

**THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI**

**A.S.No.260 OF 2023**

**JUDGMENT:**

Aggrieved by the judgment and decree dated 10.05.2023 in O.S.No.12 of 2021 (hereinafter will be referred as 'impugned judgment') passed by the learned Agent to Government, Bhadradi Kothagudem (hereinafter will be referred as 'trial Court'), the plaintiffs preferred the present appeal to set aside the impugned judgment.

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

3. The brief facts of the case, which necessitated the appellants to file the present appeal are that, the plaintiff Nos.1 to 4 filed suit for declaration, recovery of possession and perpetual injunction against the defendants in respect of suit schedule property. The averments of the plaint in brief are as under:

a) The Plaintiffs are sons of late Kakati Peeralah S/o. late Veeraiah belonging to schedule caste community and residents of Vengannapalem village & panchayat of Julurupadu Mandal, Bhadradi Kothagudem District. The plaintiffs are grandchildren of late kakati Veeraiah, who was the absolute

owner and pattadar of the agriculture land bearing Sy.No.253 to an extent of Ac.11-00 guntas situated at Gundepudi village in Gundepudi panchayat now at present within the jurisdiction of Vengannapalem Panchayat. The lands are situated in Agency Area, as such, they are governed by Agency Laws and Regulation 1/70 Act. The lands are VETTI CHAKIRI LANDS i.e. the lands were donated to KAKATI VEERAIHAH as he rendered services to the Government as servants. The lands are donated to him in the year 1955-58 and since 1955 Kakati Veeraiah was in possession and enjoyment of the property, his name was entered in KASRA PAHANI and PAHANIES as PATTADAR AND POSSESSOR. The Vettichakiri Lands are INAM lands and they are prohibited from alienation. Moreover, the Regulation 1/70 Act came into force from March, 1970, as per which all kinds of transactions in between non tribes are *void ab initio*. Kakati Veeralah and his wife died long back. Kakati Veeraiah blessed with 3 children namely, 1) Kakati Peeraiah, 2) Kakati Mysaiah, 3) Kakati Ramaseti. Kakati Veeraiah partitioned his property among his children. Accordingly, Kakati Veeraiah's son Kakati Peeralah got Ac.4-00 guntas of the land in Sy.No.253/A situated at Vengannapalem revenue village, Julurupadu Mandal, Bhadradi Kothagudem i.e., suit schedule property.

Kakati Peeralah blessed with 4 children namely, 1) Kakati Laxminarayana, 2) Kakati Venkateswarlu, 3)Kakati Nagesh, 4) Kakati Ravi Kumar. That Kakati Peeraiah and his wife Kakati Nagamma died long back. After death of Kakati Peeraiah and Nagamma, the plaintiffs succeeded to the suit schedule property as class-I legal heirs. The plaintiffs are only entitled to claim the rights over the suit schedule property.

b) The defendant Nos.1 and 2 are concerned with RCM Church, which is having office at Karunagiri, Naidupeta near bridge Warangal Bypass Road, Khammam Town and Mandal. The defendant No.2 is looking after managing of churches under his jurisdiction and taking care about the defendant No.1's church at Vengannapalem Village. The plaintiffs and their father have not sold the suit schedule property to the defendant Nos.1 and 2. Taking advantage of innocence of the plaintiffs, the defendants illegally occupied the suit schedule property based on alleged void documents and denying the title and rights of the plaintiffs. The defendants are alleging that they have obtained valid permission with plan from the defendant No.3 to construct shopping complex in the suit schedule property. In fact, the defendant No.3 has not sectioned

any permission or approved any plan for construction of the alleged shopping complex in favour of defendant Nos.1 and 2.

c) It is pertinent to mention that the property situated in Agency Area, as such, governed by Agency Laws. All kinds of transaction in between the non tribes is null and void and the outcome of the void document is void, based on void document no one can claim any kind of rights. When the defendants were orally advised to vacate and handover the schedule mentioned property to the plaintiffs, the defendant Nos.1 and 2 denied the very title of the plaintiffs and refused to deliver physical possession of the suit schedule property alleging that they have obtained valid permission with plan from the defendant No.3 and they are paying property tax to the Gramapanchayat as well as their name was entered in revenue records. The entries carried out in Gemapanchayat and revenue records are outcome of the void documents, as such, whatever entries carried out based on the void documents are void as such, they do not give any legal sanctity as such, they are liable to be deleted from revenue and Gramapanchayat records. The Secretary/Sarpanch, Vengannapalem Gramapanchayat do not have any rights to consider void documents.

