

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

SECOND APPEAL No.916 of 1999

JUDGMENT:

This Second Appeal is preferred by the appellant/plaintiff aggrieved by the Judgment and Decree dated 05.04.1999 in A.S.No.33 of 1996 passed by the learned Senior Civil Judge, Rajampet, whereby and whereunder the learned Judge allowed the appeal filed by the 1st defendant and set aside the Judgment and Decree dated 07.06.1999 in O.S.No.106 of 1993 passed by the District Munsif Court, Rajampet, filed for declaration and injunction.

2) The parties in this Second Appeal are referred as they were arrayed before the Trial Court.

3) The factual matrix of the case is thus:

a) Plaintiff's case is that plaintiff deity was in existence since more than 300 years in Raghavarajapuram village of Kodur Mandal. The suit temple is a public temple managed by a body of Trustees. ABDE land shown in the plaint plan was endowed to plaintiff's deity under Ex.A.2—registered gift deed dt.20.07.1917 by one P.Pitchaiah and Government wrongly classified the suit land as gayyalu and assigned the same to D.1 by granting DKT patta. Hence the suit for declaration and injunction.

b) The defendants opposed the suit contending that after verification of the village accounts, such as Fair Adangal, the Government having found the suit land as Shotrium village in Raghavarajapuram, abolished

in the year 1960 and assigned the same to D.1 and there was no wrong classification. Thus the defendants prayed to dismiss the suit.

c) Basing on the above pleadings, the Trial Court framed the following issues.

i) Whether the plaintiff is entitled to declaration as prayed for?

ii) Whether the plaintiff is entitled for consequential permanent injunction as prayed for?

iii) To what relief?

d) During trial, PWs.1 and 2 were examined and Exs.A.1 to A.12 were marked on behalf of plaintiff. DWs.1 and 2 were examined and Exs.B.1 and B.2 were marked on behalf of defendants.

e) After hearing both sides and basing on the oral and documentary evidence, the Trial Court decreed the suit observing that plaintiff could establish his title and possession over the suit schedule land.

f) Aggrieved, the 1st defendant preferred AS No.33/1996, wherein the lower Appellate Court allowed the appeal by setting the judgment and decree of the Trial Court.

Hence, the instant Second Appeal by plaintiff.

g) During the pendency of appeal, 1st respondent died and respondents 4 to 6 were brought on record as his LRs vide Court order dated 20.06.2012 in SAMP No.1506 of 2011. Subsequently, respondent No.4 died and respondents 5 and 6 were treated as LRs of R.4.

4) While admitting the Second Appeal this Court on 13.10.1999, framed the following substantial questions of law:

a) Is it legal on the part of lower Appellate Court to dismiss the suit for declaration of title and the consequential permanent injunction, though plaintiff established title over the suit schedule land on the ground possession was not established that too when the plaintiff is temple and further also defendant has not taken the plea of adverse possession nor proved possession?

b) Can the Lower Appellate Court reverse the findings of Trial Court without giving any reasons more so when the Trial Court had given clear and cogent reasons for its finding after elaborate consideration of documentary and oral evidence on record?

c) Can the Lower Appellate Court give any weight to the documents which are not filed in the suit when the suit is an independent one and further the same is not clubbed with any other suit?

5) Heard arguments of Sri L.J.Veera Reddy, learned counsel for appellant and learned Government for Arbitration (Andhra Pradesh).

6) **Substantial Questions A and B:** These two questions are taken up together as they are interconnected.

a) Plaintiff's case is that plaint schedule mentioned land in an extent of Ac.1-44 cents referred to ABDE in plaint plan covered by S.No.79/1 situated in Raghavarajupuram which is a shotrium village was endowed to plaintiff's deity Sri Bramaramba Mallikarjuna Swamy Temple under Ex.A.2—registered gift deed dated 20.07.1917 by one P.Pitchaiah. The

