



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3397]

WEDNESDAY, THE SIXTH DAY OF MAY
TWO THOUSAND AND TWENTY SIX

PRESENT

**THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA
KRISHNA RAO**

APPEAL SUIT NO: 1585/1994

Between:

L. Atchamma

...APPELLANT

AND

The A P State Transport Corpn and Others

...RESPONDENT(S)

Counsel for the Appellant:

1.1605/VL N G K MURTHY

2..

3.K.V.S.S.PRABHAKARA RAO

Counsel for the Respondent(S):

1.M V SURESH

The Court made the following:

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

APPEAL SUIT No.1585 of 1994

JUDGMENT:

This Appeal, under Section 96 of the Code of Civil Procedure [for short '**the C.P.C.**'], is filed by the Appellant/Plaintiff challenging the Decree and Judgment, dated 12.09.1994, in O.S.No.117 of 1988 passed by the learned II Additional District Judge, Rajahmundry, East Godavari, [for short '**the trial Court**'].

2. The appellant herein is the plaintiff, and the respondents herein are the defendants. During the pendency of the appeal, the sole appellant died, and appellant Nos.2 to 6 were added as legal representatives of the deceased sole appellant No.1.

3. Originally, the appellant/plaintiff herein filed the suit in O.S.No.117 of 1988 against the defendants, seeking to declare the plaintiff's right, title, and interest to the extent of Ac.0.48 cents as per the plaint plan and schedule, and direct defendant No.1 or its representatives, employees, agents, to deliver to the plaintiff vacant possession of the plaint schedule property marked as 'A, B, C, D', and direct the defendant Nos. 2 and 3 to suitably revise or amend the layout submitted by the plaintiff to defendant No.2 by excluding the plaint schedule property from it and carry out necessary and suitable alterations; and to grant permanent injunction restraining the defendants, their representatives, agents, employees, etc., from carrying out any construction or interfering in any manner with the plaint schedule property, and to direct

defendant No.1 and whoever happens to be in occupation of the plaint schedule property to pay the future profits to be ascertained in an enquiry, together with costs.

4. Both parties in the appeal will be referred to as they were arrayed before the trial Court.

5. The case of the Appellant/Plaintiff as per the plaint averments in O.S.No.117 of 1988, in brief, is as follows:

- I. The plaint schedule land, to an extent of Ac.0.31 cents, is part of the total extent of Ac.8.12 cents purchased by the plaintiff under a registered sale deed dated 27.06.1956, and ever since the purchase, the entire extent has been bounded by a hedge, over which the hedge plants have been grown. The plaintiff pleaded that at the time of purchase, the land was got measured on the ground and found to be with the extent noted in the registered sale deed. The plaintiff further pleaded that she used to lease out her land, to an extent of Ac.8.12 cents, which includes the plaint schedule extent, for raising tobacco seedlings every year, which has been done by the plaintiff from 1977 to 1983, and that the plaintiff is in possession and enjoyment of the plaint schedule property till defendant No.1 occupied the said property in the year 1984. The plaintiff further pleaded that defendant No.1 purchased the adjoining land to the plaint schedule land to its south on 07.01.1981, after which the agents of defendant No.1, while carrying on the leveling operation in the own land of defendant No.1, demolished the boundary

hedge lying in the land of the plaintiff demarcating the plaintiff schedule land.

