

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

AS No.24 of 2018

JUDGMENT:

This appeal is filed questioning the order dated 16.09.2017 in OS No.24 of 2017/F2 passed by the Agent to the Government-cum-District Collector, West Godavari at Eluru.

Initially, the interlocutory applications were taken up for hearing and an interim order was granted. Later, in view of the issues raised, the Registry was directed to summon the entire record from the Agent to the Government concerned. The record was received and with the consent of both the learned counsel, the appeal itself was taken up for hearing on 11.09.2018 and heard completely.

This Court has heard Sri P.V. Krishnamachary, learned counsel for the appellants/defendants 5 & 6 and Sri P.V. Ramana, learned counsel for the respondents/plaintiffs 1 to 3.

The essential ground that is urged by the learned counsel for the appellants/defendants 5 & 6 is that the entire hearing is completed in a hurried manner and that the matter involving substantial rights in the properties was decided in a very summary manner. It is his contention that notice has not been served, documents

were received behind back of the party and that a decision on merits was delivered without giving an opportunity of being heard. The essential grounds that are raised by the learned counsel for the appellants are spelt out in ground Nos.2, 3, 5, 6, 9 and 10 of the grounds of appeal. In addition, the learned counsel also submits that the District Collector who is deciding the dispute himself is shown as a party to the dispute and therefore it is his contention that a party in his own case cannot decide the dispute. The grounds that are detailed in this para form the sum and substance of the arguments advanced by the learned counsel for the appellants.

In reply thereto, the learned counsel for the respondents/plaintiffs submitted that the procedure adopted by the Agent to the Government was correct and is in tune with the Agency Laws. It is his contention that the entire procedure of a protracted civil trial has not been contemplated and that the Agent to the Government did not commit any error in passing the impugned order. According to the counsel, notices were in fact served and the present appellants were fully aware of the hearing and yet they did not participate in the suit proceedings.

This Court has taken up the main appeal itself for hearing, in view of the fact that in this matter and in other matters of similar nature orders are being pronounced in a similar manner. The learned counsel for the appellants stressed upon the need to hear this matter immediately in view of the issues involved. He states that valuable property rights of the parties particularly from the tribal/agency areas are being decided in a summary manner without due regard to the fundamental principles of law and jurisprudence. He states that this case is a classic case of justice hurried.

At the outset, as far as issuance of notices is concerned, this Court notices that the Photostat copy of the document, which has been produced from the Agent to the Government at running page-29 shows that Sri Thandra Kondala Rao received a copy of notice which fixed the date of hearing on 16.09.2017 both on his behalf and on behalf of Sri Thandra Dilip Kumar, who is the second appellant and sixth defendant in the proceedings of the Agent to the Government. Therefore, the submission about the non-service of notice and consequent injustice is not really borne out by the record.

The plaint that is filed in this case is for the following substantial reliefs:

- a) Declaring that the plaintiffs are the absolute owners of the plaint schedule property.
- b) Directing the defendants 5 & 6 to deliver possession of the plaint schedule properties to the plaintiffs.
- c) Directing defendant No.3 to cancel the pattadar passbooks and title deeds and mutation of records of defendants 5 & 6.
- d) Directing defendant No.4 to issue land acquisition compensation amount to the plaintiffs.
- e) Awarding costs of the suit.
- f) And such other reliefs as the Hon'ble Court deems fit and proper under the circumstances of the case.

The parties, who are before the Agent to Government-cum-District Collector, are the following:

I. Plaintiffs

1. Jalagam Surya Rao
2. Jalagam Ravi Kumar
3. Jalagam Jaya Kumar

II. Defendants

1. The District Collector, West Godavari at Eluru.
2. The Revenue divisional Officer, Kukunuru, West Godavari District.
3. The Tahsildar, Kukunuru Mandal.
4. The Land Acquisition Officer-cum-Special Collector, Polavaram Irrigation Project, West Godavari District.
5. Tandra Kondala Rao
6. Thandra Dilip Kumar.

This Court notices that the plaintiffs sought a declaration that they are the absolute owners of the suit schedule property. They also wanted a direction to the defendants 5 and 6 who are the appellants herein to re-deliver the possession of the property. The other directions that are sought are for cancellation of the pattadar passbooks and title deeds issued in the name of appellants and to direct the payment of the land acquisition compensation to the plaintiffs.