donor of the suit land purchased the same under Ex.A.6—registered sale deed dated 30.11.1915 from Kamisetti Nagaiah and ever since the gift, the plaintiff temple has been in effective possession and enjoyment of the same. The Mango garden situated in the suit land was withered away from 1949 onwards and since 1960, the land remained fallow for want of irrigation facility. However, the plaintiff has been in possession of the same. While-so, the trustees of the plaintiff temple came to know that the 1st defendant filed O.S.No.111/1990 against one Chowdavaram Chinnaiah seeking permanent injunction in respect of land in an extent of Ac.1-70 cts. Out of the said Ac.1-70 cts, an extent of Ac.1-44 cts is the suit land. On further enquiry, it was revealed that in 1958-59 the Shotrium village of Rangarajupuram was taken over by the Government under Estates Abolition Act and survey was conducted and in that process, the suit land of Ac.1-44 cts was wrongly clubbed with an extent of Ac.0-26 cts shown as BCDE in the plaint plan and the total extent of Ac.1-70 cts (Ac.1-44cts + Ac.0-26cts) was allotted S.No.79/1. Indeed, the suit land ought to have been demarcated as one plot and given one survey number but it was wrongly clubbed with Ac.0-26 cts. It was further revealed that the Government classified the suit land as gayyalu and assigned the same to 1st defendant by granting DKT patta. The trustees of the plaintiff temple apprehended fraud being played by the revenue authorities in collusion with the 1st defendant. They also came to know that as against the suit—O.S.No.111/90 filed by D.1 against C.Chinnaiah, the latter filed a counter suit O.S.No.65/1993 against D.1

on the file of Munsif Magistrate, Rajampet. Hence the suit for declaration and injunction.

b) While denying plaintiffs case, the defendants contended that Gangarajupuram H/o. Raghavarajupuram was a shotrium village and Government had taken over the said village in the year 1960 as per Estates Abolition Act. The said land was covered by paimash no.460 before it was taken over. S.No.79 was covering a total extent of Ac.10.60 cents. The Government have sub-divided S.No.79 into S.No.79/1, 79/2 and 79/3 as follows:

S.No.	Paimash No.	Classification	Extent	Assessment fixed
79/1	460	Govt. Dry Un-Assessed Waste	1-70	2-55
79/2	27	Inam Grama Devetha varat	2-50	3-75
79/3	66	Govt. Dry Patta Land	6-40	9-60
		Total Extent	10-60	

Thus, the suit schedule land which was originally covered by paimash No.460 was included in S.No.79/1 and it was a Government Unassessed Waste as per the fair adangal. The entire S.No.79 of Gangarajupuram covering total extent of Ac.10-60 cts. after assignment stood as follows:

S.No.	Paimash No.	Extent	Name of the Assignee/ beneficiary
79/1	460	1-70	Darla Ramaiah S/o. Gangaiah DKT No.764/79 dt.31.12.69
79/2	27	2-50	1) Chowdavaram Chinnaiah 2) Kalluru Venkata Reddy
79/3	66	6-44	Bodda Ramaiah
		10-60	

While denying the plaintiff's contention, defendants pleaded that a detailed enquiry of village accounts was conducted in respect of S.No.79 and thereafter only sub-division was made. The plaintiff never raised any

objection at any point of time. Their further contention is that on verifying the fair adangal of the village and knowing that the suit land was recorded as Unassessed waste, an extent of Ac.1-70 cts in S.No.79/1 was assigned to D.1 under DKT No.764/79 dt.31.12.1969. Though Ac.1-70 cts was assigned to D.1, in fact, he was enjoying only Ac.1-44 cts and the remaining Ac.0-26 cts was under enjoyment of C.Chennaiah. The defendants are taking steps in this regard. The defendants thus opposed the suit as not maintainable.

c) The Trial Court decreed the suit holding that the plaintiff could establish his title and possession over the suit schedule land. Whereas the lower appellate Court having considered the documentary and oral evidence, came to conclusion that the evidence produced by the plaintiff do not relate to S.No.79/1 and if at all it was plaintiff's case that his land was wrongly classified as gayyalu, the plaintiff ought to have taken up the matter with the Settlement Officer immediately after taking over of Raghavarajupuram under Estates Abolition Act. The lower Appellate Court also observed that O.S.No.111/1990 and O.S.No.65/1993 pending between D.1 and one Chinnaiah, were in fact concerning to the present suit property and in that view, plaintiff ought to have taken steps to club his suit along with those two suits for a comprehensive decision. The Court further observed that plaintiff was not in possession of the suit land even according to Exs.A.7 and A.8—representations made to the revenue authorities and therefore, the suit ought to have been filed for declaration and possession rather than injunction. On all the aforesaid

observations, the lower Appellate Court reversed the judgment of the Trial Court and dismissed the suit.

Hence it has now to be seen whether the findings recorded by the said Court are factually and legally correct or suffered the vice of perversity to necessitate interference by this Court in the Second Appeal.

7) Since it is a suit for declaration and injunction, it is needless to emphasize that plaintiff has to establish his title and lawful possession over the suit property to claim the reliefs.

