

(2005) 03 AP CK 0020
In the Andhra Pradesh High Court
Case No : SA No. 276 of 1997

Appam Shankar Rao and Others	Vs	APPELLANT
District Collector and Others		RESPONDENT

Date of Decision : 28-03-2005

Acts Referred:

Andhra Pradesh Land Encroachment Act, 1905 — Section 14, 7

Citation : (2005) 3 ALD 760

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : V. Vishwanatham, for the Appellant; Government Pleader for Revenue, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Heard Sri Viswanatham, learned Counsel representing the appellants and the learned Government Pleader for Revenue.

2. The appellants aggrieved by the reversing judgment made in A.S.No. 13 of 1994 on the file of the Subordinate Judge, Suryapet, had preferred the present second appeal.

3. The appellants herein - plaintiffs in the suit, instituted O.S.No. 408 of 1989 on the file of the District Munsiff, Suryapet, as against the District Collector, Nalgonda and Others for declaration of title and perpetual injunction in relation to the plaint schedule property. The Court of first instance on appreciation of evidence of PW1 to PW4, DW1, the then Mandal Revenue Officer, and Exs.A1 to A7 and B1 to B9, ultimately decreed the suit and the matter was carried by way of appeal by the District Collector, Nalgonda and others in A.S.No. 13 of 1994 on the file of the Subordinate Judge, Suryapet, and the Appellate Court on appreciation of the evidence available on record ultimately reversed the same, allowing the appeal and hence, the present second appeal.

4. This Court by order dated 29-4-1997 admitted the second appeal on the

following substantial questions of law.

"(a) Whether the Lower Appellate Court justified in directing the plaintiffs to vacate the Suit Schedule Property in spite of the fact that the plaintiffs are in possession of the suit land under Issue No. 3.

(b) Whether the Lower Appellate Court is justified in setting aside the findings of the Court below and whether it is justified in disbelieving the exhibits A1 and A2 and Evidence of PW1 to PW3.

(c) Whether the Lower Appellate Court is correct in presuming that the plaintiffs are not in possession on the alleged ground that, the plaintiffs failed to establish that the "Rathi Thette" was constructed prior to 40 years."

5. The only contention which had been seriously urged by the Counsel representing the appellants is that the oral and documentary evidence available on record would clearly establish long uninterrupted possession of the appellants-plaintiffs in relation to the plaint schedule property and hence, the appellants-plaintiffs are entitled to possessory title to the said property. Hence, the Court of first instance arrived at the correct conclusion in granting reliefs prayed for. The learned Counsel also had taken this Court through the findings recorded by the Appellate Court and would contend that the oral and documentary evidence had not been appreciated by the appellate Court in proper perspective and at any rate, the Counsel would maintain that even otherwise, if it is to be taken that the appellants-plaintiffs are encroachers, the possession cannot be disturbed except be following the due process of law and at least to that limited extent the decree could have been granted.

6. Per contra, the learned Government Pleader for Revenue had pointed out to the portion of the findings recorded by the Appellate Court and would contend that the fact that the subject-matter of the dispute is Government land is not in controversy. The learned Counsel would point out that concurrent findings had been recorded as far as this aspect is concerned and there is no serious controversy relating to the fact that this is Government land. The learned Government Pleader for Revenue also would maintain that merely because an encroacher claims the property on the ground of possessory title, unless such title is clearly established beyond the statutory period of uninterrupted possession, continuously, on the strength of such evidence, no declaration of title can be granted much less relief of perpetual injunction, since there is no obligation on the part of the respondents not to disturb such possession which is definitely illegal possession since the respondents are the true owners of the property which is not in controversy.

7. Heard both the Counsel.

8. The present second appeal arises out of a reversing judgment. Appellants-plaintiffs filed the suit O.S. No. 408 of 1989 on the file of the District Munsiff, Suryapet, for declaration of title and perpetual injunction on the strength of

possessory title pleading that they have been in continuous possession of the subject-matter for sufficiently a longtime.

7. It was pleaded in the plaint as hereunder:

"The plaintiffs are the owners and possessors of dry land converted wet land measuring about Ac.1.17 gts. out of Sy.No. 247 situated at Bechirag Madharam Village. Originally the suit land is the Government land. The father of the Plaintiff Nos.1 to 4 and the husband of the Plaintiff No. 5 late Appam Veeraiah was the owner of the land out of Sy.Nos.244, 245 and 246 of Bechirag Madharam Village which is adjacent to the suit land. That the suit is a bit of long in length and less in width. The suit land is part and parcel of Sy.Nos.244, 245 and 246. That except the plaintiff it will not be useful to anybody for any purpose. Originally the suit land was full of pits and submerging in the Chowdary Cheruvu. That the father of the Plaintiff Nos.1 to 4 by investing huge amounts filled the pits over the suit land, raised its level to avoid the submerge in the tank. He constructed a "Rathi thette" on western side of the suit land and raised number of trees on it. It became the boundary in between the land of the plaintiffs and Chowdary Cheruvu since more than 40 years. The photos showing the Rathi Thette and tress thereon and a sketch map of the suit land is filed will shows the possession of the plaintiffs over the suit land. That since more than 40 years the father of the Plaintiff Nos.1 to 4 is in possession and enjoyment over the suit land till his death in the year 1976 and after the death the Plaintiff Nos.1 to 4 stepped into his shoes and they are in actual possession and enjoyment of the suit land and other lands. That the plaintiffs and their predecessors are in title and continuous upon exclusively and uninterrupted possession of the suit land to the knowledge of one and all including the defendant. That the father of the plaintiffs paid the land revenue to the defendants through Village Officer. The defendants are fully aware about the possession and enjoyment of the plaintiffs and their predecessors over the suit land. That some of the local leaders of C.P.I.(M) Party started some interference over the suit land with some ulterior motives and then the Plaintiff No. 1 filed a suit for perpetual injunction against them vide O.S. No. 1893/88 and the Court granted injunction against them and still it is subsisting. That after receiving the injunction order the defendants in that suit put pressure over the defendants over the Government and with their instigation the Government has issued Section 7 notice against the plaintiffs. That the Government has been ousted by the plaintiffs predecessor-in-title from possession over the suit land more than 4.0 years and they constructed Rathi Thette. The defendants are not having any right over the suit land and the defendants were never in possession of the same. Hence, the suit."

