

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

SECOND APPEAL No.1339 of 2003

JUDGMENT:

The appellants to the second appeal are appellant Nos.1 to 5 of the first appeal of whom from death of 1st appellant, his wife as 6th appellant brought on record before the first appellate Court in A.S.No.65 of 1997, are defendant Nos.1 to 5 in O.S.No.86 of 1984 on the file of the II Additional Senior Civil Judge, Warangal. One Rajireddy, the second appeal sole respondent/plaintiff since died and his two daughters brought on record as per orders in SAMP.No.12 of 2015 dated 14.07.2015.

The suit filed was for the relief of vacant possession from the defendants of the suit property with past and future profits with the claim by the sole plaintiff Raji Reddy as owner with the claim of purchase under unregistered sale deed dated 05.11.1965 from one Ananthula Papaiah and that same was validated by certificate issued under Section 50-B of AP (TA) Tenancy and Agricultural Land Act 1950 (for short 'the Act') on 21.03.1972 and to avoid complications plaintiff got executed document dated 15.02.1966 from Pingile Purusotham Reddy who claim possessory interest over the suit property viz., Ac.14.02 gts in S.No.1 of Karkapally Village, Mulugu Taluk/Mandal, Warangal District, within the boundaries described, that ever since plaintiff in possession till he was dispossessed by the 1st defendant Chunduru Venkateshwar Rao in collusion with village patwari D.Seshaiah and despite plaintiff's application said patwari did not record ownership and possession in the pahanies in favour of the plaintiff for the suit land and said patwari obtained signatures of plaintiff on several blank papers

and retained with him for using them in validation proceedings and he made middle with his rights in the suit land with the help of those papers.

The 2nd defendant filed written statement and defendant Nos.1, 3 to 5 adopted the same which speaks while denying the plaint averments including any right and entitlement of the plaintiff over the suit property and by showing Ananthula Papaiah died in the year 1956 and there is no question of his participation in Section 50-B proceedings of the Act 1950 for issuance of any validation certificate thereunder which may be if at all obtained by misrepresentation that no way binds defendants for they are not even parties to it. It is further averred of 1st defendant purchased the suit land from the original owner Edunuthula @ Ananthula Purusotham Reddy S/o. Ananthula Papaiah under contract and obtained registered sale deed on 05.05.1984 which speaks the contractor-1st defendant entered possession thereunder and as such plaintiff has no right or title in the suit land and the 1st defendant is a bonafide purchaser for value and suit is liable to be dismissed. The trial Court therefrom framed the issues as to whether the plaintiff by claim of purchase from Papaiah under unregistered sale deed dated 05.11.1965 came into possession of the suit land by obtaining sale deed from Purusotham Reddy later on 15.02.1966 and if so was dispossessed by defendants in August 1974 (10 years prior to the filing of the suit) and entitled to any profits past and future and to what amount. Whether the 1st defendant purchased the suit land from Purusotham Reddy in 1973 and was put in possession covered by subsequent sale deed dated 05.05.1984 in confirmation of the same and as bonafide

purchaser for value and got right thereunder and the suit is liable to be dismissed with exemplary costs and to what relief.

In the course of trial, on behalf of the plaintiff, himself came to witness box as PW.1 and cause examined 6 more witnesses and placed reliance on Exs.A1 to A31 where neither the so called simple sale deed dated 05.11.1965 nor another sale deed dated 15.02.1966 were marked. On behalf of defendants, 2nd defendant S/o of the 1st defendant came to witness box as DW.1 and 4 more witnesses i.e., DWs.2 to 5 were examined and Exs.B1 to B35 were marked including the registered sale deed dated 05.05.1984-Ex.B31, the trial Court ultimately dismissed the suit. The unsuccessful plaintiff Raji Reddy filed A.S.No.65 of 1997 where during pendency 1st defendant/1st respondent Venkateshwar Rao died and his wife Subbayamma also came on record as 6th respondent as referred supra. The lower appellate Court allowed the appeal in favour of the plaintiff by ordering eviction granting 3 months time and by giving liberty to file application for determination of profits and with costs. Aggrieved thereby the defendants/respondents to the suit and first appeal, preferred this second appeal by raising the grounds in the second appeal that the reversal findings of the lower appellate Court are contrary to law and facts in decreeing the suit by allowing the appeal instead of dismissal of the appeal confirming the trial Court's dismissal decree and judgment of the suit claim of sole plaintiff for the reason the 1st defendant purchased the property and as bonafide purchaser in possession and enjoyment right from 1973 and the allegation of trespass in 1974 is false and if at all there is any so called simple sale deed and transfer deed of 1965-66 not seen the

