

***HON'BLE DR. JUSTICE K. MANMADHA RAO**

**+ CIVIL MISCELLANEOUS APPEAL Nos.276, 309, 310,
311, 312, 313, 314, 317, 318, 319, 320, 321, 322 and
323 of 2023**

C.M.A. No.276 of 2023

Between:

Ghantasala Venkateswara Rao
S/o Ananda Rao, R/o. Chinnamillipadu (PO)
Akiveedu Mandal, West Godavari District.

... Appellant

And

- \$ 1. The Asst. Commissioner,
Endowments Department,
Vijayawada, Krishna District.
2. Sobhanachaleswara Swamyvari Devasthanam
Agiripalli, Krishna District,
Rep. by its Executive Officer.

... Respondents

JUDGMENT PRONOUNCED ON **31.08.2023**

THE HON'BLE DR.JUSTICE K. MANMADHA RAO

1. Whether Reporters of Local
newspapers may be allowed to see
the Judgments? - Yes -
2. Whether the copies of judgment may
be marked to Law Reporters/Journals - Yes -
3. Whether Their Ladyship/Lordship
wish to see the fair copy of the
Judgment? - Yes -

DR.JUSTICE K. MANMADHA RAO

*** THE HON'BLE DR.JUSTICE K. MANMADHA RAO**
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... Respondents

! Counsel for the Appellant : Sri D.V. Sasidhar

Counsel for Respondents: Smt. Pulipati Radhika

<Gist :

>Head note :

?Cases referred :

1. (2015) 17 Supreme Court Cases 713
2. (2018) 10 SCC 484

HON'BLE DR. JUSTICE K. MANMADHA RAO**CIVIL MISCELLANEOUS APPEAL Nos.276, 309, 310, 311, 312, 313, 314, 317, 318, 319, 320, 321, 322 and 323 of 2023****COMMON JUDGMENT :**

As the issue involved in these appeals is one and the same, these matters are taken up together for disposal by this Common Judgment.

2. The facts in these appeals are similar and identical, therefore C.M.A.No.310 of 2023 is taken as lead case, and the facts therein are referred to for convenience.

3. The impugned application in O.A No.833 of 2013 was filed by the petitioners/respondents herein under Section 83 of A.P. Charitable and Hindu Religious Institutions and Endowments Act 30 of 1987, for grant of eviction against the respondent/appellant herein directing to vacate and deliver vacant possession of the petition schedule landed property to the 2nd petitioner. The appellant herein is the respondent and the respondents are petitioners in O.A No.833 of 2013 on the file of A.P. Endowments Tribunal, Amaravathi (for short "The Tribunal").

4. For the sake of convenience the parties hereinafter referred to as arrayed in O.A No.833 of 2013 on the file of the Tribunal.

5. The 2nd petitioner temple Sri Sobhanachala Swamy vari Devasthanam, Agiripalli, Krishna District is published under Section 6(b) of A.P. Act 30/1987 and is under the administrative control of the Deputy Commissioner, Endowments, Vijayawada and being managed by the Executive Officer concerned. The 2nd petitioner temple is the absolute owner of an extent of Ac 36.25 cents of wet land in R.S No.140 situated at Chinnamillipadu (Siddapuram Revenue village) Akiveedu Mandal of West Godavari District. While so, the respondent has illegally encroached into part of the above extent and has been cultivating the same and utilizing the income, without making any payment towards maktha to the 2nd petitioner temple. The occupation of the schedule property by the respondent is nothing but without any approval from Endowments authorities and as such it amounts to encroachment as contemplated under Section 83 of the Act 30/1987. In spite of repeated demands, the respondent did not choose to vacate and handover the vacant possession and therefore finally they got issued a notice dated 17.5.2013

demanding to vacate and deliver the possession within 15 days from the date of receipt of the notice. But the respondent did not choose to comply with the demand. Hence, the respondents herein filed O.A No.833 of 2013 before the Tribunal.

