

D.Rami Reddy and Others Vs. the Executive Officer, Tirumala Tirupati Devasthanams and Another

D.Rami Reddy and Others Vs. the Executive Officer, Tirumala Tirupati Devasthanams and Another

SooperKanoon Citation : sooperkanoon.com/950425

Court : Andhra Pradesh

Decided On : Apr-02-2012

Judge : Goda Raghuram & N. Ravi Shankar

Appeal No. : APPEAL SUIT No.2512 of 2001

Appellant : D.Rami Reddy and Others

Respondent : The Executive Officer, Tirumala Tirupati Devasthanams and Another

Judgement :

JUDGMENT OF THE COURT:

Appellant, Duggandla Rami Reddy, represented by his power of attorney holder Duggandla Mohan Reddy, is the plaintiff in O.S.No.42 of 1997 on the file of the Court of the Additional Senior Civil Judge, Tirupati (trial court). He brought that suit for declaration of his title to the suit land and for recovery of possession of the same from the defendants. The trial court, after contest, dismissed that suit by its judgment and decree dated 3rd October 2001. Aggrieved by the same, he filed this appeal.

2. The first defendant is Sri Tirumala Tirupati Devasthanam (TTD) and the second defendant is the Tirupati Municipality. The suit land is Acs.3-00 consisting of Ac.1-

88 cents described in plaint 'A' schedule and Ac.1-12 cents described in plaint 'B' schedule with survey numbers in Tirupati Urban Mandal-Tirupati Town. To appreciate points in this first appeal, the respective cases of the parties and their contentions should be noted. Henceforth, for convenience, they are referred to as they are arrayed in the suit.

3. According to the plaintiff, his father late Peddamuni Reddy purchased the suit land for a sum of Rs.90/- under Ex.A.1 unregistered document described as saswata patta dated 02.04.1911 from its lawful owner Tallapaka Venkateshacharyulu and obtained possession of the same on the very same day. The plaintiff's version is that subsequently his father obtained Ex.A.2 ryotwari patta dated 30th December 1957 from the Tahsildar, Chandragiri, for the suit land under the A.P. (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 (for short Act), and continued in possession and enjoyment of it. This Ex.A.2 is, according to plaintiff, preceded by Ex.X.10 decision dated 27th September 1957 of Tahsildar notifying the suit land as inam land under the Act. He also says that his father earlier and as well as himself perfected his title to the suit land even by prescription and his father died in 1959 thereupon he inherited the suit land.

4. The grievance of the plaintiff is that subsequently it turned out that the first defendant occupied plaint 'A' schedule land of Ac.1-88 cents on 4th December 1996 and the second defendant occupied plaint 'B' schedule land of Ac.1-12 cents without any manner of right and did not handover possession of the same to him despite repeated requests and a notice and therefore he had been constrained to bring the suit.

5. Before we set out the pleas of the defendants, we must mention that the trial court judgment would show that it rejected the plaintiff's case more on the ground that he failed to establish that the suit land is the same land for which Ex.A.1 saswatha patta and Ex.A.2 ryotwari patta were issued. Sri M.Adinarayana Raju, the learned counsel appearing for TTD filed a chart showing the original extent of the land in Sy.No.9 of Tirupati and its sub-divisions and their extents and in which sub-division the suit land lies. The said chart is as follows.

S.No.9

Ac.50-50

|

|

|

S.No.9/1

S.No.9/2

Ac.24-23

Ac.29-27

|

|

|

9/1A

9/1B

Ac.2-55

Ac.21-68

|

|

|

|

9/1B/1A

9/1B/1B

9/1B/1C

Ac.2-57

Ac.3-56

Ac.15-34

| Location on the West Given

at the time of formation Located| on Eastern

of Bye Pass road of Bye pass road to D1 TTD side of Bye| pass road

|

| | |

9/1B/1C1 9/1B/1C2 9/1B/1C3

36 Ac.0-40 Ac.13-58 Ac.1-
(Ac.13-64 u/sale (Ac.1-42 U/

u/deed dt.26-8-93 agreement dt.