Therefore, the reliefs claimed make it very clear that the appellants who are the defendants in the suit are in actual physical possession of the property and that there is also a dispute about the title. Once these issues are raised and it is admitted that the respondents/defendants are in possession of the property and a prayer is made for redelivery, the Agent to the Government-cum-District Collector should have taken due care to see why and in what circumstances defendants 5 and 6 (who are the appellants herein) have got possession of the property. Unfortunately, this was not done.

A reading of para-5 of the plaint shows that pattadar passbooks and ROR (Record of Rights) books have been issued to the appellants who are defendants 5 and 6. The allegation made is that some fabricated and

false documents were used by the present appellants for securing the ROR etc. Once such a serious allegation is made, the same should have been thoroughly investigated. Unfortunately it was not.

In addition, a reading of the impugned order shows that Jalagam Narayana Rao, father of the first plaintiff is the original owner of the land in question. The Agent to the Government perused the registered document No.289 of 1977 and came to the conclusion that it is not a valid document as it was executed in 1977. The Agent to the Government failed to notice that the plaintiffs by name Jalagam Surya Rao, Jalagam Ravi Kumar and Jalagam Jaya Kumar are the son and grandsons of Jalagam Narayana Rao. Jalagam Ravi Kumar is the executant of the sale deed, which is considered by the Agent to the Government. He has conveyed the property on 01.08.1977 in favour of present appellants. The Agent to the Government did not consider this aspect at all.

This Court also notices that the document that is now considered in the impugned order is not a document that is appended to the plaint filed. There are only five documents filed by the plaintiffs before the Agent to the Government. When the sale deed of 1977 was filed, whom it is filed is not mentioned. Whether this document

is received from the plaintiffs or from any other party or source is also not clear.

The final orders were passed on 16.09.2007 directing the Sub-Collector, Kukunoor to cancel the pattadar passbooks and title deeds without granting the rest of the reliefs as prayed for. The other reliefs/prayers are not even discussed in the order let alone granted or rejected.

The Agent to the Government did not also notice that the District Collector, West Godavari at Eluru is the first defendant in the case filed before him. As the District Collector was made a party to the suit, he should not have adjudicated the dispute, unless proper steps were taken at that stage to delete him as a respondent and/or to add the proper party. Order 1 Rule 10 (2) C.P.C. should be the guiding factor in such cases. A party to a dispute cannot be a judge in his own case. It is a fundamental principle of our jurisprudential system.

All these matters are being highlighted at the very outset in view of the fact that the sale deed of 1977 has been set aside on the ground that it is opposed to the regulations.

A reading of the impugned order passed makes it clear that the substantial issues that are raised have not

been decided. The questions that fall for consideration in this case are a) whether the sale deed executed by the father of the first plaintiff is a valid document or not? b) whether the plaintiffs are entitled to a declaration as sought for? c) if the appellants who are defendants 5 & 6 are in lawful possession, whether the plaintiffs are entitled to ask for redelivery of the possession? d) whether the pattadar passbooks and title deeds are liable to be cancelled and finally? e) who are entitled to the land acquisition compensation that is awarded?.

This Court is pained to point out that similar orders are coming up before this Court regularly. Substantial rights of the parties who live in tribal areas and who most of the time are from the poor and down trodden sections of the society are being decided in such a summary manner. It is high time that the Agent to the Government-cum-District Collector exercise the quasi-judicial powers in a manner sanctioned by law. While it is a fact that they are burdened with other administrative duties, they are forgetting that they are conferred with the special powers relating to scheduled areas to decide the disputes and that they are administering civil and criminal justice in certain areas. The A.P. Agency Rules, 1924 clearly deal with the manner in which the enquiry

should be conducted. The Collectors and District Magistrates of West Godavari, East Godavari, Visakhapatnam, Srikakulam, Adilabad, Warangal, Khammam and Mahaboobnagar Districts are designated to deal with this sort of disputes. As per Rule 1 of the Agency Rules, they will be the District Judges and Magistrates within the agency areas.

The Andhra Pradesh Agency Rules, 1924 are framed for the adjudication and decision of such matters. They are hardly if ever followed. Rules 14 to 20 deal with the institution, trial and determination of the suits. Rule 21 deals with appearance of authorized agents/advocates. Rules 22 to 24 deal with the service of process/notices etc. Rules 26 to 28 deal with the appearance of parties and consequences of non-appearance. Rule 29 onwards deals with the execution of decrees and orders. In addition to all the above, power to grant interim reliefs like temporary injunction, appointment of receiver are also spelt out in Rules 42 and 43. All these rules are being highlighted because judgments in matters of this nature are being passed in matters of this nature in a very cursory manner. Despite the conferment of power; the same is rarely being used to deliver justice. Summary rejection and failure to consider the matters involved in

such cases will lead to complications that will in some cases that will persist for generations.

