HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL No.188 OF 2016

JUDGMENT:

This is plaintiff's second appeal. He has been unsuccessful before both the Courts below.

2. He filed suit in O.S. No.511 of 2000 on the file of Junior Civil Judge, Gajuwaka, for the relief of perpetual injunction simplicitor restraining defendant Nos.1 to 4 amongst whom, defendant No.4 is the Mandal Revenue Officer, Gajuwaka, Visakhapatnam, on the ground that defendant Nos.1 and 2 influenced defendant No.4 to dispossess the plaintiff from the suit schedule property.

3. Concurrent findings have been recorded by both the Courts below and, therefore, at the threshold, the present Second Appeal is liable to be dismissed for the reason that nothing is projected to view that the findings recorded by the Courts below are patently perverse.

4. Be that as it may, even looking at the merits, the roof of the plaintiff's house alleged to have been removed by defendant Nos.1 to 3, and, therefore, the suit was filed against defendant Nos.1 to 4, who are police officials along with revenue officials.

5. In the written statement filed by defendant Nos.1 to 3, their main submission has been that they were shown in the official capacity and on that ground itself, the suit is liable to be dismissed in

limini as without making the Government as respondent, they cannot be shown in official capacity. They set out the case, which the plaintiff has not projected at all as the source of title in Survey No.129 of Vadlapudi village which is classified as *poramboke* and recorded the same in the revenue records. It appears, a case was filed under the provisions of A.P. Land Grabbing (Prohibition) Act, 1982 against defendant No.1 and the same was allowed by the Land Grabbing Court and defendant No.1 has delivered vacant possession of the land and they denied the allegations levelled against them by the plaintiff as to removal of roof of her house. Incidental pleas were taken by the defendants which are unnecessary to refer to.

6. A separate written statement was filed by defendant No.4 questioning maintainability of the suit on the ground of non-issuance of notice under Section 80 of the Code of Civil Procedure, 1908, and being shown him in official capacity. The main defence is that the tax receipts filed by the plaintiff do not contain any assessment number to identify the subject property and since it is hill-*poramboke*, the Civil Court has no jurisdiction to entertain the suit and sought to dismiss the same.

7. The trial Court framed two issues. The plaintiff examined herself as PW.1 and four more witnesses were examined as PWs.2 to 5 and marked Exs.A-1 to A-3. On behalf of the defendants, they were examined as DWs.1 to 4; whereas, one S. Bhoolokamma was

examined as PW.5 and marked Ex.X-1 and X-2, patta issue proceedings and patta issue acknowledgement register.

8. The trial Court, on appreciation of evidence on record, disbelieved the evidence let in by the plaintiff. The trial Court mainly observing that the plaint schedule extent was shown as 150 square yards in the schedule attached to the plaint. The evidence of PW.1 shows that she has house in an extent of 90 square yards and that accounts for inconsistency. The second factor considered by the trial Court is, survey number is shown as '129 of Chinagantyada village,' whereas the evidence of DWs.1, 2, 3 and 4 would show that Survey No.129 is situated in 'Vadlapudi village,' but not in Chinagantyada village and, thereby, held that the particulars of the plaint schedule are not tallying with the particulars of the land actually situate. The trial Court, based on entries in Ex.X-1, observing that the said patta issue proceedings and Ex.X-2 copy of patta issue acknowledgement register, do not contain name of the plaintiff as pattadar, and patta is a fake one and the Mandal Revenue Officer has asserted that the patta is a fake one, dismissed the suit, also observing that the plaintiff has not approached the Court with clean hands.

9. Aggrieved over the same, when appeal was preferred in A.S. No.15 of 2004, the appellate Court by its judgment dated 07.11.2005, confirmed the judgment and decree passed by the trial Court.

10. The appellate Court formulated two points in paragraph No.5 thus:

> "(i) Whether the court below has rightly appreciated the evidence on both sides?
>
> (ii) Whether the decree & judgment of the lower court is liable to be set aside?"

On re-appraisal, it found that the plaintiff's possession for three years next before institution of the suit, cannot be construed as legal possession, besides the factors taken up by the trial Court having affirmed it. The appellate Court observing that the plaintiff cannot depend upon the weaknesses of the other side, she has to prove her case and stand on her own legs, dismissed the appeal. A definite finding was also recorded by the lower appellate Court that the patta was fabricated to build up her case and thereby dismissed the appeal. That is how, the plaintiff is before this Court.

11. Heard Sri Dadi Venkata Lakshmi, learned counsel for the appellant - plaintiff, and Sri K. Sarva Bhouma Rao, learned counsel for the respondents - defendants, and perused the material on record.

12. In fact, the present Second Appeal is disposed of at the admission stage. Merits have been mentioned in the above and findings have been recorded that the patta is not a genuine one and name of the plaintiff is not shown anywhere in Ex.X-1 - patta issue proceedings and Ex.X-2 - patta issue acknowledgement register, and

as observed that by the appellate Court that mere possession do not enure to benefit to seek perpetual injunction and, therefore, the said finding cannot be faulted. During the course of arguments, it is stated by the learned counsel that the suit against defendant No.4 was not pressed and ad-interim injunction ought to have granted against defendant Nos.1 and 2, if not against defendant No.3. This submission appears to be wholly misconceived for the reason that it is not just for non-compliance of notice under Section 80 CPC, it can be said that the suit is maintainable against defendant Nos.1 to 3. The plaintiff, certainly, has to prove her case. The special notice issued in her favour with an assessment No.52445 with door No.2.158/3 for 1998-99/2 marked as Ex.A-1 and the photographs under Ex.A-2 would not improve her case, more particularly, when Ex.A-3, patta issued in favour of the plaintiff by the Mandal Revenue Officer, Gajuwaka, was seized by both the Courts and arrived at by both the Courts that it is a fabricated document.

13. Therefore, the Second Appeal fails and is dismissed, at the admission stage itself. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand disposed of.

A. SHANKAR NARAYANA, J

June 27, 2017.

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