

HON'BLE SMT. JUSTICE P.SREE SUDHA

SECOND APPEAL No.1319 of 2010

J U D G M E N T

1. This second appeal is directed against the judgment and decree dated 09.09.2010 passed by the learned Senior Civil Judge, Nirmal, in A.S.No.15 of 2006 confirming the judgment and decree dated 14.08.2006 passed by the learned Junior Civil Judge, Nirmal, in O.S.No.108 of 1997. The said suit was filed by the plaintiff seeking for declaration and recovery of possession of suit schedule property. By the judgment dated 14.08.2006, the trial Court decreed the suit with costs in favour of the plaintiff.

2. Vemula Sulochana-plaintiff filed a suit for declaration of possession of the land admeasuring Ac.2.25 guntas, dry, situated in Sy.No.392 of Rajura Village of Khanapur Mandal (hereinafter referred to as 'suit land'), *inter alia* contending that she is the owner and possessor of the suit land and that she succeeded the same from her deceased mother-Lalitha Bai and her mother died in the year 1996 leaving behind her daughter, the plaintiff, as the sole legal heir. Thereafter, the plaintiff approached the Mandal Revenue Officer, Khanapur, to mutate the suit land in her favour after the death of her mother as successor. The defendant is the brother of her father i.e. junior paternal uncle and he was looking after the properties of her mother and cultivating the suit land on batai basis and he was giving share in the crop to her mother every year. Even after the demise of her mother, the defendant used to give paddy crop to her. When the plaintiff approached the Village Administrative Officer of Rajura Village for payment of land revenue and also for issuance of pattadar

pass book and title deed, he refused to issue the same, and as such, she approached the Mandal Revenue Officer and applied certified copies of pahanies in respect of the suit land and also to know the procedure to mutate the suit land in her name. At that point of time she noticed that the name of the defendant is reflecting in the pattedar column and cultivation column. The plaintiff would also submit that the defendant got mutated his name in revenue records with the collusion of the Village Administrative Officer by name Venkat Rao who is his close relative. Thereafter, the plaintiff filed a petition on 02.09.1997 before the Mandal Revenue Officer to cancel the mutation in the name of the defendant and to affect the same in her name. As the Mandal Revenue Officer refused to cancel the name of the defendant, the plaintiff filed the present suit seeking declaration and recovery of possession as well as rectification of the revenue entries.

3. The defendant in his written statement while denying the averments made by the plaintiff, submitted that the father of the plaintiff was his elder brother and that their joint family consists of three brothers and the suit land was the joint family property. As the plaintiff's father late Basa Hanumantha Rao was the elder and kartha of joint family was looking after the entire agricultural operations, the lands were kept in his name and after his death, the properties were mutated in the name of his wife. The defendant would submit that as there are disputes arose between the parties regarding the suit land, with the intervention of the relatives and caste elders a panchayat was held in the Ellapi Sangham on 24.01.1993. In the said panchayat it was agreed by both the parties that the suit land has to be mutated in the name of the defendant and the husband of the

plaintiff-Venkat Ramulu agreed and signed for the proposed mutation and in view of the re-arrangement between the parties as agreed, the suit land was mutated in the name of the defendant. He would further assert that the plaintiff is estopped by the agreement dated 24.01.1993, and thus, the suit is not maintainable since the plaintiff has no locus to file the suit.

4. The plaintiff, in support of her case, examined herself as P.W.1 and also P.Ws.2 to 4 including the Mandal Revenue Officer and relied upon Exs.A.1 to A.17. The defendant examined himself as D.W.1 and also examined D.Ws.2 and 3 on his behalf and relied upon Exs.B.1 to B.23.

5. The trial Court, after appreciating the evidence on record, decreed the suit with costs in favour of the plaintiff and directed the defendant to deliver possession of the suit land and the plaintiff is entitled to rectification of revenue entries in the records. Aggrieved by the said judgment, the defendant preferred appeal in A.S.No.15 of 2006. The appellate Court dismissed the appeal confirming the judgment of the trial Court, and thus, the defendant preferred this Second Appeal.

6. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent. Perused the entire record and the case law cited by both the counsel.

7. Learned counsel for the appellant would argue that the suit property is a joint family property, but both the Courts below erred in decreeing the suit. He would further assert that Ex.B.1 pahani for the year 1975-76 was misconstrued which shows that the father of

respondent-plaintiff is pattadar of suit land and in column No.15 it is shown as 'swantham'. The respondent herein did not file any document to show that the suit property is a self acquired property of her father. Learned counsel raised the following substantial questions of law:

- a) Whether both the Courts had justified in decreeing the suit of the respondent-plaintiff on the basis of the evidence let in by both the parties?
- b) Whether the findings of both the Courts are perverse or not?
- c) Whether in the absence of any link document earliest to Ex.B.1 to show that the father of the plaintiff is the exclusive owner of the suit schedule property, the Court below was right in decreeing the suit?
- d) Whether in a suit for declaration and recovery of possession the initial burden of the proving prima facie title to the property lies on the plaintiff and that plaintiff must stand or fail on its strength. Whether in the absence of discharge of such initial burden the Courts below were right in shifting the burden wrongly on defendant?

