
(1990) 04 AP CK 0025

In the Andhra Pradesh High Court

Case No : Second Appeal No. 723 of 1987 and Cross-Objections

Chakala Anjappa

APPELLANT

Vs

Betappagari Anjaneya alias Anjappa and Others

RESPONDENT

Date of Decision : 26-04-1990

Acts Referred:

Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 11
Andhra Pradesh Survey and Boundaries Act, 1923 — Section 9(2)
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 32

Citation : (1992) 1 ALT 544 : (1990) 2 APLJ 141

Hon'ble Judges : Immaneni Panduranga Rao, J

Bench : Single Bench

Advocate : R. Venugopal Reddy, General, for the Appellant; E. Kalyan Ram, for the 1st Respondent, for the Respondent

Judgement

Immaneni Panduranga Rao, J.—The first defendant is the appellant herein. The suit was originally filed for permanent injunction restraining the defendants from interfering with the plaintiffs possession over the plaint schedule properties. Subsequently, the plaint was amended seeking the relief of declaration of title. The plaintiff is the father-in-law as well as the sister's husband of the first defendant. The second defendant is the elder brother of the first defendant and the third defendant is the mother of defendants 1 and 2. The fourth defendant is another sister of the first defendant. The suit property consists of two items of wet land measuring Ac.1.23 cents and Ac.1.74 cents, and a house constructed on seven Ankanams of site together with a well and a pump set.

2. The plaintiffs case is that he purchased the unit property and some other properties from the second defendant who executed Ex.A-1 sale deed on his behalf and on behalf of the first defendant as karta of the joint family to meet the expenditure for digging a well and for family necessity, that the first defendant did not take any steps to get the sale set aside after attaining majority; that the plaintiff took possession of the properties purchased by him

and has been in possession and enjoyment of the same since then, that on 1-3-1977, the second defendant trespassed into item No. 1 of the plaint schedule and objected for the ploughing; that he also trespassed into the house and tried to break open the locks and that the defendants have been obstructing the plaintiff from raising sugar cane crop in the suit land. The plaintiff further pleaded that in the sale deed dt.11-6-1953, which is marked as Ex.A-52, under which the first defendant purchased some property from one Gaddi Agasthya Reddy, the northern boundary is described as that of the plaintiff and as such, the defendants are estopped from questioning the title of the plaintiff.

3. The common defence set up by all the defendants is that the sale deed Ex.A-1 dated 22-3-1948 is nominal and not intended to be acted upon; that in fact the said deed was not acted upon; that the plaintiff never took possession under the sale deed and was never in possession and enjoyment of the suit properties; that as the second defendant was innocent, the third defendant got the sale deed executed by the second defendant in order to prevent the second defendant from wasting away the properties; that defendants 1 to 3 continued to be in possession and that there was no necessity for the family to alienate the suit properties. Subsequently, the first defendant filed an additional written statement pleading that after the estate of Punganur Zamindar was taken over by the Government, the Survey and Settlement authorities granted a patta in favour of the first defendant and that the Civil Court has no jurisdiction to entertain the suit.

4. The first defendant explained that when he purchased some properties adjoining the suit land, he did not go to the Sub-Registrar's Office and that he is not aware that the northern boundary in the said sale deed was shown as that of the plaintiff's land. It is further pleaded that the plaintiff came from Mysore State one year prior to the suit and the first defendant permitted him to reside in a portion of the southern side of the farm house because the plaintiff is his father-in-law.

5. The plaintiff filed a re-joinder pleading that the first defendant who is a legal practitioner at Punganur might have played fraud against the village officers and Government officials in securing a rough patta which was brought to light only at the time of filing the additional written statement; that the survey authorities have no right to issue any rough patta and that even if the patta is issued, it is not valid and operative and does not bind the plaintiff. During the course of trial, the third defendant filed a separate written statement stating that defendants 1 and 2 have nothing to do with the suit properties; that her husband was the absolute owner of the suit properties which are his self-acquired properties and that she has become the absolute owner of the suit properties by virtue of Section 14 of the Hindu Succession Act.

6. The learned Principal District Munsif, Madanapalle on a consideration of the oral and documentary evidence adduced before him came to the conclusion that Ex.A-1 sale deed in favour of the plaintiff is not a nominal document but was

executed for the family necessity of the defendants and as such is binding on the first defendant, that the plaintiff made improvements to the plaint schedule properties; that there is cause of action for filing the suit, that the first defendant did not take any steps to set aside Ex.A-1 sale deed which is a voidable document within three years after his attaining majority and as such the plaintiff is entitled for declaration of his title and that the plaintiff has title to and possession of the plaint schedule properties. Basing on those findings, the learned District Munsif has granted a decree for declaration of title and permanent injunction.

