

(2011) 06 AP CK 0071

In the Andhra Pradesh High Court

Case No : Second Appeal No. 1407 of 2004

Attada Gangu Naidu and Attada Gowru Naidu

APPELLANT

Vs

Deepala Chandra Mouli and Others

RESPONDENT

Date of Decision : 15-06-2011

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 151, 84(2)
Civil Procedure Code, 1908 (CPC) — Section 100
Criminal Procedure Code, 1973 (CrPC) — Section 145
Specific Relief Act, 1963 — Section 37

Citation : (2011) 5 ALD 770 : (2011) 6 ALT 585

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : K. Soma Konda Reddy, for the Appellant; V.T.M. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

R. Kantha Rao, J.—This second appeal is directed against the judgment and Decree dt. 4.8.2004 in A.S. No. 17 of 2002 passed by the Senior Civil Judge, Parvathipuram whereby the learned Senior Civil Judge reversed the judgment and Decree dt. 17.5.2002 in O.S. No. 30 of 1999 passed by the Junior Civil Judge, Parvathipuram.

2. I have heard the learned Counsel appearing for the parties.

3. The Plaintiffs are the Appellants herein. For the sake of convenience, the parties will be referred as the Plaintiffs and the Defendants.

4. The Plaintiffs instituted O.S. No. 30 of 1999 for injunction simplicitor against the Defendants claiming that they are the owners of the suit schedule land of an extent of Ac. 4.28 in S. No. 51/1 and an extent of Ac. 1.28 in S. No. 51/2 of Gumada village, Komarada Mandal, Vizianagaram District. It is asserted by the Plaintiffs that the suit schedule property is their ancestral property and they have

been in possession of the same by cultivating it as owners. According to them, when the Defendants have tried to interfere with their peaceful possession and enjoyment of the suit schedule property, they filed the suit for injunction against them.

5. It was the contention of the Defendants that the suit schedule property belongs to Sri Ramalingeswaraswamy Devasthanam of Gumada village and that the 1st Defendant who is the Trustee and Archaka of the temple has been in possession of the suit property and cultivating it by engaging hired labor and the derived income was being used for Dhoopa, Deepa Naivedyam of the Deity. It is also contended that the Sri Ramalingeswaraswamy Devasthanam is also having some other lands in the same village and they are under the cultivation of some riots. It is pleaded that the Plaintiffs have never been in possession of the suit land and they have No. right whatsoever in the suit land.

6. On the pleadings of the parties, the trial court framed the following issues:

- i) Whether the Plaintiffs are in possession and enjoyment of the suit schedule properties.
- ii) Whether the possession and enjoyment of Plaintiffs over the schedule property is lawful.
- iii) Whether the 1st Defendant alone is in possession and enjoyment of the suit land as a Trustee and Archaka of the Deity, Sri Ramalingeswaraswamy of Gumada.
- iv) Whether the suit for mere injunction is not maintainable.
- v) Whether the Plaintiffs are not entitled seek for permanent injunction.
- vi) To what relief.

Additional issues:

- i) Whether the suit lands are endorsed to the Deity Sri Ramalingeswara Swamy of Gumada village and in the income from the suit land is being utilized for Dhoopa, Deepa Naivedyam of the Deity.
- ii) Whether the Endowments Department has got title to and possession of the suit lands.
- iii) Whether the Defendants 9 to 11 are having any right, claim or interest over the schedule property.

7. During the trial, on behalf of the Plaintiffs Pws 1 to 3 were examined and Exs: A.1 to A.33 was marked. On behalf of the Defendants DWs 1 to 5 were examined and Exs: B.1 and B.2 were marked. Ex: X.1 was marked by the Court.

8. The learned trial court upon considering the entire evidence on record allowed the suit and granted decree for simple injunction against the Defendants, by the

judgment and Decree dt. 17.7.2002. Aggrieved by the same, the Defendants filed A.S. No. 17 of 2002 before the Senior Civil Judge, Parvathipuram, who after hearing both sides reversed the findings of the trial court and dismissed the suit filed by the Plaintiffs.

9. Aggrieved by the judgment and Decree dt. 4.8.2004 passed by the learned Senior Civil Judge, Parvathipuram, the present second appeal is filed.

