
(2002) 06 AP CK 0007
In the Andhra Pradesh High Court
Case No : SA No. 121 of 1992

Sammeta Tulasi Ram and Others	Vs	APPELLANT
State of A.P. and Others		RESPONDENT

Date of Decision : 07-06-2002

Acts Referred:

Citation : (2002) 5 ALD 568 : (2004) 3 ALT 200

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : C. Sadasiva Reddy, for the Appellant; Government Pleader for Revenue, for the Respondent

Final Decision : Allowed

Judgement

G. Yethirajulu, J.—This appeal is directed against the judgment and decree in AS No. 44 of 1985 on the file of the 1 Additional District Judge, Krishna at Machilipatnam confirming the judgment and decree in O.S.No. 264 of 1975 on the file of the Principal District Munsif, Machilipatnam.

2. The appellants are the plaintiffs and the respondents are the defendants in the suit. The plaintiffs filed the suit for declaration that they are the owners of the suit schedule land and for permanent injunction restraining the defendants 1 to 3 from attaching the plaint schedule property, crops raised thereon and for recovery of a sum of Rs. 960/- from defendants 1 to 3.

3. According to the plaintiffs, the suit land was purchased by the father of the plaintiffs 1 and 2, S.Venkateswara Rao, under a registered sale-deed dated 3-5-1948. He was in possession and enjoyment of the suit land till his death in 1972. After his death, the suit property devolved on the plaintiffs. Since the plaintiffs 1 and 2 were serving in military, the 3rd plaintiff being their mother was managing the suit property. The 4th defendant is the wife of Sri S. Narayana Rao, the younger brother of Sri S. Venkateswara Rao. Taking advantage of the absence of the plaintiffs 1 and 2, the husband of the 4th defendant, who was the

Village Munsif, won-over the revenue officials and got the suit land fraudulently transferred in favour of his wife i.e., the 4th defendant in the revenue records. The 4th defendant had fallen due to pay arrears of land revenue. Therefore, in 1974, the standing crop of the suit land was attached by defendants 1 to 3. The plaintiffs 1 and 2 issued a registered notice demanding defendants 1 to 3 to raise attachment over the property. But they failed to do so. The transfer of suit land from Patta No. 618 belonging to S. Venkateswara Rao to Patta No. 624 belonging to the 4th defendant is illegal and not valid under law. No title was passed to the 4th defendant in the absence of a registered document. Hence, the suit for the reliefs mentioned above.

4. The 1st defendant resisted the suit through his written statement contending that the husband of the 4th defendant was appointed as a Village Munsif in 1969. At the time of the said appointment, the 4th defendant gave the said land as security. Subsequently, the husband of the 4th defendant misappropriated a sum of Rs. 20,370-75 ps. He was kept under suspension in October, 1973 and on the instructions of the 2nd defendant, the 3rd defendant attached the property which was given as security by the 4th defendant along with another property. The 3rd defendant attached the crop standing in the plaint schedule and another land belonging to Ch. Desupathi and the produce was sold for Rs. 960/-. After deducting a sum of Rs. 500/- towards watching, thrashing charges etc., the balance amount of Rs. 460/- was adjusted towards the amount due to the Government. In pursuance of the family arrangement between S. Venkateswara Rao and his brother Narayana Rao, the suit land, which was originally purchased by S. Venkateswara Rao, was transferred to the 4th defendant. The transfer of patta was also effected at the request of 5, Venkateswara Rao. The 4th defendant has been in possession and enjoyment of the suit property for more than, 12 years. Since the plaintiffs or their purchasers in title were not in possession of the suit land within twelve years prior to the date of the suit, they are not entitled to declaration of their title. There is no cause of action for the plaintiffs to file the suit. Hence the suit is liable to be dismissed with costs.

5. The defendants 2 and 3 filed a memo adopting the written statement of the 1st defendant.

6. The 4th defendant remained ex parte.

7. The trial Court framed appropriate issues on the basis of the above pleadings.

8. The plaintiffs in order to prove their case examined P.Ws.I to 8 and marked Exs.A.I to A.9. The defendants examined D.Ws.I to 4 and marked Exs.B.I to B14. Exs.X1 to X.7 were marked through witnesses.

