

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

I.A.No.1 of 2018
and A.S.No.145 of 19994

JUDGMENT:

This is an appeal filed by the first appellant/plaintiff against the judgment and decree dated 06.12.1993 passed in Original Suit No.56 of 1985 by the I Additional Sub-ordinate Judge, Warangal.

2. As this is a first appeal and for the sake of convenience, the parties are hereinafter referred to as in the original suit only.

3. The suit is filed by the plaintiff claiming for a declaration that he is the owner of the suit lands and restrain the defendants; their officers by a permanent injunction from interfering with his possession. The suit land in question is measuring Ac.106.34 guntas in Survey No.171/3 to 7 of Kompally Village, Chityal Taluk, Warangal. The defendants are the State of Andhra Pradesh represented by the District Collector, Warangal and the District Forest Officer, Warangal North.

4. The claim of the plaintiff in the plaint is that he is the owner and pattadar of Ac.1220.34 guntas and that when the revision survey took place in 1958-59 and an announcement was made in 1960; the plaintiff realized that there was a deficit of Ac.106.34 guntas in his holding. Therefore, he filed an application before the Joint Collector, Warangal in 1977 who by his order dated 07.07.1981 directed

Ac.106.34 guntas should be deleted from the reserved forest and included in the plaintiff's khata. The plaintiff states that as there were periodical irritants and despite the orders of the Joint Collector, the Forest Officers were claiming the same, he is compelled to file the suit for a declaration of title and for a permanent injunction.

5. The Government filed a written statement denying the plaintiff's ownership and possession of the plaint schedule property. The defendants also state that a notification under Section 15 of the A.P. Forest Act was issued on 06.10.1971 and that the plaintiff also filed an application before the Government to exclude the land from the reserved forest area and the same was rejected on 01.09.1984, vide memo No.32228/For-I/82-7. The defendants urge that the entire land is in their possession and custody and is preserved as a reserved forest area.

6. Based on these pleadings, the lower Court framed the following four issues:

- i) Whether plaintiff is pattedar of suit land and has title to the same?
- ii) Whether the suit lands form part of the reserve forest area and whether they have been notified and included as such, legally?
- iii) Whether the suit is under valued and the court fee paid is insufficient?
- iv) To what relief?

7. The parties thereafter went to trial. The plaintiff examined himself as PW.1 and marked as Exs.A.1 to A.13. One witness was examined as DW.1 and he marked Exs.B.1

to B.28. After the trial and hearing, the suit was dismissed with costs by the lower Court while holding that the plaintiff is the owner of the plaint schedule property (issue No.1). But, issues 2 & 4 were held against the plaintiff. The issue of court fee (Issue No.3) was left out as the additional court fee was paid in the opinion of the lower Court. It is this judgment that is now assailed by the plaintiff in the present appeal.

8. This Court has heard Sri Vedula Venkata Ramana, learned senior counsel appearing for the appellants/ plaintiffs, the learned Advocate General appearing for the first respondent-State of Telangana and the learned Government Pleader for Appeals appearing for the second respondent.

9. The suit is filed for a declaration of title and for an injunction. The law on the subject is so well-settled that it does not require elaborate repetition. However, it is reiterated that in a suit for declaration of title, the plaintiff has to prove his case. Even if the defendant fails to prove his case or if there are any weaknesses in the defendant's case, the plaintiff cannot get a decree. The burden remains on the plaintiff to prove his case. Against this backdrop of settled law, the pleadings and evidence in this case have to be examined.

Submissions of the plaintiff:

10. The specific case of the plaintiff is that he is the owner and pattadar of the land measuring Ac.106.34 guntas. He seeks for a declaration for the same. The plaintiff examined himself as PW.1 and marked the following documents to prove his title and possession. Ex.A.1-order of

the Joint Collector (which forms the basis for his case), Exs.A.3 to A.7 pahanies and land revenue receipts and Ex.A.13-vasulu baaki for the year 1958-60. Besides this, Ex.A.2 is the demarcation sketch and Ex.A.12 is an inspection report by the Assistant Director of Survey. The remaining documents are legal notice and three postal acknowledgements. Based on these documents, the plaintiff is claiming a declaration of title.

11. Ex.A.1 is the document which started this litigation. It is the order passed on 07.07.1981 by the Joint Collector. The Joint Collector in the said order dated 07.07.1981 states that Ac.106.34 guntas in Survey Nos.171/3 to 7 is to be excluded from the reserved forest and included in the plaintiff's khata.

