

**THE HON'BLE SRI JUSTICE N.R.L. NAGESWARA  
RAO**

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**SECOND APPEAL No.362 OF 1998**

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**JUDGMENT:**

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The second appeal is filed by the plaintiffs in O.S.No.801 of 1979 on the file of the Court of III Additional District Munsif, Chittoor.

2. The suit was one filed for declaration of title and for recovery of possession of the property though originally the suit was filed for declaration of title and injunction.

3. According to the case of the plaintiff, an extent of Ac.1.48 cents of land situated in survey number 304/2 in patta No.53 was granted to the plaintiff and the plaintiff has been in possession and enjoyment of the property without any interruption and the defendants have no manner of right. It was further pleaded that during the pendency of the suit in the absence of the plaintiff, the defendants have forcibly occupied the property and consequently, the relief of recovery of possession was claimed.

4. The 1<sup>st</sup> defendant claimed that he is the owner of the schedule property situated in Sy.No.304/2 having inherited from his ancestors and has been in possession and enjoyment of the same. The 2<sup>nd</sup> defendant claimed that he has nothing to do with the schedule property. The 3<sup>rd</sup> defendant, who was impleaded subsequently and claims to have purchased the property from the 1<sup>st</sup> defendant, contended that the plaintiff has no right or interest in the property and the father of the 1<sup>st</sup> defendant Parusu Goud has been in possession and enjoyment of the property and subsequently, the 1<sup>st</sup> defendant has been in possession and enjoyment and the 3<sup>rd</sup> defendant continues to

be in possession of the property.

5. On the basis of the above pleadings, necessary issues have been framed for trial. After considering the evidence on record, the trial Court has decreed the suit of the plaintiff. As against that judgment, A.S.No.116 of 1991 was filed and the District Judge at Chittoor allowed the appeal and dismissed the suit of the plaintiff. Aggrieved by the said judgment, the present second appeal has been preferred.

6. Earlier, this Court has allowed the second appeal on 13.06.2008 in the absence of the counsel for the respondents, who was elevated to the Bench. Consequently, an application was filed to set aside the judgment in S.A.M.P.No.2573 of 2010. The said application was allowed on 28.09.2012 and arguments were heard.

7. The second appeal was admitted on 27.07.1998 and the following substantial questions of law:

- 1) When Ex.B.5, the record of rights, shows that the first defendant is an encroacher, is not the plaintiff as the owner of the suit land entitled for a decree for possession?
- 2) Whether in the absence of a specific issue framed by the trial Court that the contesting defendants perfected their title to the suit land and in the absence of evidence in support of the plea, the lower appellate Court should not have dismissed the suit as barred by limitation?
- 3) Whether suggestions in cross-examination can be the basis for deciding the rights of the parties?

8. **POINTS:**

Learned counsel for the appellants strongly contends that the reasons given by the 1<sup>st</sup> appellate Court are not valid and the title of the plaintiff has been proved and Exs.A.1 and A.2 were not properly considered by the Court below. The documents, which were relied on

by the court below in coming to the conclusion in favour of the respondent are not proper.

9. There cannot be any dispute about the fact that as the suit is one filed for declaration of title and possession is not admittedly there, which is said to have been lost subsequently, the burden is on the appellants to prove that they have got title to the property. The source of title pleaded by the appellants is a patta said to have been granted to the deceased plaintiff under Ex.A.1 and also entries in the settlement adungal Ex.A.2 dated 29.04.1989. On the other hand, it is claim of the defendants that they have got right to the property as the property belonged to their father. Except relying on Exs.A.1 and A.2, the plaintiff has not adduced any documentary evidence to prove that his possession was recognized for longer time and was in continuous possession and enjoyment of the property for several years exercising right of ownership. In case if Ex.A.1 does not relate to the title of the plaintiff, then his claim cannot be considered. The possession is claimed from 1945 but there is no single document to substantiate it. The appellate Court has considered the documents and scrutinized them and on a perusal of Ex.A.1 it was noticed that it is only a notice to grant patta and the plaintiff was directed to appear before the Assistant Settlement Officer on 21.03.1959 in the enquiry. Therefore, it cannot be taken as grant of patta conferring title. No document of title was filed and consequent on Ex.A.1 there is no order passed by the Settlement Officer granting patta to the plaintiff. Ex.A.2 is said to be settlement adungal of the year 1989, which refers in column No.11 to patta No.53 was granted to the plaintiff but it does not show as to when it was granted.

10. Added to that boundary recitals in the neighbouring transactions clearly go to show that the property was described as the property of the father of the plaintiff. Ex.B.1 is relied on by the Court below. It is strongly contended for the appellants that Ex.B.5 pattadar pass book

and Exs.C.1 to C.4 shows that the plaintiff is pattadar of the suit though the possession is recorded with the 1<sup>st</sup> defendant and consequently, the Court below should not have ignored this document. It is not known as to how the 1<sup>st</sup> defendant came into possession of the property and the particulars as to when Ex.B.5 was issued are not clear. It is not the case of the plaintiff that the 1<sup>st</sup> defendant or his father being lessees are in permissive possession on his behalf. It is to be mentioned that Ex.B.5 was filed by the defendants and the plaintiff has not even filed the pattadar pass book issued subsequently. Merely because the 1<sup>st</sup> defendant has not agitated about the patta in favour of the plaintiff his possession and enjoyment of the property cannot be ignored. Even in 1945 as per Ex.B.1 the name of the father of the 1<sup>st</sup> defendant is shown as the owner of the schedule property, which evidently adjoining the land under Ex.B.1. In fact, there is no proof of dispossession as alleged by the plaintiff apart from the fact, there is no proof of continuous possession and enjoyment of the property.

11. In fact, it is a case where the defendants are claiming the property as their own and asserting it to be so and the 1<sup>st</sup> defendant has been in continuous possession and enjoyment of the property and the long possession of the property indisputably shown the right to possession of the 1<sup>st</sup> defendant. It is well settled that the plaintiff cannot take advantage of the infirmities in the case of the defendants. Having come to the Court claiming that patta was granted by the Settlement Officer and such patta having not been filed and there being no material evidence as to when the said patta was granted the subsequent documents showing the plaintiff as a pattadar does not create any title. In fact, the evidence of plaintiff is also not clear as to when the patta was granted and what has happened to the patta. Except relying on Ex.A.1, which is notice there is no material to show

that he has got patta to the land. In the absence of any such material and when the plaintiff failed to prove title to the property mere entries in some of the revenue records, which cannot be taken as conclusive, cannot confirm title to the plaintiff. Even though some of the revenue employees have been examined, the plaintiff could not prove as to when and under what proceedings the patta was granted. Therefore, in view of the above circumstances, the plaintiff having failed to discharge the primary burden of establishing the title is not entitled for the relief as prayed for and the 1<sup>st</sup> appellate Court has discussed the material evidence in a right perspective and I do not find any reason to interfere with the judgment of the Court below.

12. Accordingly, the Second Appeal is dismissed. No costs. Miscellaneous petitions, if any, pending in this appeal, shall stand closed.

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**JUSTICE N.R.L. NAGESWARA RAO**

Date: .02.2013  
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