light no way relate to suit land for Ananthula Papaiah died on 03.09.1956 as can be seen from Ex.B21 for no question of his executing simple sale deed dated 05.11.1965 arise and the validation certificate dated 21.03.1972 was obtained by fraud from Papaiah died on 03.09.1956 and the lower appellate Courts finding of tampering of records is perverse and based on the manipulated document of so called validation certificate of 21.03.1972 under Section 50-B of the Act 1950 the suit wont lie for there is no title or right in favour of the plaintiff much less at any point of time to claim alleged dispossession apart from there is presumption backwards in favour of the defendants and even Pingile Purusotham Reddy to execute any alleged sale deed dated 05.11.1965 not seen light of the day has no right or title that was not properly appreciated by the lower appellate Court.

From the above, the Second appeal though was admitted initially on 21.07.2004 by mentioning simply grounds 12 & 14 involve substantial questions of law without formulating actual substantial questions of law if any this Court on 03.04.2018 formulated the following substantial questions of law since involved and taken up the appeal for hearing therefrom:

1) Whether Ananthula Papaiah as with alias name Edunoothula Papiiah and if so he died on 03.09.1956 and not subsequent to 05.11.1965 as shown in Ex.B.21 and if so the unregistered simple sale deed, dated 05.11.1965, said to have been executed by Ananthula Papaiah is not true and genuine document and the consequential certificate obtained referring to it under Section 50 B of the A.P. (T.A.) Tenancy and Agricultural Lands Act, 1950, is invalid and unenforceable including to obtain any

document from PW.5-P. Purushotham Reddy (Ex.A.32 of the First Appeal)?

2) Pursuant to the so-called Section 50 B certificate or the unregistered sale deed, whether the so-called vendee (Plaintiff) since died by the Legal Representatives-respondent Nos.2 and 3 of the Second Appeal is in possession and with what evidence including as to drawing of any presumption backward or forward, as the case may be?

3) Whether the reversal finding of the lower appellate Court decreeing the plaintiff's suit setting aside the trial Court's judgment is perverse and unsustainable?

4) To what result?

Heard both sides at length and perused the material on record.

The trial Court in its dismissal judgment dated 15.07.1997 in O.S.No.86 of 1984 observed with reference to evidence placed on record referred supra that plaintiff-PW.1 besides oral evidence of PWs.2 to 5 placed reliance mainly on Section 50-B certificate dated 21.03.1972 covered by Ex.A15 and PW.5 is Pingile Purusotham Reddy, whose signature is Ex.A16 on the so called unregistered sale deed dated 05.11.1965. Exs.A4 to A6 are pahanies of the years 1970-71 to 1972-73 only showing the possession and PW.2's evidence is only of PW.5-Pingali Purusotham Reddy executed so called sale deed and the signature therein is Ex.A16 is of no relevancy, PW.5 himself came to witness box speaking of the signature for the document not admissible not marked. PW.3 deposed of his so called presence when plaintiff was put in possession by Ananthula Papaiah having sold the suit land to

