

THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

APPEAL SUIT No.580 of 2006

JUDGMENT:

This appeal is filed against the Judgment and decree of the trial Court in O.S.No.29 of 2000 dated 05.06.2006.

2. Plaintiff filed suit in O.S.No.29 of 2000 against the Secretary of the Government of Andhra Pradesh, Revenue Department and the Divisional Electrical Engineer, A.P.S.E.B for declaration to declare the plaintiff as absolute owner and possessor of the suit well which is abutting to Sy.No.266 known as Panumalla Bhavi situated at Gaddiannaram Village, Saroornagar and to grant permanent injunction restraining defendants from causing any sort of interference to the peaceful possession and enjoyment of the plaintiff with the suit well by way of installing any electric transformer or in any manner.

3. Plaintiff stated that he is the owner and possessor of the lands bearing Sy.No.2670/AA, 261, 266 and 268 total admeasuring Acs.5 – 35 gts situated at Gaddiannaram village of Saroornagar. There is an agricultural well abutting to Sy.No.266 known as Panumalla Bhavi. The said well is intervened and

separated by a Government road which leads to Saroornagar from Gaddiannaram. The well along with appurtenant open land consisting of 621 Sq.yds and it is called as suit land for the sake of convenience. Originally, one Ramulamma mother of the plaintiff is the owner of the said well as well as the agricultural lands. She used to irrigate those lands through the waters of the suit well. Prior to her, her vendor enjoyed the suit well. She constructed pump room and installed electric pump set to lift the water and also erected a pipe line leading to agricultural lands. A.P.S.E.B granted agricultural service connection under V-4005 in favour of Ramulamma in the year 1960 and she was continuously paid electric charges under agricultural category. After her death, plaintiff succeeded the suit well and her lands as her only son and he is continuously enjoying the possession of the suit well. Recently, he constructed a theatre in the part of the agricultural lands and some part of the land is used for agricultural purpose and paying land revenue to the Government regularly. The suit well is presently drained up. As the plaintiff is enjoying possession of the suit well for 42 years, he has perfected his title over the suit well by adverse possession.

4. Plaintiff stated that defendant No.2 under the influence of local political leaders intentionally trying to install an electric transformer in the open land as shown in the Red colour in the sketch plan annexed herein. He has no right whatsoever to cause any sort of interference or install electric transformer in the above land, which is part and parcel of suit well. The suit well is previously being used by the plaintiff as "Bavi Gadda" and he used to keep his buffalos and cattle in the above land as a cattle shed. When he came to know about the proposed installation of transformer, he filed an application dated 31.12.1999 before defendant No.2 requesting him not to install any electric transformer. The defendant No.2 kept quiet for some days and afterwards again he made his efforts to install the same. On 21.02.2000, he came to the spot along with his subordinates and started digging the open place of suit well. When he questioned defendant No.2, he stated that they got instructions from the defendant No.1, as such at any cost they will install electric transformer. Hence, plaintiff filed suit for declaration and also filed a separate petition to dispense with the notice under Section 80 C.P.C, as there is urgency in the matter.

5. In the written statement filed by defendant No.1, he stated that suit itself is not maintainable in law or on facts and is liable to be dismissed. He stated that there is no dispute with regard to the well known as “Panumalla Baavi” abutting in Sy.No.266 and the same is demarcated as Biladakala number as per the Revenue Records. He further stated that plaintiff cultivating the lands long back with the water of the suit well, no rights will be acquired by the plaintiff to claim the well as it is in abutting land to his own land. Well is located in the Biladakala number and at presently it is dried up and no irrigation is being carried either by the plaintiff or anybody else in and around the well. Long back ago, all the structures came up in the plaintiff land, as such the empty well and the appurtenant land is in the possession of the Government as Biladakala. As the suit well is a public well, the question of perfecting the title by the plaintiff does not arise. Moreover, it is dried up. The plaintiff with an intention to grab the same intentionally filed a false suit. As the suit well is vested with the Government, the local residents and political leaders wanted to erect electric transformer for the welfare of residents to regulate the supply in and around the locality and also demarcated the suit land for the purpose of erecting transformer with the help

of second defendant as the land is within Biladakala number of Gaddiannaram village. The plaintiff has no right over the suit property. The land where the transformer is likely to be erected abuts Sy.No.266 which is allegedly owned by the plaintiff. As such the claim of the plaintiff cannot be entertained. He filed a rough sketch of the proposed erection of the transformer and stated that all the said allegations are invented and concocted by the plaintiff. Even assuming that plaintiff got any title or claim over the suit property, the Government is at liberty to carry out all such activities for the common cause of the public and plaintiff cannot restrain such activities. Therefore, requested the Court to dismiss the suit. Defendant No.2 filed the adoption memo adopting the written statement of defendant No.1.

