

A. Vinayananda Reddy Vs. T. Gurunatha Reddy and anr.

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Court : Andhra Pradesh

Decided On : Apr-19-1999

Reported in : 1999(3)ALT105

Judge : Ramesh Madhav Bapat, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100

Appeal No. : Second Appeal No. 988 of 1998

Appellant : A. Vinayananda Reddy

Respondent : T. Gurunatha Reddy and anr.

Advocate for Def. : P.S. Narayana, Adv.

Advocate for Pet/Ap. : M. Chandrasekhar Reddy, Adv.

Disposition : Appeal dismissed

Judgement :

Ramesh Madhav Bapat, J.

1. The appellant herein was the plaintiff, who had instituted O.S. No. 170 of 1987 in the Court of the Principal Junior Civil Judge, Punganur, Chittoor District. The respondents herein were the defendants in the aforesaid suit. The plaintiff filed the suit against the defendants for permanent injunction restraining the defendants

from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property, costs of the suit and other reliefs.

2. It was averred by the plaintiff that the property described in the plaint schedule is the ancestral property of the plaintiff. The suit village was originally in the Zamindari Estate. The grandfather of the plaintiff named Raghava Reddy @ Chengal Reddy acquired the suit property and other properties from the then Zamindar of Punganur Estate long prior to the notified date under the Estates Abolition Act. After the abolition of Estate during the survey and settlement operations in the year 1960, ryotwari patta was granted for the suit land by the Board of Revenue, Government of Andhra Pradesh in the name of the plaintiff's grandfather. The suit survey numbers have been correlated to Paimash No. 58 part and since then the plaintiffs father has been in possession and enjoyment of the schedule land as of their own right. The grandfather of the plaintiff died leaving behind him his three sons viz., A. Subrahmanyam Reddy, A.R. Krishnamurthy Reddy and A. Pratap Chandra Reddy and they succeeded to the estate of plaintiff's grandfather including the suit property. Both Subrahmanyam Reddy and Pratap Chandra Reddy were residing at different places and doing their professions leaving the father of the plaintiff named Krishnamurthy Reddy alone to look after the family properties. The father of the plaintiff became sick and unable to manage the estate of the family properties for the last two years. Hence the plaintiff being eldest member of the family was looking after the management of the suit schedule properties and other properties for the benefit of all the sharers. During the life time of plaintiff's grandfather, mango garden was raised in an extent of Ac. 100-00 out of the vast extent of the land possessed by their family leaving the rest as fallow due to personal inconvenience and financial constraints. The plaintiff came to know that the revenue authorities have not implemented the Board of Revenue orders of 1960 in the revenue records. After hectic efforts finally on verification of the records, Board of Revenue Orders were implemented in revenue accounts on 5-4-1986 in the name of plaintiff's family. Earlier to the implementation of the orders and before getting favourable orders from the Board of Revenue for the suit land and properties, the suit lands were classified as assessed waste lands and the plaintiff's family paid land revenue under 2-A system. The plaintiff and his ancestors have perfected their title even by virtue of

adverse possession. The defendants are strangers and having no right over the suit schedule property. In spite of the fact, at the instigations of persons, who were inimical towards the plaintiff's family, defendants are trying to trespass into the suit land under the guise of D.K.T. patta said to have been issued by the then Punganur Tahasildar for some part of the suit property. On 3-3-1987 the defendants started removing the bushes with the help of their men. Defendants never reclaimed the suit land and they never exercised their rights over any extent of the suit property. The Government authorities have no right to grant D.K.T. patta for the suit land in favour of the defendants. D.K. T. patta alleged to have been issued in favour of the defendants is not binding on the plaintiff. The plaintiff is not in a position to resist the high-handedness of the defendants. Hence the suit for permanent injunction.