d) The plaintiffs could not recover the physical possession of the suit schedule property inspite of their best efforts. Moreover, these lands are INAM LANDS, which are prohibited from all kinds of alienations. At present the plaintiffs are suspecting danger to their life and property. The defendant Nos. 1 and 2 are threatening to alienate the property in favour of the third parties to create multiplicity of legal proceedings and taking the law into their hands. Hence, the plaintiffs are constrained to seek help from the Hon'ble Court by way of filing of this suit to declare them as absolute owners of the suit schedule property consequential recovery of possession of property and deliver the physical possession of the property and rectify the entries i.e., delete the names of the defendant Nos.1 and 2 in revenue and gramapanchayat records and consequentially perpetual injunction restraining the defendant Nos.1 and 2 from alienating the property in favour of third parties and also to direct defendant No.3 to direct defendant No.3 not to entertain any void documents. Hence, this suit.

4. In reply to the plaint averments, the defendant Nos.1 and 2 filed written statement and the brief averments of which are as under:

a) The land out of Sy.No.253/AA to an extent of Ac.0-10 guntas, of Vengannapalem village, Jullurupadu Mandal, which was agricultural land converted into non-agricultural land by the then RDO, Kothagudem, in proceedings No.H/1459/08 dated 14.08.2008, basing on the letter of Tahsildar, Jullurupadu dated 07.08.2008. In fact the land was purchased by the Society long back in the year 1977 through registered document bearing No.1367/1977 dated 04.11.1977 and since then these defendants are in legal possession and enjoyment of the same without any sort of interruption from all corners and the defendants herein who had earlier filed a suit on the file of Senior Civil Judge, Kothagudem vide O.S.No.32/1990 over the same schedule of property *inter-alia* claiming ownership against Kakati Peeraiah, Mysaiah, Lakshmi Narayana, Kakati Veerababu, Kakati Venkateswarlu i.e., Defendant No.3 & 5 who are the plaintiffs No.1 & 2 herein were also party to the above suit and the same suit after complete verification of documents and physical possession, the said parties entered into compromise on 29.11.1996 with the following terms and conditions:-

i) It is agreed that the defendant No.1 & 2, who are the plaintiffs in the said suit, shall have to pay Rs.30,000/- to each

of the plaintiffs No.1 and 3 to 5 and the said amount was received through demand draft by the plaintiffs (who were defendants in O.S.No.32/1990)

ii) It is agreed that the defendant Nos.1 and 2 shall have to hand over 'B' schedule property of an extent of Ac.0.22 guntas out of schedule property on the southern side of the same to the plaintiffs to an extent of Ac.0.22 guntas and the said plaintiffs have to distribute the same equally among themselves to raise their respective houses.

iii) The plaintiffs have received the said amount and agreed to remove their existing thatched huts and move to the Southern side of the suit schedule property i.e., on the allotted 'B' schedule property to raise their respective houses therein equally.

iv) The plaintiffs undertaken that they shall not file any suit in any manner against the defendant Nos. 1 and 2 at any point of time in respect of the suit schedule property to an extent of An 3.00 guntas in future and allow the defendant Nos. 1 and 2 to enjoy the same peacefully.

v) The defendant Nos. 1 and 2 shall have to bear the court fee of

Rs.336/ upon the market value of Ac. 0-22 guntas, computed at Rs.3,960/-.

b) Accordingly the suit was disposed of and thereafter the matter was again presented before the RDO, Kothagudem by one Bhukya Somla in collusion with the persons interested it was clear in the order dated 25.08.1999, that the defendant is in possession and enjoyment, the Diocession Society of Khammam should not be disturbed from the possession over the said lands.

c) Further, the plaintiff No.4 herein filed a Writ Petition vide W.P.No.2840/2009 in WPMP No. 3645/2009 against the revenue officials by suppressing the material facts with unclean hands, thereupon noticing the attitude and action of the plaintiff No.4 herein *inter-alia* claimed that he is in possession of land, sought for interim orders and obtained *status quo* vide orders dated 16.02.2009 against the revenue officials after knowing the said fact and by misusing the orders of the Court when the above plaintiff No.4 tried to interfere into the possession and enjoyment, the defendants herein filed impleading petitions vide WPMP No.5964 & 9220 of 2009 and after hearing both the sides this Court was pleased to dismiss



the Writ petition No.2840/2009 on 22.10.2013, but the plaintiffs dishonestly, wilfully knowing fully well about the entire above proceedings that did took place in various courts and forums filed the present suit with all false and baseless allegations and averments by misusing the process of law.