- II. The plaintiff further pleaded that the watchman engaged by the plaintiff in her land abstained from attending to work for about three (03) months and finally absconded without intimation to the plaintiff; as such, the plaintiff could not notice the encroachment into the plaintiff schedule land on the part of defendant No.1. The plaintiff further pleaded that till the said encroachment took place, the plaintiff schedule site, along with the remaining extent of land purchased in the year 1956, has been in the plaintiff's possession and enjoyment uninterruptedly. The plaintiff further pleaded that in the month of March 1984, she discovered the encroachment of defendant No.1 and represented the same to the concerned authorities and tried in vain to persuade defendant No.1 to hand over the plaintiff schedule land to the plaintiff. The plaintiff further pleaded that defendant Nos.2 and 3 were misled by defendant No.1 in approving the layout plan submitted by defendant No.1 by showing the plaintiff's land, to an extent of Ac.0.48 cents, as the own property of defendant No.1, and as such, the layout approved by defendant Nos.2 and 3 in respect of the land of defendant No.1 requires suitable revision or amendment. Hence, the plaintiff filed the present suit seeking declaration of title over the plaintiff schedule property.
6. The defendant No.1 filed the written statement and the case of the defendant No.1 as per the written statement is as follows:

- I. The defendant No.1 purchased the land adjoining the plaintiff's land, and the defendant No.1 purchased the land from late Koduri Rajarao Chowdari and his family members in the month of July 1981. The defendant No.1 further pleaded that there was no hedge between the land of the plaintiff and defendant No.1, and there used to be a 'Kattava' in the land of defendant No.1 demarcating the land of the plaintiff and defendant No.1. The defendant No.1 further pleaded that while carrying on the leveling operations, defendant No.1 removed the trees and leveled the ground so as to make it fit for construction of houses, and after purchase of the land by defendant No.1 from late Koduri Rajarao Chowdari and his family members, the extent was measured, and all the neighboring landowners, including the plaintiff, were present at the time of measurement. The defendant No.1 pleaded that the boundaries of the land purchased by defendant No.1 were fixed, and all neighboring landowners, including the plaintiff, accepted the boundaries. The defendant No.1 pleaded that after purchase of the land, 'Kattava' was in the land of defendant No.1, and while carrying on the leveling operations, defendant No.1 leveled the land within the limits of the boundaries mentioned in the sale deeds and within the boundaries fixed at the time of the measurement.
- II. The defendant No.1 pleaded that the Society was formed to cater to the housing needs of the employees of APSRTC, and defendant No.1 purchased a total extent of Ac.9.29 cents of land from late Koduri

Rajarao Chowdari and his family members in R.S.No.398 and 399 of Rajahmundry for the purpose of constructing houses for its members. The defendant No.1 further pleaded that he purchased an extent of Ac.7.67 cents in R.S.No.399, and the balance extent was purchased in R.S.No.398, and Sy.Nos.398 and 399 are contiguous plots. The defendant No.1 pleaded that the lands purchased by him and the lands in the adjacent survey numbers, including the plaintiff's land, were earmarked in the master plan prepared by the Rajahmundry Municipality for constructing a sluice for storing and cleaning of sullage water, and immediately, defendant No.1 purchased the land and applied to the Director of Town Planning to exempt the land from the master plan. The defendant No.1 further pleaded that after hectic efforts, defendant No.1 could get the required exemption and was accorded permission to prepare a layout for construction of houses.

- III. The defendant No.1 further pleaded that as the entire land earmarked in the master plan for a sluice was exempted, all the neighboring landowners, including the plaintiff, were immensely benefited, and since defendant No.1 converted the land into house sites, the prices of the lands in the vicinity increased, and as such, the plaintiff wanted to convert her land into house sites. The defendant No.1 further pleaded that neither the plaintiff nor her predecessors in title ever had possession or enjoyment of the plaint schedule land or the 'Kattava' separating the land of the plaintiff and defendant No.1. The defendant

No.1 and his predecessors in title, who have been in possession and enjoyment of the plaint schedule land, including the 'Kattava', for over the last 35 years in their own right, openly and publicly and to the knowledge and exclusion of one and all, including the plaintiff and her predecessor in title, and thus perfected title by adverse possession. The defendant No.1 further pleaded that the suit filed by the plaintiff is frivolous in nature and vexatious in character and requested dismissal of the suit with costs.

