
(2011) 12 AP CK 0051

In the Andhra Pradesh High Court

Case No : Second Appeal No. 503 of 2005

A. Ponjurangam Since deceased per LRs and Others	APPELLANT
Vs	
Darshanala Swamy Since deceased Per LRs and Others	RESPONDENT

Date of Decision : 27-12-2011

Acts Referred:

Citation : (2012) 2 ALD 433 : (2012) 2 ALT 607

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : D. Srinivas Prasad, for the Appellant; M.V. Suresh, for the Respondent

Final Decision : Allowed

Judgement

Sri Justice L. Narasimha Reddy

1. While the appellants are the legal representatives of the sole defendant in O.S.No.157 of 1990 on the file of the V Junior Civil Judge, City Civil Court, Hyderabad, the respondents are the legal representatives of the sole plaintiff in that suit. For the sake of convenience, the parties herein are referred to as "plaintiff" and "defendant".

2. The suit was filed for the relief of declaration of title, mandatory injunction for removal of structures and recovery of possession of suit schedule property of about 280 square yards, in premises bearing No.3-7-141 of Kakaguda, Hyderabad. The plaintiff pleaded that the property admeasuring 350 square yards, in all, was acquired by himself and one Darshanala Ramaswamy jointly, and on the death of Ramaswamy, it has accrued to him by survivorship. It was stated that part of the property was given on lease to the defendant, initially on a rent of Rs. 50/-, per month, and thereafter, Rs. 75/- per month. It was stated that, when the defendant is making the construction on his own accord, notice of eviction was issued, requiring him to pay the arrears. Alleging that the defendant did not accede to the request, the plaintiff filed the suit for the reliefs mentioned

above.

3. The defendant filed written statement, opposing the suit. He raised an objection as to the very maintainability of the suit, both on the grounds of territorial and subject matter of litigation, viz., that the plaintiff ought to have initiated proceedings before the Rent Controller. It was also pleaded that the plaintiff did not have the title vis-a-vis the property at any point of time, and that he is not the tenant of the plaintiff.

4. Through judgment, dated 29.06.1998, the trial Court dismissed the suit. Thereupon, the plaintiff filed A.S.No.485 of 2001 in the Court of III Additional Chief Judge, City Civil Court, Hyderabad. The appeal was allowed through judgment, dated 10.02.2005. Hence, this second appeal.

5. Heard learned counsel for the appellants, and learned counsel for the respondents.

6. The trial Court framed the following issues for its consideration:

Preliminary Issue:

i) Whether this Court has no territorial jurisdiction to try the suit as the suit property falls in the area Kakaguda, Secunderabad of cantonment board and not Kakaguda of Hyderabad as contended by the defendant?

Issues:

i) Whether the plaintiff is entitled for declaration declaring him as owner of the suit schedule property?

ii) Whether the plaintiff is entitled for taking over the possession from the defendant of the suit schedule property?

iii) Whether the plaintiff is entitled for mandatory injunction against the defendant?

7. To prove his case, the plaintiff examined PWs.1 and 2 and filed Exs.A.1 to A.17. On behalf of the defendant, DW.1 was examined and Exs.B.1 to B-4 were filed.

8. The objection raised as to the maintainability of the suit was overruled, but the suit was dismissed on merits. The lower Appellate Court framed only one point for consideration viz., "Whether the judgment and decree of the lower Court, are sustainable in law and on facts?" The appeal was allowed and the suit was decreed.

9. In a suit for declaration, heavy burden rests upon the plaintiff to prove the title, particularly when it is in respect of an item of immovable property. There are certain known sources of acquisition of title, such as by way of succession, purchase, assignment from the Government, or even by perfecting the title by adverse possession. To prove the title, what becomes essential is to identify the

erstwhile owner of the property and then to explain the manner in which it has accrued to the plaintiff. Even if there exists certain missing links in the chain of events that connect the original owner and plaintiff, the title can be said to have been established, in the absence of any stronger claim by the defendant.

10. In the instant case, the plaintiff did not mention as to who was the original owner of the property and as to how it has accrued to him. The plaint started with the statement that the plaintiff and one Ramaswamy got the property jointly. It was not even mentioned that both of them have occupied the land belonging to any particular individual, much less they have acquired, title either by purchase or by other modes known to law. When this is the type of claim, hardly there existed any basis for declaration of title of the plaintiff. An attempt was made to support their claim by placing reliance upon a mortgage deed. Even if the mortgage deed - Ex.A.2 is true, by itself, it does not confer any title.

11. The necessity for a Court to assess the strength of the claim of the defendant would arise, if only the plaintiff has proved the basic requirements, as regards title.

12. In the instant case, the trial Court dismissed the suit, on finding that the plaintiff miserably failed to establish the title. The lower Appellate Court, however, reversed that finding, by undertaking the discussion about the weakness of the case of the defendant. That was a totally erroneous approach.

13. One of the important contentions advanced by the plaintiff was that the defendant is his tenant. The trial Court did not discuss that aspect in detail, since it found that the plaintiff failed to prove his title. The lower Appellate Court, however, recorded a finding to the effect that the defendant is not the tenant of the plaintiff at all. Curiously, it proceeded to observe that even if the possession of the defendant was not as a tenant, possession can be recovered. For all practical purposes, the lower Appellate Court has treated the case of the respondent as the one totally different, from that, presented through his plaint.

14. This Court finds that two substantial questions of law, viz.,

a) Whether a civil Court can declare a plaintiff in a suit to be holding title, vis-a-vis the suit schedule property, even if the basic facts relating thereto, such as the origin of title and the manner in which it was acquired, are not pleaded, much less proved? and

b) Whether a civil Court can presume to itself, a case for the plaintiff, which is not presented in the plaint arise for consideration?

15. These questions are answered in favour of the defendant and the second appeal is allowed. The decree passed by the lower Appellate Court in A.S.No.485 of 2001 dated 10.02.2005, is set aside.

There shall be no order as to costs.