

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**WEDNESDAY, THE THIRTY FIRST DAY OF JANUARY
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU

SECOND APPEAL NO: 114 OF 2018

Appeal under section 100 of Civil Procedure Code, 1908 against the judgment and decree dated 06.09.2017 made in A.S.No. 32 of 2016 on the file of the Court of the Judge, Family Court - cum - VIII Additional Sessions Judge, at Mahabubnagar, Confirming the judgment and decree dated 23.11.2015 passed in O.S.No. 10 of 2000 on the file of the Court of the Senior Civil Judge, Narayanpet.

Between:

1. Munji Guru Bheemachary, S/o.Late Raghavendra Chary R/o.Narayanapet, Presently residing at Gulbarga
2. M.Laxmanachary, S/o.Late Raghavendra Chary R/o.Narayanapet, Presently residing at Gulbarga
3. M.Narayana Murthy, S/o.Late Raghavendra Chary R/o.Narayanapet, Presently residing at Gulbarga
4. M.Ram Murthy, S/o.Late Raghavendra Chary R/o.Narayanapet, Presently residing at Hyderabad.
5. M.Krishna Kumar, S/o.Late Raghavendra Chary R/o.Narayanapet, Presently residing at Yadagiri Village & Tq, Gulbarga, Karnataka State.

...APPELLANTS/APPELLANTS/PLAINTIFFS

AND

Nagar Panchayat Narayanapet, Rep By Its Commissioner, Narayanapet, Mahabubnagar District 509210.

...RESPONDENT/RESPONDENT/DEFENDANT

IA NO: 1 OF 2018

Petition under 39, Rules 1 & 2 R/W, Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant injunction in favour of the petitioners and against the respondent from altering the nature of the Suit Schedule property by way of alienation or otherwise, subject matter O.S.No. 10 of 2000 on the file of the Principal Senior Civil Judge, at Narayanapet, pending disposal of the above Second Appeal.

Counsel for the Appellants: SRI BOTLA VENKATESWARA RAO

Counsel for the Respondent: SRI N. PRAVEEN KUMAR

The Court delivered the following: JUDGMENT

THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU

SA NO.114 OF 2018

JUDGMENT:

This is a Second Civil Appeal filed by the unsuccessful plaintiffs in OS.No.10 of 2000 on the file of Senior Civil Judge, Narayanapet filed under Section 100 of Civil Procedure Code (for short 'C.P.C.'). The appellants have filed a suit before the trial Court for declaration of their title, recovery of possession of 715 Sq.yrds which is a part of Sy.No.272 of Pallaburju North by removing the shops constructed by the respondent-Nagar Panchayat, Narayanapet and the said suit was dismissed on contest, thereby, preferred first appeal before the learned District VIII Addl. District Judge, Family Court, Mahaboobnagar. However, since the First Appeal was also dismissed, preferred this Second Appeal.

2. As could be seen from the judgment and decree of the trial court, it seems the appellants who are natural brothers and members of joint family claimed that an extent of Ac.3-13 gts of land in Sy.No.272 of Pallaburju is their ancestral Property. Their father had alienated an extent of Ac.1-00 during his lifetime to one Govardhan Lahoti under a

registered sale deed dated 07-09-1968. Out of the remaining property, an extent of Ac.00-35 gts was covered by road, Ac.00-32 gts of land was in the occupation of Shivanand Dall Mill and in the remaining extent of Ac.00-26 gts, the respondent/defendant constructed 15 shops by covering an extent of 715 Sq.yrds, thereby, the appellants claimed that they are in possession of the remaining Ac.00-20 gts and also by claiming that since they were residing in different places, they could not know the encroachment of Ac.00-6 gts of property referred above, filed this suit for declaration of their title.

3. According to further averments of the plaint, the appellants herein have also claimed that when they came to know about the construction of shops by respondent, they approached the respondent and enquired, but there was no proper response. The appellants were informed that Balaram Lahoti, the son of above referred Govardhan Lahoti, who purchased Ac.01-00 gts of land from the father of plaintiffs, approached the respondent seeking permission for a compound wall and as the respondent refused to accord permission on the ground that he has no right over the property, filed a suit vide OS.No.4 of 1994 before Special

Court, Mahabubnagar and the suit was decreed. It seems, it was an *ex parte* decree, subsequently, the respondent filed an application to set aside the decree with a delay condone petition and when the petition was dismissed, preferred revision vide CRP.No.4898 of 1996, subsequently there was a compromise between Manohar Lahoti and respondent. The village Patwari has recorded the name of municipality as pattedar and since then municipality started claiming ownership over the Sy.No.273 which includes the suit schedule property.