7. Based on the above pleadings, the trial Court framed the following issues:

- 1) *Whether the plaintiff is entitled for the declaration in the plaint schedule as per the plan marked ABCD and direct the defendants, their men to deliver vacant possession of it?*
- 2) *Whether the defendants are to be directed to revise and amend the layout plans submitted by the 1st defendant excluding the plaint schedule land?*
- 3) *Whether the plaintiff is entitled for a permanent injunction in respect of the plaint schedule property?*
- 4) *Whether the plaintiff is entitled to profits?*
- 5) *Whether the 2nd defendant is not a proper and necessary party to the suit?*
- 6) *Whether the court has no jurisdiction against the 2nd defendant in respect of the relief claimed against him?*

7) *To what relief?*

On 09.11.1993, the trial Court has framed the following additional issue:

1) *Whether the defendants perfected their title by adverse possession?*

10. During the course of trial in the trial Court, on behalf of the plaintiff, P.Ws.1 to 3 was examined and Ex.A-1 to Ex.A-5 were marked. On behalf of the defendants, D.Ws.1 & 2 were examined and Ex.B-1 to Ex.B-22 were marked.

11. After completion of the trial and on hearing the arguments of both sides, the trial Court dismissed the suit with costs *vide* its judgment, dated 12.09.1994, against which the present appeal is preferred by the appellant/plaintiff in the suit, questioning one of the findings arrived by the trial Court in its decree and judgment.

12. Learned counsel for the appellant would contend that the judgment and decree passed by the trial Court below is erroneous, contrary to law, the weight of evidence, and probabilities of the case. He would further contend that the trial Court failed to observe that the boundary between the appellant and respondent No.1 land has a 'Kattava', and the said 'Kattava' has been included in the land sold to the appellant according to the boundary recitals. Learned counsel for the appellant would further contend that the trial Court failed to observe that the Advocate Commissioner corroborated and substantiated the case of the appellant to the effect that respondent No.1/defendant has encroached upon the site of the appellant. Learned counsel for the appellant would contend that the trial Court failed to observe

that the appellant/plaintiff is in exclusive possession and enjoyment of the disputed 'Kattava', which is the demarcating land between the properties of the appellant and the predecessor in title of respondent No.1/defendant, and he would further contend that the trial Court failed to appreciate the evidence in a proper manner and dismissed the suit, and he would further contend that the appeal may be allowed by setting aside the decree and judgment passed by the trial Court.

13. Per contra, learned counsel for the respondents would contend that on appreciation of the entire evidence on record, the learned trial Judge has rightly dismissed the suit, and there is no need to interfere with the findings arrived at by the trial Court, and that the appeal may be dismissed.

14. Heard Sri K.V.S.S.Prabhakara Rao, learned counsel for the appellant/plaintiff and Sri M.V.Suresh, learned counsel for the respondents/defendants.

15. Now, in deciding the present appeal, the points that arise for determination are as follows:

- 1) Whether the appellant/plaintiff is having valid right and title in the plaint schedule property?**
- 2) Whether the appellant/plaintiff is entitled for the recovery of possession of the plaint schedule property?**
- 3) Whether the decree and judgment dated 12.09.1994, passed by the trial Court needs any interference?**

16. **Point No.1:**

**Whether the appellant/plaintiff is having valid right and title in the
plaint schedule property?**

The case of the appellant/plaintiff is that she purchased the total extent of Ac.8.12 cents, including the plaint schedule land of an extent of Ac.0.48 cents, under a registered sale deed dated 02.06.1956, and since the date of purchase, the plaintiff is in possession and enjoyment of the same. The plaintiff specifically pleaded in Paragraph No.5 of the plaint that defendant No.1 purchased the adjoining land to the plaint schedule land to its south on 07.01.1981, after which the agents of defendant No.1, while carrying on the leveling operations in its own land, demolished the boundary hedge lying in the land of the plaintiff demarcating the plaint schedule land and thereafter encroached upon the plaint schedule land. There is no whisper in the plaint as to when the agents of defendant No.1 demolished the boundary hedge line in the land of the plaintiff, which demarcates the land of the plaintiff and the land of defendant No.1. There is also no whisper in the plaint as to when defendant No.1 encroached upon the plaint schedule land. Since the appellant/plaintiff approached the Civil Court for seeking the relief of declaration of title of Ac.0.48 cents of immovable property, therefore, it is for the plaintiff to prove the title in the plaint schedule land by producing cogent and documentary evidence.

