

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

S.A.Nos.679 of 2012 & 725 of 2012 and C.R.P.No.1838 of 2013

COMMON JUDGMENT :

These three matters arise between the same parties. So they are being disposed of by this common judgment.

2. The appellants in S.A.Nos.679 of 2012 & 725 of 2012 are the petitioners in C.R.P.No.1838 of 2013. The respondents in both SAs are different parties. But the respondents in SA.No.679 of 2012 are also respondents in CRP No.1838 of 2013.

S.A.No.679 of 2012

3. S.A.No.679 of 2012 is filed by defendants in O.S.No.760 of 2001 on the file of the II Additional Senior Civil Judge, Warangal.

4. The said suit was filed for declaration of title by respondents therein against appellants and for recovery of possession of the plaint schedule property apart from mesne profits.

5. The subject matter of this suit is an extent of Ac.1.08 gts in Sy.No.403/A/1 of Bhupalpally village and Mandal, Warangal District. The said suit was decreed with costs.

6. Challenging the same, the appellants filed A.S.No.115 of 2006 before the IV Additional District Judge (FTC) at Warangal. The said appeal was dismissed on 15-09-2011.

7. Aggrieved thereby, S.A.No.679 of 2012 is filed.

S.A.No.725 of 2012

8. S.A.No.725 of 2012 is filed by the defendants in O.S.No.761 of 2001 against respondents therein for declaration of respondents' title to the plaint schedule property and for eviction of appellants therein apart from mense profits.

9. The subject matter of this suit is an extent of Ac.2.16 gts in Sy.No.407/A/1 in Bhupalpally village and Mandal, Warangal District.

10. The said suit was decreed with costs on 16-12-2005.

11. This was questioned in A.S.No.135 of 2006 by the appellants before the IV Additional District Judge (FTC) at Warangal. The said appeal was dismissed on 15-09-2011.

12. Challenging the same, S.A.No.725 of 2012 has been filed by appellants.

C.R.P.No.1838 of 2013

13. C.R.P.No.1838 of 2013 is filed challenging the order dt.06-02-2013 in E.A.No.155 of 2012 and E.A.No.156 of 2012 in E.P.No.160 of 2006 in O.S.No.760 of 2001 of the II Additional Senior Civil Judge at Warangal directing the Court Bailiff to deliver vacant possession of the property which is subject matter of O.S.No.760 of 2001 to the respondents herein.

The pleadings of the parties

14. As mentioned above, O.S.No.760 of 2001 was filed for declaration of title by the respondents in SA No.679 of 2012 against appellants therein for recovery of possession and for mense profits in respect of Ac.1.08 gts of land in Sy.No.403/A/1 and O.S.No.761 of 2001 was filed by the respondents in SA No.725 of 2012 against appellants therein in respect of Ac.2.16 gts of land in Sy.No.407/A/1 of Bhupalpally village of Warangal District.

15. The contentions of the respondents/plaintiffs in S.A.No.670 of 2011 in O.S.No.760 of 2011 are that they are the owners and pattedars and persons in possession of the suit schedule properties which they inherited from their fore-fathers; as per Revenue records, the patta and possession of the said lands stands in the name of respondents; they had also been issued pattadar pass books and title deeds; when respondent No.3 applied for construction in the above land, the Bhupalpally Gram Panchayat also granted permission, but the appellants obstructed them and interfered with the possession of respondents over the suit schedule property. They alleged that they earlier filed O.S.No.65 of 2000 and also obtained temporary injunction but the said IA for temporary injunction was dismissed subsequently; and then appellants occupied the suit schedule property with the assistance of Inspector of Police and demolished structures raised by 3rd respondent. They contended that the police put the

respondents in lockup and got the structures demolished on 20-09-2000 and occupied the suit schedule properties.