The plaintiff to establish his case examined PWs.1 and 2 and produced Exs.A.1 to A.12.

a) Oral evidence is concerned, PW1 is the plaintiff. He deposed about plaint averments and claimed that temple obtained the suit land under Ex.A2—gift deed and the suit land was wrongly clubbed with 0.26 cts. belonging to Chinnaiah and allotted one common division number and assigned to D1.

b) He also examined PW2 who is the VAO of Raghavarajpuram. His version is that as per records, Sy.No.79/1 had an extent of Ac.1.70 cts. Prior to 05.02.1959 Raghavarajpuram and Ganrajupuram were Shotrium villages and after they were taken over under Estates Abolition Act, the land in those villages were surveyed in 1960. At the time of survey concerned persons who surveyed the lands, did not summon the Ryots and other concerned. Sy.No.79/1 was shown as Gayalu land by survey people by mistake and they have committed similar mistake in other 10

places in same village and mentioned the same in fair Adangal of Gangarajupuram village. He referred Exs.A10 to A12 and stated that Sy.No.79/1 to 3, Sy.No.82 and Sy.No.112 were wrongly shown as Gayalu. Thus, his evidence is to the effect that suit land and some other lands were wrongly classified as Gayalu and further, suit land was wrongly clubbed with 0.26 cts. belonging to Chinnaiah and given Sy.No.79/1 during the survey. However, in the cross-examination he admitted that at the time of survey he was not the village Munsif or Karnam of Ganrajaupuram and he was not present when the survey was conducted. Prior to 1992 he had no personal knowledge about the records of Gangarajupuram village. He further admitted that unless any objection is made during the survey, the same has to be taken for granted as correct. He admitted that D1 has been paying land revenue for 1.44 cts. in Sy.No.79/1 and C.Chinnaiah was paying land revenue for the remaining extent of 0.26 cts. He also admitted that unless he see the records he cannot say the particulars of the land owned by the plaintiff—temple. He further stated that as per rules an appeal against survey should be preferred to concerned Settlement Officer. He admitted he did not report to any of his superiors about the mistake committed by the survey staff.

c) Thus, the oral assertion of PWs.1 and 2 is not helpful to the plaintiff to establish that suit land was wrongly classified as Gayalu. As rightly observed by the lower appellate Court, PW2 though a subordinate to DWs.1 and 3, he spoke contrary to their evidence as if suit land was wrongly classified as Gayalu. During his evidence he did not produce

any record to buttress his statement. Admittedly at the time of survey he was not village Munsif or Karnam and he was not personally present. Thus, his evidence cannot be accepted.

d) The documentary evidence is concerned, Ex.A.1 is the proceedings of the meeting of the Trustees of plaintiff temple dated 27.02.1993 whereunder a resolution was passed to the effect that the plaintiff being the principal trustee, was authorized to file the suit and get possession of land in an extent of Ac.1-44 cts in Sy.No.79/1. Ex.A.2 is the registration copy of gift deed dated 20.07.1917 said to be executed by P. Pitchaiah in favour of temple gifting the land covered by Paimash No.95. However, it should be noted that there is no evidence to hold that the said Paimash No.95 was later converted to Paimash No.460 as claimed by the PW.1 in his evidence. As per defendants, Paimash No.460 was given Sy.No.79/1 during the survey and settlements operations, which is the suit land. Thus in essence, there is no evidence to hold that Ex.A.2 is the suit land. In Ex.A.7 representation, the plaintiff claimed that the plaintiff deity is the owner in extent of Ac.1-44 cts as per the Inam Fair Register and other records. However, to correlate the Paimash No.95 to the suit land covered by Sy.No.79/1, the plaintiff has not summoned the Inam Fair Register. Then Exs.A3 to A.5 are receipts issued by the Endowments Department in favour of plaintiff temple. However these receipts do not depict as to in what context the amount was paid and the receipts were obtained by the plaintiff. Moreover nothing is mentioned about the suit land in those receipts. Hence they have no relevancy to the suit land. Ex.A.6 is the sale deed