7. Aggrieved by the said decision, the first defendant preferred A.S.No. 13 of 1981 on the file of the Sub-court, Madanapalle. It was later on transferred to the court of the Additional District Judge, Madanapalle and the learned Additional District Judge has dismissed the appeal confirming the findings of the trial court.

8. Aggrieved by the said decision of the learned Additional District Judge, Madanapalle the first defendant has preferred the above second appeal. The plaintiff has filed cross-objections for costs.

9. The learned Advocate General appearing for the appellant argued that the entire property being alienated for the purpose of digging a well is unbelievable, that Ex.A-1 sale deed reads as if it was executed by the first defendant as the guardian; that the name of the first defendant was struck-off and only the second defendant's name remains in the document; that there can be no basis for the assertion that the second defendant has executed Ex.A-1 as the karta of the joint family, that Section 14 of the Inams Abolition Act operates as a bar for the Civil Court exercising jurisdiction in the suit; that the considerations which prevailed with the trial court viz., (1) the relationship, (2) the first defendant purchasing property from D.W.2 under the original of Ex.A-52 describing the northern boundary of one of the items as that of the plaintiff, (3) the failure of the first defendant to file a suit after becoming major and (4) the power of attorney executed by the plaintiff in favour of P.W.2's father are not sufficient to grant a decree in favour of the plaintiff; that at any rate, the lower appellate court did not deal with any of the documents filed by the parties but only stated that Exs.A-1 and A-52 are sufficient to non-suit the plaintiff and that inasmuch as the lower appellate court has not applied its mind to all the aspects of the case, this is a fit case for remand. The learned Advocate General further argued that even the trial court has not properly considered the oral and documentary evidence and did not advert itself to the important aspects of the case; that both the courts did not consider the effect of pattas granted by the authorities and that in the light of the most unsatisfactory manner of disposal of the first appeal, the matter should be remitted back to the lower appellate court for fresh disposal.

10. The learned counsel for the respondents, on the other hand, argued that the Civil Court has jurisdiction to decide the question of title; that the first defendant, who is a practising advocate, did not challenge Ex.A-1 sale deed after he became a major in 1951, that the first defendant himself purchased the

adjoining property under Ex.A-52; that there is ample evidence to show that both the vendor and the vendee have together drafted that sale deed; that the description of the northern boundary therein as the plaintiff's and is very significant to disprove the first defendant's case and that Exs. A-5 and A-76 prove that Ex.A-1 was acted upon. He further argued that the lower appellate court having discussed the important aspects of the case and having given a finding agreeing with the trial court, has expressed a general agreement with the decision of the trial court which is permissible and that there is no need for any remand.

11. First, I shall deal with the objection of the learned Advocate General that the jurisdiction of the Civil Court to decide title is barred. The latest decision of the Supreme Court on this point is *State of Tamil Nadu Vs. Ramalinga Samigal Madam*, . The Supreme Court has categorically held that the Civil Court's jurisdiction to adjudicate on the real nature of the land is not ousted u/s 64-C of the Tamilnadu Estates (Abolition and Conversion into Ryotwari) Act, (Act 26/48) (hereinafter referred to as "the Act") by reason of the Settlement Officer's decision to grant or refuse to grant a patta u/s 11 read with the proviso to Section 3(d) of the Act. Though the decision before the Supreme Court arose under the Tamilnadu Act, the learned counsel for the respondents submitted that the provisions of the Estates (Abolition and Conversion into Ryotwari) Act applicable to Andhra Pradesh are in pari materia to the Tamilnadu Act. The decision of the Supreme Court in *State of Tamil Nadu Vs. Ramalinga Samigal Madam*, is followed by the decision of my learned brother Jagannadha Rao, J., in *Rama Krishna Reddy v. Balaiah*, 1987 (1) ALT 120 which is a case arising under the Andhra Pradesh Act. The learned Judge held that the Civil Court has jurisdiction to decide the questions arising u/s 11 of the Act notwithstanding any earlier decision of the settlement authority as to the persons entitled to the grant of patta u/s 11 of the Act. The decision of the Supreme Court in *State of Tamil Nadu Vs. Ramalinga Samigal Madam*, is also followed by the decision of a Division Bench of our High Court in *K.V. Krishnaiah v. M. Sidda Reddy*, 1989 (1) APLJ 93 (NRC) wherein it is held that the order u/s 11 of the Act is not final and can be questioned in a Civil Court and that the jurisdiction of the Civil Court is not impliedly barred. In view of the decision of the Supreme Court in case (1) supra) as well as the decisions of our High Court in cases (2) and (3) supra, it clearly follows that the Jurisdiction of the Civil Court is not ousted whenever the Settlement Officer issues a Ryotwari patta u/s 11 of the Act and that the Civil Court has jurisdiction to decide the question of title.