In the present case, a sale deed has been taken as the basis for the impugned order. It is not clear who filed this document and when it was filed. Rule 16 deals with the examination of witnesses. Rule 15 (g) provides for receipt of evidence/arguments. In fact, Order 13 Rule 4 CPC mandates that an endorsement should be made on the document when it is marked as an exhibit. The same should have the signature or initial of the Judge. This would enable the higher court to peruse the contents of the document, if the same is sent along with the record. In the case on hand, despite summoning the lower Court record, this Court is unable to decide whether the sale deed has been filed by the plaintiffs or by anybody else. In addition, there is another document No.265 of 1959 executed by Jalagam Narayana Rao by which he states that an extent of Ac.3.10 guntas of land in Kondapalli village has been transferred in favour of Tandra Dharma Rao. This document was also not considered by the Agent to the Government.

This Court also notices that the judgment is not even signed by the Agent to the Government-cum-District Collector, Eluru. It is important to note that judicial

orders particularly judgments and decrees should necessarily be signed by the officer who is pronouncing the same. The judgment/order decides the rights and liabilities of some parties and will have long ranging repercussions. Judgments should necessarily contain the stamp; seal and signature of the officer delivering the same. The Civil Procedure Code and the Criminal Procedure Code mandate that the signature of the officer who pronounces the judgment should be affixed to the same. A similar procedure must be followed in such case before the Agent also. In the case on hand, the document purportedly contains an electronic signature. Judgments deciding rights of parties should always be signed by the officer pronouncing the same.

The Agent to the Government also overlooked the provisions of the A.P. Rights in Land and Pattadar Passbooks Act, 1971. The said Act also provides for the procedure for the amendment/correction of entries.

Therefore, after reviewing the entire matter, this Court is of the opinion that the appeal has to be allowed with the following directions in this case and in all other cases of similar nature:-

- a) It should be decided whether the District Collector should continue as a party to the

proceedings as he is the adjudicating authority.

The Agent can also decide whether his presence as a party is necessary to decide the case. He can also direct in his place, an appropriate party can be added in case he is shown as a party.

- b) While it is true that the elaborate procedure of trial need not always be followed, the Agency Rules must however be scrupulously followed. The rules of natural justice which entail giving an opportunity of hearing should not be over simplified or brushed aside.
- c) Notice should be ordered and opportunity should be given to both the parties in terms of the Rules.
- d) If the documents are received, they should be received, marked and indexed. If oral evidence is given, it should be recorded in an open Court and the witness and the presiding officer should sign the same.
- e) While writing judgments and pronouncing the same, appendix of evidence should also be prepared and annexed to the order, to enable the superior courts to decide on the correctness or otherwise of the interpretation placed on the document that is received and considered.

- f) Judgments and decrees are to be signed by the officer pronouncing the orders. The certified copy of orders can be issued by the concerned Department, but the need and necessity for signing judgments cannot be over emphasized.
- g) Matters involving declarations of rights should not be dealt with in a summary or cursory manner. While a very elaborate judgment with reasons is not always warranted in every case still the final order or judgment in every case should contain sufficient reasons and should deal with all the points that are raised. Matters covered by the pleadings and every issue should be discussed and answered. The final order should clearly mention which prayer/issue is granted and what is refused.
- h) While it is true that the Agents to the Government-cum-District Collectors are overburdened with their own regular work, they cannot lose sight of the fact that the justice should not only be done but should also appear to be done. Due care and caution must be taken before orders of this nature involving valuable rights in properties are passed. Majority of the

people in the tribal tracts/scheduled areas are poor. Hence, greater care must be taken in deciding their cases.

With these observations and directions, the appeal is allowed. The impugned order dated 16.09.2017 in OS No.24 of 2017/F2 passed by the Agent to the Government-cum-District Collector, West Godavari at Eluru is set aside. The matter is remanded to the Agent to the Government to conduct a *de novo* enquiry within a very strict time frame after giving an opportunity to both the appellants and respondents herein, who are the defendants and the plaintiffs before the Agent to the Government.

It is needless to say that the Agency Rules, 1924 should be followed in letter and in spirit along with these guidelines which are only illustrative and not exhaustive.

In the circumstances of the case, there shall be no order as to costs. Miscellaneous Petitions, if any pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 14.12.2018
Isn