

HON'BLE SMT JUSTICE P.SREE SUDHA

APPEAL SUIT No.342 OF 2006

JUDGMENT:

This Appeal Suit is filed against the Judgment of the trial Court in OS.No.454 of 1998 dated 19.10.2005.

2. The Secunderabad Handloom Weavers Co-operative Society Limited is the plaintiff in the suit. The suit is filed for declaration as the plaintiff is the owner and possessor of the plaint schedule property and for perpetual injunction restraining the Defendants from entertaining the peaceful possession and enjoyment of the said property.

3. The plaintiff stated that the society was formed and registered about 50 years back and the object of the society is to provide various facilities and benefits to the weavers. They acquired and possessed an extent of Ac.3-32 guntas in survey No.4 of Aliabad Village, Ranga Reddy District. They purchased the

property on 11.08.1959 from Smt. Ramakka wife of Durgam Rajaram, Vishwanadam and P. Anasuya/defendant No.1 for consideration of Rs.3500/-. They were put in possession on the same date and then onwards, they were in continuous possession and enjoyment of the suit schedule property and their name was recorded in the pahanis from 1961-1962 to till date and they filed relevant documents. They further stated that the land was mortgaged to the Government under registered deed dated 14.09.1962. Revenue authorities also issued Pattadar passbook in the name of the Society. Society constructed 50 houses in the vicinity including plaint schedule property and allotted some of the houses to the members and they are living therein from all these years, thus, Society perfected the title and is also in possession of the property. About one week prior to the filing of the case, defendants came there and started measuring the land basing on the Court order.

When they enquired, they came to know that the defendants obtained decree behind their back and they are legal heirs of Durgam Rajaram, who died in 1958 and the suit was filed in the year 1979. They also stated to their knowledge the notice was not served upon them. As the Managing Committee was changing, the records were not available. The Society is in the hands of the Government Officials, who are acting as person in-charge taking advantage of the same, defendants obtained decree by fraud and misrepresentation even without showing the statutory records to the Court as such it is not binding on them, therefore requested the Court to grant perpetual injunction against the defendants as the society is absolute owners of the said property. Written statement is filed by the D2 and it is adopted by defendant Nos.1, 3, 4 and 6. She stated that Durgam Rajaram is their father and he is an absolute and exclusive owner and actual possessor of the suit

schedule property, who died on 28.07.1958 leaving his wife and four daughters laxmi Narsamma (died), Eshwaramma (Defendant No.2), Ansuya (Defendant No.1), Ramlamma (died).

4. As D2 was residing in Bombay, she came to know about the encroachment made by the plaintiff Society in the year 1976 only when she returned to the village in the year 1979, then she filed suit for partition and separate possession in O.S.No.40 of 1981 regarding two schedule properties that a schedule property, he has Ac.3-10 guntas of the land in Sy.No.4. The preliminary decree was passed in their favour after 9 years on 08.07.1987. The plaintiff remained *ex-parte*, they obtained certified copy of the judgment vide S.R.No.767 of 1987 on 23.09.1987 and filed an application under Order IX Rule 13 to set aside the *ex-parte* order and it was dismissed on 14.09.1993, but, the plaintiff failed to carry the matter either in appeal or in revision and the decree of the Court became final

as such, Society has no right to challenge the same. D2 filed E.P No. 22 of 1995 and the final decree was passed in I.A.No.425 of 1994 dated 25.08.1994. Defendant Nos.1, 3 to 5 filed E.P.No.3 of 1998 in pursuance of the orders in the E.Ps, the possession was granted to them @ Ac.3-25 guntas i.e., one-fourth share to each of them on 29.08.1998 by duly evicting the plaintiff Society and thus, they obtained possession after 18 years. From then onwards, Society is not in possession as such, not entitled for injunction and requested the Court to dismiss the suit.

5. D5 filed separate written statement, stating that the pahanis filed after 1976 are not material. The Pattadar passbook is fabricated and she reiterated the other contents of written statement of D2 before the trial Court. The plaintiff/separate appellant society as examined has PW1 and also examined two other witnesses on his behalf. D2 is examined as DW1 and also examined D2. Exs.A1 to A40 are filed and Exs.B1

to B14 and Ex. X1 CC of the sale deed is also marked. The trial Court considered the evidence on record and the arguments of both sides, dismissed the suit of the Society. The trial Court observed that the sale deed was alleged to be executed in favour of the Society was un-registered and it was marked subject to the objection but sufficient stamp duty is not paid and it was not registered under Section 17 of the Registration Act, as such it cannot be looked into and regarding the possession claimed by the plaintiff Society, it was held that the name of the Society was not continuously shown in the pahanis filed by the Society as such, Society failed to prove the possession of the suit schedule property by adverse possession and it was also observed that Society could not contest in the suit filed by the defendants and even when they came to know about the passing of decree in the partition suit. When an application under Order IX Rule 13 was dismissed, they have not carried it either in appeal or

in revision and they have not filed any suit for cancellation of the decree within 3 years. As such, the suit filed by them is barred by limitation.