16. Written statement was filed by the appellants in the SAs/defendants in both suits alleging that the Church of South India Missionary (1st appellant) purchased land admeasuring Ac.2.06½ gts in Sy.No.407 and Ac.1.20 gts in Sy.No.403 from Vanthadupula Lingaiah and Vanthadupula Durgaiah, sons of Pochaiah under registered sale deed Ex.B-23 dt.29-06-1967; that on the same day, the said extents of land were taken possession by the appellants; that the Pastor of the 1st appellant Church obtained permission from the Gram Panchayat, Bhupalpally for construction of a school building in part of land in Sy.No.403 and such permission was granted on 13-03-1992 and school building was constructed therein and is functioning therein. It is alleged that the remaining part of Sy.No.403 is vacant and respondents/plaintiffs in both the suits are trying to grab the said land. It was denied that respondents/plaintiffs names were ever in the official records and it is asserted that respondents were never in possession and enjoyment of the suit schedule properties and did not make any constructions in the land. It is contended that the appellants themselves created ryot passbooks showing that the Pastor of the 1st appellant was in possession and has been in continuous possession and enjoyment of the suit schedule property. It is therefore contended that appellants are owners and possessors of the suit schedule property

and they are also running a school and Church in the said land and so the suits should be dismissed.

17. These two suits were tried along with O.S.No.1066 of 2001 filed by the respondents in S.A.No.725 of 2012 and O.S.No.1067 of 2001 filed by respondents in S.A.No.679 of 2012 for perpetual injunction in respect of the properties which are subject matter of O.S.Nos.760 of 2001 and 761 of 2001.

18. The trial Court framed the following issues:

- “1. Whether the plaintiffs are the owners of the suit land and if so they are entitled for declaration of title?*
- 2. Whether D-1 purchased the property and has been in possession?*
- 3. Whether the defendants have illegally occupied the suit property?*
- 4. Whether the plaintiffs are entitled for recovery of possession?*
- 5. To what relief?”*

19. Before the trial Court, the respondents/plaintiffs examined P.Ws.1 to 7 and marked Exs.A-1 to A-61. The appellants examined D.Ws.1 to 3 and marked Exs.B-1 to B-33.

THE JUDGEMENT OF THE TRIAL COURT

20. The trial Court decreed the suits O.S.Nos.760 of 2001 and 761 of 2001 declaring that respondents are owners of the plaint schedule properties and directed the appellants to deliver vacant possession of the suit schedule property. It also granted permanent injunction restraining the appellants from interfering with the peaceful

possession and enjoyment of respondents over the suit schedule property. Costs were also awarded.

21. After discussing the evidence of both sides as well as the evidence on record, the trial Court held that the pattedars of the plaint schedule properties are the respondents and nowhere in the documents of the appellants, the appellants were shown as pattedars. It then referred to the contentions of the appellants that it purchased the suit schedule properties and referred to the evidence of D.W.1.

22. It noted that D.W.1 deposed that the appellants had purchased the suit schedule property and had relied upon Ex.B-19 sale deed, whose translation was Ex.B-22 dt.29-06-1967, and observed that under the said document, one Mathew Thomas purchased Ac.2.06½ gts in Sy.No.407 and Ac.1.20 gts in Sy.No.403. It held that the boundaries of the purchased land in Sy.No.407 are different from the boundaries of the suit schedule property and with regard to land in Sy.No.403 there were no boundaries mentioned in the said document. It also held that the said document does not disclose that 1st appellant purchased the said properties since Mathew Thomas was found to be the purchaser. It therefore held that there is no material to show that appellants acquired title to the suit schedule property. It also referred to Ex.B-25, whose translation was Ex.B-26, and noted that under the said document, the 1st appellant purchased Ac.1.07 gts in Sy.No.404 of Bhupalpally village, but in this document also boundaries of the properties were not mentioned. It observed that the appellants did not

connect Mathew Thomas to the 1st appellant and so they did not establish their right, title and interest with regard to the suit schedule properties. It observed that as per Ex.B-18, the Church is located in Sy.No.404, but respondents are not claiming any land in the said survey number. It also held that the appellants do not have any patta to the lands claimed by them and there is not even a mutation of their name in the revue records. It therefore concluded that the appellants were trying to occupy the land of others situated around the Church and the school without having title or interest in the land. The other evidence adduced by appellants was also discussed and discarded and it was held that respondents were the pattedars of the land but appellants were in possession thereof and had forcibly occupied the said land and got their names entered into possession columns of the pahanis illegally. The trial Court therefore decreed the suits.