4. The appellants have also claimed that the Municipal Counsel passed three resolutions disowning the land in Sy.No.273 and it never acquired the title over the property. Therefore, the respondent is only a trespasser, thereby, sought for declaration of title and recovery of possession.

5. The respondent-municipality contested the suit denying the right of the father of appellants namely Raghavendra Chary and he could not alienate any property, disputed the other averments of the plaint. The respondent/defendant further contended that they have got ownership and possession to an extent of Ac.03-13 gts of land in Sy.No.273. The land was used by the Government High

School as a play ground for so many years. The High School building was constructed in Sy.Nos.272 and 273. Subsequently, there was an agreement between Commissionerate and Director of Intermediate Education and the respondent herein to use Sy.No.273 for shopping complex. They have obtained permission from the Government and started construction of a Stadium. Therefore, the appellants cannot maintain the suit without adding the Government as a party to the suit. They have also claimed that the appellants herein did not state as to when they were dispossessed from the land in Sy.No.273. The cause of action mentioned in the suit is only imaginary one and having denied the other averments of the plaint, the respondent/defendant sought for dismissal of the suit.

6. The trial Court having framed the appropriate issues on the basis of the rival claim, proceeded with the trial during which the appellant No.4/plaintiff No.4 has been examined as PW.1. They have marked Exs.A1 to A20 and the respondent/defendant has examined PWs.1 to 3 and marked Exs.B1 to B10. The trial Court disbelieved the claim of the appellants herein and dismissed the suit. Being not happy with the said judgment, the appellants have filed AS.No.32 of

2016 before the Addl. District Court, Mahabubnagar. However, the said appeal was dismissed on contest. Therefore, the present Second Appeal has been filed on the following grounds.

7. The first appellate Court being the last Court to decide the facts finally, failed to discharge its obligation cast on it under Order XLI Rule 31 of C.P.C., thereby, judgment and decree referred by the first appellate Court by framing a single point for consideration is liable to be set aside.

8. The first appellate Court committed a serious illegality in reversing the findings on the question of title against the appellants, in the absence of any appeal/cross objections filed by the respondent with regard to findings on the issue of title of the appellants and without upsetting the findings of the trial Court vide Para Nos.13 and 16 without appreciating the documentary evidence brought on record with regard to their title through their father in respect of schedule property. The appellants have claimed that both the Courts committed serious illegality in making out a new case of adverse possession, which was neither pleaded nor any evidence was adduced on the record, and without raising any specific issues and in gross violation of the principles of

natural justice in as much as the appellants had no notice and opportunity to meet the same and therefore, the impugned judgment and decree are liable to be set aside. The first appellate Court committed a serious illegality in recording a finding vide Para No.16 of the judgment to the effect that no document is filed to show the ownership of the father and grandfathers of the plaintiff without considering the documents and held that khasra pahani and erstwhile Hyderabad State and Fair Adangals in Madras State had always been treated as authentic sources of title.

9. The trial Court and first appellate Court failed to appreciate the settled principle of law that acquisition of title under a document and plea of adverse possession are mutually inconsistent and once the party takes the plea of the title under a document is not entitled to raise the plea of adverse possession. The trial Court and first appellate Court failed to appreciate the burden of proof was on the party, who rests his case on the plea of adverse possession and specifically pleaded the commencement of date of adverse possession and must produce evidence in support of the said claim.

10. The trial Court and first appellate Court in spite of citing judgment referred in 2009 (3) ALD 416 failed to consider and apply the appropriate law laid down that mere non-mentioning of the land in declaration filed under the provisions of A.P. Land Reforms (Ceiling on Agricultural Holdings Act, 1973) by itself does not divest the rights and title of the land owner does not come in the way of claiming right and title in respect of the said land.

