

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL No.366 of 2015

JUDGMENT:

Heard Sri G. Sundaresan, learned counsel for Sri P. Govind Reddy, learned counsel for the appellants.

In the memorandum of grounds of the Second Appeal, in paragraph '12', the following substantial questions of law have been formulated in clauses (A) to (D):

“(A) Whether the judgment of the learned 1st Addl. Dist. Judge, Chittoor in A.S.No.23 of 2010 dt. 28.04.2014 confirming the judgment and decree passed by the learned Addl. Senior Civil Judge, Chittoor in O.S.No.186 of 2000 dt. 28.08.2007 is manifestly illegal and suffers from perversity in as much as both the courts did not consider, analyse and appreciate the evidence adduced by the appellants/plaintiffs in a proper perspective resulting in manifest injustice.

(B) Whether the courts below are right in holding that the house of site pattas are issued by the Govt. in favour of the respondents. Not even an iota of evidence was adduced by the respondents, on whom the burden lay, not even examining the revenue officials, to establish the aforesaid fact, when the appellants have specifically alleged that Ex.B1 to B5 are created and fabricated. Non consideration of the evidence constitutes substantial question of law.

(C) Whether the courts below are right in not considering the original under Ex.A1, of which the suit schedule property is a part and parcel, which clearly establish the right, title and interest of the appellants over the suit schedule property, which was corroborated by the oral evidence of P.W.2.

(D) Whether the courts below are right in not considering that Ex.B1 & B11 are no way connected to the suit schedule

property and that the respondents have miserably failed to examine the concerned revenue officials in order to establish that those documents pertaining to the suit schedule property.”

In fact, the present appeal is preferred by the plaintiffs in O.S.No.186 of 2000 on the file of the Additional Senior Civil Judge, Chittoor, who are also the appellants in A.S.No.23 of 2010 on the file of the I-Additional District Judge, Chittoor, having been unsuccessful throughout and now fighting against the concurrent findings recorded by the Courts below. Therefore, it is obligatory on the part of the appellants to show that there has been patent illegality in the findings recorded by the Courts below.

The learned counsel for the appellants would refer to the findings recorded by the trial Court on issue No.6.

Issue No.6 settled by the trial Court relates to whether the suit is bad for non joinder of Government as a party?

The trial Court, basing on Exs.B1 to B5, which were the pattas issued to the defendants by the Government, and considering the fact that the land relating to which the pattas were granted situated in Sy.No.158/1 and the plaintiffs are also claiming relief in regard to the land in Sy.No.158/1, but have not arrayed the Government as one of the parties, held that the Government is a necessary party and the suit is bad for non joinder of necessary party and, accordingly, dismissed the suit considering the same as one of the grounds.

The other findings have not been addressed by the learned counsel for the appellants.

Turning to the findings of the learned lower appellate Court, it is to be noticed that the lower appellate Court has formulated three points for determination, amongst which the 2nd point incidentally relates to the discussion on issue no.6 made by the trial Court. The lower appellate Court, in fact, re-appraised the evidence. As could be seen from the judgment of the lower appellate Court, certain admissions made in the cross-examination of PW.1 have been extracted. One of such admissions extracted in paragraph '18' would reflect that PW.1, in fact, expressed ignorance stating that he does not know that survey number of the suit land is 158/1 of Greampet, Chittoor. The lower appellate Court then commented that the entire claim of the original plaintiff is based on the ground that he got the suit land in partition and his father had purchased the suit property, but when he himself was unable to say as to what was the survey number of the suit land, drawn the probability against the plaintiffs – appellants, besides referring to certain other admissions made in regard to which the lower appellate Court has deliberated in paragraph '17' and, thereby, arrived at the conclusion that the plaintiffs failed to prove that the subject matter of the suit belongs to them.

When examined in the light of the case set out by the defendants, where the defendants were granted pattas under Exs.B1 to B5 by the Government in the very same survey number, it is all the more necessary for the plaintiffs to establish that the land in suit survey number i.e.,

sy.No.158/1 is a private land, but not 'Government poramboke'. In such an event, certainly, the findings recorded by the Courts below do not suffer from any patent illegality. Therefore, no substantial question of law does arise and the questions of law formulated by the appellants herein, as projected in the above, do not constitute substantial questions of law. There is no merit in the Second Appeal.

Hence, the Second Appeal is dismissed at the admission stage. No order as to costs.

Miscellaneous Petitions, if any, pending in the present appeal, stand closed.

16.03.2018
v v

A. SHANKAR NARAYANA, J