The judgment in A.S.No.115 of 2006 and A.S.No.135 of 2006

23. Assailing the same, the appellants filed A.S.No.115 of 2006 and A.S.No.135 of 2006 before the IV Additional District Judge, FTC at Warangal. These were tried with two other appeals A.S.No.114 of 2006 and 116 of 2006 arising out of O.S.No.1066 of 2001 and O.S.No.1067 of 2001. A.S.Nos.135 of 2006 and 115 of 2006 were dismissed, but A.S.Nos.116 of 2006 and 114 of 2006 were allowed. The lower appellate Court also confirmed the findings of the trial Court.

24. It held that the evidence of P.Ws.1, 2 and 7 and that of PWs.4 to 6 and the documentary evidence placed by respondents established their ownership over the suit schedule property and the ancestors of the respondents by name Gobriya Naik and Bandi Pullaiah are the pattedars of the suit schedule properties. It also stated that pattadar passbooks Exs.A-1 to A-5 and A-35 to A-37 as well as Exs.A-19, A-20, A-60 and A-61 pahanis show that respondents are the owners of the suit schedule properties. The lower appellate Court also held that appellants were in possession of the property but their possession is not adverse possession. It observed that the appellants established their possession over the suit schedule properties only from 1990-91 but not for the period prior there to; and the period of 12 years did not get completed by the time the suits O.S.Nos.760 of 2001 and 761 of 2001 were filed. It observed that the original pattadar did not sell the plaint schedule properties to the appellants under Ex.B-23 document and so the respondents are entitled to recover possession of the plaint schedule properties. It held that the respondents were not in possession of the plaint schedule properties and so the trial Court could not have granted relief of permanent injunction to them. It rejected the plea of the appellants that pattadar passbooks were given to the respondents without following the procedure laid down under the A.P. Rights in Land and Pattadar Pass Books Act, 1971 and held that there is a presumption that entries made in Exs.A-1 to A-5 and A-35 to A-37 are true and correct.

25. Assailing the same, S.A.Nos.679 and 725 of 2012 are filed by the appellants.

S.A.Nos.679 and 725 of 2012

26. As already stated above, both the trial Court and lower appellate Court came to the conclusion that the ancestors of the respondents by name Gobriya Naik and Bandi Pullaiah are the pattedars of the land. Though appellants claimed title to the plaint schedule property on the basis of Ex.B-19=B-20 and Ex.B-23=B-24, the purchaser under Ex.B-19 and B-23 is Mathew Thomas of lands of Ac.2.06 ½ gts in Sy.No.407 and Ac.1.20 gts in Sy.No.403 of Bhupalpalli village. The 1st appellant is not the purchaser under the said documents.

27. How the title to the said land purchased by Mathew Thomas was transferred to the 1st appellant is not explained by the appellants. There is nothing on record to show that the purchase by name Mathew Thomas was for the benefit of 1st appellant. Therefore it cannot be said that the 1st appellant is the owner of the lands purchased by Mathew Thomas under Exs.B-19 and B-23.

28. The 1st appellant had purchased Ac.1.07 gts in Sy.No.404 under Ex.B-26=B-25 registered sale deed, but the plaint schedule properties are in different survey No.s 403 and 407. So the appellants could not establish that they had title to the plaint schedule properties.

29. In the absence of any evidence adduced by the appellants to show that 1st appellant has purchased plaint schedule properties, they cannot be said to be having better title than the respondents.