17. As stated *supra*, the plaintiff is seeking the relief of declaration of title and also for recovery of possession of the plaint schedule property, and therefore, the entire burden is on the plaintiff to prove the same. The legal

position in this regard is no more *res integra*, and the same has been well settled by the Hon'ble Apex Court in a catena of judgments. In a case of ***Union of India and others vs. Vasavi Cooperative Housing Society Limited and others***¹, wherein the Apex Court held as follows:

"In a suit for declaration of title, 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. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited."

18. In a case of ***Moran Mar Basselios Catholicos vs. Thukalan Paulo Avira & others***², wherein the Apex Court held as follows:

"It is perfectly clear that in a suit of this description if the plaintiffs are to succeed they must do so on the strength of their own title."

In a case of ***Sajana Granites, Madras and another vs. Manduva Srinivasa Rao and others***³, wherein the Composite High Court of Andhra Pradesh at Hyderabad, held as follows:

"The Supreme Court in M.P. Athanastus case (supra), M.M. Catholices v. Polo Avira case (supra) and this Court in C. Audilakshamma case (supra) held that plaintiff in a suit for declaration of title, and for recovery of possession, can succeed only on the strength of his own title and that it is not obligatory on the defendants to plead and prove the possible defects in the plaintiffs title and so if the plaintiff fails to establish his title, even if the defendant fails to establish his own title, plaintiff must be non suited. In this case since appellants are seeking declaration of their title to the suit property they have to establish their title; and cannot expect relief on the basis of the weakness of

¹ (2014) 2 Supreme Court Cases 269

² 1958 SCC OnLine Supreme Court 136

³ 2001 SCC OnLine AP 666

the case of respondents 1 and 2, or on the basis that the evidence adduced by respondents 1 and 2 does not establish their title to the suit property."

In a case of **K.Venkatasubba Reddy vs. Bairagi Ramaiah (died) by L.Rs.**⁴ 17, wherein the Composite High Court of Andhra Pradesh at Hyderabad, held as follows:

"A Division Bench of this Court also in Chakicherla Adilakshmamma v. Almakuru Rama Rao and Ors,- (3) AIR 1973 AP 149. Relying on the judgment of the Supreme Court in AIR 1954 SC 526 (cited supra) held that "in a suit for ejectment, the plaintiff is liable to be nonsuited, if he fails to establish his own title irrespective of the question whether the defendants have proved their case or not."

The law laid down by the Supreme Court and also by the Division Bench of this Court in the ejectment suits is also applicable to the suits for declaration of title. Thus, the plaintiff must succeed by establishing his own title, by adducing satisfactory evidence and he cannot succeed on the weakness of the defendant's case.

19. **Brahma Nand Puri vs. Neki Puri Since deceased represented by Mathra Puri and another**, the Apex Court held as follows:

"The plaintiff's suit being one for ejectment he has to succeed or fail on the title that he establishes and if he cannot succeed on the strength of his title his suit must fail notwithstanding that the defendant in possession has no title to the property, assuming learned counsel is right in that submission".

In a case of **Jagdish Narain vs. Nawab Sai Ahmed Khan**, wherein the Privy Council held as follows:

"In a suit in ejectment the plaintiffs can succeed only on the strength of their own title, and there is no obligation upon the defendants to plead possible defects in the plaintiffs' title which might manifest themselves when the title is disclosed. It is sufficient that in the written statement the defendants deny the plaintiffs' title, and under this plea, they can avail themselves of any defect which such title discloses."