6. The plaintiff examined himself as P.W.1 and he also examined P.W.2 on his behalf and marked Exs.A1 to A18. Defendants examined D.W.1 & D.W.2 on their behalf and marked Exs.B1 to B3 and Exs.X1 to X8 are marked through the Commissioner. The trial Court considering the entire evidence on record, dismissed the suit but the defendants are directed to give priority to the plaintiff to give the land for the market

value/basic value register, if it is parted to the third parties on some ground or other as the property has to be given to the owner of the appurtenant government lands as the owner is enjoying the said land since long time. Aggrieved by the said Judgment, plaintiff in the suit preferred an appeal and mainly contended that the case set out by the defendants is that the suit land is recorded as “Bila Dakhala”, but it does not mean that it is Government land. The suit well was continuously utilized by his mother and also by her vendor for over 40 years and there was no proceeding initiated by the Government to evict the encroachment or user of the well. Plaintiff was successful in establishing all the ingredients of perfecting title by adverse possession, but the trial Court misconceived that usage of water for irrigation does not constitute adverse possession. Therefore, requested the Court to set aside the Judgment and decree of the trial Court.

7. Heard arguments of the appellant, as the respondents did not turn up in spite of service of summons, it is reserved for Judgment.

8. Now, it is for this Court to decide whether the Judgment of the trial Court is on proper appreciation of facts or not, if so to what extent.

9. The main contention of the plaintiff is that he is the owner and possessor of the land in Sy.Nos.260/AA, 261, 266, 268 total admeasuring Acs.5 – 35 gts situated at Gaddiannaram Village, Saroornagar Mandal, R.R.District. There is agricultural well abetting to Sy.No.266 known as “Panumalla Bhavi” and the said well along with open land appurtenant to it consisting of 621 Sq.yds. His mother Ramulamma and her vendor were using the water of well for irrigation of the agricultural land for more than 40 years. His mother constructed a pump room and installed an electric pump set to lift the water and also erected pipe line leading to agricultural lands and the A.P.S.E.B has allotted service No.V-4005 in favour of his mother in the year 1960 itself and she is paying electricity consumption charges from then onwards. As such, he perfected title by way of adverse possession, but the defendant No.2 under the influence of local political leaders trying to install an electric transformer in the open land, as such he filed suit for declaration and also filed petition to dispense with notice under Section 80 C.P.C. He

further stated that the main contention of the respondents is that under Section 80 C.P.C notice is mandatory and it cannot be dispensed with. He relied upon the decision of the Hon'ble Supreme Court in the case of **State of A.P and others Vs.**

Pioneer Builders, A.P, in which it was held as follows:

“17. From a conjoint reading of sub-sections (1) and (2) of Section 80, the Legislative intent is clear, namely, service of notice under sub-section (1) is imperative except where urgent and immediate relief is to be granted by the Court, in which case a suit against the Government or a public officer may be instituted, but with the leave of the Court. Leave of the court is a condition precedent. Such leave must precede the institution of a suit without serving notice. Even though Section 80(2) does not specify how the leave is to be sought for or given, yet the order granting leave must indicate the ground(s) pleaded and application of mind thereon. A restriction on the exercise of power by the Court has been imposed, namely, the court cannot grant relief, whether interim or otherwise, except after giving the Government or a public officer a reasonable opportunity of showing cause in respect of relief prayed for in the suit.