11. The appellants have claimed that the first appellate Court failed to refer the written arguments along with the case law cited by the appellants before disposing of the first appeal. The trial Court and first appellate Court committed a grave error by finding OS.No.4 of 1994 is not a declaration of title on merits but ascertainment of rights out of compromise and Exs.A13 and A14 does not establish the right of the appellants ignoring the fact that under Ex.A16 Sale Deed, Goverdan Lahoti father of Balaram lahoti, plaintiff in OS.No.4 of 1994 claimed rights in respect of schedule property which is part of Sy.No.273 from the father of the appellants herein and the respondent is also a party to the said suit, thereby, the principle of res-judicata squarely apply to the facts of the case. The trial Court and first appellate

Court committed serious illegality by dismissing the suit on surmises and conjunctures. Both the Courts committed an error in placing reliance on the stray entries made without any basis or proceedings under Exs.B4 to B8. Therefore, the judgment of the trial Court or the first appellate Court are perverse and liable to be set aside.

12. This Second Appeal has been admitted on three substantial questions of law with regard to the right of respondent/defendant to claim the suit schedule property by way of adverse possession and on the ground that the trial Court and the first appellate Court failed to appreciate the oral and documentary evidence produced by both the parties, more particularly, with regard to Exs.A17, A18, A20 and defendants No.4 to 8.

13. The appellants herein being plaintiffs before the trial Court while filing the original suit, sought for declaration of title over the property and also for recovery of the same by removing the shops constructed by the respondent/defendant. As per the averments made in the plaint and according to the evidence of 4th appellant/plaintiff No.4, who was examined as PW.1, the appellants failed to establish before the Court that their father was having Ac.03-13 gts of land in Sy.No.272 of

Pallaburju Village, which was their ancestral property and though their father alienated an extent of Ac.01-00 to one Goverdhan Lahoti and though they have lost some extent in the road widening still they said to have title over the suit schedule property.

14. The respondent-Nagar Panchayath claimed right over the property by way of adverse possession. It is true, there was no specific averment by the respondent to claim right over the property by way of adverse possession. But the contents of the written statement and evidence adduced before the trial Court through DWs.1 to 3, it was specifically contended by the respondent that the Municipality is the owner of the property right from 1340 Fasli and they denied the right of father of the appellants herein. The trial Court having examined all the documents including Exs.A16 and A17 pahani, though held that the father of the appellants by name Raghavendra Chary Munji was Inamdar of Ac.03-13 gts in Sy.No.273, further held that the evidence placed before the Court established that they were not in possession of the property even prior to 1946-47. The evidence of PW.1 (plaintiff No.4) also indicates that the said Raghavendra Chary worked as a Teacher in Government High School, Narayanpet

and during his life time itself land in Sy.No.273 was used by Government High School as a play ground within the knowledge of said Raghavendra Chary. PW.1 admitted before the trial Court that even while they were studying in the High School, the property was used as play ground and they did not deal with the possession of the property in any manner after the death of their father. The trial Court has also recorded a finding that the appellants herein could not file any document to show possession of their father subsequent to 1954-55.

15. Therefore, the appellants were not able to prove their title or possession since a long time. Simply because the name of said Raghavendra Chary was recorded in 1340 Fasli as Inamdar and in view of his failure to show the property in the returns filed under Land Reforms Act and in view of the failure of appellants to substantiate their possession from 1954-55, the trial Court held that the appellants are not entitled to declaration of their title. Even though a specific averment is not made in the written statement that the appellants herein cannot claim title and the respondent pleaded adverse possession, the further averments made in the written statement and issues framed by the trial Court

clearly indicates that it is for the appellants to establish their title and continuous possession over the property. When it is found that the plaintiffs or their father Raghavendra Chary did not raise any issue or did not raise any ground that they are owners of the property, the appellants cannot sought for recovery of possession by filing a suit in the year 2000. Even though, the appellants have claimed that in view of their occupation, they were away from the town and could not pursue, the evidence of PW.1 itself shows that they have got knowledge about the property being used as play ground of the School and subsequent events. Therefore, the appellants are not entitled to claim title over the property nor they can seek its recovery. Therefore, the facts and circumstances and evidence produced by both parties even in the absence of a specific issue with regard to adverse possession, the appellants cannot claim recovery of possession over the property.

