

(2006) 11 KAR CK 0056

In the Karnataka High Court

Case No : Miscellaneous First Appeal No's. 10042 and 10043 of 2006

Balaji Produce Company

APPELLANT

Vs

V. Selvaraj and Fiza Developers and Inter-Trade Pvt. Ltd. and
C. Senthil

RESPONDENT

Date of Decision : 29-11-2006

Acts Referred:

Citation : (2007) ILR (Kar) 433 : (2007) 2 KarLJ 39 : (2006) 4 KCCR 2645

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : Sundaraswamy, Ramadas and Anand, for the Appellant; Gururaj Joshi and Rajeshwari for C/R-1, for the Respondent

Final Decision : Dismissed

Judgement

V. Jagannathan, J.—These two appeals, though posted for admission, are taken up for final disposal with the consent of both sides and as they arise out of common order, they are being disposed of by this common judgment.

2. The appellant, a partnership firm, is the holder of mining lease bearing M.L.No. 2208 dated 18.12.1995 granted by the State Government over an area of 184 acres of land in S.Nos. 12 and 13 of Gollarahalli Village and S.No. 130 of Honnebagi Village, Chikkanayakanahalli Taluk, Tumkur District, and the period of lease is twenty years from 18.12.1995 to 17.12.2015.

3. In order to extract, lift and transport the minerals (iron and manganese ore), the appellant entered into an agreement with M/s Shakthi Enterprises, but the said agency did not lift any material. The appellant then entered into an agreement with M/s Uma Minerals, represented by its proprietor D.M. Shankar, for lifting and transporting the iron ore. The agreements entered into with M/s Shakthi Enterprises and M/s Uma Minerals lasted only for two years without further extension. However, the contract entered into with M/s Ganesh Minerals, Respondent No. 3 herein, though expired on 30.11.2004, a further contract was

assigned to it on 20.12.2004 for extracting and lifting iron ore from biscuit pit and Handikola area of the schedule mining property. The appellant also entered into a contract on 20.12.2004 with M/s Fiza Developers & Inter Trade Pvt. Ltd. (Respondent No. 2 herein) for sale of the iron ore.

4. Thus, it is the appellant's case that Respondent No. 1 is a total stranger as far as the appellant is concerned and hence it filed a suit in O.S.No. 60/2006 seeking permanent injunction against Respondent No. 1 and to restrain Respondent No. 1 from interfering with the appellant's possession of the suit schedule mining property. I.A.No. 2 was filed seeking temporary injunction restraining Respondent No. 1 from interfering with the appellant's possession and I.A.No. 6 to prevent Respondent No. 1 from entering and lifting iron ore from the suit schedule mining property. Both the I.As. were rejected by the trial court giving rise to these two appeals.

5. I have heard the submissions made by the learned senior counsel Sri Naganand for the appellant, Sri D.L.N. Rao, learned senior counsel for Respondent No. 3, and the learned Counsel Sri Gururaj Joshi for Respondent No. 1. At the outset, the learned senior counsel Sri Naganand submitted that the relief is sought only against Respondent No. 1 and not against Respondent No. 2 and Respondent No. 3.

6. The submissions of the learned senior counsel Sri Naganand for the appellant is three fold.

First submission is that the appellant is the owner of the mining lease and, therefore, is deemed to be in possession of the suit schedule mining property. Merely because the work of extracting, lifting and transporting of minerals is entrusted to different agencies i.e., contractors, the appellant does not cease to be the owner of the mining lease and the contractors do not get any right, to remain on the property once the contract comes to an end. Therefore, by virtue of various clauses of the Mining Lease (Document No. 2), the appellant cannot assign, sublet or transfer the mining lease or any right thereunder to anyone without the previous consent of the State Government and in case of iron ore, without the previous approval of the Central Government. Therefore, the finding of the trial court that Respondent No. 1 is in possession and not the appellant is totally erroneous.