10. This Court framed the following substantial questions of law for consideration at the time of admitting the second appeal:

i) Whether the appellate court was correct, when it held that " as seen from the evidence available on record it is manifest that the Plaintiffs are in possession and enjoyment of the suit schedule land but their claim as owners of the suit property is not proved to the hilt".

ii) Whether the appellate court was correct in reversing the judgment of the trial court when it found as a fact that the Appellants are in possession of the suit land and that they did not seek the prayer for declaration as u/s 37 of the Specific Relief Act the Appellants are not entitled to sue for a mere injunction without adding the prayer for declaration of their title when the Respondents threatened to interfere with the lawful possession of the Appellants herein.

iii) Whether the appellate court was correct in reversing the judgment of the trial court without meeting its reasoning.

iv) Whether the appellate court acted contrary to law when it reversed the judgment of the trial court on surmises and baseless suspicion.

11. This Court in exercise of jurisdiction u/s 100 CPC can interfere with the findings arrived at by the 1st Appellate Court if they involve any substantial question of law which has been wrongly decided or when the findings of fact recorded by the 1st Appellate Court are either perverse or contrary to the evidence on record and based on irrelevant considerations.

12. The Appellants/Plaintiffs filed Exs:A.1 to A.12 the certified copies of Adangals for the Falsies 1383, 1387, 1390, 1392, 1397, 1400, to 1407 respectively, Ex:A.13 Pattadar Passbook and the land revenue receipts Exs:A.14 to A.33. The learned trial court considering the fact that the names of the Plaintiffs are found in the certified copies of Adangals, the land revenue receipts indicate that the 1st Appellant has been paying land revenue for the suit lands and Ex:A.13 the Pattadar Passbook reveals that the 1st Appellant is the pattadar of the suit land, arrived at the conclusion that the Plaintiffs are in possession and enjoyment of the suit land and they are entitled for simple injunction and accordingly decreed the suit granting permanent injunction. The learned trial court also held that the Defendants did not adduce any evidence to prove that the suit land belongs to Sri Ramalingeswara Swamy Temple of Gumada village and therefore the Defendants cannot resist the suit for injunction simplicitor filed by the Plaintiffs. The trial court further expressed the view that since the Defendants did not

adduce any evidence in proof of the fact that the suit land belongs to Sri Ramalingeshwaraswamy Temple, the Plaintiffs need not seek the relief of declaration of title and that they can maintain the suit for simple injunction.

13. The learned Counsel for the Defendants would submit that the trial court overlooked the crucial evidence, which was adduced by the Defendants and also some material facts borne out from the documentary evidence adduced by the parties. The learned Counsel invited my attention to Ex:B.1 the certified copy of Settlement Fair Adangal wherein it is clearly mentioned that the pattadar of the suit land is the Deity Sri Ramalingeswara Swamy. It is also mentioned in enjoyer's column that the suit land is divided into small extents and they are in possession of several persons. Ex:B.1 further shows that there are some other lands belonging to the Deity Sri Ramalingeswara Swamy in other survey numbers and they are under cultivation of different riots. Ex:B.2 the certified copy of Cultivation Account for the Fasli 1408 indicates that the Deity Sri Ramalingeswara Swamy is the patadar of the suit land and that Duvvada Somalingam and Duvvada Annapurna are the trustees of the suit land. Further in Exs:A.8 to A.12 the certified copies of Adangals the names of D.4 to D.8 and Ors. are mentioned as Dharma Karthas of Sri Ramalingeswara Swamy Temple and they are also shown to be the pattadars of the suit land.

14. The main contention of the Respondents/Defendants from the beginning is that the 1st Appellant/Plaintiff was the village Munisff and subsequently he became the Village Administrative Officer of Gumada village and he manipulated the entire record and the documents filed by the Plaintiffs are fabricated documents and No. reliance can be placed on them. Pw.1 admitted in his evidence that he worked as VAO of Gumada village and he denied the suggestion that he manipulated the records.

15. DW.5 the Mandal Revenue Officer, Komarada before whom the proceedings u/s 145 Code of Criminal Procedure were initiated prior to institution of the present suit and who made an enquiry in the said proceedings in M.C. No. 50 of 1997 gave evidence before the trial court and he stated that the names of Duvvada Somalingam and Duvvada Annapurna are mentioned as Dharma Karthas (trustees) of Ramalingeswara Swamy temple for the lands in S. No. 51/1 and 51/2. He also stated that the said Adangals were prepared during the settlement operations which took place during 1957-1962 and the Fair Adangals were prepared after due enquiry with regard to title, possession and enjoyment in respect of the suit lands. He also further stated that while conducting enquiry u/s 145 Code of Criminal Procedure in M.C. No. 50 of 1997 he found that temple authorities also have interest in the suit lands and he made correspondence with them suggesting working out their remedies.