In a case of **A. Ramloo and others vs. G. Sreeramachandra Murthy and others**, wherein the composite High Court of Andhra Pradesh at Hyderabad held as follows:

⁴ 1999 (1) APLJ 416 (HC)

"In a ruling reported in Moran Mar Basselios Catheolikos and another v. Most Rev. Mar Poullose Athanasius and others, AIR 1954 SC 526, it has been held by their Lordships as under:

"That the plaintiff in ejectment suit must succeed on the strength of his own title. This can be done by adducing sufficient evidence to discharge the onus that is on him irrespective of whether the defendant has proved his case or not. A mere destruction of the defendants title, in the absence of establishment of his own title carries the plaintiff nowhere."

20. In the present case, the plaintiff relied on the evidence of P.W.1 to P.W.3. P.W.1 is the son of the plaintiff. It is in the evidence of P.W.1 that in the year 1983 or in the year 1984, defendant No.1 prepared a layout and encroached upon the land by removing the bund, and when defendant No.1 was trying to encroach, the plaintiff raised resistance, and the removal of the bund was temporarily stopped, and till that time, the land of Ac.0.31 cents, which was encroached upon by defendant No.1, had been in their possession, and the approval of the layout by defendant No.2, which was submitted by defendant No.1, is not within their knowledge. He further admits that defendant No.1 purchased the extent held by Koduri Rajarao in the year 1981, and there was no quarrel or dispute with regard to the southern boundary of their land by Rajarao or by defendant No.1 till the disputes arose sometime before the filing of the suit. He further admits that he prepared a layout in the year 1985 or in the year 1986, and the person who prepared their layout plan, by name Janardhan, also helped and prepared the layout for defendant No.1. He further deposed that in the month of February–March, 1984, defendant No.1 was occupying a portion of their land by engaging a bulldozer, and he got issued a legal notice after stopping the work. As per the evidence of P.W.1, her layout plan and the layout plan of defendant No.1 were prepared

by one Surya Rao. It is undisputed that the layout submitted by defendant No.1 was approved, but there is no evidence on record to show whether the layout plan submitted by the plaintiff was approved or not.

21. The undisputed facts of both the parties are that one N.Veeramma was having a total extent of Ac.16.24 cents in R.S.No.399, and one Koduri Rajarao Chowdari purchased an extent of Ac.8.12 cents from N.Veeramma on 30.01.1948, and subsequently, the said Rajarao Chowdari also purchased an extent of Ac.1.62 cents in R.S.No.398 under Ex.B-2. The plaintiff purchased an extent of Ac.8.12 cents from the said Veeramma under Ex.A-1 on 28.07.1956. It is also evident that the sale deed in favour of the vendor of defendant No.1 is much earlier than the sale deed of the plaintiff. The document of the vendor of the defendant, which relates to the year 1948, is much prior to the plaintiff's sale deed, it was recited in the said document that the boundary between both the parties is a joint 'Kattava' belonging to the vendor by name N.Veeramma and Rajarao Chowdari. The right of the vendor of defendant No.1 in the said joint 'Kattava' was never objected to by the plaintiff or the predecessors of the plaintiff from 1948 onwards. In the plaint also, it was pleaded by the plaintiff that defendant No.1 purchased the suit schedule land on its south on 07.04.1981, after which the agents of defendant No.1, while carrying on the leveling operations in its own land, demolished the boundary hedge lying in the land of the plaintiff demarcating the plaintiff schedule land and the land purchased by defendant No.1 and encroached into the plaintiff schedule property. There is no whisper in the plaint and in the

evidence of P.W.1 as to when defendant No.1 demolished the boundary hedge. As stated supra, the plaintiff approached the Court for seeking relief of declaration of title and also possession, but the evidence of P.W.1 is not convincing to support of the case of the plaintiff.

