
(2004) 04 AP CK 0005

In the Andhra Pradesh High Court

Case No : SA No"s. 4, 166 and 167 of 1997

Konduru Meera Saheb and Another

APPELLANT

Vs

Polinati Bheemayya and Others

RESPONDENT

Date of Decision : 01-04-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (2004) 4 ALD 855 : (2004) 2 APLJ 1

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : C. Poornaiah and C. Subba Rao, for the Appellant; D. Sudershan Reddy, for the Respondent

Final Decision : Dismissed

Judgement

D.S.R. Varma, J.—Heard both sides.

2. Since the parties and the subject-matter is one and the same and the judgment under challenge is being a common judgment, all the three Second Appeals are being disposed of by this common judgment.

3. Second Appeal No. 4 of 1997 is directed against the judgment and decree in AS No. 38 of 1989 arising out of OS No. 7 of 1985. Second Appeal No. 166 of 1997 is against the judgment and decree in AS No. 66 of 1989 arising out of OS No. 267 of 1984 and the Second Appeal No. 167 of 1997 is against the judgment and decree in AS No. 69 of 1989 arising out of OS No. 265 of 1984.

4. OS No. 7 of 1985 was filed by one Konduru Meera Saheb and Gollapalli Naganna, representing the residents of Peda Cheruvu and Marrivaddapeta of Sannavilli Village, Amalapuram Taluq, East Godavari District, for a declaration that the plaint schedule property is intended for the common good and benefit of the plaintiffs-residents of Peda Cheruvu and Marrivaddapeta, hamlet of Sannavilli comprising of harizans and jambavans and for possession thereof, for rendering account of income on the plaint schedule land and expenditure incurred for the

plaintiffs-residents and for recovery of the amount found due after accounting against Defendants 1 to 8 and for recovery of Rs. 2,664-35 paise from the 9th defendant.

5. OS No. 267 of 1984 was filed by the third and fourth defendants in OS No. 7 of 1985 for permanent injunction.

6. OS No. 265 of 1984 was filed by the second defendant in OS No. 7 of 1985 for permanent injunction.

7. The contention of the plaintiffs in OS No. 7 of 1985 was that the lands, which are in possession of the defendants, were to be treated as lands in joint possession and shall be for the benefit of the caste people.

8. It appears that the plaintiffs along with some others have been assigned an extent of Ac.0.10 cents of land each from a total extent of about Ac.9-00 cents of land and whereas the defendants were in possession of a total extent of Ac.2-14 cents of land. The plaintiffs further contended that there was a "trust" created, whereas the same was denied by the defendants. Even before this suit was filed by the plaintiffs in OS No. 7 of 1985, the other two suits in OS No. 267 of 1984 and 265 of 1984 came to be filed by some of the defendants in OS No. 7 of 1985 for permanent injunction.

9. The Trial Court, while dismissing the suits in OS Nos. 267 of 1984 and 265 of 1984, decreed the suit in OS No. 7 of 1985 in favour of the plaintiffs therein. On appeals, in AS Nos. 38 of 1989, 66 of 1989 and 69 of 1989 respectively, the lower appellate Court reversed the judgments and decrees of the Trial Court and consequently the suit in OS No. 7 of 1985 was dismissed while decreeing the other suits in OS Nos. 267 of 1984 and 265 of 1984. Hence, the present second appeals.

10. It is a very significant factor to note that two other defendants i.e., Defendants 1 and 8, in OS No. 7 of 1985 and appellants in first appeals in AS Nos. 67 and 68 have also filed two suits in OS Nos. 263 of 1984 and 269 of 1984 against the plaintiff No. 1 in OS No. 7 of 1985 for permanent injunction. In all, five suits were filed, which were clubbed together, and disposed of by a common judgment by the Trial Court and, consequently, in total, five appeals were filed and all the five appeals were disposed of by a common judgment. Challenging the said common judgment and decrees, only three appeals are filed. The present three appeals are against the common judgment and decrees, as already pointed out, challenging the common judgment and decrees in AS Nos. 38 of 1989, 66 of 1989 and 69 of 1989. Obviously, no second appeals have been preferred against the common judgment and decrees insofar as AS Nos. 263 and 269 of 1989 are concerned.

11. As already noticed, all the five suits were disposed of by a common judgment and all the five first appeals were also disposed of by a common judgment by the lower Appellate Court and the parties in all the above five suits are either the

defendants or the plaintiffs in the respective suits concerned.

