

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

A.S.No.989 of 1998
&
Tr.A.S.No.126 of 2000

COMMON JUDGMENT:

A.S.No.989 of 1998 is filed against the judgment and decree in O.S.No.102 of 1988, dated 29.04.1998, passed by the Additional Senior Civil Judge, Eluru.

2. Tr.A.S.No.126 of 2000 is filed against the judgment and decree in O.S.No.289 of 1987 (old), which is re-numbered as O.S.No.218 of 1990, dated 29.04.1998, passed by the Additional Senior Civil Judge, Eluru.

3. O.S.No.218 of 1990 is a suit filed for injunction by the plaintiff against defendants mentioned therein. The suit for injunction was dismissed.

4. O.S.No.102 of 1988 is a suit filed against the sole defendant therein for his eviction from the plaint-C schedule property of the 1st plaintiff, which is a society, called as "The Eluru Pattebada Sri Ganganamma Ammavari Alaya Sangham" formed for administering Sri Ganganamma Ammavaru Temple. The suit for eviction came to be decreed.

5. Both the suits O.S.No.218 of 1990, which is filed for injunction, and O.S.No.102 of 1988, which is filed for eviction, were tried together and they were disposed of by a common judgment, dated 29.04.1998. The said common judgment is challenged in these two appeals.

6. This court has heard Sri A.Chandraiah, for the appellant and Smt.K.Shyamala Reddy, for the respondents.

7. As the suit O.S.No.102 of 1988 is a suit for eviction, both the learned counsels concentrated on this suit essentially. The same is also taken up for hearing by this court.

8. The facts in brief in O.S.No.102 of 1988 are as follows:

The plaintiff is a Society, called as "The Eluru Pattebada Sri Ganganamma Ammavari Alaya Sangham (Committee)". The other plaintiffs are the Office Bearers. It is their case that the defendant has occupied the plaint-C schedule property. According to the plaintiffs in the suit, the land is situated in RS.No.22/2. The Temple is the owner of the land. They entered into exchange with a neighbouring house building society, by which, the plaint-A schedule site belonging to the Temple was given in an exchange for the plaint-B schedule property belonging to the House Building Society, called as "Ashoknagar Society". A registered Exchange Deed was executed on 04.12.1956 evidencing the same. In the year 1980, the defendant sought permission to stay in a corner of the site ('C' Schedule) stating that he would erect a thatched hut and do business in coconuts etc. Thereafter, when the plaintiff-society tried to develop the site, the defendant started claiming rights in the property. Hence, the suit was filed for eviction of the defendant from the plaint-C schedule property.

9. The defendant filed a written statement agreeing that he is an encroacher, but stating that the land in which he is encroached belongs to the Municipality and does not belong to the Temple. He pleaded that he was in continuous possession and enjoyment of the property since long and argued that he is not entitled to be evicted.

10. The following issues were framed on the basis of the pleadings:

1. Whether the plaintiff has got title to the plaint-C schedule property?
2. Whether the plaintiff is entitled for eviction and possession?
3. Whether the plaintiff is entitled for any damages, if so, at what rate?

11. The second suit O.S.No.218 of 1990 is a suit filed by one Karuparthi Guravayya, who is the defendant in the other suit. The suit is filed for an injunction. He states that he has encroached a site belonging to the Municipality and constructed Jammu roofed house therein. The Eluru Municipality is collecting property tax for the said hut and that he has been living in that hut peacefully since more than two decades. When the defendants highhandedly tried to remove his hut, he protested and then filed the suit for an injunction.

12. The defendants filed their written statement reiterating what is stated in their earlier suit O.S.No.102 of 1988 and stating that a bare suit for an injunction without seeking any right, declaration etc., is not maintainable.

13. On the basis of the pleadings, the following issues were framed:

1. Whether the plaintiff has right, title and possession to the suit schedule house?
2. Whether the plaintiff is entitled to permanent injunction and mandatory injunction reliefs?

14. Both the parties have filed a joint memo requesting the court to make a common enquiry in both the suits, and hence, both the suits were tried together.

15. For the plaintiffs, PWs 1 to 3 were examined and Exs.A1 to A7 were marked. For the defendant, DWs 1 and 2 were examined and Exs.B1 to B33 were marked.

16. After the trial, the decree for eviction was passed in O.S.No.102 of 1988 and the second suit O.S.No.218 of 1990 which was filed for an injunction was dismissed. Questioning the same the present appeals are filed.