plaintiff. It is not even the plea borne by plaintiff averments and that document not even seen light of the day during trial admittedly. What PW.4 in similar lines to PW.3 deposed and in further saying the dispute raised by PW.5 regarding the price and plaintiff obtained from PW.5 a document which contains Ex.A16 signature which is 40 acres, in which the suit land is part same also not borne by pleadings much less covered by evidence of PW.1 or PW.2 even. According to the defendants, said Ananthula Papaiah is no other than Edunuthula Papaiah who died in the year 1956 and DW.5 is grandson of said Edunuthula Papaiah and DW.5 in his evidence stated their surname as Edunuthula and they are also known as Ananthula. PW.5 states he purchased the suit land from Edunuthula Papi Reddy and in cross examination says he does not know Ananthula Papaiah personally but heard his name and about he worked as police patel and he did not disclaim knowledge about his death in 1956. Ex.B21 is CC of order of Deputy Collector, Warangal, granting vathan of Asaldar police patel of Burrakayalgudam in favour of Edunuthula Purusotham Reddy father of DW.5 and said Ex.B21 clearly shows since Edunuthula Papaiah died on 03.09.1956 and the evidence of DW.5 coupled with this Ex.B21 clearly proves Edunuthula Papaiah @ Ananthula Papaiah worked as police patel. The so called sale deed executed by Ananthula Papaiah in favour of plaintiff not filed and plaintiff did not cause examine sons or grand sons of Ananthula Papaiah to prove Ananthula Papaiah really sold the suit land in favour of the plaintiff, but for placing reliance on Ex.A15 so called Section 50-B certificate as if conclusive proof of title in favour of plaintiff with no need further to prove the same, much less by examination of any

legal heirs of Ananthula Papaiah or to exhibit the earlier sale deed or simple sale/agreement showing purchase by plaintiff from Ananthula Papaiah by filing original document and to cause admit for collateral purpose on payment of stamp duty and penalty. No doubt, plaintiff placed reliance on the judgment of single bench of this Court in **K.Chandraiah Vs. M.Taramma**¹ of alienee obtained certificate under Section 50-B of the Act 1950 based on earlier sale or sale agreement, once exhibited the certificate referring it, need not file that document of sale/agreement. Here on facts under Ex.B19, Tahsildar refused to recognize so called Ex.A15 certificate under Section 50-B of the Act and further held by Tahsildar of plaintiff produced a false affidavit before Tahsildar on 14.03.1972 and obtained said certificate. The trial Court therefrom observed the non-filing of the original simple sale, said to have been executed by Ananthula Papaiah, is fatal and thereby no credence can be given to Ex.A15 from the genuineness of Ex.A15 certificate is in cloud from Ex.B19, that too when Ananthula Papaiah and Edunuthula Papaiah is one and the same and he died on 03.09.1956 and that is proved from Ex.B21 and evidence of PW.5 and the Tahsildar in Ex.B19 dated 31.05.1984 after due enquiry by Tahsildar after notice under Ex.B22 that also served even on plaintiff, thereby refused to recognize Ex.A15 for the same obtained against a dead person.

The trial Court further observed of Exs.B17 & B14 voters list of 1965-70 of assembly elections in respect of Karkapally Village, no way reflects the name of Ananthula Papaiah, if alive during 1965 and later up to 1970, too and that also substantiates Ex.B21

¹ 1979 (2) APLJ 17

certificate issued, by that also strengthens Edunuthula Papaiah died on 03.09.1956. The trial Court further observed the kasra pahani of the year 1964-66 covered by the Ex.A1 records the name of one Edunuthula Papi Reddy as owner of the land and Pingile Purusotham Reddy-PW.5 as kabjadar/cultivator. PW.5 also stated in his evidence in chief of he purchased the land from Edunuthula Papi Reddy for PW.5 to state his alleged purchase of sale from Edunuthula Papi Reddy, there is no evidence much less any certificate under Section 50-B of the Act 1950, but for his name in Ex.A1 kasra pahani reflects as kabjadar of the land registered in the name of Edunuthula Papi Reddy so also in Ex.A2 pahanies of 1955-56 to 1957-58 as derina kabja long possession and in fact Pingile Kodanda Rami Reddy father of PW.5 was recorded as cultivator in Ex.A3 CC of pahani of 1969-70, which could not be had he that is PW.5 purchased from Edunuthula Papi Reddy, but for he or his father under Edunuthula Papi Reddy cultivated for recorded in the possession column as in possession by mentioning of Kabjadar to say from Exs.A1 to A3 no title or ownership lies in favour of PW.5 much less for plaintiff to claim from Exs.A4 to A6 pahanies of 1970-71 to 1972-73 from mere recording the name of the plaintiff. It is observed that the material document dated 15.02.1966 not seen light of the day much less filed with plaint, and it was only on 03.08.1994 the plaintiff filed the so called document, the signature of PW.5 marked as Ex.A16 only after long delay with no explanation for earlier non-filing, though it is a suit document practically, that too on plain paper unstamped and unregistered to give no any credence as held in **Davunath Singh**