Plaint "A" Sch 4-4-97 Plaint

"B" schedule

6. The above chart has been agreed to by Sri K.V.Satyanarayana, the learned counsel for the plaintiff. Even in Ex.A.2/Ex.X.1 patta the suit land is shown in Sy.No.9/1B. Thus it is clear that defendants did not dispute the identity of survey numbers of the suit land though they raised a dispute regarding boundaries and actual identity and raised various other pleas to contend that the plaintiff's claim is devoid of merits.

7. Now turning to the case of defendants, their first plea is that the entire extent in Sy.No.9/1B i.e. Acs.21-68 cents was acquired under the Land Acquisition Act, 1894 (LA Act), by the Government in 1937 under Ex.B.1 award and was made over to the second defendant municipality for public purposes. Their plea is that by reason of Ex.B.1 award the suit land ceased to be inam land by the date of commencement of the Act and therefore Ex.A.2 patta is void as the Tahsildar will have no jurisdiction to grant it as the Act has no application to it. Their version is that the Tahsildar acted with total lack of jurisdiction in granting Ex.A.2 patta and consequently it is a nullity.

8. The further plea of the first defendant is that the land in question in Sy.No.9 of which the suit land is a part was a grant made for singing hymns for the deity of TTD Temple and it was not a personal grant to members of the Tallapaka family and consequently the transferor under Ex.A.1 had no right or power to execute the same and therefore it cannot give any valid title to the plaintiff's father. Defendants further pleaded that they were persons interested in the land and the Tahsildar,

Chandragiri, did not give any notices to them before granting Ex.A.2 patta and therefore it is not, on that ground also, binding on them. The learned counsel appearing for the defendants in this appeal also argued that plaintiff's father was not an Inamdar and as the Tahsildar treated the Tirupati village as ryotwari village, plaintiff's father was not entitled to any patta and on that ground also Ex.A.2 patta is null and void.

9. They then pleaded that the revenue record relied upon by the plaintiff does not confer any title upon him to the suit land and that Exs.A.1 and A.2 and the revenue record are also got up documents. Lastly they pleaded that the plaintiff or his father were never in possession of the suit land and therefore the question of their perfecting title to it by prescription does not arise at all.

10. The main contention and argument of Sri K.V.Satyanarayana is that once the Tahsildar has exercised his jurisdiction and granted Ex.A.2 ryotwari patta in favour of the plaintiff's father that becomes final under Section 3(7) of the Act and the trial court or this court cannot go into its validity and the suit ought to be decreed. In support of this contention he relied upon various decisions. We will refer to them to the extent necessary. He also argued that Ex.A.1 saswatha patta and Exs.X.1 to X.14 documents and the revenue record support plaintiff's case in all respects including possession and he must also be held to have acquired title by prescription and the trial court erroneously ignored the same.

11. On the other hand, the arguments of Sri M.Adinarayana Raju and the learned Special Government Pleader are based on the pleas of the defendants which are set out in paras-7, 8 and 9 above. They also relied upon certain decisions and we will mention them to the extent necessary.

12. Before we go into the points raised in this appeal, it may be noted that the details of the evidence let in by both sides in support of their respective cases have been given in the appendix of evidence at the foot of the trial court judgment. The plaintiff summoned certain documents from the office of the Tahsildar, Chandragiri, in support of his case and they have been marked as Exs.X.1 to X.15.

Point No.1:

13. On the above contentions and arguments the first point that would arise is whether the suit land was acquired by the Government under Ex.B.1 award and if so whether Ex.X.10 decision of the Tahsildar and Ex.A.2 ryotwari patta are void and not binding on the defendants. This question was not framed as an issue by the trial court and not answered. However, as this is a pure question of law pertaining to jurisdiction we are considering this aspect as both sides have argued it.

14. A Gazette copy of the Section 4(1) notification of the LA Act published in the Fort St. George Gazette dated 6th October 1936 of the erstwhile Madras State marked as Ex.B.22 would show that a part of the land in Sy.No.9/1 i.e. Sy.No.9/1B (along with a part in Sy.No.9/2) was acquired under the LA Act for a public purpose i.e. sewerage purposes in Tirupati municipality and subsequently Ex.B.1 award was passed. Exs.B.1 and B.22 were marked in the evidence of D.W.2 K.Tulasiram, the then Supervisor of the Town Planning Department of second defendant. Ex.B.1 award which is of 1937 pertains to Sy.No.9/1B consisting of Acs.21-68 cents which is admittedly part of Sy.No.9/1 according to the chart furnished by Sri Adinarayana Raju and not disputed by Sri K.V.Satyanarayana. It is the admitted case of both sides that plaint 'A' schedule land is in Sy.No.9/1B/1C2 and plaint 'B' schedule land is in Sy.No.9/1B/1C3 and both are admittedly part of Sy.No.9/1B. In Ex.B.22 notification and also in Ex.B.1 award, the land is described as inam land. Thus it follows that the suit land was also acquired under Ex.B.1 award.