12. The plaintiff as PW.1 gave evidence and marked the documents which are mentioned above. The learned senior counsel appears for the appellant/plaintiff's and argued that the order passed under Ex.A.1 is a reasoned order and the Government itself realizes that the error had occurred in the survey and after ordering a physical inspection by the Asst. Director, IV Survey party, Warangal, as evidenced by Ex.A.12, the Joint Collector came to a conclusion that the land is wrongly classified as reserved forest.

13. In addition, the learned senior counsel argued that after the orders were passed, the land revenue was collected from the plaintiff and the certified copies of the pahanies filed

by him also show that the plaintiff was in possession and enjoyment of the suit schedule property. He also strongly urged that the vasulu baaki for the year 1958-60 shows the possession and enjoyment of the plaintiff.

14. The learned counsel also points out that the evidence filed by the defendants/respondents does not show that the Government followed the procedure prescribed under the Forest Act for declaring the land as the reserve forest and that none of the documents filed by the defendants proved that the land has been duly notified under Section 15 of the Forest Act after following the due procedure. Therefore, the learned senior counsel for the plaintiff argued that the extinction of rights under Section 16 does not arise and that the plaintiff's case is proved by the documents issued by the revenue authorities themselves.

Submissions of the respondents:

15. In reply thereto, the learned Advocate General for the State of Telangana appears and states that the plaintiff did not plead and prove his title to the property. He pointed out that the pleading is extremely weak and the evidence that is filed does not also support the plaintiff's case for 'title'. In fact, he points out that the evidence is not in line with the pleading. The learned Advocate General also argued that the plaintiff who was aware of the notification issued under the Forest Act filed an application before the Government for excluding of the land from the reserved forest area and the same was rejected on 01.09.1984 by Ex.B.2/Ex.B.28. The

learned counsel points out that the evidence of PW.1 itself shows that he is not the owner of the property. Neither the succession of the plaintiff to the property nor the plaintiff's right to exclusively claim the property is established as per the Advocate General. The learned Advocate General also points out that the finding on issue No.1 is erroneous and that under Order 41 Rule 22 CPC the plaintiff can challenge the finding even without filing the cross-objections on the same. He also urges that this Court being hearing the first appeal has the power under Order 41 Rule 33 (2) CPC, to pass a decree or order, which ought to have passed and also the power to pass such orders as are necessary. The learned counsel also points out that the evidence on record is enough and that under Order 41 Rule 24 CPC this Court can finally determine the suit.

16. After considering the rival submissions made and perusing the records, this Court is of the opinion that the two essential points to be determined in this appeal are as follows:

- i) Whether the plaintiff has proved his title to the property; and
- ii) whether the plaintiff has proved that he is in possession of the property so as to enable him to seek an injunction.

Point No.1:

17. As noticed earlier the trial court upheld the title of the appellant on issue no1 but ultimately dismissed the suit. The learned Advocate General appearing for the

respondent contented that it was not possible for the State to file an appeal against a finding on one of the issues and argued that an appeal lies only against a 'decree' but not against a finding. This submission is supported by the decision in the case of **Banarsi v. Ram Phal**¹. In addition, the Hon'ble Supreme Court of India in the case of **Mahant Dhangir v. Madan Mohan**² in para-15 held that the power under Order 41 Rule 33 CPC enables the appellate Court to decide any question between the appellant and respondent but also between respondents. It was further held that the appellate Court could pass any decree or order that 'OUGHT' to have been passed or such other order as the case may require. This court sitting in a first appeal is therefore examining the entire pleadings and the material on record to decide the issue on title of the plaintiff and not merely the unchallenged finding on issue No.1, in view of the case law mentioned above and as per Order 41 Rule 22 and Order 41 Rule 33 (2) CPC.

18. As noticed at the outset, the present case is a suit filed for a declaration of title. Therefore, the plaintiff will have to clearly plead and then prove his title to the property. Irrespective of the defendants' contentions, the burden is on the plaintiff alone. The learned senior counsel also argued about the title and possession of the plaintiff on this issue. However, the examination of the plaint does not show how the

¹ (2003) 9 SCC 606

² 1987 (Suppl.) SCC 528

plaintiff has actually acquired the property. The plaint starts with the sentence in para-2 that the plaintiff is the owner and pattedar of the property. None of the documents filed to show at the plaintiff's title to the property. The oral evidence of the plaintiff as PW1 shows that even in the chief examination, he starts with the sentence 'I am the plaintiff herein, I am the owner of the