Secondly, it is contended that Respondent No. 1 is a total stranger inasmuch as the appellant at no point of time did enter into any agreement with Respondent No. 1 for carrying out mining activities and the appellant never gave any authority to Respondent No. 1 to invest any amount in the schedule mining property, but on the other hand, Respondent No. 1 is a trespasser and an interloper falsely claiming to be in possession and has been carrying on illegal activities contrary to the mining lease.

Thirdly, it is argued that the injunction order obtained by Respondent No. 1 in O.S.No. 138/2006 before the court at Chikkanayakanahalli does not bind the

appellant since the appellant was not a party to the said suit.

7. On the other hand, the learned Counsel Sri Gururaj Joshi for Respondent No. 1 contended thus:

Respondent No. 1 is neither a stranger nor an interloper and the correspondence between the appellant and the contractors would amply establish the fact that Respondent No. 1 has been carrying on the activities of extracting, lifting and transporting of the ore with the active knowledge/concurrence of the appellant.

Respondent No. 1 has been in settled possession ever since M/s Shakti Enterprises assigned him the work way back in 1994. Subsequently, the work was entrusted to Respondent No. 1 by D.M. Shankar of M/s Uma Minerals and by C. Senthil of M/s Ganesh Minerals (Respondent No. 3), M/s Fiza Developers & Inter Trade Pvt. Ltd. (Respondent No. 2) also entered into purchase agreement with Respondent No. 1 and thus Respondent No. 1 has been carrying on the mining work.

Respondent No. 1 has invested large amount ever since he was entrusted with the work in 1994 and has put in machines at the mining site and has engaged large number of labourers and hence he would be put to irreparable loss and injury if injunction order is granted in favour of the appellant.

Even if Respondent No. 1 is not the owner of the mining lease, the fact that he is in settled possession requires his eviction by recourse to due process of law and not by a suit for bare injunction without a prayer for recovery of possession.

8. In view of the above, the points that arise for consideration are:

(i) Whether the Respondent No. 1 is a stranger and an interloper?

(ii) Whether the order of the trial court restraining the appellant from interfering with the possession of the suit schedule mining property is an unreasonable and capricious order?

Point No. (1)

9. The main thrust of the argument of the appellant's counsel is that the appellant is in possession of the schedule mining property and Respondent No. 1, being a total stranger and interloper, has no right to remain in possession of the suit schedule mining property. When the material on record is examined one cannot come to the conclusion that Respondent No. 1 is a total stranger or interloper. The documents produced along with the objections by Respondent No. 1 reveal this fact. Document R-15 is a letter written by M/s Shakti Enterprises to Respondent No. 1 and a copy has been marked to the appellant herein and the said letter mentions about the contract entered into by M/s Shakti Enterprises with the appellant on behalf of Respondent No. 1 for raising/lifting iron ore from the schedule mining property. Document R-16 is from the appellant addressed to D.M. Shankar of M/s Uma Minerals and in the said document, there is a mention of the appellant having a meeting with the said D.M. Shankar and V. Selvaraj