17. The essential point that is urged by the learned counsel for the appellant is about the identity of the property. He questions the manner in which the suit for eviction was decreed. According to the learned counsel for the appellant, the property which is occupied by the defendant in the suit for eviction is a property belonging to the Municipality. It is not the property belonging to the Temple or the Society. The learned counsel has also argued about the *locus* of the parties to the present case. But he essentially concentrated upon the location of the property. It is his contention that the property belongs to the Municipality and does not belong to the society and therefore, the plaintiff-society has no right to sue for eviction of the appellant. He also points out that the Municipality is not added as a party to the proceedings and that therefore, no decree can be passed. The learned counsel relies upon Exs.B1 and B2 to argue on the question of the location of the property. According to him in Ex.B1, the Municipality had clearly stated that the site occupied by the appellant is part of the public open space. Similarly, as per Ex.B2, the learned counsel submits that the resolution by the Municipality of Eluru authorizes the collection of market value for regularizing the occupied site. The rest of the documents that are filed are essentially tax receipts etc., which would go to show the possession of the property. The first two

documents are the documents concentrated upon. In addition, the learned counsel also relies upon Exs.B32 and B33 which are an application given by the defendant to the Minister, Panchayat Raj, and the endorsement made thereon. Basing on all these three documents and the tax receipts etc., which are marked, the learned counsel for the appellant contends that the site occupied by the appellant is belonging to the Municipality. He therefore submits that the society does not have the *locus* to file a suit.

18. On the other hand, the learned counsel for the respondents in the appeal and the plaintiff in the suit O.S.No.102 of 1988 contends that there is a registered Exchange Deed in their favour which shows that the plaint-C schedule property belongs to them. The learned counsel also submits that the rough sketch of the temple property is marked as Ex.A3 and it shows the encroachment. He also points out that all the persons of the locality submitted Ex.A7 application to the District Collector for grant of pattas. This application is made in June, 1983 and it is signed by the defendant also. They clearly show that the property belongs to the temple only. The learned counsel also relies upon the judgment of the Hon'ble Supreme Court of India in *Maria Margarida Sequeria Fernandes and Ors. v. Erasmo Jack de Sequeria (died) through L.Rs.*¹ and argues that a person in permissive possession should not be allowed to get any substantive reliefs in a court of law. He therefore prays that the appeals should be dismissed.

19. This court notices that the court below analyzed all the documents that are filed and also the oral evidence in coming to the conclusion that it did. This court notices that the appellant is the plaintiff

¹ AIR 2012 SC 1727

in the suit for injunction. He filed a suit seeking injunction claiming possession over a property which has the following boundaries:

EAST : Compound wall of R.Radhakrishna

SOUTH: Municipal site

WEST : Municipal site

NORTH: Municipal road

As per the schedule annexed to that plaint, this property is situated in Eluru town Pattebada locality with TS No.46, measuring 200 square yards. Within this property there is a Jammu roofed house. However, this court notices that during course of the cross examination of the defendant as DW 1 on 19.02.1988, he deposed as follows:

“The land in my occupation is bounded by; on the EAST-Matta Radhakrishnamurthy, SOUTH-Tirunagari Ramayya Suri, WEST-Ganganamma Temple site, and on NORTH-Road.”

He also deposed in the first line of the cross-examination that the land in occupation is covered by RS.No.22. Therefore, it is clear that the plaintiff in the suit filed for an injunction and the appellant herein is not even clear or sure of the property is in his occupation. The fact that the boundaries mentioned by him are totally at variance to what is stated in the plaint makes this clear. He also agrees that the land in his occupation is covered by RS.No.22 of Eluru. Ex.B2 is another document which assumes importance. As per Ex.B2 document which is the recommendation of the Municipal Commissioner, which the appellant relies upon, the land in RS.No.22 does not belong to the municipality. The Municipality itself states that the land in RS No.22 and 20/2 do not belong to the Government, and that these are lands which are layout reserve plots. The case of the plaintiff-temple is that they have exchanged the land on the

boundary with Ashoknagar residential layout. Therefore, neither Ex.B1 nor Ex.B2 actually supports the case of the defendant/appellant.

20. In addition, the other critical document which the court below relied upon is Ex.B7, which is a tax receipt filed by the appellant himself. On the reverse of this document there is an endorsement that the property belongs to the temple. The words in Telugu clearly state that a Jammu hut is erected in the temple property (Gudi stalam). This document and the endorsement of the Municipal Tax Collector support the case of the plaintiff who sought for eviction.

21. In addition, this court also notices that Ex.A7 application is filed by the defendant/appellant and others belonging to that locality. All of them have made a request to the District Collector requesting for allotment of pattas. The application filed by the present appellant is enclosed to the application made by the members of the locality. In that application for which he is seeking approval from the Government, there is a printed form which has been filled up. Column No.11 of the Form deals with the possession details. It talks about the owner of the house. In that column, the appellant has clearly filled up that his house is located within the premises of Sri Ganganamma Ammavaru gudi, Pattebada, Eluru, and the Door Number is 24A-20-4. Even Ex.B24 shows that the property is situated in Ganganammagudi area.

22. These facts would clearly support the theory that the appellant attempted to take advantage of the fact that there is some discrepancy in Exs.B1 and B2. The appellant has not proved with clear and categorical evidence that the land in fact belongs to the municipality. Exs.B1 and B2 do not support his case that particular land in which he has occupied belongs to the municipality. On the contrary, documents like Ex.A7 and

Ex.B7 prove that the property is situated within the premises of Sri Ganganamma Ammavaru gudi. In fact, the endorsement on the reverse of Ex.B7 made long prior to the filing of the suit clearly discloses that the property is located within the premises of Sri Ganganamma Ammavaru gudi. It clearly shows that there is a Jammu roofed house inside the same.