15. P.W.1 Rami Reddy, the plaintiff in his cross-examination was asked about the above acquisition under the LA Act. He stated that he does not know about the same. In other words, plaintiff was not in a position to dispute the above acquisition. Sri K.V.Satyanarayana also could not bring to our notice any circumstance in the evidence to hold that the suit land was not part of the land acquired under Ex.B.1 award. In fact, in the course of arguments we specifically asked him about the above acquisition pleaded by defendants and he fairly stated that he is not in a position to dispute the same. Accordingly the case of defendants

that the suit land was acquired along with other land in Sy.No.9/1B under Ex.B.1 award of 1937 as matters stand has to be accepted. We should also mention here that the name of the plaintiff's father is not found in Ex.B.1 award as an occupant and this will have a bearing on the plaintiff's claim regarding possession of the suit land and we will advert to it under point No.3.

16. The Act came into force on 26th September 1956. In view of Ex.B.1 award which is of 1937 it follows that the suit land did not exist as an inam for the Tahsildar, Chandragiri, to exercise jurisdiction under the Act to grant patta as the land in question already stood vested in the Government by reason of Ex.B.1 award even in 1937 itself and was not available as inam on the date of the commencement of the Act. Section 1(2) of the Act says that the Act applies only to inam lands as described in Section 2(c) thereof. Then Section 2(c) defines inam land. Thus for the application of the Act there must be inam land in existence as on the date of its commencement either in a ryotwari village; in a zamindari village; or in an inam village. Under the LA Act it is settled position that once acquisition is made and the award passed the land stands vested in the Government free from all encumbrances and the rights of the owners of such land or the occupants of the same can only be to claim compensation and they have no other right in it.

17. It should be noted that Ex.B.22-Section 4(1) notification under the LA Act and Ex.B.1 award are public documents and their veracity, especially as plaintiff and his counsel were not in a position to dispute the same, cannot be doubted. It is clear that the Tahsildar, Chandragiri, ignored the above acquisition of the suit land by the Government. In view of this acquisition, the suit land was not available as inam for applying the Act which came into force in 1956. It can therefore be said that the Tahsildar in granting Ex.A.2 patta has acted with total lack of inherent jurisdiction under the Act as it has no application to the land. This itself shows that the Ex.A.2 patta cannot be treated as a valid document and it has to be treated as a void document just like a civil court decree granted against a dead person or in respect of a non-existing property.

18. Here Section 44 of the Evidence Act, 1872, becomes relevant. Section 44 falls under that group of sections in the Evidence Act which deals with relevancy of

judgments of courts of justice and it reads as follows.

“44. Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.-- Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 40, 41 or 42 and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.”

19. From the language of Section 44 it is clear that a judgment which was given by a court not competent to deliver it or where it was obtained by fraud or collusion is not relevant in any subsequent proceedings. In *Gram Panchayat of Village Naulakha vs. Ujagar Singh* (2000) 7 SCC 543) the Hon'ble Supreme Court relying upon Section 44 has laid down the proposition that where a judgment is found to be fraudulent or collusive, it can be challenged in a later suit or proceedings by the party against whom it is relied upon and it is not necessary for that party to file an independent suit for a declaration for setting aside the same on that ground.

20. The above proposition going by Section 44 of the Evidence Act can be equally applied to the judgment of a court which had no inherent jurisdiction and was in that sense not competent to deliver that judgment. The same proposition can be equally applied to the decision of an administrative authority also under an Act over a subject matter to which the said Act itself has no application. Sri K.V.Satyanarayana however relied upon Section 3(7) and Section 14 of the Act and contended that in view of the said provisions, Ex.X.10 decision of the Tahsildar notifying the land as inam land and Ex.A.2 patta granted by him cannot be questioned.

