
(1994) 09 AP CK 0009

In the Andhra Pradesh High Court

Case No : Second Appeal No. 351 of 1988 and CMP No. 1358 of 1992

Smt. Shanta Bai

APPELLANT

Vs

The District Collector and Another

RESPONDENT

Date of Decision : 07-09-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (1994) 3 ALT 481

Hon'ble Judges : Ramesh Madhav Bapat, J

Bench : Single Bench

Advocate : M. Ramachandra Reddy and S. Ramesh Rao, in CMP, for the Appellant; Govt. Pleader for Civil Supplies, for the Respondent

Final Decision : Dismissed

Judgement

Ramesh Madhav Bapat, J.—This is art appeal filed by the original plaintiff. The plaintiff had instituted the suit O.S. NO. 247 of 1981 in the Court of the II Additional Judge, City Civil Court, Hyderabad. The plaintiff had filed the suit against three defendants. Defendants 1 and 2 are alleged to be the neighbours of the plaintiff and the third defendant is the District Collector of Hyderabad District.

2. The plaintiff had filed the suit for declaration of her title to the plaint schedule site admeasuring about 37 guntas with a house, water house, firewood shop, dhobi ghat and poles and ropes in S.No. 162 of Mallepally, Hyderabad known as "Dhobi Ghat alias Shaukari Ghat alleging that the plaintiff's husband Ramachander and Gialal are the sons of Balram alias Tikkaram. Gialal died unmarried. The suit property belongs to the plaintiff. She and her predecessors have been in possession of the property for more than 80 years.

3. It is further averred by the plaintiff that one Ahmed Ali Mirza, the Jagirdar of Mallepally, gave a notice to Balaram for payment of arrears of pan. After the death of Balaram, his son Ramachander used to pay the revenue to the Jagirdar

and after the death of Ramachander, the plaintiff has been continuously in possession of the suit property. The plaintiff has been residing in the suit property and carrying on her profession as Dhobi and has also been running a firewood shop after obtaining the licence from the Municipal Corporation. Ramachander had constructed a water house and used to pay a sum of Rs. 5/- per month and for construction of water house, he had sought the permission of the Military Officers.

4. It is further averred by the plaintiff that the Government provided water tap for washing clothes and it is in existence as on this day. Balaram paid land revenue during his life time. Later on, Ramachander paid land revenue and thereafter the plaintiff is paying the same. Alternatively it was pleaded by the plaintiff that she has perfected the title by adverse possession. The defendants 1 and 2 are bent upon to grab the vacant site and therefore they had instigated the third defendant to issue notice to the plaintiff and tried to evict her. The Tahsildar had directed the S.I. of Police, Humayun Nagar Police Station to help them in taking possession from the plaintiff. With these pleadings, it was prayed by the plaintiff that she may be declared to be the owner of the suit schedule land.

5. On Presentation of the suit, summons were issued to the defendants. Defendants 1 and 2 remained ex parte. The 3rd defendant ie., the District Collector, Hyderabad District, had filed a written statement and had raised the following contentions. The 3rd defendant had denied the title of the plaintiff to the suit schedule property. It is also denied that she owns the suit land and she has been in possession of the suit property over a period of 80 years. It was positively averred by the third defendant that Mallepally is an Ex-sarfe-khas village and the total area is of 990 acres. Out of the said land, 660 acres of land was in possession of the Army of the Ex. Nizam from 1307 Fasli to 1351 Fasli. After the demobilisation of Hyderabad Army and abolition of the Hyderabad Cantonment, the Chief Secretary by his letter dated 21-5-1951 issued a notice to the Collector to take possession of remaining land from the Cantonment Executive Officer and the P.W. D. to take possession of the Army buildings. The Collector has taken the possession of the army land including the suit property. The third defendant has been in possession of the entire land since 1951. The said land is called as Non-I.S.F. land. A Muntakab was issued in respect of 106 acres 15 guntas out of the remaining 330 acres of land and the remaining land was acquired by the City Improvement Board. Under the Muntakab dated 18th Farwardi 1348 Fasli, Ahmed Ali Mirza had Five annas share and Abbas Ali Mirza, Sogara Begum, Sehar Banu Begum and Khairunnissa Begum had one anna share each and Zohra Begum had three annas share. Survey numbers were not mentioned in the Muntakab. After the Hyderabad Jagir Abolition Regulations had come into force Mallepally Jagir was abolished under the Notification No. 49 issued on 24-9-1949 and administration of the Jagir was transferred to the Government. As Ahmed Ali Mirza died, the Jagir went under the supervision of the Court of Wards. The Jagir Administrator passed a commutation Award and