12. So far as item No. 1 of the plaint schedule is concerned, no patta has been filed into the court. The first defendant as D.W.1 has admitted in his evidence that the patta given for item No. 1 of the plaint schedule is misplaced and is not traced. He filed Exs.B-5 and B-6 in support of his title for item No. 2 of the plaint schedule properties. Ex.B-5 is the rough patta. Ex.B-6 is the notice issued to the first defendant u/s 9(2) of the Survey and Boundaries Act calling upon the first defendant to submit his objections if any, to the Survey Officer in-charge. As held

by a Division Bench of our High Court in *Elumalai Chetty v. Rathnavelu Chetty*, 1971 (2) An.W.R. 193 the rough patta is only a notice issued to the owner to prefer objections with regard to the details given therein and it does not decide title to the holding. It is neither a document of title nor evidence of title. The Division Bench further held that the issue of rough patta is one of the steps taken in the process of carrying out re-settlement operations in respect of a ryotwari area and it has no bearing at all on the question of title to the holding itself. Relying upon that decision, it follows that the first defendant cannot establish his title merely by relying upon Ex.B-5 rough patta and Ex.B-6 notice issued under the Survey and Boundaries Act.

13. The execution of Ex.A-1 is not denied by the defendants in their written statement. Their contention, as set forth in the written statement filed by the first defendant which was adopted by defendants 2 to 4, is that it is a nominal document and was never intended to be acted upon. A careful scrutiny of Ex.A-1 shows that originally both the first defendant and the second defendant have signed the document. Subsequently, having realised that the first defendant was only a minor at that time and was not capable of executing the document, the signature of the first defendant was struck off and the second defendant signed Ex.A-1 as the guardian of the minor first defendant. Admittedly, by the date of execution of Ex.A-1, the father of defendants 1 and 2 was not alive and as such, the execution of the document by the second defendant as the guardian of the minor first defendant must be deemed to be in the capacity of the Manager of the Hindu Joint Family, in respect of co-parcenary property. There is neither plea nor proof that the suit property is the self acquired property of defendants 1 and 2. The recitals in Ex.A-1 are that the suit property was disposed of to meet the expenses for digging a well and for the family necessity of the defendants. Ex.A-77 which is the certified copy of Ex.A-1 sale deed clearly points out that the corrections found in Ex.A-1 were carried out into to at the time of the execution of the document and prior to its registration. So no suspicious circumstances are attached to the execution of Ex.A-1 sale deed in view of the corrections found therein.

14. The first defendant has not taken any steps to avoid Ex.A-1 sale deed within three years of his attaining majority. Excepting the interested testimony of the first defendant, there is no other evidence to show that Ex.A-1 is a nominal document. P.W.2 deposed that his father Venkatappa acted as the power of attorney agent of P.W.1 under the original of Ex.A-5; that as the said power of attorney agent, his father, has deepened the well in item No. 1 of the plaint schedule and built a stone revetment; that his father has also built a shed on five ankanams of land for shelter in 1951-52 spending about Rs. 4,000/- to Rs. 5,000/- advanced by P.W.1; that his father has also filed O.S.No. 249 of 1959 against one Hanumantha Reddy and Agasthya Reddy as the power of attorney agent of P.W.1; that defendants 1 and 2 were never in possession of the suit lands and the power of attorney was got cancelled. The learned Advocate General submitted that Ex.A-5 does not pertain to the suit lands. But a perusal of

Ex.A-76 which is the original power of attorney executed by the plaintiff in favour of P.W.2's father shows that it is in respect of Pymash No. 33 measuring Ac.0.22 guntas which is one of the items purchased by the plaintiff under Ex.A-1. It cannot, therefore, be said that Ex.A-76 power of attorney does not relate to the suit lands at all. The evidence of P.W.2 coupled with Ex.A-5 and A-76 can be relied upon to show that P.W.2's father acted as the power of attorney agent of P.W.1, deepened the well in item No. 1 of the plaint schedule and also built a shed on five ankanams of land for shelter in 1951-52. P.W.2's evidence further shows that his father has filed O.S.No. 249 of 1959- against Hanumantha Reddy and Agasthya Reddy as the power of attorney agent of P.W.1. Hanumantha Reddy, who is examined as P.W.3, has testified to the fact that a suit was filed against him by P.W.2's father on behalf of P.W.1, and that P.W.1 was in possession and enjoyment of the suit lands for over thirty years.

