

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Second Appeal No.860 of 1998

JUDGMENT:

This Second Appeal is preferred by the plaintiffs aggrieved by the judgment dated 28.02.1998 in AS No.16 of 1996 passed by I Additional District Judge, Chittoor, dismissing the appeal by confirming the judgment and decree dt.19.03.1984 passed by the Principal District Munsif, Tirupati, in O.S.No.702 of 1978 dismissing plaintiff's suit.

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

3 a) The plaintiffs filed the suit for declaration of their title and perpetual injunction in respect of plaint 'B' schedule properties pleading them as plaint 'A' schedule properties. Plaintiffs' case succinctly is that 1st plaintiff's father Lingaiah purchased half share in plaint 'A' schedule property under Ex.A.1—registered sale deed dt.09.06.1927 from Muthuku Papi Reddy and enjoyed the same till his death on 21.02.1973. He bequeathed his share in plaint 'A' schedule properties to 1st plaintiff under Ex.A12—unregistered will dt.15.02.1973. In the remaining half share of A schedule, the 2nd plaintiff purchased 3/8th share under Ex.A.2 sale deed dt.14.05.1964 and 3rd plaintiff purchased balance of 1/8th share under Ex.A.3 sale deed dt.29.10.1964 and thus plaintiffs are in peaceful possession and enjoyment of plaint A schedule properties in an extent of Ac.17-10cts.

b) The further case of plaintiffs is that B schedule properties are part of A schedule properties. The suit properties situated in Kallurupalyam Estate, was taken over by the Government under Estate Abolition Act, 1948 during survey and settlement operations which took place in or about 1958. Out of total extent of 17 Acres and odd, patta was granted only to an extent of Ac.11-75cts in the name of Lingaiah, the father of 1st plaintiff and one Muthuku Ranga Reddy. The remaining land i.e, B schedule covered by 5 plots including an extent of Ac.0-90cts in S.No.69 is concerned, the same was wrongly classified as poramboke due to wrong correlation of i) paimash numbers 27, 28, 30, 32, 42 and 49 to S.No.60; ii) paimash nos.55, 58 and 59 to S.No.69; iii) paimash no.39 to S.No.68/1. Instead, paimash nos.26, 29, 31, 33 ought to have been correlated to those survey numbers. When Lingaiah approached Survey and Settlement Authorities, they held that plaint B schedule property was not part of plaint A schedule and on the other hand, plaint B schedule property is a poramboke land vested in the Government and there was no wrong correlation of the said land and in respect of properties that were purchased by him, a Ryotwari patta for Ac.11-75cts was already granted to him. Inspite of the wrong classification, 1st plaintiff's father and thereafter the plaintiffs are in possession and enjoyment of plaint 'A' and 'B' schedule properties. Since the defendants tried to meddle with those properties, suit was filed.

c) The defendants 1 and 2 denied the plaintiffs case. They denied that the plaint B schedule is a part of plaint A schedule. They also denied the contention of plaintiffs that B schedule properties were

wrongly classified as tank bed poramboke. The defendants claimed that the plaint B schedule is the communal poramboke even during Inam Estates period and thereafter also it continued to be communal poramboke for the benefit of villagers for grazing purpose.

d) Initially the Government was not added as party. However, subsequently Government was added as 3rd defendant.

e) D.3 filed written statement and opposed the suit *inter alia* contending that the allegation of plaintiffs that they purchased plaint A schedule property was not correct. D.3 contended that paimash nos.26, 29, 31 and 33 are correlated to RS No.62/1 with a surveyed extent of Ac.11-75 cts and recognized as patta land of Lingaiah and another under patta no.998. Hence in respect of those paimash numbers Ryotwari patta was granted to them and their right does not extend beyond the boundaries of S.No.62/1. In that view of the matter, plaint A schedule is incorrectly described by the plaintiffs.

f) D.3 further contended that the plaintiffs were never in possession of S.Nos.60, 62/4, 68/1 and 69/1 covered by B schedule properties.

Their extents and corresponding paimash numbers are as follows:

S.No.	Correlation	Total extent	Registry
69	P.Nos.55 to 59	Ac.13-93 cts	Kondamarrivarikunta
60	27, 28, 30, 32, 42 and 49	Ac.13-60cts	Un-assessed Waste
62/4	8 part	Ac.0-45 cts	Un-assessed Waste
68/1	39	Ac.0-22 cts	Footpath.

