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**(2009) 11 AP CK 0064**  
**In the Andhra Pradesh High Court**  
**Case No : S.A. No. 446 of 2009**

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| Bandi Thavitinaidu and Others | Vs | APPELLANT  |
| Jeeru Thatha (died) per L.Rs. |    | RESPONDENT |

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**Date of Decision :** 25-11-2009

**Acts Referred:**

**Citation :** (2011) 1 ALT 239

**Hon'ble Judges :** Ramesh Ranganathan, J

**Bench :** Single Bench

**Advocate :** Kuriti Bhaskara Rao, for the Appellant; N. Bhaskara Rao, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Ramesh Ranganathan, J.—This second appeal is preferred against the judgment and decree in A.S. No. 97 of 2001 dated 29-11-2001 on the file of the Additional Senior Civil Judge, Srikakulam, confirming the judgment and decree in O.S. No. 114 of 1994 dated 26-07-1996 by the Principal District Munsif, Srikakulam.

2. The Suit, in O.S. No. 114 of 1994, was filed by the Appellant-Plaintiff against the Respondent-Defendant for eviction and recovery of possession of the suit schedule property of extent of Ac.1.29 cents from the Defendant. In addition, a decree for mesne profits was sought from the date of suit along with costs.

3. The Appellant-Plaintiff claimed to be the owner and to be in possession of the suit schedule property of different extents in different survey numbers in Lopenta Village of Loveru Mandal in Srikakulam District. It is his case that, while he was away for a period of two years, the Defendant, taking advantage of his absence, had unauthorisedly trespassed and occupied the suit schedule property and as he did not redeliver possession the Appellant had to file the Suit. He further stated that he had filed a complaint with the police against the Defendant; that, in a fire accident, all the records relating to the suit schedule property were burnt; that the suit schedule property was his ancestral property and, though he made an

application to the Mandal Revenue Officer for certified copies of Settlement Land Register and the Records of Rights, the Mandal Revenue Officer had refused to give him copies thereof.

4. The Respondent-Defendant denied these allegations and stated that he had purchased Ac.0.24 Cents in item No. 3 in Survey No. 51/9 in the auction conducted by the Court and, thereafter, had sold the same to one Chatla Latchanna about three years ago and that Sri C. Latchanna was in possession and enjoyment of the Suit Schedule property.

5. The Trial Court framed five issues. Two witnesses were examined on behalf of the Plaintiff and Exs.A-1 to A-5 were marked. The Defendant examined, himself as D.W.1 and marked Ex.B-1.

6. The Trial Court observed that the Plaintiff had not filed a copy of the application, alleged to have been filed before the Mandal Revenue Officer, to show what were the certified copies of the documents he wanted; he had not produced any documents to establish that his house was burnt; item No. 1 of the suit schedule property was neither in the name of the Plaintiff's father nor in the name of his wife or anyone else; others not related to the Plaintiff were shown to be in possession; the Appellant-Plaintiff had failed to establish that he was the owner of the suit schedule property, that he had title over it, that he was in possession and that the Defendants were not in possession of the suit schedule property at the time of filing of the suit or subsequent to it.

7. The Trial Court held that the Appellant-Plaintiff had failed to establish his title, his possession or that the Defendant was not in possession of the suit schedule property and, in such circumstances, the Plaintiff was not entitled to recover possession of the suit schedule property from the Defendant or for mesne profits.

8. The Appellate Court noted that, in Ex.A-2, 10 (1) account extract of item No. 1, column No. 26, the owner was shown as Ramanna who was also shown as occupier in column No. 15; this document did not disclose the name of either the Plaintiff or his father as the pattedar or as being in possession. With regard to Ex.A-2, the Appellate Court observed that, while in column Nos. 15 and 26, the Plaintiff was shown to be in possession of Ac.0.30 cents of land, the source of title in column No. 28 was mentioned as purchase. The Appellate Court observed that when the Plaintiff's positive plea was that the land was their ancestral property, the recital in column No. 28 of Ex.A-3 (sic. A-2) negated such a contention; on the other hand, if the entry was true, the Appellant-Plaintiff should have filed the sale deed as primary evidence of his title. With regard to item No. 3, the Appellate Court observed that Ex.A-3, the extract of 10(1) account, showed that B. Appayamma and Ch. Tatitamma jointly owned Ac.0.30 cents of dry land; the Appellant-Plaintiff was neither the pattedar nor in possession of item No. 3. Similarly item No. 4, as referred in Ex.A-6, was in the name of B. Appayamma, the wife of the Plaintiff, and that it was not in the name of the Appellant-Plaintiff. The Appellate Court observed that the Appellant-

Plaintiff ought to have filed certified copies of adangals in order to show that, prior to 1990, he was growing crops and it was subsequent to 1990 only that the Defendant had encroached upon the suit lands. While observing that the Defendant had not adduced sufficient evidence to show that he had no concern with the land, the Appellate Court held that the Plaintiff, in a suit for recovery of possession, had to succeed on his own case and could not depend on the weakness in the evidence of the Defendant. The Appellate Court concluded that Exs.A-2 to A-5 did not show that the Appellant-Plaintiff was the owner, possessor and pattedar of the suit schedule property; the Plaintiff had failed to establish his title over the suit schedule property and, as such, he was not entitled for a decree of possession. The Appeal was dismissed.

9. This Court can exercise jurisdiction to entertain a Second Appeal only when a substantial question of law arises for consideration. It is not within its purview to re-appreciate the evidence on record or to come to a conclusion different from that of the Court below on the evidence being re-appreciated. It is only if the findings recorded by the Court below are perverse or are based on no evidence, would this Court be justified in entertaining a Second appeal. It cannot be said that the Courts below have recorded a perverse finding or that the findings recorded by them are based on no evidence.

10. No substantial question of law arises for consideration in the Second appeal and it is, accordingly, dismissed.