18. Having regard to the legislative intent noticed above, it needs little emphasis that the power conferred on the court under sub-section (2) is to avoid genuine hardship and is, therefore, coupled with a duty to grant leave to institute a suit without complying with the requirements of sub-section (1) thereof, bearing in mind only the urgency of the relief prayed for and not the merits of the case. More so, when want of notice under sub-section (1) is also made good by providing that even in urgent matters relief under this provision shall not be granted without giving a reasonable opportunity to the Government or a public officer to show cause in respect of the relief prayed for. The provision also mandates that if the court is of the

opinion that no urgent or immediate relief deserves to be granted it should return the plaint for presentation after complying with the requirements contemplated in sub-section (1).”

10. Perusal of the record shows that at the time of filing the suit plaintiff stated that there was urgency and requested the Court to dispense with the notice under Section 80 of C.P.C. Further defendants No.1 & 2 contested the matter and the suit was disposed of on merits. Therefore, it cannot be said that notice was not served upon the Government or the public officer and the suit is in violation of the Section 80 of C.P.C.

11. The defendant No.2 is a statutory body constituted under Section 5 of the Indian Electricity Act, 1948. The motive of the electricity board is to provide power to the people at cheaper rate and uninterruptedly and they have to supply power without any profit on cost to cost basis, as such there is necessity to lay overhead lines erecting the poles, transformer and Sub-stations wherever required. In towns and cities transformers will be erected on the road margins and they require 4x4 ft area and this area will be used for the construction of the plinth to avoid endanger to the public who are moving on the road and board will take proper precaution from endanger to the public. Before

erecting the transformer the board contacted MRO, Saroornagar to find out the information about the land. He clearly stated that in the portion of the said land large plinth can be constructed by showing the road margin. Therefore, plaintiff cannot say that defendant No.2 is interfering with his possession. The Indian Electricity Act clearly provides right of erection of the transformer on the road margin and plaintiff is having every right to get compensation from the defendants. As per the instructions of the MRO, defendant No.2 erected transformer for the benefit of the general public.

12. The Court Commissioner was examined as P.W.2 and marked Exs.A1 to A18. M.R.O cum Deputy Collector was examined as D.W.1 and Assistant Director Survey and Land Records was examined as D.W.2 and marked Exs.B1 to B3 on behalf of the defendants. Through Commissioner Exs.X1 to X8 are marked. Ex.X5 is the Commissioner's report. Ex.X6 is the rough sketch, Ex.X7 is positive photos and negatives are under Ex.X8. The Commissioner stated that the well which she inspected was old and there is a room by the side of the well which is meant for installation of electric motor. The doors and windows are old and are in dilapidated condition. Existence of

the old well along with room abutting to the said well is observed by the Commissioner. The pump room is having Zink sheet roof. Ex.A1 is the extract of Sethwan. Ex.A2 is Pahani Patrika for the year 1959-60. Under Ex.A2 under Col.No.7 against S.No.266 the source of irrigation is shown as Bhavi i.e, well. Under all Pahani Patrikas the same recital is available. The name of Ramulamma is shown as Kathadar under Col.No.11. As per Ex.A4 one Mohamadi Begum W/o. Mirja Mohad ali Baigh executed the document in favour of Ramulamma on 18.10.1958 and she sold S.Nos.266 & 268 full, 2.8 gts in S.No.260. There is no mention in the said document regarding irrigation facilities of the lands situated in S.Nos.266, 268 and 260, but in the pahani patrikas filed by the plaintiff which are marked as Ex.A3 under Col.No.7 the source of irrigation to S.No.266 is shown as well. It was also observed that neither the mother of the plaintiff nor the executants of the sale deed under Ex.A3 choose to mention about the existence of the well and about the rights of the vendor over the said well. Admittedly, it is not situated within the Survey numbers of the plaintiff, but it is situated abutting to S.No.266 of Gaddiannaram Village. The suit well is situated on the southern side of the well, Nalla is going on the further south of the suit well in order to discharge surplus water of the

Saroornagar tank. On the further south of Nalla the land belongs to Hyderabad Municipal Corporation. The lands are situated on the Northern side of the road and the well is situated on the southern side. The Court Commissioner stated that well also dried up and it is in dilapidated condition. Plaintiff constructed Shivaganga Theater in the said Survey number and he himself admitted all around those survey numbers buildings came up. After 1985 all the lands converted into non-agricultural lands and house plots raised in them. There were no agricultural operations in S.No.266 and in other Survey numbers and the well was dried up. The existence of the well is known as Panumalla Bhavi and the appurtenant land is known as Bhavi Gadda.