obtained by Pitchaiah in respect of land covered by Sy.No.95 which was later gifted by him under Ex.A.2 to the temple. Since Ex.A.2 is not correlated to the suit land, Ex.A.6 will not improve plaintiff's case. Exs.A.7 and A.8 are the representations made by the plaintiff to RDO and District Collector respectively claiming that the land in an extent of Ac.1-44 cts belonging to the plaintiff was wrongly included in the DKT Patta issued to D.1. It should be noted that without producing the record showing that gifted land was in fact covered by Paimash No.460 and Sy.No.79/1, the plaintiff cannot claim that his land was wrongly classified as gayyalu. Ex.A.9 is the registration copy of partition deed, the northern boundary of which, would show as the mango tope of the plaintiff. The boundaries of a third party are not binding on defendants to clinch the title of the plaintiff. Exs.A10 to A12 are the extracts of adangals which were sought to be filed by the plaintiff to show that the suit land and some other lands in Raghavarajapuram were wrongly classified as gayyalu. As already stated supra, without filing any authenticated record such as Inam Fair Register, showing that the suit land was originally covered by Paimash No.95 and later covered by Paimash No.460 and recorded in the name of plaintiff, there is no use in simply filing Exs.A10 to A12 to contend that the suit land and other lands were wrongly shown as gayyalu. Thus the plaintiff failed to discharge his burden. Defendants are concerned, DW.1—the MRO and DW.3—the Superintendent of Kodur have clearly deposed that the suit land situated in Gangarajupuram H/o Raghavarajapuram was a shotrium village and abolished and taken over in the year 1960. The said land was

covered by Paimash No.460 and during survey operations Paimash No.460, 27 and 66 were given Sy.No.79. They deposed that basing on the fair adangal, the Sy.No.79 was sub-divided into Sy.Nos.79/1, 79/2 and 79/3 and the suit land originally consisting of Ac.1-70 cts corresponding to Paimash No.460 was given Sy.No.79/1 and it was categorized as Government dry an Unassessed Waste. They further stated that the land in Sy.No.79/2 belong to Gramadevatha and Sy.No.79/3 belonged to Government dry patta land. Basing on the enjoyment of the lands, Sy.No.79/1 in an extent of Ac.1-70 cts was assigned to the 1st defendant under DKT patta 764/79 dt.31.12.1969. They also stated that though Ac.1-70 cts of the land was assigned to D.1, however he was enjoying only Ac.1-44 cts and remaining Ac.0-26 cts of the lands was in possession and enjoyment of Chinnaiah. They categorically stated that during the survey operations or subsequent to the assignment of the land to D.1, no objection was raised by any one. They asserted that DKT patta was issued after a detailed enquiry. In the cross-examination they admitted that plaintiff submitted representations for the first time in 1992 against assignment. They denied that the plaintiff was the owner of the suit property. The defendants produced Ex.B.1—No.3 adangal for the Fasli 1402 showing that the suit land covered by Sy.No.79/1 in an extent of Ac.1-70 cts was recorded as DKT land assigned to D.1 and he was in actual possession of Ac.1-44 cts and Chinnaiah in occupation of Ac.0-26 cts. Apart from that Ex.A.10—fair adangal produced by the plaintiff himself would show that Paimash No.460 was covered by Sy.No.79/1 and it was recorded as Gayyalu.

Thus the oral and documentary evidence produced by the defendants would clearly depict that suit land was originally covered by Paimash No.460 and it was given Sy.No.79/1 during settlement operations. Except clamoring that the classification was wrong, the plaintiff could not produce any record such as Inam Fair Register to buttress his contention. DWs.1 and 3 are Government servants and the record produced by them is the public record. Therefore, the presumption of truthfulness can be attached to their evidence under Section 114(e) of Indian Evidence Act till effectively rebutted. Thus the lower Appellate Court was right in holding that plaintiff could not establish his title relating to suit land. Possession is concerned, as rightly observed by the lower Appellate Court, plaintiff in Ex.A.7 admitted that the property belonging to the plaintiff was occupied by D.1. Therefore, the suit in the form of declaration and injunction is not maintainable. Hence there is no perversity in the findings of the lower Appellate Court. Thus substantial questions are accordingly answered against the appellant/plaintiff.

8) **Substantial Question C:** In Para 38 of its judgment, the lower Appellate Court observed that the plaintiff ought to have made Chinnaiah also as a party to the suit and got the two suits—O.S.No.111 of 1990 and O.S.No.65 of 1993 clubbed with the present suit. The argument on behalf of the appellant is that the said observation is unwarranted. As can be seen, the lower Appellate Court observed that the 1st defendant was granted permanent injunction by the District Munsif Court and in the present suit the plaintiff obtained the decree and thereby conflicting findings were generated and this situation would

have been avoided if all the three suits were tried together. The said observation cannot be said to be unwarranted.

9) In the result, in view of the findings in Substantial Questions A, B and C, this Second Appeal is dismissed by confirming the judgment of the lower Appellate Court in A.S.No.33 of 1996. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date: 31.01.2018
scs

U. DURGA PRASAD RAO, J

