

(2011) 08 AP CK 0012

In the Andhra Pradesh High Court

Case No : S.A. No. 83 of 2010 and S.A. (Sr.) No. 24157 of 2011

Kunchala Lakshmamma

APPELLANT

Vs

Tanneeru Subbaratnamma

RESPONDENT

Date of Decision : 18-08-2011

Acts Referred:

Citation : (2011) 6 ALD 579

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Venkateswarlu Sanisetty, for the Appellant; M.R.S. Srinivas, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—These two second appeals are inter-related. Hence, they are disposed of through a common judgment. The Appellant as well as some of the Respondents are common to both the proceedings.

2. The Appellant filed O.S. No. 339 of 1998 in the Court IV Additional Junior Civil Judge, Ongole, against Tanneeru Subbaratnamma, 1st Respondent in both the second appeals, for the relief of perpetual injunction in respect of the suit schedule property. She stated that she is in possession and enjoyment of the land for the past 20 years and in recognition of her rights, the Government issued DKT patta in her favour. She further pleaded that she raised eucalyptus garden in the assigned land. According to her, the close relations of the 1st Respondent were also granted DKT pattas over an extent of Acs.2.50 cents, each and they are in possession and enjoyment of the respective extents. Her grievance was that the 1st Respondent tried to interfere with her possession over the suit schedule property.

3. The 1st Respondent filed a written-statement, stating that her father-in-law Tanneeru Anjaiah was in possession of fairly large extent of land in Survey No. 388 of Marlapadu Village about 50 years back and that the suit schedule property

is part of it. She further pleaded that the eucalyptus garden existing on the suit land was raised by her and that she made a representation to the Mandal Revenue Officer, as regards her rights over the property.

4. The 1st Respondent, on the other hand, filed O.S. No. 201 of 1998 in the same Court against the MRO, Tangutur (for short ?the 2nd Respondent?), for the relief of perpetual injunction in respect of the suit schedule property therein. She pleaded that though the land was in the possession of her family for the past several decades, the 2nd Respondent was trying to dispossess her.

5. The 2nd Respondent filed a written-statement, stating that Anjaiah, the father-in-law of the 1st Respondent was in possession of the land in Survey No. 338, and that after his death, his son Guravaiah was assigned Acs.2.50 cents, his daughter, Suseela and Anjamma, were also granted pattas in respect of Acs.2.50 cents each. He further stated that in the neighbourhood of the said lands, the Appellant herein was assigned an extent of Acs.2.50 cents of land. He ultimately stated that the 1st Respondent is not at all in possession and enjoyment of any land in survey No. 338.

6. Both the suits were clubbed. Through a common judgment dated 06.07.2002, the trial Court decreed O.S. No. 339 of 1998 and dismissed O.S. No. 201 of 1998. The 1st Respondent filed A.S. Nos. 166 and 167 of 2002 in the Court of V. Additional District Judge, Ongole, against the judgments and decrees in O.S. Nos. 201 and 339 of 1998, respectively. The lower Appellate Court allowed both the appeals.

7. Second Appeal No. 83 of 2010 is filed against the judgment and decree in A.S. No. 167 of 2002. The Appellant herein is not a party in O.S. No. 201 of 1998, or A.S. No. 166 of 2002. However, she filed Second Appeal against the judgment and decree in A.S. No. 166 of 2002, by seeking leave of the Court for the reason that the said appeal was heard and disposed of along with A.S. No. 167 of 2002, and unless the second appeal is filed against it, the question of res judicata may arise.

8. Sri Venkateswarlu Sanisetty, Learned Counsel for the Appellant submits that his client was granted patta by the Government in recognition of longstanding possession, and unless that patta was set aside by the competent authority, her right to remain in possession of the property could not have been denied. He contends that though the 1st Respondent is claiming rights in relation to the very property, no patta was granted to her. He submits that the lower Appellate Court has committed legal and factual errors in reversing the judgments and decrees passed by the trial Court in the suits.

9. Sri M.R.S Srinivas, Learned Counsel for the 1st Respondent, on the other hand, submits that the 1st Respondent proved her longstanding possession over the suit schedule property by adducing oral and documentary evidence and the lower Appellate Court had rightly decreed the suit filed by her. He contends that the Appellant failed to prove possession of the property, and even if a patta was

granted to her, it is of no avail, as long as she could not be in possession.

10. Both the suits were tried together by the trial Court. Since both of them were filed for the reliefs of perpetual injunction, only one issue, viz., whether the respective parties are entitled for the relief of perpetual injunction; was framed.

11. On behalf of the 1st Respondent PWs 1 to 3 were examined and Exs.A-1 to A-6 were filed. On behalf of the Appellant, DWs 1 and 2 were examined, and Exs.B-1 to B-2 were filed. The 1st Respondent filed appeals, feeling aggrieved by the decrees passed by the trial Court. The lower Appellate Court framed identical points in both the appeals, viz., whether there are any grounds to set aside or modify the decrees and common judgment in both the appeals; and allowed the appeals.

12. It is not necessary to repeat the facts further in the appeals. Appellant, on the one hand, and the 1st Respondent, on the other hand, filed separate suits for injunction in respect of the very property. The only difference is that in the suit filed by the Appellant, the 1st Respondent was the only Defendant, whereas in the suit filed by the 1st Respondent, the 2nd Respondent was the only Defendant. Neither of them claimed the property by way of succession or purchase, or other categories of transfer. Sy. No. 388 is a vast extent of Government land. It was also alleged that the father-in-law of the 1st Respondent was in possession of fairly large extent of land. The 1st Respondent was under the impression that the Appellant herein occupied part of the land, that was being cultivated by her father-in-law. The record however discloses that after the death of the father-in-law of the 1st Respondent, DK pattas were issued in favour of his son, Guravaiah, and his two daughters, of Ac.2.50 cents each. No patta was granted in favour of the husband of the 1st Respondent. It is also evident that the Appellant was granted patta of Ac.2.50 cents, in respect of a separate bit of land.

13. In case the 1st Respondent was of the view that the 2nd Respondent has granted DK patta in respect of the suit schedule property in favour of the Appellant, without any basis, she ought to have initiated steps under the relevant provisions of law, for cancellation of the patta. Even that would not have been sufficient. Unless she has been granted patta independently, there was no way, that she could have claimed exclusive rights over the property. Even otherwise, at least when the 2nd Respondent filed a written-statement, to the effect that the plaint schedule land in O.S. No. 201 of 1998 was assigned in favour of the Appellant herein, the 1st Respondent ought to have taken steps to seek the relief of declaration of title. Therefore, the following substantial questions of law arise, viz.,

1) whether the rights of an individual, who was assigned a piece of land and granted patta by the Government, can be interfered with, by another individual, unless the assignment or patta are challenged before the Court of law?

2) whether a suit for the relief of injunction- simpliciter can be maintained by a

person, claiming possession against the Defendant, on the strength of valid title, through assignment?

14. The evidence on record would clearly lead to the conclusion that the 1st Respondent failed to challenge the assignment and patta in favour of the Appellant, and the suit filed by her for injunction- simpliciter was not maintainable in law.

15. Hence, the Second Appeals are allowed, and the judgments and decrees passed in A.S. Nos. 166 and 167 of 2002 are set aside. The decree in O.S. No. 339 of 1998 shall remain and O.S. No. 201 of 1998 filed by the 1st Respondent shall stand dismissed. It is, however, left open to the 1st Respondent to pursue her remedies for the cancellation of patta granted to the Appellant, or for declaration of title, vis-a-vis the property. There shall be no order as to costs.