3. On appearance, the first defendant filed written statement. It was adopted by the 2nd defendant. It was denied that the suit schedule property was ancestral property of the plaintiff. It was averred that the suit property was originally correlated to Py. No. 57 but not 58 as pleaded by the plaintiff. The plaintiff or his ancestors never enjoyed the suit schedule land. In fact, the suit land and the land adjoining to it consisting of Ac. 40-00 was originally in possession of one A. V. Ramachandra Reddy, who also tried to obtain ryotwari patta. But the Commissioner of Settlement refused to grant patta in his favour and assumed the land in B.F. R.T. 33/82/57 dated 29-5-1957 in the Office of Board of Revenue. Later on, he was also evicted by the Tahasildar on 2-7-1957. Plaintiff's grandfather was having Ac. 20-00 of land to the south of above said Ac. 40-00 of land for which the plaintiff's grandfather had filed an application in S.R. 4363/11/PRO before the Assistant Settlement Officer, Chittoor in which he deposed that the suit land and the adjoining land together consists of Ac. 40-00 belonging to A.V. Ramachandra Reddy and the same was in Py. No. 57. Original Py. Nos. 56 to 59 were correlated to S. No. 351 with an extent of Ac. 593-25 cents and classified as assessed waste. In the year 1962 this defendant and his wife occupied the suit land to the extent of Ac. 4-20 cents covered by S. No. 420/3 and reclaimed the same. They spent huge amounts and brought major portion of it under cultivation. Thus, since 1962 the suit land is in possession and enjoyment of defendants and they continued in possession and enjoyment of the same till 1984. Then the

Tahasildar was pleased to issue the D.K.T. patta for the suit land in favour of the first defendant and in favour of 2nd defendant in respect of S. No. 420/3. The defendants levelled the land by using bulldozers and they have spent an amount of Rs. 10,000/-. The mutation of the names of the plaintiff in the revenue records are all fabricated to defeat the rights of these defendants. The plaintiff being landlord managed the revenue authorities and fabricated all the documents. The suit land is not covered by the orders of Board of Revenue dated 9-12-1960 relied by the plaintiff. D.K.T. patta of these defendants is not cancelled and at the same time he was not evicted from the suit land. Thus the defendants are in lawful possession of the suit land. With these averments, it was prayed by the defendants that the suit filed by the plaintiff be dismissed with costs.

4. It further appears from the record that the plaintiff examined P.Ws. 1 and 2, filed certain documents and they were marked as Exs.A-1 to A-11. Defendants examined D.Ws. 1 to 4, filed certain documents and they were marked as Exs.B-1 to B-35. A Court witness was examined as C.W.1, through him certain documents were produced and they were marked as Exs.X-1 to X-3. Thus, on the strength of the evidence on record, the learned Judge was pleased to decree the suit. Aggrieved by the aforesaid decree and judgment, the defendants filed A.S. No. 27 of 1997 in the Court of the Additional District Judge, Mandanapalle. On hearing both sides, the learned Judge was pleased to allow the appeal and the judgment and decree passed by the trial Court was set aside. Aggrieved by the said Judgment and decree, the plaintiff has filed the present Second Appeal.

5. The learned Counsel Mr. M. Chandrasekhar Reddy appearing on behalf of the plaintiff-appellant submitted at the Bar that the judgment of the first Appellate Court is contrary to the evidence on record and therefore it is liable to be set aside.

6. Looking from the pleadings and the arguments advanced at the Bar, this Court has to ascertain whether the plaintiff was successful in proving his possession to the suit schedule land immediately preceding to the date of filing of the suit. The question of title would not arise.

7. It is seen from the records that according to the contention of the plaintiff that the suit land in Sy. No. 420/1 admeasuring Ac. 0-90 cents and Sy. No. 420/2

admeasuring Ac. 4-18 cents forms part of the land in Paimash No. 57, admeasuring Ac. 40-00. According to the contention of the defendants, it was in possession and enjoyment of A.V. Ramachandra Reddy in the year 1957, who was evicted from the land as per the eviction notice dated 2-7-1957 which is produced by the defendants and marked as Ex.B-1. It is further seen that the 1st defendant was working in Defence Services. He applied for allotment of the said land in the year 1962. He came into possession of the said land since then and he reclaimed the said land and has been in possession and enjoyment of the same and in the year 1984 'D' Form patta was assigned to him by the Government, which is marked as Ex.B-13. It was also the case of the defendant No. 1 that his wife, who is the second defendant in the suit, was granted land in Sy. No. 420/3 admeasuring Ac. 4-20 cents, which is evident from 'D' Form patta and which is produced on record as Ex.B-14. It was the case of the defendants that Sy. No. 420/2 was sub-divided into Sy.Nos. 420/2 and 420/3. It was the case of the plaintiff that the entire land forms part of Paimash No. 58 and the entire land forming part of Ac. 300-00 was standing in the name of plaintiff's grandfather named R. Raghava Reddy @ Chengal Reddy having entered into possession at the time of Punganur Zamindari and subsequently the possession was implemented in the revenue records. In order to prove the said averments, the plaintiff produced Exs.A-1 and A-2 and the payment of kist to the suit land from Exs.A-3 and A-4. The orders of Board of Revenue were marked as Exs.A-1 and A-2. They were implemented as per Exs. A-5 to A-7. With these documents on record, it was contended on behalf of the plaintiff that the plaintiff has been in possession of the suit schedule land. There is no dispute that the suit land forms part and parcel of the land originally in Punganur Zamindari Estate. The question is whether they were in paimash Nos. 57 or 58 and other lands covered by paimash Nos. 57 to 59? It is the main issue which was dealt with by the first appellate Court. It further appears from the record that during the pendency of the suit, a Commissioner was appointed. The Commissioner visited the suit land twice and filed his report. There was also the evidence of C.W.1 by name N. Ravi Kishore. It further appears from the judgment of the first appellate Court that with the help of the Surveyor and with the help of the sketch of paimash given to him by the first defendant, he located the land covered by the sale deed dated 24-3-1953 belonging to A.

