

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

S.A.No.546 of 2017

JUDGMENT:

This Second Appeal is preferred by the appellant assailing the judgment and decree dt.16-12-2016 in A.S.No.17 of 2014 of the Principal District Judge, West Godavari District at Eluru confirming the judgment and decree dt.31-03-2008 of the Senior Civil Judge, Tadipalligudem in O.S.No.38 of 1999.

2. The appellant is the plaintiff in the suit. It is a religious institution by name Sri Suvarneswara Swamy temple and it is represented by its Executive Officer. It filed the suit for declaration of its title and for consequential injunction against the District Collector, West Godavari District, Eluru and Mandal Reveue Officer, Ganapavaram Mandal, West Godavari District in respect of an extent of Ac.0.77 cts described as *Gramakantam* in Ganapavaram village, West Godavari District.

3. In the plaint, it is contended by the appellant that this property is located adjacent to the temple and was donated to the temple since time immemorial. It is stated that the temple authority utilized this property for the benefit of the temple and had leased it out and collected rents. It is stated that it came to know that the defendants are taking steps to grant pattas to several persons for small extent therein; on 08-08-1996, it issued a notice under Section 80 CPC to the defendant Nos.1 and 2 in response to the notice of the

defendants calling objections; that the defendants did not give any reply to the said notices; and then they issued pattas in respect of strangers, and those pattas did not bind the temple. It is stated that the strangers were attempting to make preparations to take coercive methods to enter into plaint schedule property and therefore it filed the suit.

4. The defendants filed written statement disputing the plaint averments. They denied the allegations that the plaint schedule property was donated to the temple and that it was being utilized by the temple. They stated that according to the Village Accounts, it was classified as village *poramboke* site, that the defendants have issued house site pattas to persons whose names were mentioned in the plaint and that such persons constructed houses more than 30 years back and are residing therein. It is stated that the appellant did not file any objections at the time of issuing pattas and no notice under Section 80 CPC was issued by the appellant.

5. On the basis of these contentions, the following two issues were framed by the trial:

1. Whether the plaint is entitled to declaration and consequential injunction as prayed for?
2. To what relief?

6. Before the trial Court, the appellant examined P.W.1 and marked Exs.A-1 to A-27. The respondent examined D.Ws.1 to 3 and marked Exs.B-1 to B-10.

7. The trial Court by judgment and decree dt.31-03-2008 dismissed the suit. It held that the appellant did not file any document to show that the property in question was gifted to it and P.W.1 stated that he did not see the document showing the gift of the suit land to the temple and he also cannot say whether the plaint schedule property is Government *poramboke* land or not without seeing Section 38 Register maintained under the A.P. Charitable and Hindu Religious Endowments Act, 1951. It noted that the documents filed by the defendants show that the land is *poramboke* land and Ex.A-5, a letter dt.13-08-1998 itself shows that the plaint schedule property was distributed to beneficiaries. It also held that the appellant did not choose to produce the persons who have allegedly paid rents to it and that it has also not chosen to implead the beneficiaries to whom the assignment pattas for small portions of the plaint schedule property were granted by the respondents. It held that the evidence on record shows that the plaint schedule property is *gramakantam* and there was no evidence adduced by the appellant to show that it continued in possession of the plaint schedule property after 1954.

8. Assailing the same, the appellant filed A.S.No.17 of 2014 before the Principal District Judge, West Godavari, Eluru.

9. The said appeal was also dismissed on 16-12-2016. The lower appellate Court also considered the evidence on record and held that the appellant did not place any documents to substantiate the fact of donation of the schedule property to the temple. It observed that

entries in the property register Ex.A-9 shows that the land in R.S.No.244/1A of extent Ac.0.77 cts is within *gramakantam* and Ex.B-1, adangal of R.S.No.244/1 also shows that an extent of Ac.166.65 sq. yds, which is a part of *gramakantam*, is utilized for police station in an area of Ac.0.08 cts. It also held that the property register, Ex.A-9, entries are only corroborative and cannot be the basis for declaration of title. It also held that there is no material to show that the appellant temple was in possession by the date of filing of suit in 1998.

10. Assailing the same, this Second Appeal is filed.

11. Learned Counsel for the appellant contended that both the Courts below had erred in dismissing the suit filed by the appellant for declaration of title and injunction and on the basis of the entry in Ex.A-9, temple register, declaration of title should have been granted. He further contended that the temple had earlier leased out the plaint schedule property prior to 1954 and the findings of the Courts below therefore cannot be sustained.

12. Since the appellant is seeking declaration of title and an injunction against the respondents, the burden to establish title and possession of the property on the date of filing of the suit rests on the appellant. The adangal, Ex.B-1, shows that there is a police station in R.S.No.244/1 of extent Ac.0.08 cts and the property register, Ex.A-9, also shows that R.S.No.244/1A is an extent Ac.0.77 cts and it is

located within *gramakantam*. Since revenue records show that the land is *gramakantam*/communal land and do not indicate either the title or ownership of the appellant temple, and since no other document is filed except Ex.A-9, temple register, whose entry can at best be corroborative but cannot form basis for declaration of title, I am of the opinion that the Courts below did not commit any error in law in holding that the appellant temple did not make out a case for declaration of its title. Though certain rental deeds were filed by the appellant in support of its plea of being in possession, all these relate to the period prior to 1954 and subsequent thereto, there is nothing to show that the appellant temple is in possession of the property. That apart, defendants had already taken a plea that the subject land had been assigned to various persons but these persons, who were necessary parties, were not impleaded by the appellant temple.

13. In this view of the matter, I do not find any substantial question of law arising for consideration of the Second Appeal.

14. Accordingly the Second Appeal is dismissed at the admission stage. No costs.

15. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 11-08-2017
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