sent it to the Court of Wards for payment to the respective sharers. The suit property was not called "Sahukari Ghat or Dhobi ghat" at any time. Neither the plaintiff nor her husband or her predecessors-in-title were entered into the revenue records. The Jagirdar had no authority to issue notice or collect pan. The plaintiff had made a bogus claim. The plaintiff has to establish that she was given a licence for running firewood shop. The plaintiff was further called upon to prove the construction of water house. The third defendant further alleged that no land revenue was collected from the plaintiff. The 3rd defendant also denied the knowledge regarding the dispute between the plaintiff and defendants 1 and 2. He further raised a contention that the suit is bad in law for want of notice u/s 80 C.P.C. With these pleadings, it was prayed by the third defendant that the suit filed by the plaintiff be dismissed with costs.

6. The learned trial Judge framed the issues. Parties led the evidence. Certain documents were filed and the suit was decreed in favour of the plaintiff.

7. The 3rd defendant filed an appeal against the said judgment and decree in the Court of the Chief Judge, City Civil Court, Hyderabad. The appeal was numbered as A.S. No. 90 of 1986. On hearing both sides, the learned first Appellate Judge had allowed the appeal and the decree passed by the trial Court was set aside.

8. Being aggrieved by the aforesaid judgment and decree of the first Appellate Court, the original plaintiff has filed the second Appeal.

9. The learned counsel appearing on behalf of the appellant took me through the judgments of the trial Court as well as the first Appellate Court. It was contended by the learned counsel for the appellant that Ahmed Ali Mirza was a Jagirdar of Mallepally Estate. The plaintiff's predecessors had rendered good service to the Jagirdar and therefore he had donated or gifted a piece of land in favour of plaintiff's predecessors-in-title. The plaintiff branch has been in possession of the said land over a period of 80 years. The Jagirdar had conferred the gift by way of patta in favour of the plaintiff's predecessors-in-title much prior to the commencement of Jagir Abolition Act and therefore the said Act will have no retrospective effect. The plaintiff can continue in possession of the suit schedule property in her own right. It was further submitted by the learned counsel that the plaintiff has restricted her claim only to the extent of 1452 Sq. yards. The learned counsel mainly placed reliance on Ex. A-I and Ex. B-5. The main point, which arises for my consideration in this appeal, is as to whether the Jagirdar had an authority to issue pattas in favour of any third parties, If this issue turns to be true in favour of the plaintiff, then only the plaintiff can claim title to the suit schedule property and not otherwise.

10. While rebutting the arguments of the learned counsel for the petitioner, the learned counsel for the 3rd defendant ie., 1st respondent herein, placed reliance on a ruling reported in *Jitendra and Ors. v. Sharat Chandra and Ors.*, 1981 (II) APLJ 1. This was the judgment of a Division Bench of this High Court. It was observed by this Court as follows:

"A Jagir is only a life estate of the grantee and on the death of the grantee, the subject matter of the jagir reverts to the grantor who may make a fresh grant to any or all of the heirs of the previous grantee or to any other person at his will. There is no succession in the legal sense and the jagirdar does not get proprietary rights and hence he cannot dispose of it by transfer either inter vivos or testamentary and it is a property in his hand inalienable and non-heritable and his rights are limited to its usufruct for life subject, of course, to his good conduct. Hence, the jagir or the income derived therefrom cannot be treated as an ancestral property."

In the aforesaid judgment, their Lordships had further observed in paras 14 to 17 as follows:

"14. Schedule II consists of 600 acres of agricultural lands and it can naturally be expected that the income derived from these lands, would be certainly considerable. The other source of income is the income derived from the Jagir. It is now well settled that the income derived from the jagir does not constitute ancestral property. Regarding the legal nature of the jagir estate, the Supreme Court held in *Sikander Jehan Begum and Another Vs. Andhra Pradesh State Government*, , that on the death of the holder of the jagir, the estate devolved upon the State and though it was usually re-granted to the person who was found to be the successor on enquiry, in theory, jagirs were resumed on the death of the holder of the jagir and their heirs did not automatically succeed to them. It is also clear that in their life time the jagirdars were not permitted to alienate the property or that it was not necessary that on the death of the jagir, the estate should be granted to all his heirs either Therefore, the position appears to be that the jagir consisted of not more than usufructory rights in land to which the revenue law of the State did not apply; that the jagirs were inalienable and terminable on the death of the grantee, each jagirdar, though an heir of the deceased holder, was deemed afresh grantee of the estate, the right to confer such an estate being uncontrolled absolute and beyond the jurisdiction of the Civil Courts.

