

HIGH COURT FOR THE STATE OF TELANGANA

SECOND APPEAL No.116 OF 2022

Between:

Sri Kammari Srinivas @ Seenaiah

.. Appellant

Vs.

\$ Sri Kammari Manthaiiah (died) & others.

.. Respondents

DATE OF THE ORDER PRONOUNCED: **22.01.2024**

THE HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

1. Whether Reporters of Local newspapers may be allowed to see the judgment? No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes
3. Whether his Lordship wishes to see the fair copy of the judgment? Yes

*** THE HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY**

+ SECOND APPEAL No.116 OF 2022

% DATED 22nd January, 2024

Between:

Sri Kammari Srinivas @ Seenaiah

.. Appellant

Vs.

\$ Sri Kammari Manthaiah (died) & others.

.. Respondents

! Counsel for Appellant : Ms.P.Krishna Keerthana

^Counsel for Respondents : Mr.V.Ravi Kiran Rao
Sr.Counsel represented by
Sri V.Rohith

<Gist:

>Head Note

? CASES REFERRED :

1. (2009) 8 SCC 646
2. (2007) 1 SCC 546
3. C.R.P.Nos.1101, 1168 and 1207 of 2018

HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY**SECOND APPEAL No.116 of 2022****JUDGMENT:**

This Second Appeal is filed challenging the judgment and decree dated 16.12.2021 passed in A.S.No.4 of 2019 on the file of the Court of the III Additional District Judge, Adilabad, Asifabad, reversing the judgment and decree dated 28.12.2018 passed in O.S.NO.28 of 2012 on the file of the Court of the Senior Civil Judge, Asifabad.

2. For the sake of convenience, the parties are referred to as they are arrayed before the trial Court.

3. Brief facts leading to filing of the present Second Appeal are that the plaintiff filed a suit in O.S.No.28 of 2012 for perpetual injunction before the Senior Civil Judge, Asifabad, in respect of land to an extent of Ac.7-20 cents, in Survey No.168 situated at Malledi Village of Bheemini Mandal, Adilabad District (herein after referred to as 'the suit land').

4. It is contended that the plaintiff was owner, pattedar and possessor of the suit land having purchased the same from its

original pattedar and owner on 13.07.1994 *vide* simple sale deed and his name was also mutated in the revenue records through proceedings No.G/1105/2005, dated 21.11.2005 and pattedar pass book and title deed relating to the suit land were also issued in the name of the plaintiff. Since then the plaintiff has been in actual possession and enjoyment of the suit land. It is further contended that the he has been cultivating the land by raising paddy and cotton crops and enjoying the suit land as an absolute owner.

5. It is further contended that on 12.07.2012, the defendant without any manner of right of whatsoever interfered with the suit land and threatened the plaintiff with dire consequences to vacate the suit land and that the defendant is politically influenced person. Therefore, he filed the suit for permanent injunction.

6. The defendant filed written statement denying the contents of the plaint. It is contended that suit land is Inam land and the Government assigned the suit land to the ancestors of the defendant under the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 (for short ' the

Act, 1955') and prior to that year, ancestors of the defendant enjoyed the suit land as pattedars; that patta was also granted to the ancestors of the defendant long back and that his father never sold the suit land to anybody by virtue of simple sale deed; that the plaintiff fabricated the false documents and got patta pass book and title deed books in his name.

7. It is further contended that the defendant filed application before the District Collector, Adilabad for cancellation of pattedar pass book and title deed as well as the mutation proceedings made in favour of the plaintiff and the District Collector directed the Revenue Divisional Officer (RDO), Asifabad to make an enquiry and to take necessary action. As per the directions of District Collector, Alidabad and the Revenue Divisional Officer (RDO), Asifabad, the Tahasildar, Bhemini has conducted an enquiry and sent a report to the RDO, Asifabad. Subsequently, the RDO, Asifabad passed orders vide File No.G917/2012 dated 24.07.2012 in favour of the defendant by cancelling the pattedar pass book and title deed as well as mutation proceedings in the name of the plaintiff.

Suppressing the same, the plaintiff has approached this Court and filed present suit.

8. Before the trial Court, on behalf of the plaintiff PW1 to PW3 were examined and Exs.A1 to A17 were marked; on behalf of the defendant DW1 to DW3 were examined and Exs.B1 to B15 were marked.

9. The trial Court, after considering the entire material available on record, vide judgment and decree dated 28.12.2018, dismissed the suit. Aggrieved by the same, the plaintiff has filed the appeal in A.S.No.4 of 2019 before the III Additional District Judge, Adilabad, Asifabad, and the first appellate Court, on re-appreciation of the entire evidence and the material available on record, allowed the appeal *vide* judgment and decree dated 16.12.2021 and reversed the judgment and decree passed by the trial Court. Hence, the present Second Appeal.

10. Heard Ms.P.Krishna Keerthana, learned counsel for the appellant and Mr.V.Ravi Kiran Rao, learned Senior Counsel

represented by Mr.V.Rohith, for the respondents. Perused the record.

11. A perusal of the record discloses that the trial Court dismissed the suit on the ground that the Civil Court has no jurisdiction to try the case and also held that suit land is Inam Land and the plaintiff did not apply and obtain ORC and therefore, the plaintiff cannot claim any title over the suit land and thus, has come to conclusion that the possession of the plaintiff over the suit land is not valid in the eye of law.

12. The first appellate Court, on re-appreciation of evidence on record, has come to the conclusion that judgment and decree passed by the trial Court was perverse and that the trial Court erred in going into complicated questions of title in a suit for injunction simplicitor and thus, set aside the judgment and decree dated 28.12.2008 of the trial Court and allowed the appeal vide its judgment and decree date 16.12.2021. The first appellate Court further observed that the plaintiff has proved his possession over the suit land as on the date of filing of the suit, but the trial Court opined that the Civil Court has no jurisdiction to entertain the suit in respect of Inam land. It is

well settled law that even having wrong possession over disputed land, no one evict forcibly except it due course of law.