9. The trial Court after considering the oral and documentary evidence adduced by both parties dismissed the suit with costs through its judgment dated 2-3-1985.

10. The plaintiffs being aggrieved by the said judgment and decree preferred AS

No.44 of 1985 challenging its validity and legality and the 1st appellate Court after considering the material on record and after going through the judgment of the trial Court concurred with the findings given by the trial Court and accordingly dismissed the appeal with costs through its judgment dated 3-3-1992.

11. The plaintiffs being aggrieved by the concurrent findings given by the 1st appellate Court preferred this appeal challenging the validity and legality of the judgment and decree of the said Court.

12. In the Memorandum of Appeal though the appellant raised many grounds, the following is the only substantial question of law that is to be considered by this Court:

Whether the 1 st appellate Court had not erred in holding that the principle of estoppel would apply to extinguish the title of the real owner even in the absence of a registered sale-deed conveying title to another by the real owner disregarding the provisions of law relating to transfer of immovable property?

Point :

13. It is an undisputed fact that Sri S. Venkateswara Rao, the father of plaintiffs 1 and 2, purchased the suit land through Ex.A1 registered sale-deed dated 3-5-1948. He was in possession and enjoyment of the suit property till his death in 1972. The 4th defendant is the wife of the younger brother of Venkateswara Rao. The said younger brother of Venkateswara Rao was the Village Munsif and he appeared to have appropriated the Government money to a tune of Rs. 20,320-75 ps. The defendants 1 to 3 made efforts to recover the said amount by attaching the suit schedule property on the ground that the 4th defendant is the owner of the said property. Admittedly the 4th defendant did not obtain any sale-deed or document of title from Venkateswara Rao to claim legal title over the suit property. The trial Court basing on the entries covered by Exs.X4, X5 and X6-fair adangal, adangal for 1375 and the extract of the settlement register respectively held that the 4th defendant is the owner of the suit property and the defendants 1 to 3 are justified in attaching the said property for the realisation of the amount became due from the husband of the 4th defendant. The trial Court by relying on the transfer of patta of Venkateswara Rao in favour of the 4th defendant dismissed the suit refusing to grant the injunction. The trial Court further observed that the transfer of the patta was done at the instance of Venkateswam Rao, who gave an application to the concerned authorities and disclaiming interest in the suit property and acknowledging the 4th defendant's title to the suit property. The plaintiffs being the successors in interest are estopped from pleading that they are the owners of the property. The trial Court also observed that the entries in the revenue records are sufficient proof to prove the title of the 4th defendant and in view of the 4th defendant mortgaging the suit property to the Government at the time of the appointment of her husband as Village Munsif, the defendants t to 3 were right in bringing the property for

attachment.

14. The 1st appellate Court in para 27 of its judgment observed that Sri Venkateswara Rao, the original owner of the suit property, gave Ex.B2 statement to effect mutation of patta in favour of the 4th defendant and in pursuance of that the revenue authorities mutated the patta in favour of the 4th defendant and she raised loans on the said property and it is also given as a security at the time of appointment of her husband as Village Munsif. The 1st appellate Court further observed that for all practical purposes the 4th defendant was treated as the owner of the suit property and the statement given by Venkateswam Rao that he has no interest in the suit property is also lending support to the claim made by the 4th defendant that she is the owner of the property. The 1st appellate also observed that the 4th defendant sold away some other property to purchase the suit land from Sri Venkateswara Rao, that she paid part of the sale consideration for the suit land, that in view of the close relationship and in view of the fact that Venkateswara Rao has no subsisting interest and to get over the expenditure for registration, stamp duty etc., they resorted to get the patta transferred from Venkateswara Rao to the 4th defendant. Accordingly, the 1st appellate Court recognised that the 4th defendant has title over the suit property.

15. So long as the validity of sale is not questioned, the 4 defendant is at liberty to enjoy the said property if she is in possession and enjoyment of the same, but when once the validity of title is put to test, the Court has to consider whether there was transfer of the property according to law, either by resorting to one of the modes provided under the Transfer of Property Act or under a Will or perfecting title to the suit property by adverse possession.