6. *Per contra*, the respondent/appellant filed counter and denied all the allegations made in the petition. It is submitted that the respondent/appellant does not come under the ambit of encroacher at all. As a matter of fact, Sri Raja Srimannarayana Apparao Bahadur being the Zamindar of Gollapalli estate was the original owner of the land and the founder of Agiripalli Devasthanam also. The said Sri Raja Srimannarayana Apparao Bahadur, as hereditary trustee of the Agiripalli temple, transferred the land of an extent of Ac.36.25 cents in Demarcation No.140 old S.No.173 of Siddapuram Revenue Village of Akiveedu Mandal for a Nazarana consideration of Rs.5,000/- for the absolute necessity and benefit to the temple and granted 'Saswatha Zeroyiti Veesabadi patta' on 12.5.1928 and executed a registered deed dated 12.05.1928 to Sri Muppaneni Achhayya S/o Nagayya, H/o Gummuluru village with possession and enjoyment from generation to generation and is heritable and

transferable with absolute rights of alienation by way of gift, sale or settlement etc., with a condition of payment of Rs.189-12-0 annual in two equal installments to the temple towards cist, local cess, rail cess and education cess and in default, it is to be paid with interest @ Rs.1.00 per month.

7. It is further stated that the said Muppaneni Achhayya and his brothers entered into partition among them and during such partition, he got Ac 16.10 cents, his brother Venkayya has got Ac 12.09 cents and his other brother Venkatrayudu has got Ac 8.06 cents. Thereafter, the said brothers have alienated to different persons and finally the respondent therein came into possession of the petition schedule extent. Further, the temple authorities also collected stipulated amounts from all the respondents in these batch matters and their predecessor's respectively from time to time as per the deed. This respondent and other respondents and their family members have brought the corresponding extent of land in R.S No.140 into cultivation by spending huge amounts periodically from time to time i.e., for the last 84 years and the cultivation is also not profitable one and except these small extents, the respondents in all these batch matters do not have any more lands or income for their livelihood and as such they

are also struggling for their livelihood as they are poor. These respondents have been in possession and enjoyment of their respective extents with the registered approval of the then hereditary trustee/authority, Sri Raja Srimannarayana Apparao Bahadur guru under the Saswata Zeroyiti patta dated 12.5.1928 and his successors of the temple, who executed transferred and acted upon the terms of the said deed without taking any objection. Therefore, the 2nd petitioner/2nd respondent temple has no right to claim as if it is the absolute owner of the property and consequently the petition filed for eviction is not maintainable and hence prayed to dismiss these appeals.

8. Basing on rival contentions of both parties, the following issues were framed by the Tribunal:

- i) Whether the petition schedule property belongs to the 2nd petitioner temple?
- ii) To what relief?

9. During the course of trial, on behalf of the petitioners, the Executive Officer of the 2nd petitioner temple was examined herself as PW.1 and got marked Ex.P1 to ExP3. On behalf of the respondent, the respondent was examined himself as RW.1 and no documents were marked.

10. After careful examination of the material available on record and recording the oral and documentary evidence, the Tribunal has allowed the applications with costs and respondent therein was directed to vacate and deliver vacant possession of the schedule property to the 2nd petitioner/2nd respondent temple within one month and he/she shall also pay @ Rs.10,000/- per year per acre towards damages for use and occupation from the date of petition till the date of decree and so also thereafter at the same rate till the date of eviction/delivery of the property. Challenging the same, the present appeals came to be filed.

11. Heard Sri D.V. Sasidhar, learned counsel appearing for the appellants and Smt. Pulipati Radhika, learned counsel appearing for the respondents.

12. On hearing, learned counsel for the appellants submits that the orders of the learned Tribunal in allowing the applications are contrary to law, weight of evidence and probabilities of the cases. He further submits that the Tribunal failed to consider the fact that the denial made by the E.O about the knowledge of the zeerayatipatta cannot be taken into consideration because of being an E.O., she should have