21. It is true that Section 3(7) of the Act says that every decision of the revenue court and subject to that decision, every decision of the Tahsildar under Section 3 of the Act shall be binding on all persons and institutions claiming an interest in any inam land covered by the Act notwithstanding that such persons or institutions have not filed any application or statement or adduced any evidence or appeared or participated in the proceedings before the Tahsildar or the revenue court. It is also true that Section 14 of the Act which deals with bar of jurisdiction of civil courts says that no suit or other proceedings shall be instituted in any civil court to

set aside or modify any decision of the Tahsildar, the revenue court or the Collector under this Act except where such decision is obtained by misrepresentation, fraud or collusion of parties.

22. Sri Satyanarayana's contention is that in view of the above provisions, defendants cannot be permitted to question the validity of Ex.X.10 decision of the Tahsildar and granting of Ex.A.2 patta in favour of the plaintiff. He also relied upon various decisions of the Hon'ble Supreme Court dealing with the exercise of jurisdiction by an authority or a special tribunal under an Act and when such decisions can be treated as void and when they can be treated as irregular. He says that grant of Ex.A.2 patta can be said to be an irregular exercise of jurisdiction which can be corrected only in statutory remedies under the Act and cannot be said to be void. Of the many decisions cited by Sri Satyanarayana, two decisions of the Hon'ble Supreme Court are relevant to the point as they are directly given on the position under the present Act. The first is Vatticherukuru Village Panchayat vs. Nori Venkatarama Deekshithulu (1991 Supp (2) Supreme Court Cases 228). The second is Tirumala Tirupati Devasthanams vs. Thallappaka Ananthacharyulu (2003) 8 Supreme Court Cases 134).

23. Regarding finality of decisions/orders passed by the Tahsildar and other authorities under the Act this is what the Hon'ble Supreme Court has observed in para 23 of the

judgment in Vatticherukuru Village Panchayat's case (2 supra).

"23. The jurisdiction of a tribunal created under statute may depend upon the fulfilment of some condition precedent or upon existence of some particular fact. Such a fact is collateral to the actual matter which the Tribunal has to try and the determination whether it existed or not is logically temporary prior to the determination of the actual question which the tribunal has to consider. At the inception of an enquiry by a tribunal of limited jurisdiction, when a challenge is made to its jurisdiction, the tribunal has to consider as the collateral fact whether it would act or not and for that purpose to arrive at some decision as to whether it has jurisdiction or not. There may be tribunal which by virtue of the law constituting it has the power to determine finally, even the preliminary facts on which the

further exercise of its jurisdiction depends; but subject to that, the tribunal cannot by a wrong decision with regard to collateral fact, give itself a jurisdiction which it would not otherwise have had. Except such tribunals of limited jurisdiction, when the statute not only empowers to enquire into jurisdictional facts but also the rights and controversy finally it is entitled to enter on the enquiry and reach a decision rightly or wrongly. If it has jurisdiction to do right, it has jurisdiction to do wrong. It may be irregular or illegal which could be corrected in appeal or revision subject to that the order would become final. The questions to be asked, therefore, are whether the tribunal has jurisdiction under Inam Act to decide for itself finally; whether the institution or the inamdar or the tenant is entitled to ryotwari patta under Sections 3, 4 and 7 and whether the tribunal is of a limited jurisdiction and its decision on the issue of patta is a collateral fact.”

24. The legal position stated in VatticherukuruVillage Panchayat’s case (2 supra) was considered in TirumalaTirupati Devasthanams’s case (3 supra). However in para 3 of the judgment in the latter case it was held “thus as per the law laid down by this Court in Andhra Pradesh the civil court would have jurisdiction only in cases of misrepresentation, fraud or collusion of parties”. These are the grounds on which a suit can be filed under Section 14 of the Act challenging a patta or proceedings under the Act.

