

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.360 OF 2001

JUDGMENT:

This Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.') aggrieved by the judgment and decree dated 23.02.2001 passed in A.S. No.39 of 1999 on the file of the Senior Civil Judge, Rajam, Vizianagaram District (for short, 'first appellate court'), wherein the first appellate court set aside the decree and judgment dated 30.07.1999 passed in O.S. No.113 of 1992 on the file of the Junior Civil Judge, Palakonda (for short, 'the trial court'). The original suit was filed by the appellants-plaintiffs for permanent injunction restraining the defendants and their men from in any manner interfering with their peaceful possession and enjoyment over the suit schedule property.

2. Heard the learned counsel for the appellants-plaintiffs and the learned counsel for the respondents-defendants, apart from perusing the material available on record.

3. For the sake of convenience, the parties hereinafter are referred to as they were arrayed before the trial Court.

4. Learned counsel for the appellants-plaintiffs would contend that the findings of the first appellate court are contrary to law and the evidence; the first appellate court erred in holding that the defendants are in possession of the suit schedule property; the first appellate court erred in holding that the plaintiffs failed to discharge their burden in proving the truth or otherwise of Ex.A.1-ryotwari patta; the first appellate court ought to have seen that the earlier ryotwari patta dated 01.12.1988 granted in favour of the plaintiffs prevails and the subsequent patta dated 30.12.1988 and the village records are fabricated by the defendants;

and ultimately, prayed to allow the second appeal by setting aside the judgment and decree of the first appellate court.

5. On the other hand, learned counsel for the respondents-defendants would contend that to ascertain the genuineness of Ex.A.1-ryotwari patta, the first appellate court summoned relevant record from the revenue authorities and got marked them as Exs.X.1 to X.3; having considered Exs.X.1 to X.3 and other documents and the oral evidence adduced on behalf of the defendants, the first appellate court held that Ex.A.1 is a suspicious document and rightly held that the plaintiffs were not in possession of the suit schedule property and set aside the decree passed by the trial court in favour of the plaintiffs; the findings of the first appellate court are based on evidence and record; there are no grounds to interfere with the findings of the first appellate court; no substantial questions of law do arise for determination in this second appeal; and ultimately, prayed to dismiss the second appeal.

6. To adjudicate the *lis* and to answer the substantial questions of law, it is necessary to refer to the relevant pleadings of the parties.

(a) The plaintiffs filed the original suit for grant of permanent injunction restraining the defendants and their men from interfering with their peaceful possession and enjoyment over the suit schedule property. The plaintiffs contended that Kadakella village is an inam village and the erstwhile inamdars are one Katikara Simhagiri Dora and others. Appalaswamy-father of the 1st plaintiff, China Raminaidu @ Raminaidu-husband of the 2nd plaintiff, Sivunnaidu-husband of the 3rd plaintiff, Peda Raminaidu-husband of the 4th plaintiff and Laxmana-father of the 5th plaintiff were erstwhile tenants under the original inamdar under T.L.No.2644 in Block Sy.No.74 locally known as 'Goudu polam' and a patta was granted for 2/3rd share in their favour after the advent of Inam Abolition and Conversion into Ryotwari Act by the Deputy Tahsildar, Palakonda

and patta was granted for 1/4th share in favour of the original owner. The plaintiffs were given lands covered by Sy.No.111/1 of an extent of Ac.1-00; Sy.No.111/3 of an extent of Ac.0-15 cents and Sy.No.111/5 of an extent of Acs.1-25 cents towards their 2/3rd share and the land is situated at Kadakella. Besides that land, the 1st plaintiff was also given a rough patta by Inams Deputy Tahsildar on 01.12.1988 towards his exclusive share of 2/3rd wetland covered by Sy.No.111/6 of an extent of Ac.0-17 cents. The plaintiffs have been paying land revenue to the government since long time and they have been enjoying the said land and the defendants have nothing to do with the suit schedule land.

(b) The 1st defendant filed written statement, which was adopted by defendants 2 and 3, denying all the averments made in the plaint and contended that Kadakella village is an inam village and one Katikara Simhagiri Dora was the inamdar. The documents filed by the plaintiffs do not relate to the suit schedule land and the suit schedule land was in possession and enjoyment of the 1st plaintiff. Ryotwari patta dated 31.12.1988 was given in favour of the 1st defendant for the suit schedule lands and some other lands by the Deputy Tahsildar (Inams), Palakonda. The 1st defendant has been paying land revenue to the government for the said land and his name was incorporated in the cultivation account. Ultimately, prayed to dismiss the suit.

(c) Basing on the pleadings, the trial Court framed the following issues:

- 1) Whether the plaintiffs have got right or possession over the plaint schedule land?
- 2) Whether the plaintiffs are entitled for permanent injunction as prayed for?
- 3) Whether the defendants are the owners and in possession of the plaint schedule land?
- 4) To what relief?

(d) Basing the evidence of P.Ws.1 to 3 and the documents Exs.A.1 to A.8 marked on behalf of the plaintiffs and the evidence of D.Ws.1 and 2 and the documents Exs.B.1 to B.5 marked on behalf of the defendants, the trial Court held that the plaintiffs are in possession and enjoyment of the suit schedule land since long time and the defendants taking advantage of granting patta for the similar land, have been trying to dispel and dispossess the plaintiffs from the suit schedule land and ultimately, decreed the suit granting permanent injunction in favour of the plaintiff, vide judgment and decree dated 30.07.1999. Aggrieved by the said judgment and decree of the trial Court, the defendants preferred A.S. No.39 of 1999 and the first appellate court, after appreciating the evidence on record and after marking Exs.X.1 to X.3 as additional evidence, *vide* decree and judgment dated 23.02.2001, allowed the appeal by setting aside the judgment and decree passed by the trial Court. Questioning the said judgment and decree passed by the first appellate court, the plaintiffs filed this second appeal.

