

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

A.S.No.1068 of 1999

JUDGMENT:

This appeal is filed against the judgment and decree dated 09.02.1999 in O.S.No.57 of 1993 passed by the Principal Senior Civil Judge, Srikakulam.

2. For the sake of convenience, the parties are referred to as plaintiffs and defendants only.

3. The suit is filed by 15 plaintiffs who were allotted the land through D-form pattas by the Government of Andhra Pradesh. The fifth plaintiff was allotted an extent of Ac.1.00 cents, whereas other 14 plaintiffs were allotted Ac.3.00 cents of land each. The plaintiffs stated that they have been in possession of the respective extents and enjoying the same. Just prior to the suit, the plaintiffs stated that the defendants have started to make attempts to cancel the pattas at the instance of the enemies of the plaintiffs and therefore the suit is filed for permanent injunction restraining the defenants from interfering with the plaintiffs' possession by way of cancellation of D-form pattas.

4. The second defendant/Mandal Revenue Officer, Ranasthalam Mandal filed his written statement denying the plaint averments. The allegation of the defendants is that all the plaintiffs alienated their land to one Sri G. Suryanarayana Raju. The said alienation is contrary to the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act

No.9 of 1977 under which the land was allotted. Therefore, the Government has right to cancel the pattas. The Government also stated that the suit is premature, as the actual cancellation has not taken place.

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

- i) Whether the suit is bad for want of Section-80 CPC notice?
- ii) Whether the Court has no jurisdiction to try the suit?
- iii) Whether the suit is premature and is not maintainable?
- iv) Whether this suit is not maintainable on behalf of all the plaintiffs?
- v) Whether the plaintiffs are in possession of schedule properties?
- vi) Whether the plaintiffs are entitled to the perpetual injunction as prayed for? and
- vii) To what relief?

6. For the plaintiffs, 11 witnesses were examined as PWs.1 to 11 and Exs.A.1 to A.52 were marked. For the defendants, 5 witnesses were examined as DWs.1 to 5 and Exs.B.1 to B.44 were marked. Ex.X.1 was also marked.

7. After a prolonged hearing and trial, the suit was dismissed by the impugned order resulting in the present appeal.

8. This Court has heard Sri M.V. Durga Prasad, learned counsel for the appellants/plaintiffs. None appeared for the respondents/defendants.

9. The learned counsel for the appellants/ plaintiffs argued that the order of the lower Court is wrong and that the Court committed a fundamental error in not decreeing the suit as prayed for. He also relied upon case laws, the Board Standing Orders (BSO) to show that the Government cannot act arbitrarily and can resume the land within three years only from the date of assignment, even if the appellants committed any fraud in obtaining D-form pattas. For this proposition, the learned counsel relied upon **P. Anasuyamma v. Commissioner of Land Revenue**¹ and contended that under the Board Standing Order-15, cancellation of assignment can only be made within three years. He also relied upon **Sarup Singh v. Union of India**² wherein a Division Bench of the High Court of Punjab and Haryana at Chandigarh held that the plaintiffs who are entitled to protection by a permanent injunction even if preliminary proceedings are carried out for cancellation of the assignment etc. He also argued that as the judgment of the lower Court is totally wrong, it can be challenged at any time and even in collateral proceedings also. For this proposition, he relied upon **Sarup Singh's** case (2 supra).

10. The question that arises for consideration before this Court in the present appeal is whether the impugned judgment and decree is correct or not?

¹ 1994 (2) ALT 329

² (2011) 11 SCC 198

11. The lower Court has framed seven issues in this case of which the most important are Issue Nos.3, 5 and 6. These issues are the crux of the matter, since they focused on the prayer of the plaintiffs for permanent injunction. It is the settled law that a plaintiff who is in the legal possession, is entitled to protection from forceful dispossession. The question, however, is the prayer in this suit and whether the plaintiffs are entitled to perpetual injunction as prayed for in this suit. The prayer in the suit in para-VI (1) is as under:

“The plaintiffs therefore humbly pray that the Hon’ble Court may be pleased to pass a decree in favour of the plaintiffs and against the defendants for a permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit schedule lands by way of cancellation of D.form pattas issued by them or in any other way in the ends of justice.”

Therefore, a reading of the plaint makes it clear that the prayer is not for a mere injunction against the forceful eviction or protection of the possession of the plaintiffs against highhanded eviction but is an injunction restraining the defendants from cancelling the D-form pattas. In fact, para-III (d) of the plaint also makes it clear that the injunction is sought restraining the defendants from cancelling the D-form pattas issued on 09.05.1992. Relying on this prayer, the lower Court observed that the plaintiffs are not entitled to a blanket order of injunction restraining the defendants from cancelling the pattas. Paras 15, 16 and 18 of the lower Court judgment are dealing with this issue.