all the documents and knowledge of the same because the 38 Register is under her custody, as per Section 29 of the Endowments Act 30/87 and also failed to consider the fact that having observed that there is a mention in the 38 Register of saswathazeerayatipatta shifting the burden on the respondents for filing the same and allowing the O.As on non-filing of the same is misconstrued, even when the E.O was shown the Visabadipatta at the time of cross examination, but the same was not marked by the Advocate Commissioner. He further submits that the Tribunal also failed to consider the fact that the property got partitioned by the family members of Atchaiah and thereafter alienations were made prior to commencement of the Act 30/87 and Act 66, the question of claiming the property after around 90 years is impermissible. Learned counsel mainly contended that, once Section 143 of the Act 30/87, the limitation operates from 30.09.1951 and prior to any title is vested with any person or his predecessor will be the owner of such property. In the instant case, the property got to Achhayya from 1928 onwards. As such, the question of filing the applications in O.As, claiming the property by the temple, as illegal and arbitrary, and hence, the same are liable to be dismissed.

13. On the other hand, learned counsel for the respondents while denying the ground of appeal urged by the learned counsel for the appellants, contended that the order passed by the Tribunal is in a proper manner and the appeal filed by the appellants is not maintainable and prayed to dismiss the same. She placed reliance on a decision of Hon'ble Supreme Court reported in **A. Andisamy Chettiar versus A.Subburaj Chettiar**¹, wherein the Hon'ble Apex Court held that *"the principles summarized unless conditions mentioned under Order 41 Rule 27 are fulfilled, additional evidence cannot be adduced at appellate stage."*

14. The facts of the above case are not applicable to the facts of the present case.

15. On a perusal of the impugned orders, this Court observed that, admittedly, one Sri Raja Srimannarayana Apparao Bahadur, Zamindar of Gollapalli Estate, hereditary Trustee and original owners of the subject lands, and the founders of Agiripalli Devasthanam, transferred Ac 36.25 cents of land vide demarcation No.140, (old S.No.173) of Siddapuram (G)(V) Akividu (M) for a nazarana of Rs.5000/- for the benefit of

¹ (2015) 17 Supreme Court Cases 713

subject temple, and granted Saswatha zeroity Veesabadipatta on 15.5.1928 and executed a registered Deed on the same day to Sri Muppaneni Achhayya S/o Nagayya with possession and enjoyment from generation to generation, and is heritable and transferable with absolute rights by way of gift, sale, settlement etc., with a condition of payment of Rs.189-2-0 annual rent, in two equal installments, to the subject temple, towards cist, in default, it is to be paid with interest at the rate of Rs.1-0-0 p.m.

16. This Court further observed that the said Muppaneni Achhayya in their turn partitioned the said property among his brothers. In turn, one Kanumuri Satyanarayana Raju and his family purchased the same for valuable sale considerations in different extents, on different dates, with absolute rights, and obtained separate Registered Sale Deeds for an extent of Ac 12.09 cents from Muppaneni Venkayya on 24.06.1949 and an extent of Ac.10.04 cents on 01.07.1946 from Medavarapu Sitaravamma, who in-turn purchased from Muppaneni Achayya on 01.07.1942; an extent of Ac.2.02 cents from Nimmala Veeramma @ Katreddi Veeraamma in 1954; an extent of Ac.4.04 cents from Nimmala Peddiraju and Nimmala Peddintlamma, who purchased the

said extents from Muppaneni Achhayya in 1942; and an extent of Ac.2.00 cents in 1946 from Muppaneni Venkata Rayudu. The total extent purchased by the said Kanumuri Satyanarayan Raju is Ac.30.19 cents. Out of Ac 30.19 cents, his sons, namely, one Kanumuri Rama Raju got Ac.6.31 cents; Kanumuri Venakta Narasimha Raju got Ac.6.00 cents; Kanumuri Sri Rama Krishnam Raju got Ac.6.09 cents; Kanumuri Sitarama Raju got Ac.5.73 cents and Kanumuri Subba Raju got Ac.6.06 cents in the partition. Out of Ac 5.73 cents of K. Sitarama Raju, one Kanumuri Bangaramma got Ac.1.00 cents, Kanumuri Ganga Sri Hari Venkata Subbaraju @ Sri Hari Raju got Ac.1.50 cents, Kanumuri Lakshmi got Ac.1.25 cents, Kanumuri Manoj got Ac.1.00 cents and Kanumuri Praneetha got Ac.1.00 cents in family partition-cum-arrangement and enjoying the same with possession. Out of them, the respondent herein is one among them. Except this land, the respondent has no other source for his livelihood.

