

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

C.C.C.A. Nos.131 and 133 of 2015

DATED:28-03-2018

C.C.C.A. No.131 of 2015

Between:

N. Bhagyalakshmi
and another ... Appellants

And

Ranjeet Singh
and others ... Respondents

COUNSEL FOR THE APPELLANTS: Mr. V.S.R. Anjaneyulu

COUNSEL FOR THE RESPONDENTS: Mr. C.V.R. Rudra Prasad

C.C.C.A. No.133 of 2015

Between:

N. Bhagyalakshmi
and others ... Appellants

And

Ranjeet Singh
and others ... Respondents

COUNSEL FOR THE APPELLANTS: Mr. V.S.R. Anjaneyulu

COUNSEL FOR RESPONDENT No.1: Mr. C.V.R. Rudra Prasad

THE COURT MADE THE FOLLOWING:

COMMON JUDGMENT:

(per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)

Both these appeals arise out of common judgment dt.19.11.2014 in O.S. Nos.682 of 2007 and 127 of 2010 respectively on the file of the II Additional Chief Judge, City Civil Courts, Hyderabad.

2. The respondents in CCCA No.131 of 2015 have filed O.S. No.682 of 2007 seeking the relief of declaration that they are owners of the suit schedule property and for a consequential injunction restraining the appellants from interfering with the respondents' peaceful possession over the said property. The appellants in CCCA No.133 of 2015 are the plaintiffs in O.S. No.127 of 2010, who were brought on record as the legal representative of the original plaintiff, who originally filed O.S. No.2050 of 2006 on the file of the IV Junior Civil Judge, City Civil Court, Hyderabad, which was transferred to the Court of the II Additional Chief Judge, City Civil Court, Hyderabad, and renumbered as O.S. No.127 of 2010, restraining respondent No.1 and his agents from interfering with the peaceful possession of the original plaintiff over the suit schedule property and for grant of a mandatory injunction to correct the entries by deleting the name of

respondent No.1/defendant No.1 in the records of respondent Nos.2 to 5/defendant Nos.2 to 5.

3. Having regard to the respective pleadings of the parties, the Court below has framed the following issues in O.S. No.682 of 2007.

1. “Whether the plaintiffs are entitled for declaration of their title over the plaint schedule property as prayed for?
2. Whether the plaintiffs are entitled for injunction as prayed for?
3. To what relief?”

It has also framed the following issues in O.S. No.127 of 2010.

1. “Whether plaintiffs are entitled for perpetual injunction against defendant No.1 as prayed for?
2. Whether plaintiffs are entitled for mandatory direction against defendants 2 to 5 as prayed for?
3. To what relief?”

4. In support of their plea, the respondents have let in the oral evidence of P.Ws.1 and 2 and got Exs.A.1 to A.42 marked. On behalf of the appellants, D.Ws.1 and 2 were examined and got Exs.B.1 to B.46 marked. On purported consideration of the oral and documentary evidence, the lower Court decreed O.S. No.682 of 2007 and dismissed O.S. No.127 of 2010. Feeling aggrieved by the common judgment, these appeals are filed.

5. Though the parties claimed that there is some variation in the description of the property, by and large the property which is the subject matter of both the suits is same. From the perusal of the judgment under appeals it is evident that the Court below has referred to the documentary evidence on both sides. However, without any proper analysis of the documents, it has rendered a finding that the plaintiffs in O.S. No.682 of 2007 failed to prove that the suit schedule property is their ancestral property. It has, however, held that the documents filed by the said plaintiffs show that they have been in possession of the property and paying the property tax and other charges and thereby they have perfected their title by adverse possession. On that premise, the lower Court has declared the title of the plaintiffs in O.S. No.682 of 2007 while decreeing the said suit. As a consequence of the said finding, it has dismissed O.S. No.127 of 2010.

6. As rightly submitted by Mr. V.S.R. Anjaneyulu, learned counsel for the appellants, it is not the pleaded case of the respondents that they have perfected their title by adverse possession. On the contrary, they sought to trace their title through some of the documents marked in Ex. 'A' series. The Court below has therefore fallen into a serious error in

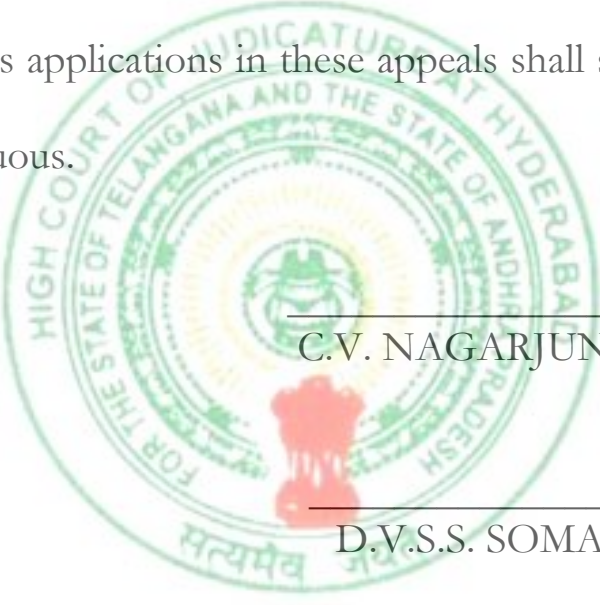
declaring the title on the finding of adverse possession. We are also in agreement with the submissions of Mr. C.V.R. Rudra Prasad, learned counsel for respondent Nos.1 to 3 in CCCA No.131 of 2015 and respondent No.1 in CCCA No.133 of 2015, that except referring to the documents filed by both the parties, the lower Court has not considered their effect and rendered a finding as to whether the parties are entitled to any relief based on such documents. He, therefore, on instructions, fairly agreed for setting aside the judgment and remanding the suits to the lower Court for fresh disposal on the analysis of the oral and documentary evidence.

7. The judgment under appeals is accordingly set aside. The lower Court is directed to dispose of the suits afresh based on the oral and documentary evidence adduced by the parties and the issues already framed. It shall make every endeavour to dispose of the suits within six months from the date of receipt of this order. Since the plaintiffs in O.S. No.127 of 2010 have filed an application for receiving additional evidence in their appeal, they are permitted to file a similar application before the lower Court. Similarly, if the plaintiffs in O.S. No.682 of 2007 intend to file such application they shall also be free to do so. Both the parties may file such applications within one month

from the date of issue of fresh notices by the lower Court. If such applications are not filed within the stipulated time, the lower Court shall not entertain the same thereafter. In the event, the lower Court allows such applications, it shall permit both the parties to adduce additional oral evidence.

8. The appeals are accordingly allowed to the extent indicated above.

As a sequel to disposal of the appeals, pending miscellaneous applications in these appeals shall stand disposed of as infructuous.



C.V. NAGARJUNA REDDY, J

D.V.S.S. SOMAYAJULU, J

28-3-2018

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