16. There is no dispute about the specific contention raised by the respondent that the father of the appellants did not show the property in the declaration filed in CC.No.1081 of 1975 showing the list of family members and their holdings. He did not show the land in Sy.No.273 was in his

possession. Therefore, this specific contention raised by the respondent in its written statement indicates that they are claiming title on the property on the ground that the father of the appellants himself did not assert any right on the property from 1975. The appellants who are permanent residents of that particular town though away from the said place cannot contend that they were not aware of the subsequent events. The record produced by the respondent indicates that when the Manohar Lahoti S/o. Goverdhan Lahoti, who said to have purchased Ac.01-00 gts from the above referred Raghavendra Chary filed a suit, there was a compromise between the said Manohar Lahoti and the respondent, wherein, the assertions of the said Manohar Lahoti were accepted by the respondent herein.

17. As rightly held by the trial Court, it was subsequently confirmed by the first appellate Court, the said compromise cannot be used as an admission of title of the appellants herein. Therefore, the appellants who did not raise any claim on the property even subsequent to 1954-55 and in the absence of any contention or assertion on the land in Sy.No.273 while filing declaration in 1975, the appellants cannot assert such a right in the year 2000. The trial Court

having examined Exs.A17, A18, A20 as well as the documents produced by the respondent categorically recorded a finding that the appellants did not assert any right on the property at least from 1975.

18. On the other hand, the subsequent proceedings produced by the respondent indicates that the respondent/defendant obtained necessary permission from the Government, proceeded with the construction of a shopping complex. The construction of a shopping complex was undertaken by wide publicity must be within the knowledge of appellants herein. Therefore, it is nothing but the respondent asserting right on the property to the knowledge of one and all including the appellants herein. Therefore, the substantial questions must be answered in favour of the respondent. Consequently, the Second Appeal is liable to be dismissed.

19. In the result, the Second Appeal is dismissed.

Consequently, Miscellaneous applications if any, are closed. No costs.

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Sd/- K.SAILESHI
DEPUTY REGISTRAR
SECTION OFFICER

To,

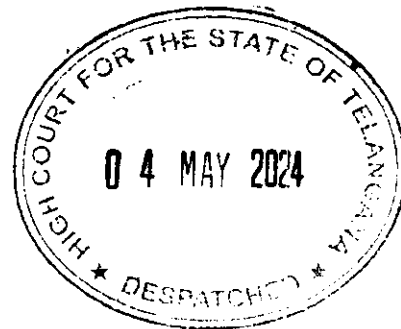
1. The Senior Civil Judge, Narayanpet.
 2. The VIII Additional District Judge, Family Court, Mahaboobnagar.(with records)
 3. One CC to Sri Botla Venkateswara Rao, Advocate [OPUC]
 4. One CC to Sri N. Praveen Kumar, S.C. For M.C. [OPUC]
 5. Two CD Copies
- Pip/gh

HIGH COURT

DATED:31/01/2024

JUDGMENT

SA.No.114 of 2018



**DISMISSING THE APPEAL.
WITHOUT COSTS.**

(Signature)

8/4/24

HR

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**WEDNESDAY, THE THIRTY FIRST DAY OF JANUARY
TWO THOUSAND AND TWENTY FOUR**

PRESENT

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ORDER: This appeal coming on for hearing and upon perusing the grounds of appeal, the Judgment and Decree of the Lower Court and the material paper in the case and upon hearing the arguments of Sri Botla Venkateswara Rao, Advocate for the Appellants and of Sri N. Praveen Kumar, Advocate for Respondent.

This Court doth Order and Decree as follows:

1. That the Second Appeal be and hereby is dismissed; and
2. That there shall be no order as to costs in this appeal.

//TRUE COPY//

Sd/- K.SAILESHI
DEPUTY REGISTRAR
SECTION OFFICER

To,

1. The Senior Civil Judge, Narayanpet.
2. The VIII Additional District Judge, Family Court, Mahaboobnagar.
3. Two CD Copies



HIGH COURT

DATED:31/01/2024

JUDGMENT+DECREE

SA.No.114 of 2018

**DISMISSING THE APPEAL.
WITHOUT COSTS.**

③

8/4/24

20.15