tenants are invalid as the protected tenancy certificate operates and takes effect from 01.01.1973 and as the legislation is one in the nature of agrarian reform under which the pattedar and ownership rights are conferred on the protected tenants.

(ii) The decision in Sada and etc v. the Tahsildar, Uttoor, Adilabad District³ is relied upon in support of the contention that a person who holds the land as a protected tenant is a protected tenant as on the notified date though out of possession and that as long as his right as protected tenant has not been

² 1988 (1) ALT 93

³ AIR 1988 AP 77

determined by the date of notification in a manner known to the Act, he holds the land as protected tenant, whether physically in possession or not and that for the vesting of the ownership of land held by a protected tenant under S.38-E(1), it is not necessary that the protected tenant should have been in physical possession on the date of notification and that once the certificate is granted, it would be effective and operative from the date of notification and it shall for all purposes be considered that the protected tenant held the land as on the date of notification and that when once the certificate is issued the protected tenant becomes the owner and he shall be deemed to have been holding the land on the date of notification and that the transfer of ownership does not remain in abeyance till certificate of ownership was actually issued and that when once the certificate is issued it binds not only the land holder but all the persons claiming rights in the said land be it agreement holders or vendees.

(iii) However, there is no need to dilate on these two decisions as there is no finality attained to the certificate under Section 38-E of the 1950 Act which is being relied upon by the plaintiffs and the justifiability of the said certificate is a matter, which is sub-judice. Though the plaintiffs and the defendants rely upon entries in the revenue records, it is settled law that the said entries would neither confer nor would take away any right existing in a rightful owner. Hence, the two decisions are not helpful to the plaintiffs in this suit for perpetual injunction more particularly in the absence of any finality attached to the final certificate under Section 38-E of the 1950 Act.

(iv) The decision in *Om Prakash v. State of Himachal Pradesh*⁴ is relied upon in support of the contention that the appellate court did not dispose of the appeal suit as per the procedure contemplated under law and that the trial Court having framed issues did not answer the issues in the

⁴ AIR 2001 HP 18

manner contemplated under law and that the 1st appellate Court also did not give findings on each issue though the 1st appellate Court is the last Court of fact. This Court has carefully gone through the common judgment of the trial Court and the judgment of the 1st appellate Court. In the instant suit, the trial Court framed four issues viz., (1) Whether the plaintiffs are in possession of the suit schedule property as on date of filing of the suit? (2) Whether the alleged interference by the defendants is true and correct? (3) Whether the plaintiffs are entitled for the relief of perpetual injunction? And (4) To what relief? All the first three issues are of such nature that they can be answered by advertence to common comprehensive discussion. The first appellate Court also made a detailed reference to the pleadings, the exhibits and the contentions raised and then formulated the points for determination as follows: (1) Whether the plaintiffs are entitled for the relief of permanent injunction as prayed for? (2) Whether the impugned judgment is sustainable on facts and law? And (3) To what relief? Thereafter, it discussed the evidence of PWs 1 to 3 in juxtaposition with the exhibits and then recorded its findings on an independent consideration of the facts and evidence and resultantly confirmed the decree and common judgment of the trial Court and, therefore, the contention that the Courts below did not decide the suit and the appeal in accordance with law cannot be countenanced.

11. On a careful reading of the questions of law in the light of the above analysis by this Court, it appears that the questions raised are not pure questions of law but are only mixed questions of fact and law and questions of fact and that no substantial questions of law are involved in the second appeal. The law is well settled that a second appeal shall not be admitted if no substantial question of law arises for consideration and when no substantial question of law is involved. The view of this Court is reinforced by the ratio in the decision in *Gurudev Kaur v. Kaki* (AIR 2006 SC 1975). In the case on hand, as this court finds, after careful examination of the pleadings, the evidence

and the contentions, that no substantial question of law is involved, this second appeal is liable for dismissal at the stage of admission, in view of the narrow compass of Section 100 of the Code of Civil Procedure.

12. Viewed thus, this Court finds that no substantial questions of law are involved and there is no substance in the questions sought to be raised and, that therefore, the second appeal deserves to be dismissed at the stage of admission.

13. In the result, the Second Appeal is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

23.02.2017
Vjl



M. SEETHARAMA MURTI, J