Vs. Debendranath². In fact such an invalid transaction cannot be validated by obtaining certificate under Section 50-B of the Act as held in **Ushanna Vs. Sambu Goud**³ for same cannot convey title and possession as lawful and not covered by doctrine of part performance to the rescue of such purchasers, much less to claim any possessory title against the defendants to recover possession thereunder for contents cannot be used for collateral purpose for want of registration otherwise for such a document no way conveys any right and title to rely, leave about any records of possession of plaintiff from Exs.A4 to A6 for 3 fasli no way enable to recover possession from defendants thereunder, that too when the defendants are claiming of purchase in 1973 and later obtained regular sale deed on 05.05.1984 (Ex.B31) and the pahanies Exs.B4 to B14 of the years 1973-74 to 1983-84 all show Ananthula Papaiah as owner and 1st defendant as possessor. The evidence of DW.2 besides D.2 as DW.1, proves the due execution by his attestation of Ex.B31 sale deed of 1984. It is observed the so called dispossession of plaintiff by the 1st defendant in 1974 is with no explanation for waiting till filing of the suit in 1984 and not taking steps for recovery of possession all through if at all was in possession for no explanation of the lengthy silence despite alleged dispossession. The trial Court therefrom held that the plaintiff failed to prove any purchase from Edunuthula or Ananthula Papaiah in 1965 or obtaining of any document in 1966 from PW.5 for no validation of it by regularization under Ex.B21 under Section 50-B of that Act that too as can be seen from Ex.B19 Tahsildar refused to recognize the Ex.B21, leave apart if at all

² AIR 1930 Patna 78

³ 1985 (3) APLJ 32

there is any such transaction and existence of the documents of 1965-66 neither PW.5 nor his father Kodandarami Reddy declared the suit land in their declaration filed under Agricultural Lands Ceiling Act vide Ex.B29 and Ex.B30 documents or their declarations which show neither PW.5 nor his farther got any right over the property nor claimed any right over it including by showing in the land ceiling declaration as part of their holdings. It is also observed Exs.A23 to A31 pahanies are postliti after filing of the suit, to give no any credence. In fact the paisalpatti of 1984-85 shows the 1st defendant was in possession of the suit land and his name mutated as having right over it in thereby holding the plaintiff is not entitled to the relief of possession much less in consequential reliefs.

The reversal judgment of the lower appellate Court speaks by formulation of points as to whether the plaintiff/appellant established the title to the suit property and of he was dispossessed from the same in August 1974 to get the relief as prayed for in the plaint so to allow the appeal; that Ex.A15 certificate under Section 50-B of the Act as of 1972 shows old survey No.197 for new survey No.1 as belonged to one Edunuthula Papi Reddy and the case of the plaintiff is from him Pingile Purusotham Reddy acquired the suit land and thereby mentioned in Ex.A1 kasra pahani as occupier in 1954-55 and he was shown as occupier till 1970 as can be seen from Ex.A3 though the pattedar name of Edunuthula Papi Reddy originally under Ex.A1, later shown in Ex.A3 as Ananthula Papaiah, Ex.B27 if considered of 1963-64 co-relates old with new survey numbers supra mutated in the name of Ananthula Papaiah. It is from Exs.A4 to A7 are