The above correlation made by the survey and settlement authorities is correct and hence the contention of the plaintiffs that the above lands fall within the boundaries mentioned in their sale deeds is false. Except S.No.62/1, the plaintiffs have no right in respect of other lands. The defendants further contended that the classification made by the settlement authorities cannot be challenged in a civil court as it has no jurisdiction to impugn the classification. They also contended that the suit is barred by limitation. They further contended that the suit is not maintainable against D.3 without issuing notice under Section 80 CPC.

g) Basing on the above pleadings, the Trial Court framed the following issues:

- 1) *Whether the first plaintiff is entitled to half share in the plaint A schedule properties by virtue of a will dt.15.02.1973 executed by Lingaiah?*
- 2) *Whether the 2nd plaintiff purchased 3/8th share in the plaint A schedule properties under a sale deed dt.29.10.1964?*
- 3) *Whether the 3rd plaintiff purchased the remaining 1/8th share in plaint A schedule properties under a sale deed dt.14.05.1964?*
- 4) *Whether the plaintiffs and their predecessors-in-title have been in possession and enjoyment of the properties?*
- 5) *Whether the defendants attempted to interfere with plaintiffs' possession and enjoyment of the plaint B schedule properties?*
- 6) *Whether the plaintiffs and their predecessors-in-title have perfected their title by adverse possession to the plaint B schedule properties?*

- 7) *Whether the suit is bad for non joinder of Government as a party to the suit?*
- 8) *Whether the plaintiffs are entitled for declaration of title to the plaint B schedule properties and for permanent injunction against the defendants, as prayed for?*
- 9) *To what relief?*

h) The following additional issue was framed on 20.08.1990:

- 1) *Whether the sale deeds referred to in the plaint are valid?*
- 2) *Whether the plaint 'A' schedule in material particulars is incorrect and misleading?*
- 3) *Whether the correlation of P.Nos.55 to 59 to make to S.No.69, P.No.27, 28, 30, 32, 42 and P.No.39 to 68/1 by survey and settlement authorities is correct?*
- 4) *Whether the civil court is having jurisdiction to grant relief prayed to the plaintiff?*
- 5) *Whether the suit is barred by limitation?*
- 6) *Whether the suit is maintainable against the third defendant without notice under Section 80 CPC?*

i) The Trial Court dismissed the suit answering issues 1 to 6, 8 and additional issues 2 to 6 against the plaintiffs holding that 1st plaintiff could not prove Ex.A.12—will by examining the attestors; the 2nd and 3rd plaintiffs could not prove that they purchased the remaining half share under Exs.A.2 and A.3 by examining the attestors; the plaintiffs could not prove that themselves and their predecessors-in-title were in possession and enjoyment of plaint B schedule properties and they perfected their title by adverse possession; that the correlation made by the settlement authorities was correct and the same could not be

disproved by the plaintiffs; the Civil Court has no jurisdiction to grant the reliefs prayed for; the suit is barred by limitation and the same is not maintainable against 3rd defendant without issuing notice under Section 80 CPC.

j) Aggrieved, the plaintiffs preferred AS No.16/1996 and the learned I Additional District Judge, Chittoor, dismissed the said appeal confirming the findings of the Trial Court on all the issues except the additional issues 4 to 6. In respect of additional issue No.4 touching the jurisdiction of the Civil Court, the lower appellate Court basing on the decision of the Apex Court in *State of Tamil Nadu v. Ramalinga Samigal Madam*¹, held that Civil Court has jurisdiction to adjudicate upon the real nature of the land. In respect of additional issue No.5, it held that the revision preferred by the father of 1st plaintiff was dismissed on 28.12.1971 and the present suit was filed on 10.12.1973 i.e, within 3 years after the dismissal of revision by the Survey and Settlement Board of Revenue and hence the suit was within time. Regarding additional issue No.6, it held that since statutory notice under Section 80 CPC vide Ex.A.16, was issued to D.3, the suit is maintainable. Thus the lower Appellate Court held that inspite of holding additional issues 4 to 6 in favour of plaintiffs, still the appeal was liable to be dismissed.

Hence the Second Appeal at the instance of plaintiffs.

¹ AIR 1986 SC 794 = (1985) 4 SCC 10

4) While admitting the instant Second Appeal on 04.11.1998, the following substantial questions of law were framed by this Court:

- (i) *Whether the lower Appellate Court had arrived at correct conclusion in dismissing the suit having accepted the sale deeds and also in the light of long and undisturbed possession of the plaintiffs and their predecessors-in-title in view of the doctrine of tacking?*
- (ii) *Whether the courts below could have accepted and acted upon Ex.B.1 to disprove that there was no wrong cancellation as pleaded by the appellants especially when it was not properly proved and no evidence was adduced by the contesting respondents as to its correctness?*

5) Learned counsel for appellants filed a memo dated 17.08.2017 submitting that the appeal is not pressed against the unofficial respondents and confining the same against the Government (R.3).