13. Learned counsel for appellant herein/defendant vehemently argued that the trial Court decreed the suit by duly taking into consideration the nature of land i.e, Inam land as well as the documents, materials placed on record. Further, the first appellate Court erroneous interpretation held that the plaintiff was in possession of suit land and that non-issuance of ORC is not a basis for dismissal of the suit and that in a suit for injunction simplicitor, the Court cannot go into complicated question of title.

14. *Per contra*, learned Senior Counsel appearing on behalf of the respondents submitted that the first appellate Court was right in allowing the appeal and setting aside the judgment and decree of the trial Court and had rightly held that in suit for injunction simplicitor, the Civil Court cannot go into complicated question of title and the same has to be decided by the appropriate authority in an appropriate proceedings. He further contended that the respondents have been in

possession and enjoyment of the suit land from the date of purchase i.e., from the year 1994.

15. Learned Senior Counsel for the respondents relied upon the common order of this Court dated 08.06.2018 passed in Civil Revision Petitions Nos.1101, 1168 and 1207 of 2018, wherein, in somewhat similar circumstances, the learned Single Judge of this Court, upheld the dismissal of applications filed under Order VII Rule 11(d) of CPC which were filed for rejection of the plaint, by referring to Section 29 of the Act, 1955, as per which, civil suit is barred.

In the above case, the defendant filed interim application under Order VII Rule 11(d) of C.P.C., for rejection of plaint on the ground that the plaint is barred by law under Section 29 of the Act, 1955 and the trial Court dismissed the said application, challenging the same, the defendants have filed the C.R.Ps. In the said C.R.Ps, this Court while dismissing the C.R.Ps has observed as under:

“The oblique attack on the maintainability of the subject suits by the first defendant on the ground that the ownership claim of the plaintiffs over the suit schedule properties would also entail examination of the Occupancy Rights Certificate granted under the Act

of 1955 is too long drawn a connection to sustain his plea for rejection of the complaints under Order 7 Rule 11(d) CPC.”

16. Learned Senior Counsel has also relied upon the judgment of Hon'ble Apex Court in the case of ***Nahar Industrial Enterprises Limited Vs. Hong Kong and Shanghai Banking Corporation reported in (2009) 8 SCC 646***, wherein at paragraph Nos.107 and 110 it has been held as under:

“107. A civil court is entitled to decide the respective claims of the parties in a suit. It must come within the purview of the hierarchy of courts as indicated in Section 3 of the Code. It will have jurisdiction to determine all disputes of civil nature unless the same is barred expressly by a statute or by necessary implication.

110. It must be remembered that the jurisdiction of a civil court is plenary in nature. Unless the same is ousted, expressly or by necessary implication, it will have jurisdiction to try all types of suits.”

Thus, learned Senior Counsel would submit that Civil Court has jurisdiction to entertain the suit and the judgment of the first appellate Court is proper and does not warrant any interference by this Court.

17. The point for consideration is, whether the suit for injunction simplicitor is maintainable in the light of the Sections 10, 23 and 24 of the Act, 1955?

18. Admittedly, the suit was filed for injunction simplicitor by the plaintiff and the first appellate Court has observed that in a suit for injunction simplicitor, the trial Court cannot go into the complicated question of title. A perusal of Sections 10, 23 and 24 of the Act, 1955 would show that same are related to resolution of dispute between the parties in respect of rights and claim of the property. In the present case, the suit is only for injunction simplicitor and not related to any order passed by the revenue authority under the Act, 1955.

19. The provisions of the Act, 1955 would have to be construed strictly for the purpose for which it was enacted i.e., to adjudicate disputes between the Inamdars on the one hand and his lessee/assignees on the other hand, so as to determine their rights.

20. The first appellate Court held that the suit filed for injunction simplicitor based on possession of the plaintiff and thus, the relief would not find within the jurisdiction of any authority under the Act, 1955 and therefore, the suit is

maintainable and thus, allowed the appeal by setting aside the judgment and decree of the trial Court.

21. Learned counsel for the appellant vehemently argued that the trial Court dismissed the suit without proper appreciation of the evidence and bar under the Act, 1955. However, learned counsel failed to raise any substantial question of law to be decided by this Court in this Second Appeal. In fact, all the grounds raised in this appeal are factual in nature and do not qualify as the substantial questions of law in terms of Section 100 of C.P.C.

22. Further, in ***Gurdev kaur Vs. Kaki***¹ the Hon'ble Apex Court held that the High Court sitting in Second Appeal cannot examine the evidence once again as the third trial Court and the power under Section 100 of C.P.C. is very limited and it can be exercised only where a substantial question of law is raised and fell for consideration.

23. Having considered the entire material available on record and the findings recorded by the first appellate Court, this

¹ (2007) 1 SCC 546

court finds no ground or reason warranting interference with the said findings, under Section 100 of C.P.C. Moreover, the grounds raised by the appellant are factual in nature and no question of law much less a substantial question of law arises for consideration in this Second Appeal. In the considered opinion of this Court, the first Appellate Court has rightly allowed the appeal by setting aside the judgment and decree of the trial Court.

24. Hence, the Second Appeal fails and the same is accordingly dismissed at the stage of admission. No costs.

Pending miscellaneous applications, if any, shall stand closed.

LAXMI NARAYANA ALISHETTY, J

Date: 22.01.2024

Dua

Note: LR Copy to be marked : Yes