30. The plea of adverse possession raised by the appellants is of no avail because as per the findings of the lower appellate Court, the appellants were able to establish possession only from 1990-91. The suits O.S.Nos.760 of 2001 and 761 of 2001 were filed in the year 2001 and by that time, the period of 12 years necessary to acquire title by adverse possession did not elapse. Therefore the appellants are not entitled to raise the plea of adverse possession.

31. The trial court as well as the lower appellate court has come to the same conclusion by proper appreciation of evidence. These concurrent findings of fact do not warrant any interference in exercise of the jurisdiction conferred on this Court under Sec.100 CPC.

32. I also hold that there is no question of law much less substantial question of law arising for consideration in the Second Appeals.

33. Therefore, S.A.Nos.679 of 2012 and 725 of 2012 are dismissed with costs of Rs.5,000/- (Rupees Five Thousand only) to be paid by the appellants to the respondents in the respective appeals.

C.R.P.No.1838 of 2013

34. Coming to C.R.P.No.1838 of 2013, the Executing Court directed delivery of possession through Court Bailiff to the

respondents in S.A.No.679 of 2012 who are respondents in C.R.No.1838 of 2013.

35. Once the judgment and decree in O.S.No.760 of 2001 has been confirmed in S.A.No.679 of 2012, the petitioners in this CRP cannot obstruct delivery of possession through Court to the plaintiffs in O.S.No.760 of 2001/respondents in C.R.P.No.1838 of 2013.

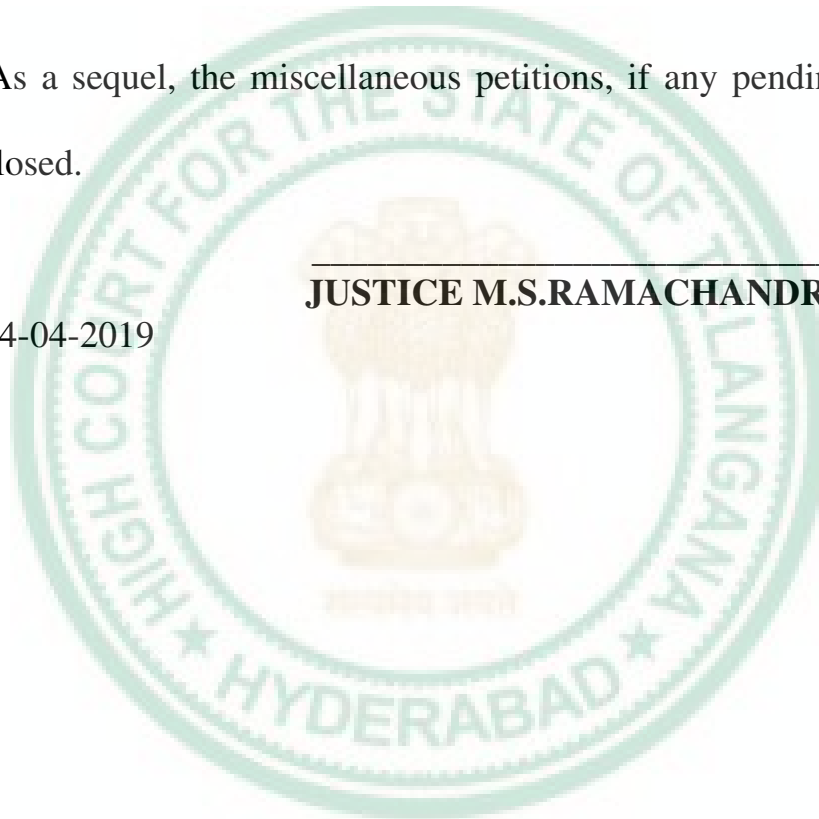
36. Therefore, C.R.P.No.1838 of 2013 is also dismissed. No costs.

37. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-04-2019

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THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

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