6) Heard arguments of Sri P.V.Vidya Sagar, learned counsel for appellants and learned Government Pleader for Arbitration (Andhra Pradesh).

7) **Substantial Question No.1:** The case of plaintiffs is that they purchased plaint A schedule property under Exs.A.1 to A.3—sale deeds and the A schedule property is a Jeeraithi land and B schedule property which is part of A schedule property was wrongly classified as tank bed poramboke by the Authorities during survey and settlement operations conducted after abolition of the Inams Estate. It is their further case that despite such wrong classification, plaintiffs and their predecessors-in-title have been in continuous and uninterrupted possession of A

schedule property which includes B schedule property to the knowledge of the defendants and therefore they perfected their title by adverse possession also.

8) In this Second Appeal, the appellants/plaintiffs introduced the doctrine of tacking to their claim of adverse possession on the argument that the present plaintiffs and their predecessors-in-title have been continuously enjoying the suit schedule properties adverse to the knowledge and interest of the defendants and therefore the successive enjoyment by their predecessors can be tacked to the adverse possession of the present plaintiffs.

9) The doctrine of tacking to adverse possession would reveal that an adverse possessor can avail the benefit of adding to the period of his adverse possession, the previous adverse possession of his predecessors for computation of total length of the adverse possession, provided the present adverse possessor claims such adverse possession through his previous possessor but not independently. This doctrine was discussed in *G.Narayan Reddy vs. P.Narayana Reddy*², wherein it was held thus:

*“**Para 30:** Doctrine of tacking is one relating to computation of period of adverse possession. Where a person has been in possession without title short of statutory period and another person succeeds such person and completes the rest of the period, such person is entitled to compute the whole period for invoking the concept of adverse possession. This principle cannot be extended in case of independent trespassers.”*

² 2016(3) ALT 12

Be that it may, this doctrine comes into play only when the plaintiffs and their predecessors have exercised adverse possession against the Government. The plaintiffs have filed B-memos covered by Exs.A7 to A9, A14 and A15 to show their possession. Ex.A.7 was booked against one P.Gangaiah in respect of S.Nos.68, 69, 72/8 without specifying the fasli period. Ex.A.8 is another B-memo booked against P.Lingaiah, the father of 1st plaintiff in respect of S.No.69 without specifying the fasli period. Ex.A.9 is the B-memo booked against P.Gangaiah in respect of S.Nos.60 and 62 without mentioning the fasli period. Similarly, Ex.A.14 is a B-memo booked against P.Lingaiah for S.No.69 and Ex.A.15 is another B-memo booked against P.Gangaiah for S.No.69. In Exs.A.14 and A.15, there is no specific mention about the fasli years. It must be noted that these documents will not help plaintiffs claim adverse title against the Government since the plaintiffs having received the B-memos paid penalties for those lands and obtained receipts (vide the admission of PW.1). In that view of the matter, it cannot be held that the plaintiffs have claimed any adverse interest against the Government. It must also be noted that since inception the case of plaintiffs is that B schedule properties were wrongly classified as poramboke and on that ground P.Lingaiah went upto the Commissioner of Survey and Settlement, office of the Board of Revenue, A.P and his claim was negated vide Exs.B.1 to B.3. Thereafter, the present suit is filed by the plaintiffs. In the backdrop of these facts, it is not the case of plaintiffs and their predecessors that the suit lands belonged to Government and they adversely enjoyed. Therefore, the plea of adverse

possession or doctrine of tacking of adverse possession is not available to them. This question is accordingly answered against the appellants.

10) **Substantial Question No.2:** Ex.B.1 is the certified copy of Survey Land Register (SLR) issued by the Tahsildar, Chandragiri, wherein the plaint B schedule properties covered by S.Nos.60, 62/4, 68/1 and 69 are recorded as Sarkaar porambokes (Government porambokes). The plaintiffs though vehemently contended that the aforesaid classification was wrong, could not produce any reliable material to contradict the contents in Ex.B.1. It must be noted that the presumption of correctness propounded under Section 114(e) of Indian Evidence Act, is applicable to Ex.B.1 as the said document is originated from the public office. Therefore, the Courts below rightly held that the classification could not be challenged by the plaintiffs. This question is accordingly answered against the plaintiffs.

11) In the result, this Second Appeal is devoid of merits and hence dismissed by confirming the judgment in AS No.16 of 1996 passed by the learned I Additional District Judge, Chittoor. No costs.

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

U. DURGA PRASAD RAO, J

Date: 23.01.2018

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