

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

A.S.No.937 of 1995

JUDGMENT :

This appeal is filed challenging order dated 11.06.1995 passed by the agent to Government, East Godavari District, Kakinada in O.S.No.17 of 1986.

The appeal was initially filed by four appellants against one Chavalam Krishna Murthy. As per this Courts order dated 15.07.2014, the appeal abated as far as appellant Nos.1 to 3 are concerned. Therefore, it is the appellant No.4/defendant No.4, who is prosecuting the appeal filed against Chavalam Krishna Murthy.

The dispute in question pertains to a land measuring Acs.14.00 cents, which is described in the plaint along with the boundaries. This land is situated in Cheedipalem Village, East Godavari District. The suit is filed by one Chavalam Krishna Murthy, who is the sole respondent herein for a permanent injunction restraining the defendants, their men and agents from interfering with the plaintiff's possession and enjoyment of the suit schedule property. The said suit was allowed and a permanent injunction was granted. Questioning the said order, the present appeal is filed.

This Court has heard Sri Mangena Srirama Rao, learned counsel for the appellant and Sri Dantnu Srinivas, learned counsel for the respondent.

The appellants' arguments were heard on 05.07.2018 and the matter was adjourned to 13.07.2018 to hear the respondents, but there was no representation. On 16.07.2018, again brief submissions made on behalf of the appellant, but there was no representation for the respondent. Therefore, the matter was reserved for orders.

Learned counsel for the appellant argued that the evidence was not properly considered by the lower Court and that no opportunity given to the appellant to contest the matter. He also argued that the suit schedule property is not correctly described in the plaint.

As mentioned earlier, the sum and substance of the submission of the learned counsel for the appellant is that there was no opportunity for the appellant and that the evidence is not properly considered.

This Court has perused the original Judgment that is passed and also the records.

The plaint in O.S.No.17 of 1986 is filed for a permanent injunction. The averments in the plaint are based on the following documents. (1) the order passed in Crl.Appeal No.155 of 1979 dated 15.03.1980 which is passed by the Sessions Judge, East Godavari District. This appeal arises

out of the case filed in the Court in the Taluk Magistrate, Rampachodavaram, wherein the accused were convicted. In the course of the discussion of the order, the Principal Sessions Judge, East Godavari, clearly held that the suit land belongs to the first accused-Chavalam Pandudora and he is in possession of the property. Therefore, the appeal is allowed and the conviction in the lower Court is set aside. (2) The next order considered is the order in LTRP.No.339 of 1978. This is an order dated 23.04.1979 in a case filed by K.China Nagannadora against three people including Chavalam Pandudora. In the course of this order, it is clearly mentioned that the *lis* in favour of a non-tribal is allowed and set aside and petition schedule land is restored to respondent No.2. This is marked as Ex.A.2 in the case. Ex.A.3 is the order passed in appeal in CMA.No.107 of 1979, dated 04.07.1979. This is filed against the order in LTRP.No.339 of 1978 which is considered earlier. The agent to Government, Kakinada clearly held that there are no merits in the application and that therefore, the appeal is dismissed. Ax.A.4 is the certified copy of the order passed in O.S.No.5 of 1984, wherein the suit filed was dismissed. The suit is filed against Chavalam Krishna Murthy.

In addition, in the present suit O.S.No.17 of 1986 Chavalam Krishna Murthydora, S/o Chavalam Pandudora gave evidence. He clearly deposed about the facts of the case and marked Exs.A.1 to A.5 including a study certificate and

legal heir certificate. He prayed for an injunction restraining the respondents from interfering with his possession. This evidence was followed by the evidence of PW.2, who also deposed that the plaint scheduled land belongs to plaintiff and his fore-fathers. There is no cross-examination either for PW.1 or PW.2. Therefore, the evidence given is virtually unchallenged.

After, considering all these aspects including the unchallenged testimony of the witness, the lower Court came to a conclusion that the respondent/appellant has proved his case.

In the course of the oral submissions, nothing contrary was pointed out which would entitle this Court or which would justify this Court in interfering the impugned order. The impugned order is a reasoned order passed after considering the available material. The failure of the defendants to cross-examine the witness has left their testimony unchallenged.

This Court is, therefore, of the opinion that there are no grounds whatsoever to interfere in this case.

The appeal is, therefore, dismissed. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S.SOMAYAJULU, J

Date: .09.2018

KLP