7. While admitting this second appeal on 26.04.2001, this Court framed the following substantial questions of law for determination:

(a) Whether the appellate court is justified in summoning the revenue records at the instance of the respondents when they fail to summon them to produce before the trial court without any reason whatsoever?

(b) Whether the cultivation accounts (No.2 adangal) filed by the respondents for the year 1991 dated 06.01.1993 are to be believed as against the cultivation account (No.2 adangal) filed by the appellants for the year 1981 to 88 and would it not throw a doubt that the same are obtained after institution of suit?

(c) Whether the appellate court is justified in accepting the cultivation accounts (No.2 agandal) for the fasli 1401 filed by the respondents as against the cultivation accounts for the faslis 1392 to 1398 filed by the appellants?

8. There cannot be any dispute that under the amended Section 100 C.P.C., a party aggrieved by the decree passed by the first appellate court has no absolute right of appeal. He can neither challenge the decree on a question of fact or on a question of law. The second appeal lies only where the High Court is satisfied that the case involves a substantial question of law. The word 'substantial' as qualifying 'question of law', means and conveys of having substance, essential, real, of sound worth, important, considerable, fairly arguable. A substantial question of law should directly and substantially affect the rights of the parties. A question of law can be said to be substantial between the parties if the decision in appeal turns one way or the other on the particular view of law. But, if the question does not affect the decision, it cannot be said to be substantial question between the parties. Recording a finding without any evidence on record; disregard or non-consideration of relevant or admissible evidence; taking into consideration irrelevant or inadmissible evidence; perverse findings are some of the questions, which involve substantial questions of law.

9. The record reveals that both the parties have contended that ryotwari pattas were granted in their favour in respect of suit schedule land by the revenue authorities and they are in continuous possession and enjoyment of the suit schedule property. One party is alleging illegal interference by the other party. For the relief of perpetual injunction, the plaintiffs have to prove *prima facie* case and balance of convenience in their favour. The plaintiffs have got marked Ex.A1-ryotwari patta to show that they were granted ryotwari patta by the revenue authorities. The defendants have denied the said documents and contended that they were granted Exs.B.1 and B.2-ryotwari pattas by the revenue authorities in respect of the suit schedule land. In view of these contentions, the first appellate court had summoned the revenue records to find out with regard to the issue of ryotwari pattas in respect of the suit schedule land.

On production of the revenue records by the authorities concerned, Exs.X.1 to X.3 were marked by the first appellate court. On verification of Ex.X.1-photocopy of survey land register, Sy.Nos.111/1, 3, 5 and 6 measuring HO-40-0, HO-06-05, HO-46-0 and HO-7-0 respectively were assigned to Akkena Satyamnaidu, son of Appalanaidu and those lands were comprised in block Sy.No.74 of Kadakella village. Ex.X.2-photocopy of 10(1) account reveals that Akkena Satyanarayana was shown as pattedar for Sy.Nos.111/1, 3, 5, 6 and 9. Column No.13 of Ex.X.3-photocopy of adangal for the fasli 1403 reveals that Akkena Satyamnaidu (D.1) was shown as enjoyer of those properties. So, the entries mentioned in Exs.X.1 to X.3 falsify the issue of Ex.A.1-ryotwari patta granted in favour of the plaintiffs. Further, the oral and documentary evidence adduced on behalf of the defendants also falsifies the genuineness of Ex.A.1-ryotwari patta granted in favour of the plaintiffs. In the other documents marked on behalf of the plaintiffs, i.e., Exs.A.4 to A.6, there is no mention of survey numbers. The defendants made out *prima facie* case and their possession over the suit schedule property. These aspects were elaborately dealt with by the first appellate court and recorded finding in favour of the defendants. When the defendants have proved their possession over the suit schedule property and also the grant of ryotwari patta in their favour in respect of the suit schedule property, the first appellate court rightly dismissed the suit filed by the plaintiffs and recorded finding in favour of the defendants. All the contentions raised before this Court are the factual aspects of the case, particularly the grant of ryotwari patta and possession over the suit schedule property. These factual aspects are all elaborately dealt with by the first appellate court. There are no substantial questions of law do arise for determination in this second appeal. There are no grounds to interfere with the findings of the first appellate court.

10. It is appropriate to state that under Section 100 of the C.P.C., the jurisdiction of the High Court to interfere with the judgment of the Court below is

confined to substantial question of law. The findings recorded with regard to the factual aspects by the first appellate court are final. Those findings of facts are not amenable to the jurisdiction of this Court by way of second appeal. The first appellate court had elaborately dealt with regard to the possession of the defendants over the suit schedule property. In the circumstances of the case, this Court cannot re-appreciate the evidence and arrive at a different conclusion. Neither inadmissible evidence has been considered nor admissible evidence not acted upon. Viewing from any angle, no question of law much less substantial question of law does arise for determination in this second appeal. Therefore, this second appeal is devoid of merit and is liable to be dismissed.

11. In the result, the Second Appeal is dismissed confirming the judgment and decree dated 23.02.2001 passed in A.S. No.39 of 1999 on the file of the Senior Civil Judge, Rajam, Vizianagaram District. Interim order granted on 26.04.2001 in C.M.P. No.8831 of 2001 stands vacated and Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

Date: 27.09.2018
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Dr. SHAMEEM AKTHER, J