13. D.W.1 and D.W.2 stated that well is situated in Bilaldakla land, abutting the said well there is Nalla which is meant for discharging of surplus water from the Saroornagar tank. There are no encroachments over the said Nalla. As seen from Ex.B1, well is situated on the adjoining the said Nalla. Under Ex.B2 the existence of the well is shown under Part No.8. If exclusive rights are given to the plaintiff over the said well, it will definitely cause hurdle to the other portion in the same line

which is shown 1 to 7 and 9 numbers under Ex.B2. Admittedly in Ex.A3 existence of the well or about transferring of the rights over the said well to Ramulamma were not mentioned. The trial Court observed that the lands which are irrigated by the waters of Panumalla Bavi was converted into non-agricultural lands in the year 1983 itself and the well dried up and is in dilapidated condition. It was not used for any purpose for more than a decade prior to filing of the suit. Therefore, argument of the plaintiff that he acquired rights over the suit well by way of adverse possession cannot be accepted. When the residents of the locality and the political leaders requested the electricity department for installation of transformer for supply of uninterrupted and quality power in that locality, authorities of defendant No.2 approached the MRO, Saroornagar to show them some land for the purpose of construction of plinth for installation of transformer. M.R.O, Saroornagar under the instructions of District Collector, R.R.District requested the Electricity Department to construct flatform for installation of the transformer by the side of the dilapidated well which is situated in Biladakala land in the Revenue Records.

14. In the cross-examination of P.W.1, it was admitted that A.P.TRANSOCO constructed a transformer in the suit open site for the purpose of installation of electricity transformer and electricity pole is also installed near the said flatform. A.P.TRANSOCO intending to install a transformer for the public utility to provide quality supply of power to the nearby people and P.W.1 is also benefited with that. Defendants further stated that defendant No.2 is having power under Indian Electricity Act, 1938 to install electric poles, transformers and sub-stations wherever it is necessitated as they are supplying power to the public on no profit or no loss basis for general utility. If the land belongs to the plaintiff, plaintiff is at liberty to claim compensation but he has no right to seek the relief of permanent injunction. It was also observed that merely because the mother of plaintiff was using the water of the well in exercise of their easementary right over the well to irrigate their lands. As the lands were converted into non-agricultural lands and when there is no water in the well, the question of exercising easementary rights does not arise. D.W.1 stated that well situated in 255 Sq.yds, pump room is situated to an extent of 100 Sq.yds and the entire land is around 600 Sq.yrds. The learned Counsel for the plaintiff relied upon the

G.O.Ms.No.1601/05 dated 29.08.2005 and also other revenue laws and defendants have to give priority to the plaintiff for parting land in favour of the Government. Admittedly, land is not situated in survey numbers of the plaintiff, but it abutting to Sy.No.266. In the sale deed executed in favour of the mother of the plaintiff it was not specifically mentioned that the suit well is part and parcel of the survey numbers for which plaintiff is the owner and possessor of the same. The main contention of the plaintiff is that his mother and her vendor were using the water of the well for irrigation purpose for more than 42 years and it clearly amounts to easementary rights and it will not confer any title to the plaintiff. Moreover, when he filed suit for declaration, there was no water in the well and it is in dilapidated condition and even agricultural lands converted into non-agricultural lands, P.W.1 also constructed theatre in certain portion of his land, as such the well was not used for irrigation purpose. Defendants intend to install transformer in the said place for the public purpose, therefore the trial Court considering all the aspects rightly held that plaintiff is not entitled for declaration and dismissed the suit. The trial Court also held that as the plaintiff was using the suit well since long time, defendants are directed to give priority to him to give land

for the market value or basic value register as he is parting with the land with the third parties, this Court finds no infirmity in the Judgment of the trial Court and it needs no interference.

In the result, appeal is dismissed confirming the Judgment of the trial Court in O.S.No.29 of 2000 dated 05.06.2006.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE P.SREE SUDHA

DATED: 20.01.2023

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