19. A reading of the cross-examination of this witness, on 15.07.2013 shows that he made the following admissions with regard to the title a) his paternal grand father purchased the suit land but he does not know from whom his grandfather purchased the suit land (page-4). In page-5, he states that the patta of the suit land stands in the name of his paternal grandfather and after him, in the name of his father. He further states that about 50 years back after the death of his father, succession to the suit lands and other lands opened up (the plaintiff was about 52 years on the date on which he gave his deposition. Therefore, it is obvious from this answer that he does not really have personal knowledge and the manner of his succession). Soon after this, he states that his brother also has half share in the property. He deposes that his brother also filed a separate declaration under the Land Ceiling Act, wherein his brother-Gulam Sandhani claimed half share in the holding. He also states that in the declaration filed before the Land Ceiling Authorities, he has not shown the land in Survey Nos.171/3 to 7 as his lands.

20. A reading of these admissions in the evidence of PW.1 clearly shows that he is not the absolute owner of the subject land. The details of the acquisition of title, the details succession are not at all spelt out anywhere in the plaint or in the evidence of PW.1. The admission that his brother-Gulam Sandhani also filed a separate declaration showing half share in the suit land in his declaration clearly leads to the conclusion that the plaintiff's brother also is claiming the half share. The plaintiff also filed the vasulu baaki for the year 1958-60, which is marked as Ex.A.13, but even in the very same vasulu baaki clearly shows that the land in Survey No.171/3 to 7 has been rectified, pursuant to Ex.A.1-order. Therefore, the documents filed do not really establish the title and possession of the plaintiff.

21. Apart from the specific denial of the ownership and the possession of the plaintiff over the suit schedule land, the defendants have also taken a specific plea that subsequent to Ex.A.1-order, the plaintiff has filed an application before the Government in 1982 to exclude the land from reserved forest area and the same was denied, vide memorandum No.32228/For-I/82-7, dated 01.09.1984. This is pleaded in the written statement. Ex.B.2 is a copy of the memo and Ex.B.28 is the office copy of the same. Ex.B.2 was marked subject to an objection. Ex.B.28 was then produced and marked. This is an office copy of the order passed. Apart from these two documents, the learned Advocate General also points out that the admission is made by the witness in his

cross-examination wherein he clearly stated that it is true that in the year 1982 he filed an application before the Government for de-reserving the suit land from the reserved forest area. The witness however denies that the Government rejected the application. The attention of the witness is drawn from the memo No.32228, dated 01.09.1984 specifically but he denied the same. But, as pointed by the Advocate General, the fact remains that there is a clear admission that he filed an application for de-reserving the suit lands. Hence, it is clear that the plaintiff was aware of the inclusion of this land in the forest area. Ex.B.28 clearly states that notification u/s.4 was published in the A.P. Gazette and also in the District Gazette. Therefore, the Principal Secretary to the Government rejected the claim on the ground that the application is not maintainable. Ex.B.2/Ex.B.28 clearly refers to the application dated 21.04.1982 filed by the plaintiff, which is in line with this admission in the cross-examination. Ex.B.2/Ex.B.28 also clearly refers to Section 15 of the Forest Act. Once the notification is issued declaring the land as 'reserved', Section 16 comes into play and there is an extinction of any existing rights also.

22. On an examination of the oral and documentary evidence, this Court is of the opinion that the plaintiff has failed to prove his exclusive title to the property which would enable him to seek the relief of a declaration to such a vast extent of land.

23. The examination of the evidence particularly the documents filed by the defendants on the other hand show that the land in Sy.No.171 has been enjoyed by the Forest Department since 1960. The copies of pahanies from 1964-65 to 1984-85 are marked as Exs.B.3 to B.23. The copies of vasulu baaki and sethuvar show that pursuant to the Ex.A.1-order only, the land in Survey No.171/3 to 7 has been excluded from the forest land and included in the plaintiff's khata. However, the sethuvar of 1960 which is marked as Ex.B.26 shows that the land is classified as sarkari land as 1960 itself.