(Respondent No. 1 herein). The next document R-17 is addressed to Respondent No. 1 by D.M. Shankar of M/s Uma Minerals and it is with regard to the raising contract for lifting iron ore from the mining area belonging to the appellant and the said document refers to the joint contract/agreement entered into with the appellant-company. This letter also indicates a copy being marked to the appellant. Document R-18 is from the appellant-company addressed to M/s Ganesh Minerals and in the said letter also, there is a mention of the discussion being had both with Respondent No. 3 herein as well as Respondent No. 1 with regard to lifting of iron ore from the schedule mining area. Document No. 19 is assignment of mining work given to Respondent No. 1 herein by Respondent No. 3 and the said authorisation mentions that Respondent No. 1 is authorised to develop the mine and it also makes it clear that the said authorisation will be valid as long as the offer letter issued to Respondent No. 3 by the appellant will be in force. Document R-20 pertains to extension of the contract between the appellant and R-3 M/s Ganesh Minerals and, as per this document, the contract for extraction will stand extended for a period of five years from 1.1.2005. It is unnecessary to refer to the rest of the documents for the limited purpose of answering the point under consideration. The above documents thus go to indicate that Respondent No. 1 herein is not a stranger nor an interloper as contended by the appellant's counsel. The very fact that Respondent No. 1 figures in all the above documents and the further fact that Respondent No. 3 has authorised Respondent No. 1 to continue to carry on the work of extraction as long as the offer that is made by the appellant to Respondent No. 3 is in force, therefore, implies that Respondent No. 1 has been authorised to carry on the work of extracting and lifting the iron ore from the schedule mining area and the further inference that the appellant-company is fully aware of the extraction work being done by Respondent No. 1 also becomes inevitable. As such, there is no merit in the contention put forward by the learned Counsel for the appellant that Respondent No. 1 is totally a stranger or an interloper. The trial court has arrived at the very same conclusion after examining the various documents produced by both sides. In fact, the trial court has gone on much deeper by referring to the permits, delivery notes and trip sheets issued in regard to supply of ore extracted by Respondent No. 1. These documents are to be found at R-36 of the documents annexed to the objection statement. I, therefore, find no error being committed by the trial court in dismissing the plea of the appellant that Respondent No. 1 is a total stranger or an interloper. Hence, point No. (1) is answered in the negative.

Point No. (2)

10. The trial court has granted the temporary injunction in favour of Respondent No. 1 herein by recording a finding that not only Respondent No. 1 is in possession of the schedule mining area but further Respondent No. 1 has invested huge amount for the work of extracting, lifting and transporting the iron ore and for this he has engaged large number of workers and machineries have also been put to use for the purpose of extraction of the iron ore and, therefore,

the balance of convenience lies in favour of Respondent No. 1. As far as the contention of the appellant's counsel that the appellant being the lease holder and consequently the owner of the schedule mining property and, therefore, Respondent No. 1 cannot be considered as having been in lawful possession and hence continued occupation of the schedule mining property by Respondent No. 1 amounts to carrying on illegal mining activity is concerned, I have already answered Point No. (1) in the negative by holding that Respondent No. 1 can never be considered as a trespasser or an interloper. Even accepting the argument of the appellant's counsel for a moment that the appellant is the lawful owner of the schedule mining property by virtue of the lease granted by the Government, yet, Respondent No. 1 cannot be thrown out of the schedule mining property without due process of law.

11. The facts admitted by the parties as could be seen from the various correspondence referred to by me while answering Point No. (1) lead to the inference that Respondent No. 1 is in actual possession of the suit schedule mining property and he has put in machinery to extract the iron ore and has also engaged good number of workers to carry out the mining activities of extracting, lifting and transporting of ores. Therefore, there can be no denial of the fact that notwithstanding the appellant being the lawful mining lease holder and therefore the lawful owner of the suit schedule mining property, yet, Respondent No. 1 is actually in possession of the said mining area. Therefore, even if the appellant wants to dispossess Respondent No. 1, it can be done only by having recourse to the due process of law. The above conclusion of mine is fortified by the law laid down by the Apex Court in this regard.

12. In the case of N. Umapathy Vs. B.V. Muniyappa, , the Hon''ble Supreme Court has observed thus:

5. It is also admitted case that the appellant has mining lease in respect of 1 acre 16 gunthas of land in the same survey number in which the respondent has by a lease deed dated November 29, 1993. The respondent cannot unlawfully be dispossessed from the lands nor his possession and enjoyment interdicted except in accordance with the due process of law.

6. Under these circumstances, though the appellant had a lease, he cannot be given possession by the Government except after duly ejecting the respondent in accordance with law. It would appear that subsequently on a representation made by the respondent, the Government acknowledged the factum of his possession and agreed to ratify his continuance in possession subject to his paying Rs. 12 lacs and odd per acre and further amount as contemplated by the Government order.