6. Aggrieved by the said order, Society preferred an appeal and contended that the trial Court did not consider the evidence of PW2 regarding the execution of Ex.A39 i.e., Un-Registered Sale deed (marked subject to objection) and delivered the possession though DW1 stated that she has not filed any suit for partition. It was also stated that D2 is not a party under Ex.A39, erroneously the trial Court failed to read the entire evidence. The pahanis filed under Exs.A3 to A34 were not considered. The mere filing of the suit by defendants for partition will not defeat their rights. The decree under O.S.No.40 of 1981 was obtained by misrepresentation though possession was delivered under Ex.A39, it was not considered. The trial Court observed that they have not examined DW1 and rejected Ex.A39 and also

instead of directing them to pay stamp duty rejected Ex.A39. Exs.A4 to A17 shows the possession of appellant but, they were not considered. They were in continuous possession for more than 12 years. As per the evidence of P.Ws.2 and PW3 houses were constructed and they were residing in it but, the trial Court erroneously dismissed the suit. Therefore, requested this court to set aside the same.

7. Basing on the oral and documentary evidence placed before the Court, the Society acquired the land from Durgam Rajaram under Ex.A39 on 11.08.1959 for the sale consideration of Rs.3500/- and it was executed by Vishwanatham son of Durgam Rajaram and Anasuya/defendant No.1 also signed on it. Later, the said property was mortgage to the Government under Ex.A36 and 50 quarters were constructed and also allotted to the members. Pattadar passbooks was issued in the name of the Society and the name of the Society was shown as

Chenetha Sahakara Sangam/weavers colony in the pahanies but the name on the pattadar passbook was shown as Durgam Raju for the reasons best known to the plaintiff Society, it was not mutated in their names even after execution of the sale deed. They were shown as possessors of the land. Even then, when the sale deed was filed before the Court and there was an objection from the other side regarding the payment of stamp duty, plaintiff society failed to pay the stamp duty, as such the trial Court rightly observed that it cannot be looked into. As the plaintiff filed the suit for declaration basing on the said document, when it is insufficiently stamped, it is for the plaintiff to pay the sufficient stamp duty but they failed to do so, as such, they cannot take advantage on this aspect. At the later point of time, the plaintiff stated that they have no knowledge about the decree passed in O.S.No.40 of 1981 and there is nothing on record to show that notice was served upon them. But as per the material

available before the Court, they obtained the copy of the judgment and filed an Interlocutory Application to set aside the ex-parte order after passing of the decree when it was dismissed by the Court, they have not preferred any appeal or revision against the said order though they are having knowledge about the passing of the decree and filed an Interlocutory Application to set aside the same, they kept quiet till the possession was delivered under the final decree through E.P proceedings on 29.08.1998. IA.No.820 of 1987 under Ex.D17 to set aside the ex party order was dismissed on 13.10.1987 but the suit is filed on 03.11.1999 and they simply stated that they filed the suit one week after the delivery of the possession whereas the defendant contended that they obtained possession by due process of law. Final decree was passed in I.A.No.425 of 1994 dated 25.08.1994. D2 filed E.P.No.22 of 1995 D1, D3 to D5 filed E.P in 1998 and in pursuance of the same, possession was delivered to

them on 29.08.1998 even the trial Court observed that it is for the plaintiff to file a suit for cancellation of the decree but they failed to do so. Plaintiff Society did not contest the suit filed by the defendants for partition though they are made as the party to the suit and they signed on vakalat, for the reasons best known to them even after passing of the decree when set aside the application was dismissed, they have not preferred any appeal as such order in O.S.No.40 of 1981 became final and accordingly final decree was passed and possession was handed over to the defendants. Later, they filed the suit and it is clearly barred by limitation. The trial Court considering all the aspects, rightly dismissed the suit. The plaintiff contended that the Society was represented by the Government Officials/personal incharge as such, they could not represent before the courts properly.

8. Admittedly, Society is represented by the President and Secretary even they signed on the

mortgage deed as such, they ought to have taken interest as the Society was formed for the welfare of the weavers and 50 houses were constructed in the said land, but, the suit filed before the trial Court was dismissed for their lapses.

9. No doubt, sale deed was executed in their favour by the father of D1 and D2 way back in the year 1959 and in pursuance of the same, they mortgaged the same to the Government and constructed 50 houses and some of the houses were constructed in the suit schedule land, even P.Ws.2 and 3 stated that they are residing in the said quarters since decades. When suit is filed by D2 in the year 1981, they could not make proper representation either during the pendency of the suit or even after the decree of the suit in favour of the defendants, as such, the final decree was passed in the year, 1994 and possession was also delivered in the defendants in the year, 1998. As the possession was not in the plaintiff Society, a question

of granting injunction does not arise. As plaintiff failed to pay the sufficient stamp duty during the pendency of the suit and validate the same, sale deed cannot be looked into and thus, I don't find any infirmity and illegality in the orders of the trial Court and it needs no interference.

10. In the result, the appeal is dismissed confirming the judgment and decree of the learned I-Additional Senior Civil Judge, Ranga Reddy District passed in O.S.No.454 of 1998, dated 19.10.2005. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

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Date: 20.12.2022
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