24. One more important factor is that the plaintiff has not included this land on which he claims exclusive title and ownership in his declaration before the agricultural land ceiling authorities. He has not filed the declaration and on the other hand, he admits that his brother and himself have shown half of the suit land as their holding under the Agricultural Land Ceiling Act. In the further cross-examination, he states that he has filed the declaration before the agricultural land ceiling authority but he has not shown the lands in Survey No.171/3 to 7 in his declaration as the orders of the Joint Collector as Ex.A.1 are subsequent. This Court is of the opinion that the wrong inclusion of the land etc., are not really material for the title of the plaintiff. Ex.A.1-order does not in any way confer "title" on the plaintiff. As per the plaintiff, he had pre-existing title and because an error occurred in the survey he was compelled to seek for

rectification of the survey error. This resulted in Ex.A.1-order. Therefore, this Court is of the opinion that nothing prevented the plaintiff from declaring this land as his property in his land ceiling holding. If prior to 1975 itself the property belonged to the plaintiff, nothing prevented him from declaring this property in his declaration before the agricultural land ceiling authorities. The respondents have also filed a copy of the land ceiling declaration filed by the plaintiff as Ex.B.27 on 11.04.1975. This declaration does not show the plaintiff's claim over this property.

25. The plaintiff also states in his evidence that he has sold some of the property to third parties. The names of few people who allegedly purchased the lands are mentioned in his cross-examination on 21.07.1993 but there is no proof filed to show that he actually sold the land. This sale could have been an incident or evidence of ownership.

26. Therefore, on a review of the entire evidence that is introduced in this case, this Court is of the opinion that the plaintiff did not file any proof to establish 'his' title over the property. This is all the more important in view of the fact that he claims to have inherited the property by succession and also because his brother has claimed half of the property as his own property by filing a declaration before the land ceiling authorities. In the absence of any title deed or other document in proof of acquisition of property, lack of details/proof of succession to the same etc., this Court is of the opinion that the plaintiff cannot seek a declaration for

himself that he is the owner of the suit schedule property. Therefore, point No.1 is decided against the plaintiff and it is held that the plaintiff failed to prove his right, title or interest to the property.

Point No.2:

27. As pointed out earlier this point relates to the possession of the property by the plaintiff. The examination of the oral evidence clearly shows that there is no document filed to show that the plaintiff is in actual possession and enjoyment of Ac.106.34 guntas of land with definite boundaries. The cross-examination also reveals that he is cultivating only some part of the land. In one part of his cross-examination, he states that he is cultivating 40 acres of wet land and in one part of his cross-examination, he states that he is cultivating Ac.50.00 guntas and soon after he states that he is cultivating forty acres. In addition, he also states that he sold some of the land to third parties. Except three land tax receipts, no other document is filed which would clearly establish his possession of the present suit schedule property. In fact, the description of the suit schedule property itself is not borne out by any record and boundaries are also not established. The land receipt filed as Ex.A.4 is of the year 1983 and Ex.A.5 is a land receipt for December 1983. Ex.A.6 & A.7 are documents of December 1988 which are after filing of the plaint. Therefore, none of these documents actually help in proving the plaintiffs possession and enjoyment of the property particularly as on the date of

the filing of the suit i.e., in April 1985. This Court is of the opinion that these documents do not prove the plaintiff's possession and enjoyment to any of the part of the property. Therefore, point No.2 is also answered against the plaintiff.

28. This Court on an examination of the facts and figures comes to a conclusion that the plaintiff has not discharged the burden cast upon him to prove his title to the property. The plaintiff has also failed to prove that he is in possession of the property.

29. Issue No.2 in the lower Court is about the notification of the land as a Reserve Forest. The defendants have marked the gazette publication as Ex.B.1 itself to show the inclusion of this forest as a 'Reserve Forest'. The plaintiff is also aware of this as already discussed earlier with regard to Ex.B.2/Ex.B.28. Hence, this Court is of the opinion that there is no infirmity in the order of the lower Court with regard to issue No.2 and the general issue No.4. For all the above reasons, it is held that the plaintiff is not entitled to any relief in this case. This Court therefore holds that there are no merits in the appeal.

30. Accordingly, the appeal is dismissed. The judgment and decree dated 06.12.1993 passed in Original Suit No.56 of 1985 by the I Additional Sub-ordinate Judge, Warangal are confirmed. But in the circumstances of the case, there shall be no order as to costs.

31. The applicants also filed IA No.1 of 2018 to direct the Assistant Director, Land Survey to conduct a survey of

the land and to measure/verify and demarcate the same. The application is in the opinion of this Court misconceived, more so at the appellate stage and at the fag end of the hearing. The contents of the affidavit filed in IA No.1 of 2018 are also argumentative in nature and are dealing with the merits of the matter. Hence, the same is rejected.

32. Miscellaneous petitions, if any, pending in this appeal shall also stand closed.

Date: 20.07.2018
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D.V.S.S. SOMAYAJULU, J