15. Earlier the Full Bench of the Hyderabad High Court also took similar view in *Ahmed-Un-Unnisa v. State* (2) AIR 1952 Hyd163. The Full Bench held the "Ruler of the State was absolute owner of all the lands. We granted usufructuary rights in them to others, which might be called tenures. Two such tenure-holders were the pattedars and the jagirdars. The legal position of a jagirdar differs from that of a pattedar; in that the jagirdar paid no revenue; the heirs did not automatically succeed to the estate; during the life time of the holder alienation of the estate was forbidden. The grantor was not bound on the death of the grantee to confer the estate on his heirs and no suit relating to such tenures could be instituted in civil court without prior permission.

16. The Division Bench of this Court consisting of Mr. Justice Satyanarayana Raju (as he then was) and Mr. Justice Kumarayya (as he then was) in *Ratnamma v. Krislian Rao* (3) ILR 1963 A.P. 431 observed that the concept of *Atia Shahi*

implies an Atia or grant of by the King for the life time of the grantee or Inamdars. What is granted really is the right of usufruct on pain of resumption in case of misconduct or any default. The grant may be continued in the line of original grantee. On the death of each grantee, the subject-matter of Atia reverts to the grantor who may make a fresh grant to any or all of the heirs of the previous grantee or to any other person at his will.

17. Thus, it is clear that a jagir is only a life estate of the grantee and on the death of the grantee, the subject matter of the jagir reverts to the grantor who may make fresh grant to any or all of the heirs of the previous grantee or to any other person at his will. There is no succession in the legal sense and the Jagirdar does not get proprietary rights and hence he cannot dispose of it by transfer either intervivos or testamentary and it is a property in his hand inalienable and non-heritable and his rights are limited to its usufruct for life subject, of course, to his good conduct. Hence, the jagir or the income derived therefrom cannot be treated as an ancestral property."

Their Lordships had also considered the previous rulings on the aforesaid point and came to irrevocable conclusion that Jagir property is neither alienable nonheritable. Under such circumstances, I have no hesitation in holding that the Jagirdar cannot grant pattas to third parties consequently and the contention of the plaintiff that her predecessors-in-title were given patta by the Jagirdar and since then she and her predecessors-in-title had acquired the proprietary right in the property will have no legal meaning. Under such circumstances, the contention raised by the plaintiff herein has to be rejected.

11. The learned counsel for the plaintiff-appellant, as stated earlier, mainly relied upon Ex. A-I. The said document was filed by the plaintiff-appellant. It was an unregistered document, under which the Jagirdar, for accepting Nazarana from the plaintiff's predecessors, had executed the deed or patta in favour of plaintiff's predecessors. It is dated 7th Aban 1346 Fasli (1936). This document is alleged to have been executed on the aforesaid date. Therefore, the contention was raised by the learned counsel that the validity of the aforesaid document and genuineness of the aforesaid document cannot be challenged. The learned counsel for the plaintiff-appellant placed reliance upon Section 90 of the Indian Evidence Act. My attention was invited by the learned counsel for the plaintiff-appellant to the observation made by the Chief Judge, City Civil Court, Hyderabad and submitted that the learned Chief Judge erred in not relying upon the aforesaid document. It was the bone of contention of the learned counsel that the aforesaid document ought to have been accepted as a genuine. It appears from the judgment of the first Appellate Court that the genuineness of the aforesaid document was not accepted by the First Appellate Court for various reasons. The learned First Appellate Judge observed that the Court may draw a presumption and not that it must draw a presumption. The learned First Appellate Judge disbelieved the document for assigning many reasons though the custody of the document comes from the plaintiff-appellant. The first reason

was assigned by the learned First Appellate Judge that it was not registered and there is no evidence to show that the value of the said property was over Rs. 100/- or below Rs. 100/-. The second reason assigned by the learned First Appellate Judge that if the plaintiff or her predecessors-in-title were in possession of the suit property, they ought to have applied for patta and entering their names in the revenue records under the Rules regarding grant of Pattedar Rights in non-khalsa village having come into force in 1355 Fasli. The plaintiff did not take any action in this regard and therefore the genuineness of the aforesaid document was not accepted by the learned First Appellate Judge.

12. The third reason assigned by the learned First Appellate Judge that if at all the plaintiff and her predecessors-in-title were holding the suit land when the Rule came into force in 1356 Fasli they did not pay revenue the Jagirdar.