25. From the legal position stated in the VatticherukuruVillage Panchayat’s case (2 supra), it can be concluded that despite Section 3(7) and Section 14 of the Act, if the Tahsildar acting under the Act has decided jurisdictional facts wrongly and applied the Act to a land to which it has no application, he assumes a jurisdiction which he would not otherwise have. This proposition has not been varied in TirumalaTirupati Devasthanams’s case (3 supra) and the said judgment reads that the above view regarding the effect of wrongly deciding jurisdictional facts has also received approval. The facts in the present case would show that the Tahsildar granted Ex.A.2 patta for the suit land though it ceased to be inam and became Government land in 1937 itself by reason of Ex.B.1 award. It can thus be said that Ex.A.2 patta is void.

26. It is true that Section 14 of the Act says that a civil court can have jurisdiction only when the proceedings under the Act are vitiated by fraud, misrepresentation or collusion. However, when the Act itself has no application to the land in question, in our opinion, that can also be an additional ground to treat a patta granted under it as void notwithstanding the above Section 14 and also Section 3(7) of the Act as that amounts to exercising a jurisdiction not permitted by the Act and not an irregular exercise of available jurisdiction.

27. For the aforesaid reasons, in view of the legal position stated in Gram Panchayat of Village Naulakha's case (1 supra) based on Section 44 of the Evidence Act, it follows that defendants can successfully question and resist Ex.X.10 decision of the Tahsildar and Ex.A.2 patta as void and not binding on them in the present suit by way of their defence. Accordingly, we decide this point in favour of the defendants.

Point No.2:

28. We must say here that the above conclusion of ours on point No.1 is sufficient to dismiss this appeal confirming the judgment of the trial court. However both the learned counsel for defendants argued that Exs.A.1 and A.2 can be said to be vitiated by collusion and misrepresentation; for want of notice to them; and on the ground that the plaintiff's father was granted Ex.A.2 patta for the suit land to which he is not entitled and therefore they are not binding on them. The learned counsel for the plaintiff tried to sustain Exs.A.1 and A.2 opposing the above argument of the counsel for defendants. As this court has to answer all the points raised in a first appeal, we take up that controversy as point No.2.

29. The first contention of the learned Special Government Pleader and Sri Adinarayana Raju is that no individual notices were given to the defendants by the Tahsildar under the Act, and if such notices had been given, they would have brought to the notice of the Tahsildar about Ex.B.1 award, the unreliability of Ex.A.1 and that the plaintiff's claim is devoid of merits. They say that Ex.A.2 patta and all other proceedings of the Tahsildar must be held to be vitiated and void on that ground also. Opposing this contention, Sri Satyanarayana relied upon a Division Bench decision of this court given in Sri Malleswara Swami Vari Temple

vs. Juttiga (1971 (1) An WR 27) and contended that it was not necessary to give any individual notices to the defendants under the Act and A.P. Andhra Area Inams (Abolition and Conversion into Ryotwari) Rules, 1957 (for short the Rules) framed thereunder in the enquiry that preceded the issuance of Ex.X.10 decision and Ex.A.2 patta and consequently the same cannot be held to be invalid on that ground.

30. The above contention of Sri Satyanarayana cannot be accepted. Sub-rules 2, 3 and 4 of the Rules prescribe the procedure for issuing notices before the Tahsildar takes a decision under Section 3 of the Act to notify a land as inam land. Sub-rule 5 says that copies of notice shall also be served on all other persons known or believed to be interested in the lands in question by the Tahsildar. Sub-rule 6 says that where the person interested is found to be an institution, notice shall be sent to the Manager or trustee or executive officer or other person in charge of that institution before taking the decision. Explaining the scope of this sub-rule 5 the Division Bench in Sri Malleswara Swami Vari Temple's case (4 supra) held as follows in para-10 of the judgment.

“10. Before sub-rule (5) is attracted it has to be shown that the Special Deputy Tahsildar who was making an enquiry under section 3 knew or believed that the petitioners were interested in the lands specified in the notice. The section or the said sub-rule does not cast any duty upon the Tahsildar to make any effort to find out as to who are the persons can be said to be interested in the lands specified in the notice. If he by some method or other happens to actually know or he believed that the petitioners were interested in the lands specified in the notice then the sub-rule which is couched in a mandatory and imperative language casts an obligation upon the Tahsildar to issue notice to such person.”