1970-71 to 1973-74 pahanies, the name of the plaintiff shown as cultivator and the pattedar as Ananthula Papaiah and Ex.A15 validation certificate under Section 50-B of the Act was dated 21.03.1972 showing validation of the transfer of the land in favour of the plaintiff by Ananthula Papaiah S/o Mallaiah. No doubt under Ex.B19, 1st defendant's name was mutated by Tahsildar, Mulugu, by saying Section 50-B certificate under Ex.A15 dated 21.03.1972 was outcome of false affidavit given by the plaintiff before Tahsildar on 14.03.1972 for issuing later on 21.03.1972 under Ex.A15. As per Section 50-B of the Act, only Collector is vested with revisional powers including even suo motu besides there is appeal remedy to the aggrieved and if at all the defendants are aggrieved by Ex.A15 they should have challenged by filing revision/appeal. The order of the Tahsildar, Mulugu, dated 31.05.1984 declaring Ex.A15 certificate as false, is after filing of the suit on 26.04.1984 and the Tahsildar based for Ex.B19-the statement given by Edunuthula Purusotham Reddy under Ex.B18, as 1st defendant claims purchase of the land from him. The appellate Court therefrom held Tahsildar had no authority to declare Ex.A15 as false document much less by passing order under Ex.B19 that too when pahanies under Ex.A7 of the year 1973-74 shows striking of the name of the plaintiff and adding of the name of the 1st defendant as cultivator without mentioning any reasons for so doing and the Ex.B1 sale deed dated 05.05.1984 obtained by the 1st defendant from Edunuthula Purusotham Reddy was within 10 days after filing of the suit O.S.No.86 of 1984 dated 26.04.1984, including to cause mutate his name for fasli 1983-84 (fasli as from June to June) mere deleting the name of the plaintiff

and entering the name of the 1st defendant does not confer any right on 1st defendant over suit property. It is observed that Edunuthula Purusotham Reddy S/o Edunuthula Papi Reddy @ Edunuthula Papaiah has no right over the property even by the year 1973 to sell to the 1st defendant for later execution of Ex.B31 sale deed on 05.05.1984 for the reason Pingile people that is PW.5 and his father acquired the land from Edunuthula people even earlier to it (there is no basis for the appellate Court to say so for no document even and emphasis is mine). The appellate Court therefrom held the plaintiff filed valid and acceptable documentary evidence in proving his entitlement, having purchased the property from Ananthula Papaiah in November 1965 and came into possession and enjoyment and continued till 1974 and pleaded dispossession then by 1st defendant and DW.5-Edunuthula Purusotham Reddy also claimed his name as Vijender Reddy and did not show any name @ Ananthula and even Ex.B1 executed as Edunuthula Purusotham Reddy and not referred as Ananthula as surname and Ex.A27 letter of DW.5 addressed to the plaintiff in saying they have no landed property in Karkapally village where the suit land situated to say Edunuthula people have no surname as Ananthula therefrom and Pingile people acquired in 1954-55. The plaintiff/appellants filed registered sale deed of fasli 1349 as additional evidence in appeal executed by Edunuthula Papi Reddy whose father's name shows as Venkata Narsaiah whereas Ananthula Papaiah is son of Mallaiah and what the defendants claimed through DW.5 of Edunuthula Vijendar Reddy S/o Purusotham Reddy is a different person it appears. What PW.5 deposed of purchased property from Edunuthula Papi Reddy not

challenged even by suggestion of Edunuthula Papi Reddy and Ananthula Papaiah were one and the same. The appellate Court further held the purchase by 1st defendant in 1973 and came into possession and pursuant thereto and obtaining sale deed under Ex.B31 on 05.05.1984 mentions in the sale deed consideration of Rs.14,250/- and advance in 1973 mentions Rs.2,000/- and putting question of itself as to not probable of put in possession of about 14 acres with such small advance. The lower appellate Court observed regarding Ex.B20 elders settlement document deposited through DW.2 one of the elders shows from the distance between the signature and lines of writing not genuine apart from recital mentions purchase from Pingile Madanmohan Reddy and even coming to Ex.B22 which is note dated 23.05.1984 of Tahsildar Office that Edunuthula Papaiah and Ananthula Papaiah are not one and the same also if at all from Edunuthula Papaiah of Regonda and Purusotham Reddy claimed as his son and there is endorsement of Edunuthula Papaiah died in the year 1956 as per serial No.4 and serial No.5 shows Ananthula Papaiah of Karkapally, patwari endorsed of the transfer was not in the village and if Ananthula Papaiah and Edunuthula Papaiah are one and the same besides from issuing of notice to both residents of different villages and those endorsements does not arise. The lower appellate Court with these and Ex.A4 land revenue passbooks and A12 verification report of LAO, Ex.A13 certificate copy of Tribunal order dated 29.04.1976 stated presumption backwards can be drawn and given credence to the Ex.A21 certificate under Section 50-B of the Act in 1972 and pahanies entries in favour of the plaintiff from 1973-74 referred supra stated