9. Written statement was filed by the third defendant denying the averments. It was pleaded that the plaintiffs are not the owners and possessors of the suit land and further pleaded as hereunder:

"As per the records, it is a Government land. It is a fact that the suit land is situated adjacent to the patta land of the plaintiffs in Survey Nos.244, 245 and

246. The father of the plaintiff was never in possession of the suit land much less to since 40 years. The plea of succession to the suit land is not tenable. The plaintiffs were not in possession and enjoyment at any time. That the plaintiffs were not in possession over the suit land as per the records of the Government. Therefore, the eviction of the plaintiffs does not arise. That the so-called land revenue receipts produced by the plaintiffs are not correct. The plaintiffs might have influenced the Village Officers to strengthen their claim. That there is no pressure over the defendants from any of the political party to initiate proceedings against the plaintiffs. As responsible officer the M.R.O. issued eviction proceedings u/s 7 of the Encroachment Act to the plaintiffs on 28-12-1998. That the plaintiffs were never in possession of the suit land at any time and as such the plea of adverse possession cannot be taken into account. Moreover, the plaintiffs will not have any right over the suit land. The Government has every right to evict the plaintiff at any time by invoking the provisions of Encroachment Act. That the suit land is a Government land and the plaintiffs are not in possession and enjoyment of the suit land continuously till 1987. After knowing the fact in the year 1987 the eviction proceedings were initiated against the plaintiffs. This Court has no jurisdiction to decide the suit u/s 14 of the A.P. Land Encroachment Act and as such the suit has to be dismissed."

10. On the strength of the pleadings of the parties before the Court of first instance, initially the following issues were settled.

- i. Whether the plaintiffs are owners and possessors of the suit land in dispute?
- ii. Whether the plaintiffs are entitled for injunction restraining the defendants as prayed for?
- iii. To what relief ?

11. Subsequently an additional issue had been framed to the following effect:

Whether the Court is having jurisdiction to entertain the suit?

12. Plaintiff No. I was examined as PW1 and PW2, the farm servant and PW3 and PW4 also had been examined and Exs.A1 to A7 were marked. Ex.A1 is the Pouthi Book and Ex.A2 is the land revenue receipt. Ex.A3 is the memo issued by M.R.O. Exs.A4 and A5 are photos and Exs.A6 and A7 are the negatives. On behalf of defendants, the then Mandal Revenue Officer was examined as DW1 and Exs.B1 to B9 were marked. Exs.B1 to B7 are the true copies of Pahanis and Ex.B8 is the office copy of the notice issued buy Mandal Revenue Officer. Ex.B9 is the served copy of the notice of Ex.B8.

13. The Court of first instance, on the strength of the evidence believed the possession of the plaintiffs and ultimately decreed the suit. The Appellate Court on appreciation of the evidence available on record, recorded the findings and ultimately allowed the appeal. Findings in detail had been recorded at Paras 9, 10, 11 and 12 of the judgment of the Appellate Court. It is not in serious controversy that the Government is the owner of the plaint schedule property

and appellants-plaintiffs are the encroachers. Even on careful scrutiny of both oral and documentary evidence, it is clear that the continuous possession and enjoyment of the plaint schedule property by the appellants-plaintiffs and their predecessors continuously for more than the statutory period so as to perfect the title as against the Government had not been established. Hence, it is needless to say that declaration of title on the ground of possessory title cannot be granted in the absence of such proof. Apart from this aspect of the matter, it is needless to say that a decree for perpetual injunction cannot be granted in favour of an encroacher as against the true owner since there is no obligation cast upon the respondents-defendants being the true owners not to interfere or disturb the possession of the appellants-plaintiffs. It is no doubt true that the respondents-defendants-Government may have to follow the procedure but however, inasmuch as concurrent findings had been recorded relating to encroachment over the Government property by the appellants-plaintiffs and in the absence of necessary proof of possession beyond statutory period, the findings recorded by the Appellate Court cannot be found fault and accordingly the said findings are hereby confirmed. It is needless to say that the second appeal is devoid of merit and the same shall stand dismissed. No order as to costs.