15. As against the above evidence of P.Ws.1, 2 and 3, the first defendant as D.W.1 tried to depose that as the wife of the second defendant deserted him, the third defendant suspected that she might claim maintenance and therefore, to avoid the maintenance claim a nominal document was executed in favour of P.W.1 in Ex.A-1. But this statement of D.W.1 is not supported by a plea to that effect in the written statement of the first defendant. The statement of D.W.1 that he came to know of Ex.A-1 only after the suit is filed cannot be accepted because the document contains his signature.

16. Another piece of evidence which is relied upon by the plaintiff in proof of his title is the description of the northern boundary in Ex.A-52 as the land of the plaintiff. D.W.1 tried to get over the recital of boundaries in Ex.A-52 by stating that he was not present at the time of execution of the original of Ex.A-52. But that statement is contradicted by D.W.2 who categorically stated that himself, D.W.1, Munuswamy and some others were present when the original of Ex.A-52 was written and that all of them have given instructions for preparing Ex.A-52. It is elicited from him in the cross-examination that he did not execute any rectification deed even after he came to know of the description of the boundaries in Ex.A-52. The description of the boundaries in Ex.A-52, to which D.W.1 is a party, is admissible in evidence to corroborate the evidence of P.W.1 that the northern boundary for the land covered by Ex.A-52 was described as the land of the plaintiff.

17. The learned Advocate General argued that the lower appellate court has disposed of the appeal only in one paragraph which is a most unsatisfactory manner of disposing of a first appeal; that the lower appellate court did not consider the question of adverse possession at all; that the crucial period for determining adverse possession is from 1963 of 1977, during which period the first defendant alone was dealing with the property for a continuous period of twenty four years; that the finding of the trial court about adverse possession is totally halting; that the trial court did not advert itself to the important question as to whether the second defendant is competent to act as the guardian of the

first defendant when his mother was admittedly alive and that the trial court did not determine who the heirs of the deceased father of defendants 1 and 2 are who died before 1948. There is absolutely no evidence on record to show that the suit property constituted the self acquired property of the father of defendants 1 and 2. That being the case, when defendants 1 and 2 were alive by the time of their father's death, the second defendant who is the elder son of the family naturally becomes the kartha of the joint family. Though the third defendant filed a separate written statement, she did not examine herself nor did she adduce any evidence, either documentary or oral, to prove that the father of defendants 1 and 2 has acquired the suit property from out of his own earnings and that as such it constitutes his separate property. The question of the trial court determining who the heirs are for the deceased father of defendants 1 and 2 does not arise. Therefore, it may be presumed that the second defendant has executed Ex.A- 1 in his capacity as the Manager of the Hindu Joint Family.

18. As regards the question of adverse possession, it is in evidence that the plaintiff got some repairs effected and improvements made to the suit land subsequent to Ex.A-1. The plaintiff was in Government service and was working in Karnataka State. Unless he had title in the suit property, it is unbelievable that he should have taken pains to effect repairs or make improvements to the suit property. P.W.2 has testified to the fact that his father, as the power of attorney agent of the plaintiff has deepened the well, built the stone revetment and also five ankanams of shed for shelter with the funds provided by the plaintiff. Exs.A-66 and A-67 show that the asbestos sheets were purchased by the plaintiff which were used for repairing the house in item No. 1 of the plaint schedule. The plaintiff has also produced a certificate issued by the Karnataka State Electricity Board to show that the electric motor and pump set fixed to his well at Nangili has been disconnected and that the said electric motor and pump set were installed to the well situated in the suit property. The first defendant did not adduce any independent evidence to establish that either he has effected any repairs to the suit well with his own funds or that he made constructions by himself.