31. The above passage and the observations made in the above Division Bench judgment would of-course show that no general duty is cast upon the Tahsildar to give individual notices to the persons interested, but if it is shown that there is some material before the Tahsildar from which he could reasonably infer or he can be made to believe that a third person is also interested in the land and when there is such material, he ought to give individual notice to such third person

before taking a decision about the nature of the inam and to grant patta. In the present case, Ex.X.1 application dated 06.11.1956 itself of the plaintiff's father seeking patta discloses that the grant was made for singing hymns in Lord Venkateswara Swamy temple in Tirumala but the grant was to an individual. The further claim was that since the grant was made to an individual, Tallapaka Venkateseshacharyulu who was the inamdar or a descendant of the inamdar was competent to transfer it under Ex.A.1.

32. It should now be noted that Lord Venkateswara Swamy's temple in Tirumala is a very ancient famous temple in our country and it was so in 1957 as well and is situate on the Tirumala hills near Tirupati right from the beginning. That being the case, no revenue official can be permitted to say that there was no material before him or he had no knowledge about the interest of that temple in the land especially and, to repeat, when Ex.X.1 application itself discloses that the grant was made for singing hymns in that temple. Therefore it can be said that the Tahsildar was duty bound to ascertain whether the grant was to the individual or to the said temple and for that purpose it was his duty to hear the version of the authorities of the said temple also, about the nature of the grant. Thus as held by the Division Bench in the above decision, this case cannot be said to be a case where there was no reasonable material before the Tahsildar to ignore issuing notice to the authorities of the above temple, managed by the TTD. The Tahsildar failed to give notice to that temple.

33. The learned single Judge who decided the matter in the first instance (in the aforesaid case) held that failure of the Tahsildar to give individual notices to other interested persons while taking a decision in Form-II under Section 3 of the Act makes the whole proceedings void. The Division Bench did not totally reverse the above view but as stated in para-10 of that judgment which is extracted supra, it held that to find fault with the Tahsildar in that behalf it must be shown that there was some material before him from which it can be said that the Tahsildar had knowledge about the other persons interested in the land. The Division Bench reversed the judgment of the learned Single Judge in that matter on the ground that there was no such material before the Tahsildar to give individual notices to the persons aggrieved therein. The Division Bench, thus, upheld the view that the

patta or the decision of the Tahsildar to notify the land as inam land would be void if the Tahsildar failed to give notices to the other persons interested when he had knowledge about them or there was some material before him from which it can be said that Tahsildar ought to have issued notice to third parties interested in the land. In the present case, the situation is otherwise as Ex.X.1 application of the plaintiff's father itself discloses that the temple i.e. TTD is also interested in the land and therefore the failure of the Tahsildar to give individual notices to TTD vitiates Ex.A.2 patta and makes it void as against TTD and consequently against the second defendant also. Ex.B.1 award further strengthens the above conclusion.

34. The aforesaid conclusion of ours on the first contention raised by defendants under this point is sufficient to decide the same in favour of defendants. Hence, we decide this point also in favour of defendants.

35. Regarding the plea of Sri Adinarayana Raju that since plaintiff's father was not an inamdar, he is not entitled to patta for the suit land as it is notified to be in a ryotwari village by the Tahsildar, we must say that the said plea is correct. It should be noted that under Ex.X.10 decision, the Tahsildar notified the suit land to be inam declaring Tirupati village as ryotwari village. The plaintiff's father was admittedly not an inamdar and he got possession only under Ex.A.1 which is described as permanent lease deed. Thus Section 4(1) of the Act which deals with grant of pattas in ryotwari or zamindari villages provides for grant of pattas only to inamdars. It is Section 4(2) which says that in the case of inam land situate in an inam village alone, a person in occupation of land as a tenant or in some capacity mentioned therein would be entitled to patta subject to satisfaction of the conditions and the shares stated therein.

36. The above legal position has been stated in the decision of this court in G.C.H.Jagadev vs. The Revenue Divisional Officer, Tekkali (1963 (2) An WR 418) and the matter was remanded back to the Tahsildar, but the patta was not declared void. Hence, it is difficult to accept the contention of defendants that Ex.A.2 patta can be said to be void on that ground in view of the aforesaid decision of this court. Even otherwise we refrain from expressing any final opinion

on this question as our conclusions under point No.1 and the aforesaid reasons recorded under point No.2 are enough to dismiss the appeal.