d) That there is no cause of action to file the suit and the alleged cause of action is nothing but self imaginary. The suit is not maintainable due to the principles of *resjudicata* and the defendants are the rightful owners of the suit schedule property by virtue of their acquisition and in view of the compromise entered before the Senior Civil Judge, Khammam vide LA.No. 785/1995 in O.S.No.32/1990, the same schedule property was involved in the said suit, between the same parties as such the plaintiffs estopped to claim any right or to raise their little finger over the exclusive property belongs to defendants Nos.1 and 2.

e) The defendant Nos.1 and 2 Society is formed with a phylosonthrificial and other charitable purpose and they are in legal possession from the date of their acquisition and make use of the same for various purposes and constructed a complex, church and a residential quarter for the Priest and the remaining land being used for agriculture and other social,

economical upliftment activities for the poor and needy of the locality. The suit is not maintainable for lack of limitation.

f) The court fee paid on the suit and its very nature of framing of the suit is not maintainable and court fee is not sufficient, as the plaintiffs failed to assess the value covered under the existing permanent structures over the part of the suit schedule property and the plaintiffs have to pay the court fee separately to both the vacant site as well as the existing structures. Hence, the defendants prayed to dismiss the suit with exemplary costs.

5. Based on the pleadings of both the sides, the trial Court has framed the following issues:

1. *Whether the suit proceedings are against the law, as per 'doctrine of Res Judicata'?*
2. *To what relief?*

6. On behalf of plaintiffs, plaintiff No.4 was examined and got marked Ex.A1 i.e., nine photographs. On behalf of defendants, no oral or documentary evidence is adduced. The trial Court on appreciating the evidence on record, has dismissed the suit by holding that neither the plaintiffs nor defendants have established their ownership and title over the

suit schedule land.

7. Aggrieved by the above said judgment and decree, the plaintiffs filed the present appeal.

8. Heard both sides and perused the record including the grounds of appeal.

9. The first and foremost contention is that the petitioners are Schedule Tribes and that the property is situated in the Agency Tracts. The learned counsel for the plaintiffs contended that the defendants are contesting the suit as well as in the appeal that they have purchased by way of a registered sale deed executed by Kakati Peeraiah and Kakati Mysaiah but it is a blatant lie as there are no registrations in the Agency Tracts since 1970 onwards as such their claim of registration of their deed itself is not tenable. It is further contended that the bare look at the document also do not bare any signature of any Registrar except some number on the top of the document, but no stamps of the registration department. It is a minimum knowledge that if a document is registered it bears a Round seal, but hear there is a oval shape stamp which shows only a date in the middle and no signature so that is a stamp of a

stamp vendor and no registration. Secondly, since all the sales in the agency tracts are absolutely null and void as the Act of Parliament. The Agency tracts attract the provisions of Land Transfer Regulation Act of 1956, which came into force from 03.02.2070 which categorically prohibits all the transactions of immovable properties in the agency tracts. The proviso under Section 3 of the said Act reads as under:

*“3. Transfer of immovable property by a member of a Schedule Tribe:-*

*[(1) (a) Notwithstanding anything contained in any enactment, rule or law in force in the Agency tracts any transfer of immovable property situated in the Agency tracts by a person, whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of person, who is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) which is composed solely of member of the Scheduled Tribes.*

*(b) Until the contrary is proved, any immovable property situated in the Agency tracts and in the possession of a person who is not a member of Scheduled Tribe, shall be presumed to have been acquired by such person or his predecessor in possession through a transfer made to him by a member of a Scheduled Tribe.”*

10. In support of the above said contention, the learned counsel for the plaintiffs relied upon a decision of the High Court for the erstwhile State of Andhra Pradesh in **Tellam Venkata Rao and another v. Government of Andhra Pradesh and another**<sup>1</sup>, wherein it was observed as under:

*“11. Surprisingly, this assertion on the part of the*

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<sup>1</sup> 2012 (1) ALT 102 (D.B.)