16. It is an undisputed fact that there is no valid document of title in favour of the 4th defendant and she did not raise the plea of adverse possession against the plaintiffs. The 4th defendant is alleged to have got the patta transferred in her name from Sri Venkateswara Rao at his instance. So. it has to be considered whether the entries in the revenue records amounts to valid transfer of title from the rightful owner. In this regard the learned Counsel for the appellants-plaintiffs relied on a judgment of this Court in Yeluri Vijayabharathi and Others Vs. Yeluri Manikyamma and Others, , wherein it was contended that the entries in the Record of Rights Register should be taken as a basis to fix the title. The Court held that such contention cannot be accepted, although the entries in the Records of Rights Register enjoin the presumption in law that the entries are true unless the contrary is proved and may not be discredited. The records of rights are no records of documents of title. Such documents are more in the nature of fiscal inquiries instituted in the interest of the State for the purpose of ascertaining which of the several claimants for the occupation of certain denominations of immovable property may be put into occupation of it with greater confidence that the revenue for it will be paid. It was further held therein that such entries have got corroborative value regarding the possession of a party in regard to an immovable property.

17. In Nagar Palika, Jind Vs. Jagat Singh, Advocate, , the Supreme Court held that the relief of ejectment basing on title cannot be granted to the plaintiff merely on the basis of the entries in the revenue records.

18. In Pydi Hariya and another Vs. Revenue Divisional Officer, Kandukuru Division, Prakasam Dist. and others, , this Court has categorically observed that the Records of Rights do not confer any right and a passbook is issued merely for the purposes mentioned therein.

19. The learned Counsel for the respondents 1 to 3 defendants relied on a judgment of this Court reported in Chanumolu Nirmala and Others Vs. Chanumolu Indira Devi, , wherein this Court while considering Section 6 of the A.P. Record of Rights in Land Act, 1971 held that every entry in record of rights shall be presumed to be true until contrary is proved or until it is amended and the authenticity of the entries therein cannot be doubted.

20. So far as the principle laid down in the above judgment is concerned, it is not in dispute, but in the facts and circumstances of the case on hand and in view of the decision referred above, I am of the view that the entries in the revenue records do not confer any valid title to the person in whose name the entries are made against the person who acquired valid title according to law. Unless the parties adopt one of the modes provided under the Transfer of Property Act or any other law for the time being in force, the claim regarding the title of the 4th defendant cannot be recognised, as it is not valid under law.

21. The respondents 1 to 3 are repeatedly saying that the 4th defendant is the owner of the property, but the 4th defendant who is alleged to be in possession of the property and who is alleged to be paying the land revenue in pursuance of the claim of her title remained ex pane and did not contest the suit. The 4th defendant also did not enter the witness box to affirm the stand taken by the defendants 1 to 3 that she is the owner of the property. She did not spell out as to when she entered into possession of the property, what was the nature of right she was claiming over the property and what were the circumstances under which she failed to get valid transfer of title in her name. In the absence of such material the Courts below were not justified in drawing presumptions that the 4th defendant became the owner of the suit property. The approach made by the Courts below on the basis of the presumptions and invalid material cannot sustain and I find every force in the contention raised by the learned Counsel for the appellants that there was no valid transfer of title to the 4th defendant and she is not the owner of the property. In the light of the above circumstances, I am of the view that there is no legal basis for the findings of the Courts below and there is every justification to interfere with the findings of the Courts below on the ground that there was no valid transfer of title from the father of the plaintiffs to the 4th defendant and I find every merit in the appeal and I am inclined to allow the same.

22. In the result, the appeal is allowed by setting aside the judgments and

decrees of the Courts below and decreeing the suit by granting the relief of declaration of title in favour of the plaintiffs and for a permanent injunction restraining the defendants from attaching the plaint schedule property and the crops raised thereon.

23. Since the defendants I to 3 have attached the crop raised in the suit land on a bona fide impression that the land belongs to the 4th defendant, the plaintiffs are not entitled for recovery of the said amount of Rs. 960/- as prayed for. In view of the circumstances of the case, each party to bear its own costs.