22. P.W.2 is the Advocate Commissioner who visited the suit schedule property. As per the evidence of P.W.2, defendant No.1 also gave his title deeds at the time of his inspection, and he localized the land only with reference to the field measurement book, and he did not localize the land with reference to the title deed of defendant No.1. He further admitted that the plaintiff informed him orally that Ac.35.00 cents of land was acquired, and he did not produce any document in that behalf. He further admits that he cannot say as to how he arrived at the figure of Ac.7.57 cents as mentioned in the report. In the Advocate Commissioner warrant, the Advocate Commissioner was directed by the Court to localize the disputed schedule land with reference to the title deeds of both the parties, but admittedly, the Advocate Commissioner/P.W.2 did not execute the warrant with reference to the title deeds of both the parties. By assigning reasons, the trial Court rightly ignored the evidence of P.W.2.

23. P.W.3 deposed in his evidence that the 'Kattava' is in existence for more than twenty (20) years and that the said 'Kattava' is the boundary line between the suit land and the land of Rajarao. He further admits that one Vanumu Abhadham, who is his brother by courtesy, cultivated the land of the plaintiff for about 4 or 5 years and that he came to know about the existence

of the 'Kattava' in the said land. Therefore, his evidence clearly goes to show that he is in no way concerned with the suit schedule land and he has no personal knowledge about the suit schedule land. For the aforesaid reasons, this Court is of the considered view that the evidence produced by the plaintiff is not to establish that the plaintiff is having right and title in the plaint schedule property.

24. The learned counsel for the appellant placed a case law in ***Nilima Das Gupta (Deceased) Through its Lrs. Vs. On the Death of Abdur Rouf his Legal Heirs & Ors.***⁵, wherein the Hon'ble Apex Court held as follows:

"Thus, under Sections 118 all persons are competent to testify, unless the court considers that by reason of tender years, extreme old age, disease, or infirmity, they are incapable of understanding the questions put to them and of giving rational answers. Competency of a person to testify as a witness is a condition precedent to the admissibility and credibility of his evidence."

In the case at hand, the plaintiff was aged about 81 years at the time of filing of the suit, and she is a 'senior citizen', and because of her old age of 81 years, her son gave evidence as P.W.1. P.W.1 is the son of the plaintiff. It was not suggested to P.W.1 by the learned counsel for the appellant that P.W.1 is not competent to give evidence on behalf of the plaintiff. It is not the case of respondent No.1 that P.W.1 is not competent to give evidence on behalf of the plaintiff.

25. The learned counsel for the appellant placed a case law in ***Dina Malar Publications, A Tamil Daily, Reptd., By Its Partner, R.Krishnamoorthy Vs.***

⁵ [2025] 8 S.C.R. 740

The Tiruchirapalli Municipality, Reptd., By its Executive Authority, The Commr., And Ors.⁶, wherein the High Court of Madras held as follows:

“9. The property in question bears a subdivided town survey No. 371/2, with an extent of 2,400 sq. ft. The property in question is not an unsurveyed area or an area in respect of which the extent is in doubt. In laying down the principle that the boundaries should prevail over the extent, in the above decisions, the learned Judges have applied the following principles:(1)in case of doubtful or varying extents in the documents of title relating to the property, boundaries should be preferred to the extent; (2) Only in the absence of definite material to show the actual extent intended to be sold the boundaries should outweigh the doubtful extent mentioned in the document; (3) If the recitals in the documents and the circumstances of the case show that a lesser extent only was conveyed than the area covered by boundaries, and there is clear evidence as to the intention of the parties with reference to the extent conveyed, then the extent should prevail over the boundaries. Bearing in mind the above said principles, we will have to examine the facts of this case.”

In the case at hand, the sale deed of the plaintiff under Ex.A-1 relates to the year 1956, whereas the defendant's vendor's sale deed relates under Ex.B-1 to the year 1948. Therefore, the boundaries in Ex.B-1 i.e. the earlier registered sale deed prevail over those in Ex.A-1. It is not in dispute that after purchase of the schedule property by the vendor of defendant No.1, his possession was uninterrupted by the vendor and also by the plaintiff herein. For the aforesaid reasons, this Court is of the considered view that the evidence produced by the plaintiff failed to prove the right and title of the plaintiff in the plaint schedule property.