Venkataswamy Reddy. He also located with the help of the Surveyor and the relevant document, the land of A. Venkataswamy Reddy purchased by Chengal Reddy, the grandfather of the plaintiff and also the land of Ramachandra Reddy to the extent of Ac. 40.00 and finally he located the suit schedule land in Sy.Nos. 420/1 and 402/2 covered by fencing raised by the defendants. He compared with the particulars mentioned in 'D' form pattas given in favour of the defendants 1 and 2 and found that the land in Sy.Nos. 420/1 and 402/2 are in occupation of the defendants. The first appellate Court also took into consideration the evidence of the Mandal Revenue Officer, who was examined as C.W.1 and had filed Ex.X-2, the copy of the detailed report submitted by him to the District Collector, Chittoor on 17-6-1996, which has got lot of relevancy in this case. It shows that the land under dispute and the land in Sy. Nos. 420/1 and 420/2 to the extent of Ac. 13.19 cents and Ac. 8.38 cents were included in ryotwari patta granted to Raghava Reddy @ Chengal Reddy under patta No. 1244. It was also noted in 10 (1) account. It also shows that the defendant No. 1 named T. Gurunatha Reddy was also granted D.K.T. patta by the then Tahasildar, Punganur in Sy. Nos. 420/1 and 402/2 and another patta was also given to his wife Neelamma for the lands situated in Sy. No. 420/3 in the proceedings dated 11-9-1984. The said land was shown as unassessed waste land in the year 1984 without taking into consideration of the pending of the finalisation of the implementation of Board Orders. The first appellate Court further observed that in Ex.X-2 it has been categorically stated by the Mandal Revenue Officer that the suit lands are shown in the relevant Revenue records in favour of the defendants as well as the plaintiff. Therefore, it became very essential for the first appellate Court to ascertain actually who was in possession of the schedule lands on the date of the suit without going into the validity of those orders.

8. As stated earlier, Ex. X-2 shows that C.W.1 had submitted his report to the District Collector stating that no body was in enjoyment of the suit schedule lands on the date of the report. The Mandal Revenue Officer expressed a view in the letter that it was yet to be ascertained. The first appellate Court held that though Ex.X-2 shows that neither the plaintiff nor the defendants were in possession of the suit schedule land by the date of order, both the parties disputed the said finding given by the Mandal Revenue Officer. The case of the defendants was that

the land was reclaimed in the year 1962 and since then they have been in possession of the said lands. The Commissioner's report also shows that on the date of his visit, the plaintiff-appellant herein was not in possession of the suit schedule land. In pursuance of Exs.A-1 and A-2 by implementing the said order, 'D' form patta was marked as Exs.B-13 and B-14 and it was not cancelled. The first appellate Court held that if reliance is kept on Ex.X-2, one has to hold that Sy. numbers were also included in Ex.X-1 Ryotwari Patta Pass book. In that case, the constructive possession of the plaintiff has to be accepted. But the plaintiff himself does not know the total extent of the land which he was really in possession, because it forms the part of big extent of more than 500 acres of land. Thus, the learned Judge held that the plaintiff himself was not sure regarding the possession of the extent of the land and therefore held that the plaintiff failed to establish the possession of the suit schedule land. Many more reasons were assigned on factual aspects.

9. Considering the above factual aspects, this Court is of the considered view that in an injunction simpliciter, the plaintiff has to prove his possession and the same was not proved by the plaintiff and therefore it was held by the first appellate Court that the plaintiff is not entitled for injunction and thus the decree passed by the trial Court was set aside.

10. Looking to the facts, this Court holds that the first appellate Court had given a judgment basing purely on facts. While hearing the Second Appeal, this Court is not supposed to look into the facts. There is no substantial question of law made out in this case.

11. Therefore, the Second Appeal is dismissed. No costs.