defendants failed to establish their right over the suit property and plaintiff is able to establish right over the suit property and thereby dismissal judgment of the trial Court is not correct.

In fact the lower appellate Court without marking additional evidence document by recording evidence, additional evidence if any with reference to it discussed the same which is not at all correct and an unmarked document even received as additional evidence placing reliance in its discretion as if proved is highly uncalled-for and unknown to law, though otherwise for the first appellate Court being the final fact finding Court the entire matter is at large and thereby the discussion at Para 22 of the lower appellate Court's judgment mainly referring to the unmarked additional evidence document of sale deed of 1349 fasli is by discussing the contents therein without bringing the same as evidence on record is unsustainable and the findings thereby are liable to be set aside by remanding the matter for the perversity in relying upon an unmarked document and discussing it in the judgment by the lower appellate Court, including based on it in coming to any finding of Edunuthula Papi Reddy and Ananthula Papaiah are not one and the same, and that too, the lower appellate Court in its judgment did not formulate the proper points for consideration arisen from the lis with reference to the grounds of appeal and findings of the trial Court in the appeal of the unsuccessful plaintiff by meeting the points in answering the same specifically with reasons. Further the lower appellate court did not give any reasons as to why the plaintiff kept quiet if at all dispossessed in 1974 till filing of the suit in the end of April 1984 and if so when not in possession where is the question of giving

credence to the pahanies under Exs.A4 to A6 of the years 1970-71 to 1973-74 particularly without even date and month mentioning when in 1974 dispossessed and how in 1973-74 pahani possession recorded. Further the lower appellate Court instead of saying in a suit for possession based on alleged title burden is on the plaintiff discussed as if defendants not proved though weakness of the defendants defence no way enhances the claim of the plaintiff nor lessen the burden of proof much less shifts without plaintiffs making out a case by preponderance of possibilities with certainty, and not on ifs and buts of entitlement over the property. Here the important aspect to be kept in mind is plaintiff to make out entitlement. There is no discussion by the lower appellate Court of the same was made out and therefrom to say burden shifted on the defendants to rebut even from the proposition laid down in **RVE Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple⁴**.

The lower appellate Court no doubt has to keep in mind that mere possibility of another view itself is not a ground for setting aside the trial Court's judgment, unless there is specific finding as to where the trial Court erred in its finding and arriving a conclusion to interfere therewith in arriving final result with reference to any such interference with specific finding from the entire matter at large, including under Order 41 Rule 33 CPC. Leave about the issuance of certificate under Section 50-B does not take away jurisdiction of the civil Court to adjudicate the question of title between the persons who are parties and non-parties to the said proceedings under Section 50-B of the Act, that too without

⁴ (2003) 8 SCC 752

ascertaining as to who are the parties to the proceedings and whether the persons who sold to the plaintiff were parties and they got title and whether the persons who sold to the 1st defendant were parties and got title and if so from whom the enquiry was conducted and as to both the persons Edunuthula Papi Reddy and Ananthula Papaiah one and the same or not from the evidence on record that too without proper discussion of the evidence of PW.5 and DW.5 respectively.

Having regard to the above, the Second Appeal is allowed and the lower appellate Court's judgment is set aside and the matter is remitted back to the lower appellate Court to give fresh disposal by properly formulating the relevant points for consideration including as to any requirement of additional evidence with reference to the so called document of sale of fasli 1359 by recording evidence with reference to it by it as contemplated by order 41 and Section 107 CPC and give fresh disposal preferably within six months from the date of receipt of this Judgment.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 12.06.2018
ska