16. From the evidence adduced by both the parties, it is clear that the suit lands in fact belong to the Deity Sri Ramalingeswara Swamy of Gumada village. Though both the courts below after appreciating the evidence on record found that the Plaintiffs are in possession of the suit lands, the 1st Appellate Court

reversed the decree and judgment of the trial court on the ground that the Plaintiffs suppressed the material fact that the suit lands belong to Sri Ramalingeswara Swamy temple and that the Plaintiffs set up title in themselves but failed to prove the same. The 1st Appellate Court also held that the Plaintiffs are not entitled for the equitable relief of injunction for suppressing the fact that the suit land actually belongs to Sri Ramalingeswara Swamy Temple. In the circumstances of the case mentioned above, the 1st Appellate Court also expressed the view that without seeking the relief of declaration of title, the Appellants cannot maintain the suit for simple injunction.

17. Sri. Somakonda Reddy, the learned Counsel for the Appellants/Plaintiffs would submit that since both the courts have found that the Plaintiffs are in possession of the suit land, the 1st Appellate Court is not justified in reversing the judgment of the trial court and dismissing the suit. According to the learned Counsel, it is not obligatory on the part of the Plaintiffs to seek the relief of declaration of title and without seeking such a relief, they can maintain the suit for simple injunction. The learned Counsel in support of his contention, relied on the decision in *M. Kallappa Setty Vs. M.V. Lakshminarayana Rao*, wherein the Supreme Court held as under:

The Plaintiff can on the strength of his possession resist interference from persons who have No. better title than himself to the suit property. Once it is accepted, as the trial court and the first appellate court have done, that the Plaintiff was in possession of the property ever since 1947 then his possession has to be protected as against interference by someone who is not proved to have a better title than him to the suit property. On the findings arrived at by the fact finding courts as regards possession, the Plaintiff was entitled to the second relief (injunction) asked for by him even if he had failed to prove his title satisfactorily.

18. The learned Counsel for the Appellants relied on another decision in *Muthayyan Swaminatha Sastrial v. S. Naraanswamy Sastrial* AIR 1936 Mad 936 wherein it was held that where the allegation of the Plaintiff is that he is in lawful possession of the properties and that his possession is threatened to be interfered with by the Defendants, he is entitled to sue for a mere injunction without adding prayer for declaration of his rights.

19. The learned Counsel also relied on the decision in *Fakirbhai Bhagwandas and Another Vs. Maganlal Haribhai and Another*, wherein it was held that it is not necessary for the person claiming injunction to prove his title to the suit land and it would suffice if he proves that he was in lawful possession of the same and his possession was invaded or threatened to be invaded by a person who had No. title whatever.

20. The learned Counsel for the Appellants further relied on a decision in *Rame Gowda (D) by Lrs. Vs. M. Varadappa Naidu (D) by Lrs. and Another*, wherein the Supreme Court held as under:

A person in possession of land in assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against the entire world but the rightful owner. When the facts disclose No. title in either party, possession alone decides. Possession contra omnes valet praeter eum cui is sit possessionis (he that hath possession hath right against all but him that hath the very right). In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. When the Defendant fails in proving his title to the suit land the Plaintiff can succeed in securing a decree for possession on the basis of his prior possession against the Defendant who has dispossessed him. Such a suit will be founded on the averment of previous possession of the Plaintiff and dispossessed by the Defendant.