37. The learned Special Government Pleader invited us to examine Ex.A.1 and its stamp paper, Exs.B.23 and B.24 registered saswata pattas of 1925 and 1927 respectively and argued that the above documents would show that Ex.A.1 must be rejected as a doubtful document and not as genuine. He also argued that Ex.X.1 application, Ex.X.8 patta, Ex.X.9 order of the Tahsildar and Ex.X.10 decision of the Tahsildar appear to have been typed on the same typewriter. He also pointed out that Ex.X.10 decision of the Tahsildar to notify the suit land as inam land is dated 27th September 1957 whereas the Rules came into force on 27th November 1957 and this circumstance would also show that everything was done in haste. Basing on the said contentions, the learned Special Government Pleader says that the entire proceedings can be said to be vitiated by misrepresentation, fraud and collusion and therefore the aforesaid documents should be ignored as void on that ground in view of Section 14 of the Act.

38. We have considered the above contentions. It is seen that the trial court did not frame any issue on the above contentions. It is clear that defendants did not invite the trial court or insist upon it to frame specific issues on their above pleas or contentions regarding allegations of collusion, fraud and misrepresentation. It is seen that defendants also did not lead any expert evidence regarding their contentions relating to stamp paper on which Ex.A.1 is drafted and the type written matter on other documents. Hence we do not propose to go into the above questions of collusion, fraud and misrepresentation in this appeal. We must however say that Exs.B.23 and B.24 documents have relevance to the plaintiff's plea relating to possession of the suit land and we will consider them under point No.3.

Point No.3:

39. The third point is regarding plaintiff's possession of the suit land and the title claimed by him by prescription. Sri K.V.Satyanarayana relied upon Exs.A.5 to A.9 cist receipts (roughly pertaining to Fasli 1361 to 1386), Exs.A.10 and A.11 Adangal copies (roughly pertaining to Fasli 1369 to 1379 and 1383) to show that the

plaintiff's father and later on the plaintiff himself were in possession of the suit land. They pertain to Sy.No.9/1B, but extent is not mentioned. Equally the defendants relied upon Exs.B.2 to B.23 and B.25 to B.29 documents which are correspondence between defendants inter se and Government orders and a possession certificate to show that they are in possession of the suit land right from the beginning. Ex.B.21 is the sale deed dated 26th August 1993 executed by the second defendant in favour of the first defendant in respect of Acs.13-64 cents in Sy.No.9/1B/1C2 of which plaint 'A' schedule land is a part. Ex.B.12 is the agreement of sale dated 4th April 1997 executed by the second defendant in favour of the first defendant in respect of Acs.3-10 cents covered by four survey numbers and of them Sy.No.9/1B/1C3 is the survey number which consists of plaint 'B' schedule land. These documents were spoken to by D.Ws.1 to 3 who are all officials. The other documents namely Exs.B.6, B.14 and all other documents among 'B' series marked on behalf of the defendants would show that possession of the suit land has been with the second defendant and subsequently it was made over to the first defendant.

40. We have earlier concluded under point No.1 that Ex.X.10 decision of the Tahsildar and Ex.A.2 patta are void. Thus the title of the plaintiff based on the said two documents cannot be upheld. Even with regard to the prescriptive title set up by the plaintiff, Exs.A.5 to A.11 cist receipts and adangals can be given weight only if there is no other evidence showing a better possessory title in favour of the defendants. Even otherwise it may be noted that any person may pay cist for any land but it is not conclusive proof of possession or ownership. The documents filed by the defendants preponderantly show that possession has been with them right from the beginning. In fact, though it is the case of the plaintiff that his father has been cultivating the land right from the date of Ex.A.1, he could not adduce any convincing evidence to prove the same. Added to this, Ex.B.1 award shows that the suit land already vested in the Government and became Government land in 1937 itself.

41. It may also be noted that in a suit for declaration of title, the plaintiff has to positively prove his case regarding title and cannot rely upon any weaknesses in the defendant's title. In the present case the evidence also shows that the

defendants have a better case both on title and possession. Even with regard to boundaries and the identity of the land claimed on the basis of Ex.A.1 patta, the case of the plaintiff as observed by the trial court is not convincing.