13. The further reason assigned by the learned First Appellate Judge that as per the averments of the plaintiff that she has been residing in the suit land and has been carrying on her profession as "Dhobi" and also running a firewood stall. She has not been able to prove the same and further more it was held that Ex. A-1 could not have been gifted by Ahmed Ali Mirza, who had a life interest and could not alienate any property during his life time and hence the contention raised by the plaintiff-appellant was rejected. I am in agreement with the observations made by the First Appellate Court.

14. On the point of adverse possession, the learned trial Judge considered the oral evidence of the plaintiff, who has deposed that they have been in possession over 80 years and she has constructed two houses and leased them to the tenants on monthly rent of Rs. 80/- each and that she has been residing in the suit site and carrying on her profession as "Dhobi" in washing clothes and putting them for drying and running a firewood stall in the suit site. The learned Appellate Judge also took into consideration Exs. A-2 to A-4 which have been filed by the plaintiff-appellant having paid the land revenue. The learned Judge further took into consideration the evidence of P.W. 2, who has stated that he has been residing in the suit property as a tenant of the plaintiff for about 12 years. He has also taken into consideration the evidence of P.W. 3, who has stated in his evidence that he has been residing in the suit property over a period of 18 years. P.W. 4, the plaintiff's witness, stated that the plaintiff has been residing in the suit property for about 32 to 35 years. P.W. 5 stated that he worked as Patwari of Mallepally during 1974 to 1984 and he prepared Ex. A-2 in his hand-writing and it was signed by the Revenue Inspector and issued a receipt for Rs. 196-47ps towards arrears of land revenue for 1952 to 1959 years in respect of the property in S.No. 162 of Mallepally. Ex. A-3 is a receipt dated 6-11-1974 for payment of the amount which was collected as "Sivasjara in respect of Survey No. 162 of Mallepally for the years 1959 to 1966. On this point, the third defendant ie. the first respondent herein, also led evidence that the suit property does not fall within S.No. 162 of Mallepally. Thus, on the point of identity of the property, the learned first Appellate Judge disbelieved the evidence of both sides

and further observed that the plaintiff-appellant has not produced any documentary evidence to show that she or her predecessors-in-title have been in possession of the suit property. It was further observed by the learned Judge that though the plaintiff-appellant claimed that there were two houses in the suit property she has not stated as to how long they have been in existence and came to the conclusion that the suit houses could not have been in-existence more than 8 to 13 years prior to the filing of the suit. It was further observed by the learned Judge that the Municipal Corporation has not awarded the door numbers. The plaintiff-appellant also did not pay the taxes regarding the houses alleged to have been constructed by her. It was further observed by the learned Appellate Judge that the suit site was in S.No. 162 of Mallepally and further observed that it was not mutate in her name in the Court of Wards. Therefore, the contention raised by the plaintiff-appellant was rejected that she has perfected the title by adverse possession.

15. The learned Judge also observed that the document Ex. B-2 does not prove that it was a Government poramboke. But there is no evidence to show that T.S. corresponds to S.No. 162. With this evidence on record, the learned Judge observed that though the claim of the plaintiff-appellant was restricted now only to a smaller extent, she has to prove her own title if at all she wants to get the advantage of title perfected by adverse possession.

16. The learned Judge also observed in his Judgment that the plaintiff-appellant did not give a notice to the 3rd defendant i.e., the first respondent herein, especially u/s 80 C.P.C. and on that ground also the learned Judge allowed the appeal and dismissed the suit filed by the plaintiff-appellant. I am in agreement with the findings given by the learned Judge and hold that the plaintiff-appellant could not prove her title to the suit property. Secondly she also could not prove that she perfected the title by adverse possession. The only legal point which was raised before me is regarding the grant made by the Jagirdar in favour of the predecessors-in-title of the plaintiff-appellant. Her contention is not legal for the reasons which I have already assigned by me in the foregoing discussion of my judgment. On facts, the learned Judge held that the plaintiff-appellant could not prove her title by adverse possession. I have discussed the observations of the learned First Appellate Judge in my earlier paragraphs of my judgment on the point of adverse possession, and I hold that the observations are legally right and hence I find that there is no substance in the Second Appeal.

C.M.P. No. 1358/92:

17. The third party was allowed to interfere in this appeal, who has claimed the very property of the plaintiff-appellant from Government as he happened to be the Ex. Service man. No direction can be given in this appeal. It is for the Government to decide whether he should be allotted plot or piece of land which the plaintiff-appellant claims to have been in possession. I therefore direct that no orders are necessary on the application submitted by the third party. Therefore, the C.M.P. No. 1358/92 is dismissed.

18. In the result, the Second Appeal is dismissed. No costs.

19. After pronouncement of the judgment, the learned counsel for the appellant prayed for leave to file L.P.A. Leave refused.