8. Learned counsel for the appellant would rely upon the case law to support his contentions. In a decision reported in **SAJANA GRANITES, MADRAS V/s. MANDUVA SRINIVASA RAO**¹ it was held that in a suit for declaration of title and possession the plaintiff could succeed only on the strength of his title but not on the failure on the part of the defendant to prove his title. Another decision cited by the learned counsel for the appellant reported in **SURAJ BHAN V/s. FINANCIAL COMMISSIONER**² for the proposition that *an entry in revenue records does not confer title on a person whose name appears in record-of-rights. Entries in the revenue records or jamabandi have*

¹ 2002 (2) ALD 436 (DB)

² (2007) 6 SCC 186

only 'fiscal purpose' i.e. payment of land revenue, and no ownership is conferred on the basis of such entries. So far as title to the property is concerned, it can only be decided by a competent civil court.

9. Before the appellate Court, the appellant argued that the trial Court erred in decreeing the suit basing on the weaknesses of the defendant but not on the strength of the plaintiff, but the appellate Court after considering the evidence on record and the case law cited before it held that the said decision has no application to the facts of the case on hand since the plaintiff established her title by way of abundant documentary material and the inconsistent stand taken by the defendant and also leading evidence contrary to the pleadings. Even the appellate Court relied upon a case law reported in **BASALINGAPPA CHANNAPPA V/s. DUNDAPPA PUTTAPPA PANCHAPPANAVAR**³ and held that it is well settled position of law that mutation of a property in the revenue records does not create or extinguish title nor its presumptive value on title. It was also observed that the defendant in the cross-examination clearly admitted that partition took place between the defendant and his two brothers long ago. After the death of their father their names were mutated for properties that fell to their shares and in that manner the suit land was recorded in the name of the father of the plaintiff and after his death in the name of his widow Lalitha Bai. The trial Court also held that the defendant filed Ex.B1 pahani for the year 1975-76 which shows that the plaintiff's father is the pattedar of suit land and in Column No.15 it was shown as 'swantham' i.e. self acquired property and in Ex.B2 the name of the mother of the plaintiff was entered in the pahani for the year 1985-86 and in

³ AIR 1998 Kar 321

Column No.12 it was shown as 50(B) Patta and in the cultivation column also her name was reflected. Even in the pahanies for the years 1994-95 and 1995-96 the name of the plaintiff's mother was shown as pattedar of the suit land. Exs.B3 and A1 pertains to the year 1993-94 in which the name of the plaintiff's mother was shown as pattedar. The name of defendant first time was shown as pattedar in pahani of 1996-97 under Ex.B6. The defendant argued that his name was shown in possessory column and in Column No.15 it is mentioned as 'hisitardaru' and thus he was a co-sharer of the suit land. But the trial Court observed that by the date of death of the father of the plaintiff defendant was aged 20 to 25 years and hence at the time of partition he was major and aged 20 to 25 years but he did not made any effort to enter his name in the revenue records and only after the death of the plaintiff's mother he got his name mutated in the revenue records and that he failed to prove that he is a co-sharer of the suit land. The plaintiff also contended that defendant was looking after the properties on *batai basis* even during the life time of her mother, as she died in the year 1995, he got his name mutated in the year 1997, and thus, he was never in the possession of the suit land. It was also observed by both the Courts that the defendant was taking inconsistent pleas. The trial Court in Issue No.3 clearly held that the defendant entered his name wrongfully in collusion with revenue authorities and thereafter the Mandal Revenue Officer without following proper procedure effected mutation in Ex.A5 and the defendant failed to file any documents to prove his right over the land. Even the appellate Court held that the revenue authorities did not follow due procedure while effecting mutation in the name of the defendant.

10. Learned counsel for the appellant would further argue that the suit land is a joint family property and not self acquired property of plaintiff and that the plaintiff did not file any iota of evidence to support of her contention. The said issue was dealt with by the trial Court in detail and after considering the entire evidence on record rightly declared the plaintiff as owner of the suit land, which was also confirmed by the appellate Court. It is to be noted that when there are concurrent findings of both the Courts in a well reasoned order, the Second Appeal is not maintainable without any substantial question of law involved in it.

11. This Court therefore finds no merit in the second appeal. No question of law, much less a substantial question of law, arises for consideration in this appeal. The Second Appeal is accordingly dismissed with costs.

12. Pending miscellaneous petitions, if any, shall also stand dismissed in the light of this final judgment.

P.SREE SUDHA, J.

18TH FEBRUARY, 2022.

PGS