12. Now, it is to be seen that the common judgment and decrees insofar as first appeals in AS Nos. 263 and 269 of 1989 are concerned, which were filed for the same relief as that of permanent injunction in relation and with regard to the same subject-matter land have become final, since no Second Appeals have been preferred against the decrees and common judgment in AS Nos. 263 and 269 of 1989. It is to be further noticed that the relief sought for by the parties in all the first appeals, except AS No. 38 of 1989, was common, interest was common and again the subject-matter of dispute was also common. Therefore, the common judgment and decrees insofar as AS Nos. 263 and 269 are concerned, they have become final.

13. Now, the primary question that falls for consideration before this Court is as to whether all the above-mentioned three Second Appeals are maintainable or not?

14. Admittedly, no second appeals were preferred challenging the common judgment and decrees insofar as the first appeals in AS Nos. 263 of 1989 and 269 of 1989 are concerned, in such circumstances, a Division Bench of this Court (to which DSRV, J is a party) in Tangella Sesham Raju and Others Vs. APSRTC and Others, , following the judgment of this Court in K. Krishnan and Others Vs. Tirumala Tirupati Devasthanams and Another, , and also the judgment of the Supreme Court in Sheodan Singh Vs. Smt. Daryao Kunwar, observed as under :

"The test of res judicata has to be applied, as observed by the Division Bench, in order to see that no two inconsistent decrees should come from an incidental issue. In the case on hand, the findings in OS No. 156 of 1988 granting permanent injunction has become final, since no appeal is filed. But, the Corporation for the reasons best known to it filed appeals against other suits and it succeeded in the first appeals. This shows for the same cause of action, the plaintiff in OS No. 156 of 1988 is enjoying permanent injunction and the allottees - plaintiffs in other suits are forced to pay damages. We are of the further view that by virtue of the judgment of the learned Single Judge, in the batch of the appeals filed by the Corporation, the common judgment and decree of the Trial Court was reversed and in some other cases in which no appeals are preferred by the Corporation, the common judgment of the Trial Court had become final, leading thereby to divergent decrees and judgment. This is an incomprehensible situation and to avoid the same, principle of res judicata has to be applied and on this score the impugned judgment of the learned Single Judge is liable to be set aside."

15. Now, it is relevant to note the observations of a Division Bench of this Court in K. Krishnaiah's case (supra), following the judgment of the Supreme Court in Narayana Prabhu Venkateswara Prabhu Vs. Narayana Prabhu Krishna Prabhu (Dead) by L. Rs., , which are as under:

"What was the "matter in controversy" in both the suits in question ?

Undoubtedly, the controversy pertained to the nature of the suit land. The finding given is that it is an inam land granted by devadayam purpose to Kurathalwar Temple and that Appellants 2 to 5 herein are encroachers. Appellant No. 1 had no title and no evidence, whatever was brought on record by him to establish the title of his ancestors. Issue No. 3 in OS No. 4 of 1987 whether the plaintiff-Tirumala Tirupati Devasthanams is entitled to injunction as prayed for an issue Nos. 1 and 2 in OS No. 4 of 1987 - (i) whether the plaintiffs are entitled to perpetual injunction and (ii) whether the plaintiffs are entitled to a mandatory injunction as prayed for -practically cover the same ground. If this appeal is to be heard and decided on merits, there is likelihood of inconsistent decrees coming into existence since the very source of the title in both the suits as put forward by the appellants herein is identical and such a situation is precluded by the principle of res judicata. As observed by the Supreme Court, "one of the tests for deciding whether the doctrine of res judicata applies to a particular case or not is to determine whether two inconsistent decrees will come into existence if it is not applied". (Emphasis is ours)

16. Therefore, without going into the other merits in the present Second Appeals, following the judgments, referred to supra, this Court is of the opinion that since the common judgment and decrees insofar as two first appeals in AS Nos. 263 of 1989 and 269 of 1989 have become final and any judgment that is likely to be passed in these second appeals may run contrary to the common judgment rendered insofar as those two first appeals is concerned, which are not appealed against and became final.

17. Hence, I am of the considered view that the present second appeals are hit by the principles of res judicata, having regard to the facts and circumstances and the judgments referred to supra.

18. For the foregoing reasons, the second appeals fail and are liable to be dismissed as they are hit by the principle of res judicata.

19. In the result, all the above-mentioned three second appeals are dismissed. However, there shall be no order as to costs.