*Government in trying to justify and extending the enabling provision to such non-tribals in the scheduled areas could not have been made to the detriment of those who are sought to be protected in the area. The move by the Government through the circular is certainly a way out which they could not have done directly. By reading the aforesaid provision of the Constitution and also the provisions of the A.P. Scheduled Areas Land Transfer Regulations, 1959, there is no question of any semblance of right, title and interest whatsoever in nature in respect of any person other than a tribal in the scheduled area. In such an event, the creation of any such enforceable right in a prohibited area, which is amply protected under the Constitution, is not only illegal, but also ultra vires the Constitution.”*

11. On the other hand, the learned counsel for the defendants contended that the plaintiffs have not filed any certificate to establish that they belong to Schedule Tribe. Admittedly, the plaintiffs have not filed any document to establish that they belongs to Schedule Tribe in order to claim shelter under the aid of the principle laid down in the above said decision.

12. The learned counsel for the plaintiffs further contended that the defendants have filed a suit for injunction against these appellants and there was a compromise therein vide OS No.32 of 1990, which is also a blatant lie as there is absolutely no compromise, but the suit is withdrawn by them as not pressed by a docket order dated 02.02.1996, which read as "counsel for the plaintiff endorsed on the plaint not pressing the suit hence,

the suit is dismissed without costs as not pressed. Counsel for D1 and D3 to D5 is not present Sri J. Gopi Krishna Advocate for plaintiff informed.” It is further submitted by the learned counsel for the plaintiffs that the defendants failed to file any documents showing that there is a compromise but only extracted so called compromise terms in the written statement and the counter herein, which cannot be accepted. The Honourable Apex Court in **Medi Narayana v. Nagarjuna Gramena Bank and others**<sup>2</sup> that the decrees passed by the civil courts over the matters of agency are not enforceable. It is submitted that even there is no such decree nor the alleged compromise is also a blatant lie.

*“9. We have carefully considered the matter and we are satisfied that the judgments under challenge in this group of civil appeals do not require any interference.”*

*10. It is however, clarified that those persons who have decrees, orders or judgments in their favour passed by the civil court(s) may lay their claim before the agency court(s). In the event of such claims being laid before the agency court(s), the same shall be decided by the agency court(s) uninfluenced by any judgment, decree or order passed by the civil court(s).”*

13. The legal principles imply that the Judgments, decrees and orders passed after 1972 by the civil courts in Scheduled

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<sup>2</sup> (2013) 11 Supreme Court Cases 362

areas were null and void, irrespective of whether the litigation is exclusively between the people of Scheduled Areas or between people of Scheduled Area and people of non-Scheduled Area. The said cases/claims have to be freshly adjudicated by Agency Courts. But as stated supra, the plaintiffs have not filed any document to establish that they belongs to Schedule Tribe in order to claim shelter under the aid of the principle laid down in the above said decision. Further, even as per the plaint averments, as stated in paragraph No.1 of the plaint, the plaintiffs belongs to 'schedule caste community'. Thus, even as per the version of the plaintiffs, they belong to 'schedule caste' but not 'schedule tribe'

14. It is further contention of the learned counsel for the defendant that earlier a writ petition filed by the plaintiffs was also dismissed by this Honourable High Court. It is further contended by the defendants one Bhukya Somla has filed a complaint to the Revenue Divisional Officer way back in the year 1999 and the same has been decided in their favour. In order to refute this contention, the learned counsel for the plaintiffs submitted that the said writ petition was filed with a prayer seeking direction to the official respondents not to dispossess

them but the officials respondents submitted that they were not interfering with the possession of the plaintiffs, as such, the said writ petition was dismissed by holding that the plaintiffs have no title, however, a Writ order or an order of a rank of Revenue Divisional Officer will not be binding on the civil courts which decides the title by way of trial and the said order do not take away the rights granted under the Act of parliament. There is absolutely no doubt that the question of title cannot be adjudicated under writ jurisdiction or based on an order of a rank of Revenue Divisional Officer. The suit filed by the plaintiffs is for declaration, recovery of possession and perpetual injunction against the defendants. The Honourable Supreme Court in **Jagdish Prasad Patel (dead) through LRs and another v. Shivnath and others**<sup>3</sup>, wherein it was observed as under:

*“41. In the suit for declaration for title and possession, the plaintiffs-respondents could succeed only on the strength of their own title and not on the weakness of the case of the defendants-appellants. The burden is on the plaintiffs-respondents to establish their title to the suit properties to show that they are entitled for a decree for declaration. The plaintiffs-respondents have neither produced the title document i.e. patta-lease which the plaintiffs-respondents are relying upon nor proved their right by adducing any other evidence. As noted above, the revenue*

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<sup>3</sup> 2019 Laws Suit (SC) 1038



