

THE HON'BLE DR.JUSTICE K. MANMADHA RAO**SECOND APPEAL No.120 OF 2023****JUDGMENT:**

The Second Appeal has been filed assailing the Judgment and Decree dated 28.11.2022, passed in A.S.No.17 of 2018 by the learned Senior Civil Judge, Dharmavaram. The learned first Appellate Court, while dismissing the appeal filed by the plaintiff, had confirming the decree and Judgment dated 28.03.2018 of the learned Principal Junior Civil Judge, Dharmavaram, passed in O.S.No.161 of 2010.

2. The parties will herein after be referred to as they are arrayed in the Original Suit for the sake of convenience.

3. The plaintiff filed suit in O.S.No. 161 of 2010 on the file of the Court of the Principal Junior Civil Judge, Dharmavaram against the defendant for grant of permanent injunction restraining the defendant and his men from interfering with plaintiff's peaceful possession and enjoyment of the plaint schedule property. The averments in the plaint, in brief are as under:-

The Government granted patta in favour of the plaintiff on 06.07.1993, since then he has been possession and enjoyment of the plaint schedule property by raising crops therein and his name was duly mutated in all the revenue records. The plaintiff has also availed loan from PACS and the same was waived by the

Government. The defendant has no way concerned with the plaint schedule property. The defendant started demanding the plaintiff to sell the plaint schedule property for cheaper price, for which he refused to do so. Therefore, the defendant is trying to interfere with the possession and enjoyment of the plaint schedule property. Hence the suit.

4. *Per contra*, the defendant filed Written Statement denying the material averments made in the plaint and contended that originally the plaint schedule property is assigned to father of the defendant, who is none other than grandfather of the plaintiff by name Narayanappa, on request made by him to the Government. The said original D-Patta issued to the Narayanappa was lost. The said Narayanappa had three sons. After demise of said Narayappa, his three sons succeeded the estate of deceased being the legal heirs. Subsequently the suit schedule property got partitioned allotted to the respective brothers. After sub division, the Government also issued D-Patta to all the three sons of Narayanappa under DAR Dis.No.12/1408, dated 12.09.1998. The Government also issued pattadar pass book and title deeds and their names were duly muted in all revenue records. Therefore the documents filed by the plaintiff is forged and fabricated and that the suit is liable to be dismissed.

5. Based on the above pleadings, the trial court eventually framed the following issues for trial:

1. *(a) Whether the plaintiff is in possession of the plaint schedule property as on the date of filing of suit?*
(b) If so, such possession was lawful one?
2. *Whether the defendant tried to interfere with the plaintiff's possession over the plaint schedule property?*
3. *Whether the plaintiff is entitled to permanent injunction as prayed for?*
4. *To what relief?*

6. During the course of trial PWs-1 and 2 were examined on behalf of the plaintiff and Exs.A1 to A5 were marked and on behalf of the defendants, DWs-1 was examined and marked Ex.B1 to B5. The evidence of D.Ws 2 to 4 were eschewed as they did not turn for cross examination.

7. After full-fledged trial, the trial court could hold that the plaintiff has failed to prove his possession and enjoyment of the plaint schedule property and that plaintiff is not entitled for permanent injunction. Accordingly, the suit was dismissed.

8. Assailing the said judgment and decree of the trial court, the plaintiff has preferred an appeal in A.S.No. 17 of 2018. The first appellate court has framed the following points for consideration in the Appeal:

1. *Whether there are any grounds to set aside the decree and judgment, dated 28.03.20218 in O.S.No.161 of 2010 passed by the learned Principal Junior Civil Judge, Dharamavaram?*
2. *To what relief?*

9. The First Appellate Court after considering the facts and circumstances of the case, held as follows:

20.In view of the above stated, it is clear that weighing evidentiary value of P.W.1 and 2, D.W.2 (DW-3 and DW-4 evidence was eschewed by the lower court) and Ex.A.1 to Ex.A.5, Ex.B.1 to Ex.B.5 and the learned Trial Judge went correct in giving findings. In view of above factual and legal positions of the case, this court do not find ground to interfere the findings of the learned Trial Judge, hence, the point is answered accordingly”.

and dismissed the appeal on merits on 28.11.2022, by confirming the findings of the trial court. Assailing the Judgment of the First Appellate Court, the appellant herein, who is plaintiff before the both courts below filed this Second Appeal, seeking to set aside the decree and Judgment of the courts below.