12. The lower Court noticed in para-15 the prayer that is specifically made and held that the plaintiffs are not entitled to a blanket injunction against the defendants giving a go-by to the terms and conditions mentioned in the pattas. The lower Court observed held in para-16 of the judgment that the Government has the absolute right to cancel the pattas if the terms and conditions which are mentioned therein are violated. The lower Court also held that if at all the Government initiated proceedings cancelling the pattas and such proceedings are not correct as per law, the plaintiffs have the liberty to challenge the same. However, the lower Court held that it did not find any material from the plaintiffs site to hold that the defendants initiated proceedings in cancelling the D-form pattas illegally or highhandedly.

13. On the other hand, this Court noticed that a strenuous effort was made to challenge the manner in which the Government purported to act in cancellation of the pattas. The case law cited by the learned counsel for the appellants are to the effect that even in collateral proceedings patently illegal actions can be challenged. This Court agrees with the law laid down by the Hon'ble Supreme Court in **Sarup Singh's** case (2 supra) wherein it is held that the decree passed by a Court which lacked jurisdiction can be attacked or challenged either in execution or in the collateral proceedings. The Hon'ble Supreme Court held that such defect of jurisdiction strikes at the very root of the authority of a Court to pass an

order. Therefore, the learned counsel vehemently argued that this Court can go into these issues also.

14. However, this Court finds from a very careful reading of the judgment in **Sarup Singh's** case (2 supra) that the judgment pertains to an order passed by a Court without authority. In this case, there is no pleading or evidence that the government does not have the jurisdiction to cancel the pattas. There is no foundation laid in the pleading that the judgment is contrary to law. Even in the oral evidence, there are no basis on the points that are now urged in the course of oral submissions. The scope of the suit is also extremely narrow and the prayer is worded in such a way that the plaintiffs would get a blanket injunction against the defendants from cancelling the pattas. By venturing into the areas suggested by the learned counsel, this Court feels that it would be transgressing the limits laid down by the settled principles of law on pleadings and evidence in support of pleadings. Therefore, this Court does not wish to venture into the areas urged by the learned counsel for the appellants. This Court upholds the findings of the lower Court that a blanket injunction cannot be granted. If the plaintiffs are aggrieved by the actions of the revenue officials in cancellation of the pattas, they can seek appropriate remedies. The suit filed is thus premature. Therefore, this Court concurs with the findings of the lower Court on issue Nos.3, 5 & 6.

15. As far as issue No.1 is concerned, it was based on the contention that the suit is bad for want of Section-80 CPC notice. This Court finds that the lower Court has noticed that an application was filed in the lower Court for waiver of the Section-80 CPC notice and the same was allowed. Therefore, this issue does not survive for consideration.

16. Issue No.2 is an issue on the jurisdiction of the Court to entertain the suit. This Court finds that no point was raised in the lower Court that it did not have jurisdiction to entertain the suit that was filed. This Court agrees with the finding of the lower Court.

17. Similarly, with regard to issue No.4 also, the defendants contend that the suit is not maintainable, but they have neither pleaded nor introduced any evidence to show why the suit is not maintainable.

18. The learned counsel for the appellants also argued that his clients are entitled to an injunction since they are in possession of the property. Such an injunction could have been granted if the suit was a simple suit for injunction for protection of the possession of the suit schedule property. The entire endeavor of the plaintiffs is to secure an order against the cancellation of pattas. Even if all the plaintiffs are found to be in lawful possession, still if their actions are contrary to the terms and conditions of the pattas, the defendants have a right to cancel the assignments and resume possession as per law. This has been recognized by

the lower Court. Since there is no actual physical threat of dispossession as can be seen from the record, this Court is not inclined to grant any order protecting the possession of the suit schedule property.

19. For all the above reasons, this Court holds that the plaintiffs are not entitled to a relief of permanent injunction as prayed for. This Court concurs with the findings of the lower Court on all the issues that are raised. There are no merits in the appeal.

20. The appeal is accordingly dismissed. The plaintiffs are not entitled to a blanket injunction as prayed for. The judgment and decree dated 09.02.1999 in O.S.No.57 of 1993 passed by the Principal Senior Civil Judge, Srikakulam is confirmed. In the circumstances of the case, there shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 23.03.2018
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