21. The facts of the decisions relied on by the learned Counsel for the Appellants are altogether different from the facts of the case on hand. In those cases, the Defendants failed to prove title to the schedule properties and the ratio laid down therein is that the Plaintiff who is in lawful possession of the property is entitled to protect his possession by filing a suit for mere injunction. In all the decisions referred above, the core issue whether the Plaintiff who suppressed the material fact with regard to title, is entitled for injunction, which relief is equitable and discretionary had not arisen for consideration. The Defendants in the instant case by adducing enough evidence demonstrated candidly that the suit lands actually belong to Sri Ramalingeswara Swamy Temple and that the Plaintiffs failed to prove as to how they came into possession of the suit land and how they have become the owners of the lands belonging to Deity. It is not the case of the Plaintiffs that they are the tenants or that they have purchased the lands in any auction conducted by the temple authorities. The Plaintiffs have asserted in their plaint that the properties are their ancestral properties but they have not filed any document to show that the suit lands are their ancestral properties. Though they filed Ex:A.13 Pattadar Passbook which was in the name of the 1st Plaintiff, it is settled law that the Pattadar passbook is not proof of title but the contents therein are presumed to be genuine unless contrary is proved by adducing rebuttal evidence by the opposite party. In the instant case, there is sufficient evidence showing that the suit lands in fact belong to Sri Ramalingeswara Swamy temple. Therefore, the genuineness of Ex:A.13 the Pattadar passbook which was issued in the name of the 1st Appellant is very much in doubt and basing on the said document, it is not open for the Defendants to contend that the title of the suit land vested with them. The finding of fact recorded by the learned trial court that the Defendants did not adduce any evidence to prove that the suit land belongs to Sri Ramalingeswara Swamy Temple is factually incorrect because in the documents filed by the Plaintiffs as well as the Defendants it is specifically mentioned that the suit land belongs to Sri Ramalingeswara Swamy Temple. In such an event, it has to be necessarily presumed that the Plaintiffs suppressed the material fact relating to the ownership of the suit land, set up title in themselves and filed the suit for perpetual injunction against the

Defendants who are the Archakas and authorities of the temple.

22. The relief of injunction is an equitable relief and the court has discretion either to grant or refuse the same. If the court finds that the Plaintiff who approached the court did not come with clean hands, it will refuse him the relief of injunction. In the instant case, it is obvious that the Plaintiffs/Appellants are guilty of suppression of material fact regarding ownership of suit land and tried to project the suit property as their ancestral property. The 1st Appellate Court is therefore right in reversing the judgment and Decree of the trial court and dismissing the suit filed for simple injunction filed by the Plaintiffs. In the facts and circumstances of the case, I am of the view that the Plaintiffs without seeking the relief of declaration of title to the suit lands, cannot maintain the suit for simple injunction and they are not entitled for such a relief. The suit itself is therefore not maintainable without seeking the relief of declaration of title.

23. The issue of maintainability of the suit filed by the Plaintiffs for injunction simplicitor also needs to be examined from the scheme of the A.P. Charitable and Hindu Religious Institutions and Endowment Act, 1987 (for short "the Endowments Act"). The Authorities under the Act are empowered to remove any encroachments or unauthorized occupations of the endowment lands. Section 151 of the Act lays down that No. suit or legal proceeding for redresses of a dispute shall be instituted in any Court of law except under and in conformity with the provisions of the Act. Sub-section (2) of Section 84 contemplates a situation where a party aggrieved by a direction of removal of encroachment can file a suit. It proves for filing the suit by a person aggrieved only on the ground that the charitable and religious institution or endowment has No. title to the land, building or the space. Therefore, it is implicit in the scheme of the Endowments Act that a person cannot institute a suit in a civil Court except contending that charitable or religious institution or endowment has No. title to the property in dispute. If the Plaintiffs assert that the property is that of their own and file a suit against the Archakas and Authorities of the temple, they have to necessarily make a mention in their plaint as to why the authorities of the temple or the archakas, as the case may be, are interfering with their possession. If their case is that such interference is on the footing that the suit land belongs to the temple, they have to invariably seek the relief of declaration of title.

24. In the instant case, the case of the Plaintiffs is not specific as to the cause of intervention of the Defendants over their possession in the suit land. The Plaintiffs conveniently pleaded that the property is their ancestral property and that the Respondents are interfering with their possession and enjoyment. It is very well established from the evidence adduced on either side that the suit land actually belongs to the Deity Sri Ramalingeshwara Swamy enshrined in Gumada village. It therefore seems to me that the Plaintiffs purposefully suppressed the material fact viz., that the suit land belongs to the Deity. Having regard to the peculiar facts and circumstances of the present case, I would hold that the Plaintiffs are not entitled for the equitable relief of injunction on account of the

suppression of material fact as afore-stated and also that they cannot file a suit for bare injunction without the relief of declaration of title.

25. In the strict sense, No. substantial question of law is involved in the second appeal which is sine qua non for maintaining the second appeal u/s 100 CPC This Court in exercise of powers u/s 100 CPC will not interfere with the findings of the fact recorded by the first appellate Court since they are neither perverse nor extraneous to the evidence on record. The first appellate court rightly dismissed the suit filed by the Plaintiffs and its decree and judgment do not warrant any interference in this second appeal.

26. The second appeal is accordingly dismissed. There shall be No. order as to costs.