10. This court while admitting the Second Appeal has framed the following substantial question of law, which are as under:-

(a) “Whether both the courts below are wrong in not giving any finding whether the Assignment Patta granted in favour of the plaintiff with reference to the suit schedule property under D.A.R.No.40/1402 dated 06.07.2023 is true and correct? Or whether the sub-division is true and correct and based on the same D-Patta under D.A.R.Dis.No.12/1408, dated 12.09.1998 is legal and proper in terms of Law of Assignment, without cancellation of Assignment made in favour of the plaintiff and

without recovery of possession from the plaintiff is legal and valid under Assignment Law”?

11. Heard Mr.I.Venkata Prasad, learned counsel for the appellant and Mr.K.Narsi Reddy, learned counsel for the respondent.

12. The appellant herein is the plaintiff/ appellant before the courts below.

13. During hearing learned counsel for the appellant submitted that the plaintiff is the absolute owner of the plaint schedule property, having obtained from the Government by way of Patta dated 06.07.1993, since then he has been inducted into possession and his name is also duly mutated in all records and that the defendant has no manner of any right, title or possession trying to interfere with the plaint schedule property, for which the plaintiff resisted his attempts. The defendant has got nothing to do with the plaint schedule property.

14. Whereas, learned counsel for the respondent vehemently contended that originally the plaint schedule property is assigned to the father of the defendant, who is none other than the grand father of plaintiff by name Narayanappa. Subsequently his three sons succeeded the estate of Narayanappa by way of three equal sub divisions and they were enjoying respective shares. Therefore the documents filed by the plaintiff are rank forged and fabricated

documents and that the plaintiff is not entitled to claim relief of permanent injunction. Hence the appeal is liable to be dismissed.

15. Perused the records.

16. As could be seen from Ex.A1, the plaintiff was granted an extent of Ac. 5.00 cents in Sy.No.406-3 and in recognition of his possession and enjoyment the Revenue Authorities have issued Pattadar Pass Book in the year 2015 and his name is also duly mutated in Adangal i.e Ex.A5. Further, it is the contention of the learned counsel for the plaintiff that the defendant did not produced any document to show that the Sy.No.406-3 was subdivided into three parts to an extent of Ac. 1.67 cents each and the defendant was allotted Sy.No.406-3B. But as per evidence of PW-1 it is stated that he came to know that his father's name was mutated in the adangal relating to suit schedule survey number and the name of the defendant was also entered in the revenue records pertaining to Ac. 1.67 cents. The trial court on keen observation with regard to documents filed by the both the parties that the suit schedule property is different, but as per the admissions made by PW-1 that name of the defendant and name of his father was entered in the concerned revenue records, establishes that the plaintiff approached the court by suppressing the material facts. There is a doubt relating to the possession of

the plaintiff over the plaint schedule property. Therefore the trial court dismissed the suit of the plaintiff.

17. From the evidence adduced by both parties, it is clear that the oral evidence let in by the plaintiff as P.W.1 was disbelieved by the trial Court. On the contrary, the respondent has filed D-Form Patta marked as Ex.B1 and Adangal issued in his favour as Ex.B1. Pitted against the documentary evidence produced by the defendant, the oral evidence of the plaintiff regarding possession paled into insignificance. Therefore, both the Courts below have held that the plaintiff failed to establish his possession. Though the trial Court has held that the plaintiff is not entitled to the equitable relief, this Court need not delve into the said aspect.

18. Even assuming that the plaintiff alone is entitled to maintain the suit, as he failed to establish his plea that he is in possession of the property, he is not entitled to the relief of injunction. Though the defendant has claimed ownership and title, he has not produced the sale deed. Even if the defendant has no title over the property, his possession is enough to non-suit the plaintiff. Assuming that the plaintiff is the true owner of the property, as he is not in possession of the same, he is not entitled to the grant of injunction. The plaintiff, if so advised, can only file a separate suit for declaration of title and recovery of possession of

the property. In **“Vallabhneni Bangaraiah Vs. Panamala Peda Musili”¹** the learned Single Judge of unified High Court of A.P also discussed the similar facts and liberty also given to the appellant therein to file a separate suit for declaration of title and recovery of possession of the property and dismissed the said appeal.

19. In view of the forgoing discussion, I find no merit to interfere with the findings of the both courts, except granting liberty to the plaintiff to approach proper fora for redressal of the title dispute between the parties, in respect of plaint schedule property, if so advised.

20. Accordingly, the Second Appeal is dismissed. There shall be no order as to costs.

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

DR.JUSTICE K. MANMADHA RAO

Date: 08.08.2023.

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¹ S.A.No.974 of 2013, dated 05.06.2014

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