26. To disprove the evidence of the plaintiff and to prove the defence of defendant No.1, the defendant No.1 relied on the evidence of D.W.1 and D.W.2. As per the evidence of D.W.1, he deposed that after taking measurements, the defendants took possession of the land covered under

⁶ 1983 0 Supreme(Mad) 340

Ex.B-3 to Ex.B-11, and before taking the measurements, they informed the plaintiff, and she deputed her son/P.W.1 at the time of taking measurements. He further deposed that the adjacent neighbors were also present at the time of taking measurements, and as per the measurements, the ridge ('Kattava') lies within the boundary of defendant No.1 land, and P.W.1 did not raise any objection while taking the measurements. He further deposed that when defendant No.1 purchased the land, the land was full of shrubs and was uneven with ups and downs, and by the time defendant No.1 purchased the land from Rajarao Chowdari and his family members, the land of the plaintiff was not under cultivation. He further deposed that the Government had granted exemption, and the layout was also approved by the Director of Town Planning in its proceedings dated 24.11.1983, and before approving the said layout, the land was measured by the Municipality, and as the measurements were correct, the layout plan was approved. D.W.1 further deposed that the disputed site was also included in the layout, and the plots were also earmarked in the said site, and they carried out leveling and also laid roads. He further deposed that at the time of leveling the ground, the disputed ridge was removed and leveled, but neither the plaintiff nor her son raised any objection at that time, and as such, the agents of defendant No.1 leveled the land with the assistance of the Agro Industries and also with private bulldozers. He further deposed that as per the layout plan, there are a total of 195 plots, and the plots situated in the disputed site are ten (10) in number, and defendant No.1 got prepared the layout with the assistance of a private

surveyor, and again the said layout was prepared in the year 1983 by the Town Surveyor on the application made by defendant No.1 to the Rajahmundry Municipality.

27. D.W.2 is none other than the son of the vendor of defendant No.1. The evidence of D.W.2 supports the case of defendant No.1. To prove the title of the plaintiff, the plaintiff failed to examine her vendor to show that the vendor of the plaintiff had title over the disputed property ('Kattava') in the land of the plaintiff. On the other hand, to disprove the evidence of the plaintiff and to prove the defence of defendant No.1, defendant No.1 relied on the evidence of the son of his vendor, since his vendor is no more, and the son of the vendor of defendant No.1 was examined as D.W.2. The evidence of D.W.1 and D.W.2 clearly supports the defence of defendant No.1. For the aforesaid reasons, this Court is of the considered view that the appellant/plaintiff failed to prove that she is having valid right and title in the plaint schedule property.

Accordingly, Point No.1 is answered against the appellant.

28. **Point Nos.2 & 3:**

Whether the appellant/plaintiff is entitled for the recovery of possession of the plaint schedule property?

Whether the decree and judgment dated 12.09.1994, passed by the trial Court needs any interference?

As stated supra, in Point No.1, it was held that the appellant/plaintiff to prove that she is having valid right and title in the plaint schedule property.

Since the appellant/plaintiff has failed to prove the right and title in the plaint schedule property, she is not entitled to the relief of recovery of possession of the plaint schedule property. In view of my findings on Point Nos.1 and 2, I do not find any illegality in the decree and judgment dated 12.09.1994, passed by the trial Court, I do not find any reason to interfere with the impugned judgment and decree passed by the trial Court.

Accordingly, Point Nos.2 and 3 are answered.

29. In the result, the appeal suit in A.S.No.1585 of 1994 is **dismissed**. Considering the facts and circumstances of the case, each party do bear their own costs in the appeal.

As a sequel, miscellaneous petitions, if any, pending in the Appeal shall stand closed

V. GOPALA KRISHNA RAO, J.

Date: 06.05.2026

SRT