17. It is also observed in the impugned order, from the evidence of RW.1, it is quite clear that the alleged grant of Veasabadi patta in faovur of Achhayya much less on 12.05.1928 and that too, by way of registered document is not

proved before the Tribunal for lack of filing of such patta and therefore the subsequent alienations if any by the said Achhayya cannot be taken cognizance of and that too, those subsequent sale deeds are also not filed showing the reference about grant of Veasabadi patta in favour of Achhayya. Even if such documents are filed before the Tribunal, the respondents must be in a position to show that even the hereditary trustee was vested the power of alienation, of course in the interest of institution/temple and so also, right of granting saswata zeroiyti Veasabadi patta. In this case, even such remittance of alleged amounts of nazarana consideration of Rs.5,000/- is also not proved before the Tribunal for lack of any documents filed by the respondents. Therefore, what all the respondents in all these batch matters have pleaded is without evidence and baseless. Therefore, no weight need be given to the pleading of the respondents since it is not substantiated by any documents or evidence.

18. In a case of **Uttaradi Mutt Vs. Raghavenra Swamy Mutt**², the Hon'ble Supreme Court held that:

To sum up on the issue, it may be held that an application for taking additional evidence on record at a belated stage cannot be filed as a matter of right. The court can consider such an

² (2018) 10 SCC 484

application with circumspection, provided it is covered under either of the prerequisite conditions incorporated in the statutory provisions itself. The discretion is to be exercised by the court judicially taking into consideration the relevance of the document in respect of the issues involved in the case and the circumstances under which such an evidence could not be led in the court below and as to whether the applicant had prosecuted his case before the court below diligently and as to whether such evidence is required to pronounce the judgment by the appellate court. In case the court comes to the conclusion that the application filed comes within the four corners of the statutory provisions itself, the evidence may be taken on record, however, the court must record reasons as on what basis such an application has been allowed. However, the application should not be moved at a belated stage.”

The High Court could have issued directions to the First Appellate Court to determine any question of fact including the existence and genuineness of the additional evidence or for that matter, whether the contents of the said documents had been duly proved by the party relying thereon. After recording the evidence in support of such relevant matters as the High Court may have directed, the First Appellate Court could proceed to try such issues and return the evidence to the High Court together with its findings thereon within the prescribed time. Such a course was permissible in terms of Rule 28 of Order XLI of CPC. And on receipt of the report, the High Court could then consider the substantial questions of law already framed while admitting the second appeal and finally decide the same on all issues.”

19. On a perusal of the decision of Hon’ble Apex Court referred to above, it is observed that, in a catena of judgments, the High Court could have issued directions to the first appellate Court to determine any question of fact including the existence and genuineness of the additional evidence or for that matter, whether the contents of the said documents had been duly proved by the party relying thereon. Further, after

recording the evidence in support of such relevant matters as the High Court may be directed, the first appellate Court could proceed to try such issues and return the evidence to the High Court together with its findings thereon within the prescribed time. Therefore, this court is of the opinion that the Tribunal, without considering all the above facts and not giving opportunity of filing documents, while concluding the matters, even not properly evaluated the material on record, straight away passed the impugned orders. Hence, this Court deems fit to remand back the matters to the Tribunal for fresh consideration by allowing these appeals.

20. Accordingly, all the Civil Miscellaneous Appeals are allowed and the impugned orders in those cases are hereby set aside and remanded back the matters to the Tribunal for proper consideration. Further, the Tribunal is directed to reconsider those cases along with main appeals with regard to documents filed along with the applications afresh by affording an opportunity to both parties and pass appropriate orders, as expeditiously, as possible, preferably within a period of three (03) months from the date of receipt of a copy of this order. There shall be no order as to costs.

21. As a sequel, miscellaneous applications pending, if any, shall also stand closed.

DR.JUSTICE K. MANMADHA RAO

Date: 31 -08-2023.

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