23. Apart from this, the learned counsel also relied upon Ex.B32 application and the endorsement made thereon. This application which is made after the filing of the suit and as such, the same is not really taken into consideration.

24. On question of law, the learned counsel for the respondent relied upon *Maria Margarida Sequeria Fernandes and Ors. v. Erasmo Jack de Sequeria (died) through L.Rs.* (1 supra). The Hon'ble Supreme Court of India clearly held that in an action or litigation by a person in possession of the property, sufficient detailed pleadings with particulars and documents must be given in order to continue his possession. It is held as follows in paragraph Nos.69 and 70.

“69. The person averring a right to continue in possession shall, as far as possible, give a detailed particularized specific pleading along with documents to support his claim and details of subsequent conduct which establish his possession.

70. It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive.

- (a) who is or are the owner or owners of the property;
- (b) title of the property;
- (c) who is in possession of the title documents
- (d) identity of the claimant or claimants to possession;
- (e) the date of entry into possession;

- (f) how he came into possession -whether he purchased the property or inherited or got the same in gift or by any other method;
- (g) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, license fee or lease amount;
- (h) If taken on rent, license fee or lease -then insist on rent deed, license deed or lease deed;
- (i) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants etc.;
- (j) subsequent conduct, i.e., any event which might have extinguished his entitlement to possession or caused shift therein; and
- (k) basis of his claim that not to deliver possession but continue in possession.”

Similarly, in paragraph No.76, the Hon’ble Supreme Court held as follows:

“76. In pleadings, whenever a person claims right to continue in possession of another property, it becomes necessary for him to plead with specificity about who was the owner, on what date did he enter into possession, in what capacity and in what manner did he conduct his relationship with the owner over the years till the date of suit. He must also give details on what basis he is claiming a right to continue in possession. Until the pleadings raise a sufficient case, they will not constitute sufficient claim of defence.”

25. Ultimately, the Hon’ble Supreme Court has held that in cases of this nature, the court should very carefully analyze the pleadings and evidence and arrived at the truth. The Hon’ble Supreme Court held that the Judges at all levels must seriously engage themselves in the journey of discovering the truth. Paragraph No.32 of the judgment of the Hon’ble Supreme Court of India makes it clear that it is the mandate, obligation and bounden duty of a Judge to discover the truth.

26. Against this backdrop of the above Three Judge Bench’s Judgment of the Supreme Court the present case is examined. It is clear

that the appellant who seeks an injunction and judicial approval of his possession has not pleaded with clarity, the various details that are necessary for allowing this court or the lower court to come to a conclusion about the legality of his possession or of the land in his possession. The details mentioned in paragraph Nos.69 and 70 of the judgment of the Hon'ble Supreme Court (1 supra) are conspicuously missing. The boundaries pleaded by the appellant in the plaint are totally different from the boundaries as mentioned in the evidence. Ex.B7 and Ex.A7 clearly prove that the appellant is in occupation of the land belonging to the temple.

27. The last issue that needs to be considered is the evidence of DW 2, who is the Overseer in Eluru Municipality. His evidence is to the effect that the site which is in occupation of the appellant is in RS No.22. This site, according to him, is a reserve open space. In his cross-examination, he says that he cannot say who is the owner of RS No.22. He cannot say in which survey number the schedule site was located. Again on re-examination and re-cross-examination he further compounds the problem and ultimately says in re-cross-examination that he is not sure that the site belongs to the Municipality. Therefore, this witness does not in any way take the case forward.

28. Ultimately, relying upon the dicta of the Hon'ble Supreme Court of India in *Maria Margarida Sequeria Fernandes and Ors. v. Erasmo Jack de Sequeria (died) through L.Rs.* (1 supra), this court itself has looked into all the documents. This court is of the opinion that the application made by the appellant in Ex.A7 and the endorsement made on the reverse of Ex.B7 tax receipt clearly go to show that the appellant has occupied the site belonging to the temple. The mere fact

that taxes are paid for the property in his occupation will not entitle to the appellant to an injunction, as he is in permissive possession. The judgment of the Hon'ble Supreme Court (1 supra) clearly applies to the facts of the case.

29. In this view of the matter, this court is of the opinion that the impugned judgment and decree passed by the court below is correct. The discrepancy in the evidence and the pleadings in the suit for injunction also lend credence to this finding.

30. For all these reasons, this court is of the opinion that the appeal has no merits. The impugned judgment and decree that are passed by the lower court are a reasoned judgment and decree passed on a correct appreciation of facts and law. This court is therefore of the opinion that there are no merits in the appeal. The findings of the lower court on all the issues in O.S.No.102 of 1988 are confirmed. The suit for an injunction (O.S.No.218 of 1990) is dismissed. The appellant/defendant is directed to vacate and handover vacant possession of the plaint-C schedule property within two months to the plaintiff Committee (O.S.No.102 of 1988), who is declared to be owner of the plaint-C schedule property. Plaintiffs are also entitled to damages as awarded by the trial court.

31. Accordingly, both these appeals are dismissed. In the circumstances, no order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

D.V.S.S.SOMAYAJULU,J

Date: 13.12.2018
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