*entries relied on by them are also held to be not genuine. In any event, revenue entries for few Khataunis are not proof of title; but are mere statements for revenue purpose. They cannot confer any right or title on the party relying on them for proving their title. Observing that in a suit for declaration of title, the plaintiffs-respondents are to succeed only on the strength of their own title irrespective of whether the defendants-appellants have proved their case or not, in Union of India and others v. Vasavi Co-operative Housing Society Limited and others (2014) 2 SCC 269, it was held as under:-*

*“15. It is trite law that, in a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff.”*

14. In view of the principle laid down in the above said decision, it is quite clear that the burden is upon the plaintiff to establish that he is the owner and possessor of the suit schedule property as on the date of filing of the suit and that his possession over the suit schedule property was encroached upon by the defendants. The plaintiff has to stand or fall upon his own legs but cannot depend upon the weakness of the defendants, more particularly, in a declaratory suit. In the case on hand, except the oral evidence of PW1 and photographs, the plaintiff has not filed any other material to establish their case. Mere filing of photograph does not establish title or possession

over an immovable property because even on perusal of those photographs, there is no clarity as to whether it is the suit schedule property or any other property. The plaintiffs ought to have filed appropriate documents to establish as to from whom they are tracing their title over the suit schedule property and whether they are the legal heirs of original owner of the suit schedule property.

15. The plaintiffs are alleged to have been claiming their title over the suit schedule property through Kakati Veeraiah, who was blessed with four sons and the plaintiffs are alleged to be the sons of elder son of Kakati Veeraiah viz., Kakati Peeraiah. But there is no document to show that Kakati Veeraiah was donated Ac.11.00 guntas by the government and after his death the said land was devolved upon his four sons. There is also no document to show that father of the plaintiffs by name Kakati Peeraiah was allotted Ac.4.00 guntas towards his share. There is also no documentary evidence to show that the plaintiffs are the grandchildren of Kakati Veeraiah and that they are the sons of Kakati Peeraiah. The learned counsel for the plaintiffs filed Photostat copies of certain documents in support of their contentions. The plaintiffs ought to have filed the certified

copies of those documents for better appreciation as the contents in certain documents are not legible. Moreover, this is not the procedure to be adopted for filing documents at the appellate stage. The plaintiffs ought to have invoked the provisions order XLI Rule 27 of the Code of Civil Procedure to submit documents for perusal of this appellate Court by explaining the reasons for not producing these documents before the trial court despite their best efforts. But there are not such efforts put forth by the plaintiffs.

16. It is further submitted that the court below having observed that the transactions on immovable property in the Agency tracts are not valid, and also holding that the civil decrees are not enforceable in the Agency tracts, and also holding that the names of the fathers of the have been reflecting in the Dharani portal also, erred in dismissing the suit. It is pertinent to note that mere entries in the revenue records do not confer any title in favour of the plaintiffs and those revenue entries are helpful in payment of land revenue only. Merely because the defendants claimed to have purchased the suit schedule property from the grandfather of the plaintiffs in the year 1977, it cannot be inferred that Kakati Veeraiah is the

original owner of the suit schedule property. There is no record to show that Kakati Veeraiah was donated the land by the government.

17. As seen from the cause of action mentioned in the plaint, there is no specific month or year, more particularly the date and time as to when the cause of action arose for the plaintiffs to file the present suit. Thus, there is ambiguity with regard to the cause of action. The plaintiffs have not explained as to when their possession over the suit schedule property was grabbed by the defendant. It is apparent from the record that the defendant alleged to have purchased the suit schedule property from the grandfather of the plaintiffs and also gone to the extent of constructing church and shopping complex etc. It appears that the plaintiffs are being unsuccessful before all the forums. Until and unless the plaintiffs approach the court with convincing and cogent evidence, they cannot succeed in any suit, much less in a declaratory suit. On these grounds also the suit of the plaintiffs is liable to be dismissed.

18. In view of the above facts and circumstances, this Court is of the considered view that the trial Court though has not considered all the aspects meticulously, has arrived to an

appropriate conclusion by assigning the reasons as to why the relief sought by the plaintiff was not being granted and thereby there are no merits in the appeal to set aside the impugned Judgment. Thus, the appeal is devoid of merits and liable to be dismissed.

19. In the result, this appeal is dismissed. There shall be no order as to costs.

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

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**JUSTICE M.G. PRIYADARSINI**

Date: 21.06.2024

Note: LR copy to be marked.  
B/o. AS