13. In the case of Krishna Ram Mahale (Dead), by his Lrs. Vs. Mrs. Shobha Venkat Rao, , it has been held by the Hon''ble Supreme Court thus:

It is a well-settled law in this country that where a person is in settled possession of property, even on the assumption that he had no right, to remain on the

property, he cannot be dispossessed by the owner of the property except by recourse to law.

14. A Division Bench of this Court in the case of John B. James and Others Vs. Bangalore Development Authority and Another, , while dealing with the law relating to settled proposition of law that a true owner (even if it is the State or a statutory body) has no right to forcibly dispossess an unauthorized occupant (including a trespasser) in settled possession, otherwise than in accordance with law.

15. Hence, in the light of the aforesaid principles of law as laid down by the Apex Court as well by as this Court, Respondent No. 1 herein can be thrown out by the appellant only by having recourse to the due process of law. As such, the contention put forward by the appellant's counsel that the appellant is the lawful owner of the mining area and, as such, Respondent No. 1 herein should be refrained from carrying on the mining activities cannot be accepted.

16. That apart, Respondent No. 1 herein has already moved the trial court at Chikkanayakanahalli in O.S.No. 138/2006 and obtained an order of injunction restraining the defendants in the said suit in his favour and this is also an indication of the fact that Respondent No. 1 has got a prima facie case in his favour. Added to this, the fact that men, material and machinery have been put into operation by Respondent No. 1, is yet another factor tilting the balance of convenience in his favour. By granting an order of injunction in favour of the appellant herein, in my considered opinion, irreparable injury would be caused to Respondent No. 1. As such, all the three requirements for grant of injunction in favour of Respondent No. 1 herein have been made out. Therefore, it would not be in the interest of justice to grant the prayer of the appellant herein for an order of injunction against Respondent No. 1. In this connection, a decision of the Apex Court in the case of Hardesh Ores Pvt. Ltd. Vs. Timblo Minerals Pvt. Ltd. and Others, , will have to be pressed into service. In the said decision, the Apex Court has observed thus:

11. After considering the comparative merit of the case of either parties and their rival claims, we have formed an opinion that the High Court ought not to have granted unconditional order of temporary injunction by ignoring the huge investments which have been made by the old contractor to operate the mine under an existing arrangement and alleged renewal of the contract by their mutual conduct.

17. Hence, having regard to the above factors. I am of the view that the refusal by the trial court to grant injunction in favour of the appellant herein appears to be a reasonable order and it cannot be either termed as perverse or can it be said that the said order has been passed ignoring the legal position vis-a-vis the true owner and a trespasser insofar as grant of temporary injunction is concerned. In the case of Wander Ltd. and Another Vs. Antox India P. Ltd., the Apex Court has observed thus:

The appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.

In the case of *M. Gurudas and Ors. v. Rasaranjan and Ors.* AIR 2006 SCW 4773 it has been observed by the Apex Court thus:

22. While considering the question of granting an order of injunction one way or the other, evidently, the court, apart from finding out a *prima facie* case, would consider the question in regard to the balance of convenience of the parties as also irreparable injury which might be suffered by the plaintiffs if the prayer for injunction is to be refused. The contention of the plaintiffs must be *bona fide*. The question sought to be tried must be a serious question and not only on a mere triable issue.

I, therefore, answer Point No. (2) in the negative.

18. In the result, both the appeals are dismissed. However, it is to be mentioned that the observations made herein above are all confined to the interlocutory order passed by the trial court which is under challenge in this appeal and, therefore, the trial court shall not in any way be influenced by the above observations and the observations shall not in any way prevent the trial court from disposing of the main suit on the basis of the evidence to be produced by the respective parties. At the same time, considering the magnitude of the dispute between the parties and the consequences thereof and the high stakes involved in the running of the mine, the trial court is directed to expedite the trial and it shall make every effort to dispose of the main suit itself as early as possible, but within 90 days from the date of receipt of this judgment. The parties to bear their own costs.