

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

S.A.No.741 of 2017

JUDGMENT:

This Second Appeal is preferred challenging the judgment and decree dt.30-03-2012 in A.S.No.53 of 2006 of the IV Additional District Judge (F.T.C.), Tanuku confirming the judgment and decree dt.09-03-2012 of the Principal Junior Civil Judge, Tanuku, in O.S.No.615 of 1997.

2. The appellants are plaintiff Nos.1 to 3 in the above suit. They filed the said suit for grant of permanent injunction against the respondents to restrain them from interfering in any manner with the appellants' alleged peaceful possession and enjoyment of the plaint schedule property.

3. It is not in dispute that 1st respondent is the maternal grandmother of 3rd respondent. The 3rd respondent is the brother of appellant Nos.2 and 3.

4. The plaint schedule property is a site of extent Ac.0.03 ½ cts in the 10th ward of Aravilli village, Attali Mandal, West Godavari District.

5. The appellant Nos.1 to 3 and the 3rd respondent are the children of one Undi Chittiyya.

6. In the plaint, it is contended by the appellants that their father during his lifetime constructed a thatched house in the schedule

property and was in possession and enjoyment of the same and Door No.6-14 was also allotted to the said house and taxes were collected by the Gram Panchayat. It is stated that their father died and the appellants along with 3rd respondent were in possession and enjoyment of the schedule property and also perfected their title by adverse possession. It is stated that 3rd respondent got job in Visakhapatnam and shifted there; 2nd appellant got job at Visakhapatnam and he also shifted there five years prior to the filing of the suit; that the 3rd appellant got married and she is also residing in Visakhapatnam; and the 1st appellant also lived in Visakhapatnam leaving the thatched house locked. It is contended that 1st respondent, who is their maternal grandmother, influenced the M.R.O. (5th respondent) and in the appellants' absence, created a patta as if she is residing in the property, though she was residing in Rayakuduru which was her permanent residence. It is stated by the appellants that the old house fell down in a cyclone and it was removed by 2nd respondent and he was trying to level it for construction of a new house. It is contended that the appellants came to know that patta was issued in favour of 1st respondent and she sold it to the 2nd respondent and when this was questioned by the appellants, the respondents threatened them with dire consequence. It is stated that the property is ancestral property of the appellants and there cannot be grant of a patta for the same.

7. Pending suit, 1st respondent died. The learned counsel for the appellants filed a memo before the trial Court stating that by virtue of a Will dt.20-04-1999, the schedule property was bequeathed in favour of 3rd respondent by 1st respondent.

8. The 2nd respondent contested the suit stating that the property was not the property of Chittiyya; that he was never in possession of the same; that the 1st respondent was the full owner of the property till her death; that she executed a Will bequeathing the plaint schedule property in favour of 3rd respondent; that on 20-02-1996, patta was issued to 1st respondent and on 17-02-1999, the plaint schedule property was sold to 2nd respondent for a sum of Rs.56,000/- and possession was delivered to 2nd respondent.

9. The 3rd respondent filed a written statement also opposing the grant of relief to the appellants stating that the property in question was granted by patta Ex.A-1 in 1996 to 1st respondent though electricity connection was taken in the name of one Chittiyya, that 1st respondent died on 26-06-1998 and during her lifetime, she executed a Will bequeathing the property in favour of 3rd respondent.

10. It is pertinent to note that as against respondent Nos.4 and 5, the suit was held to be not maintainable by the trial Court on the ground of non-issuance of mandatory notice under Section 80 CPC.

11. However, the trial Court dismissed the suit on 09-03-2006 holding that P.W.1, who is the 3rd appellant, claimed that the property is self acquired property of Chittiyya but failed to produce any document on the basis of which he acquired title to the plaint schedule property. It also gave a finding that having regard to her evidence, it has to be held that Undi Chittiyya and P.W.1 were not residing in the schedule property on the date of filing of the suit, and that even the 2nd appellant is residing in the USA. It also held that appellants should have questioned the patta granted in 1996 in favour of 1st respondent, but they have not taken any action in that regard. It held that the contentions of respondent Nos.4 and 5 showed that it was the 1st respondent who resided the plaint schedule property and not Undi Chittiyya and the appellants; that P.W.4, Mandal Revenue Officer, stated that the patta was granted for the plaint schedule property as per Ex.B-1 to 1st respondent since the property was *poram boke* land; and that the appellants failed to show that they were in possession of the property on the date of filing of the suit, since they did not examine any neighbours.

12. Assailing the same, A.S.No.53 of 2006 was filed by the appellants before the IV Additional District Judge (F.T.C.), Tanuku.

13. The lower appellate Court also confirmed the findings of the trial Court. It also held that once the patta is granted to 1st respondent by the revenue officials of the State Government, and the same was not questioned by the appellants, they cannot seek any relief

in the suit. Though the appellants contended that in O.S.No.335 of 1997 filed by the respondent Nos.1 and 2, their claim for rights over the plaint schedule property was rejected, it held that this would not prove that the appellants were in possession of the property. It took note of the fact that the 1st respondent executed a Will dt.07-03-1996 (Ex.B-2) in favour of 3rd respondent, but both 1st respondent and 3rd respondent sold away the property in favour of 2nd respondent. It held that if the appellants' contention that the property is ancestral property is accepted, then the 3rd respondent would be a co-owner, being their brother, and there cannot be any perpetual injunction against 3rd respondent. It noted the appellants' averments in the plaint that the 2nd respondent was in possession of the property by the date of filing of the suit and held therefore unless the appellants seek declaration of their title, they cannot be granted any relief.

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

15. Learned counsel for the appellants contended that the trial Court had observed in para-18 that the appellants are in possession of the property and therefore the Courts below erred in not granting injunction to the appellants.

16. This contention, though appears to be attractive, the fact remains that the trial Court held in para-20 that the evidence of P.W.1 itself shows that the appellants were not in possession of the schedule property on the date of filing of the suit, and the lower appellate Court

also had held that the appellants' averments in the plaint would show that 2nd respondent was in possession of the property on the date of filing of the suit.

17. As rightly held by the lower appellate Court, having pleaded that the plaint schedule property is ancestral property of their father, the appellants cannot seek injunction against the 3rd respondent, who is their brother. Also the State had granted patta under Ex.B-1 to his maternal grandmother, the 1st respondent, and without questioning the same, they cannot maintain the suit, since no injunction can be granted against the real owner.

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

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

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-08-2017

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