19. Undoubtedly, the burden of proving adverse possession is on the person setting up that plea. The first defendant did not produce any record of cultivation showing that he has been cultivating the suit lands for over the statutory period. As rightly held by the trial court, the stray entries in the village records for one or two years do not confer title and payment of tax is not an indication of possession and title. From the mere fact that the electricity connection was taken in the name of the first defendant, it cannot be presumed that he was in exclusive possession and enjoyment of the suit property. The plaintiff is no other than the brother-in-law and the father-in-law of the first defendant. Being the person who was readily available at the suit property, it is quite probable that the first defendant might have applied for the electricity connection to the pump set in the suit property. That by itself does not amount to proof of possession of the suit property. The evidence placed on record is not sufficient to establish that the

first defendant has perfected his title by adverse possession.

20. The learned Advocate General relying upon the decision in *Biharilal v. Murti Sri Radha Krishnaji Thakurbari*, AIR 1991 Patna 234 argued that where the lower appellate court simply agreed with the finding of fact recorded by the trial court observing that the trial court had elaborately discussed the evidence and did not consider the evidence on record and did not record its reasons in support of the finding, the finding would not be binding in the Second Appeal. He has also placed reliance upon the decision of the Supreme Court in *Dilbagrai Punjabi Vs. Sharad Chandra*, which lays down that the court is under a duty to examine the entire relevant evidence on record and if it refused to consider the important evidence having a direct bearing on the disputed issue and the error which arises is of a magnitude that it gives birth to a substantial question of law, the High Court is fully authorised to set aside the finding. Basing on the decision of the Supreme Court in *Dilbagrai Punjabi Vs. Sharad Chandra*, the learned Advocate General argued that inasmuch as the appellate court has disposed of the appeal in a perfunctory manner without discussing the entire evidence placed on record, this is a fit case where the decree of the lower appellate court should be set aside and the case remitted to the appellate court for fresh disposal.

21. The learned counsel for the respondents relying upon the decision of the Supreme Court in *Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury*, argued that when the appellate court agrees with the view of the trial court on evidence, it need not restate the effect of evidence or to reiterate the reasons given by the trial court and the expression of general agreement with the reasons given by the trial court would ordinarily be sufficient. In this case, no doubt, the appellate Judge should have discussed the evidence in greater detail. But the judgment shows that he has considered the crucial aspects of the case, viz., whether Ex.A-1 is a nominal document and whether it is a document null and void. In arriving at that decisions, he has relied upon the description of the northern boundary in Ex.A-52. He has also mentioned that the corrections and the additional writing in Ex.A-1 were written prior to its registration as evidenced by Ex.A-77 and that Ex.A-76 power of attorney executed by the plaintiff in favour of P.W.2's father shows that the plaintiff has authorised the father of P.W.2 to manage the suit properties and the other properties on his behalf. The lower appellate court has also held that the civil court has jurisdiction and observed that the trial court has exhaustively discussed the evidence adduced on behalf of both the parties and referred to the documents filed by both the parties in detail and that he sees no reason to interfere with the findings of the trial court. As held by the Supreme Court in *Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury*, when the appellate court agrees with the view of the trial court on evidence, it need not restate the reasons given by the trial court and the expression of general agreement with the reasons given by the trial court would ordinarily suffice. It cannot, therefore, be said that the lower appellate court has not considered all the aspects of the case and as such the case warrants a remand. The judgment of the learned appellate Judge shows that he is in general

agreement with the findings of the trial court which has exhaustively discussed the evidence on behalf of both the parties and referred to the documents filed by both the parties in detail.

Even otherwise, there is no sufficient material to warrant the necessity of remanding the case to the lower appellate court for fresh disposal on the question of adverse possession. The trial court has rightly observed that the stray entries in the village records do not confer title to the first defendant. The first defendant did not produce any record of cultivation to show that he has been cultivating the suit lands for over the statutory period. Exs.B-11 to B-20 are for the period from December, 1971 to 1977. Exs.B-21 to B-30 are also for the period subsequent to 1971. There is no satisfactory material to show that the first defendant has perfected his title to the suit property by adverse possession. As I discussed already, the mere fact that the first defendant has applied for and obtained electric connection in his name for the pump set in the suit property does not lead to the conclusion that he was in adverse possession of the suit property.

22. Following the decision of the Supreme Court in *Girija Nandini v. Bijendra Narain* (7 supra), I hold that there is no necessity for remanding the case to the lower appellate court for fresh disposal.

23. Both the courts below have concurrently found that Ex.A-1 is not a nominal document not intended to be acted upon and that it is binding on the first defendant. Consequently, the decree for declaration and injunction granted in favour of the plaintiff is perfectly correct and does not call for any interference.

24. The Second Appeal and cross-objections are accordingly dismissed, but without costs.