42. In Ex.A.1 the boundaries for the entire extent of Acs.3-00 are shown as South-Erukula bata (tribal path), West, South and East-remaining land of executant of that document. In the plaint for the plaintiff 'A' schedule land of Ac.1-88 cents, the boundaries are shown as East, West and North-TTD's land and South-plaint 'B' schedule land. For plaintiff 'B' schedule land, the boundaries shown in that schedule are South-Erukula bata, North-plaint 'A' schedule land. The Eastern and Western boundaries are shown as canal and TTD land and road respectively.

43. In the first commissioner's report, the boundaries for the entire extent are shown as East- Drainage channel, South-Vacant lands in Sy.No.623, West-TTD land and bye pass road and North-TTD lands. In the second commissioner's report the boundaries for the entire extent are shown as East-Drainage channel, South-Erukula bata, West-1st defendant's land and road and North-Plaint 'A' schedule property divided with fence from plaintiff 'B' schedule property. Thus it is clear that boundaries also do not tally and it is also very difficult to localize the land.

44. Exs.B.23 and B.24 documents, relied upon by the learned Special Government Pleader, coupled with Ex.B.1 award also have significance to negative the case of plaintiff regarding possession. Exs.B.23 and B.24 are saswatha pattas dated 14.11.1925 and 27.06.1927 respectively and they are registered documents. Ex.B.23 shows that it was executed by one T.Mahadevacharyulu in favour of one K.Venkat Reddy. Ex.B.24 shows that it was executed by the present Tallapaka Venkataseshacharyulu who also executed Ex.A.1. The recitals in Exs.B.23 and B.24 would show that both the above gentlemen transferred their right to 1/6th share and 5/6th share respectively in Sy.No.9 consisting of Acs.53-50 cents and lands in some other survey numbers in favour of two transferees i.e. K.Venkat Reddy and P.Subba Reddy mentioned in the said documents respectively. They show that both the said transferees got possession of the suit land also but in unpredicated shares, as will be presently

seen.

45. The chart furnished by Sri Adinarayana Raju shows that Sy.No.9 consisted of Acs.53-50 cents and it was subsequently sub-divided. Ex.A.1 dated 02.04.1911 relied upon by the plaintiff is not mentioned in Exs.B.23 and B.24 which are subsequent documents of 1925 and 1927 respectively even though Ex.A.1 also pertains to Acs.3-00 in Sy.No.9. If TallapakaVenkataseshacharyulu had already transferred Acs.3-00 in Sy.No.9 in favour of plaintiff's father under Ex.A.1 which is of 1911, what should have been transferred under Exs.B.23 and B.24 must be only Acs.50-00 and odd, but not the entire extent of Acs.53-50 cents i.e. in Sy.No.9. This circumstance shows that the plaintiff's case regarding obtaining of possession of the suit land by his father under Ex.A.1 is highly improbable.

46. The above improbability regarding the plaintiff's possession of the suit land further stands strengthened by Ex.B.1 award. In Ex.B.1 award the names of the above four persons i.e. T.Mahadevacharyulu, T.Venkataseshacharyulu, K.Venkata Reddy and P.Subba Reddy are shown as persons interested in the land acquired i.e. in Sy.No.9/1B. The plaintiff's father's name is not found in Ex.B.1 and this is a negative point for the plaintiff. Added to this, plaintiff has not been able to produce any evidence to show that the above four persons or their descendents claimed any patta under the Act and were successful. This is also a minus point for the plaintiff and shows that the entire land in Sy.No.9/1B or even in Sy.No.9 itself was treated as Government land after Ex.B.1 patta and therefore the Act was not applicable to it. This circumstance would also show that as the land vested in the Government nobody claimed any patta under the Act. It should also be noted that the plaintiff has not let in any convincing evidence to show that his father or himself continuously exercised hostile title for a period of more than 12 years against the Government or the defendants.

47. What follows from the above circumstances is that the plaintiff's claim regarding possession and adverse possession has to be rejected as unconvincing and not proved. We therefore agree with the view of the trial court which held against the plaintiff on the above aspects.

48. Accordingly, this appeal must fail and is dismissed with costs. All the C.M.Ps. filed for various interim reliefs pending this appeal, shall stand disposed of according to the result of this appeal.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com