
(1972) 07 KAR CK 0009

In the Karnataka High Court

Case No : Civil Revision Petition No. 1668 of 1971

Banappa Dyavappa Kumbar

APPELLANT

Vs

Gurunath Krishnaji Ingalgi and Others

RESPONDENT

Date of Decision : 18-07-1972

Acts Referred:

Citation : AIR 1973 Kar 199 : AIR 1972 Kar 199 : (1973) 1 MysLJ 99

Hon'ble Judges : B. Venkataswami, J

Bench : Single Bench

Advocate : J.S. Gunjal, for the Appellant; V. Tarakaram, for the Respondent

Final Decision : Allowed

Judgement

B. Venkataswami, J.—This revision petition is directed against an Order made by the learned Second Additional District Judge at Dharwar. In M. A. No. 29 of 1971. by which the temporary injunction granted by the learned Civil Judge at Hubli in O. S. No. 48 of 1971 was vacated. Hence this petition by the plaintiff.

2. The relevant facts are as follows : The suit was filed by the petitioner for a permanent injunction in respect of R. S. No. 1/1 of Hirenarti village. In the said suit, I. A. I. was filed for the grant of a temporary injunction against the respondents. The trial Court allowed the application and issued the temporary injunction prayed for. On appeal by the present respondents, the learned District Judge allowed the appeal and set aside the order of injunction. It is necessary to set out a few more facts relative to previous proceedings between the parties.

3. The suit land originally he-longed to one Krishnaji, whose son is the first respondent herein. The case on behalf of the petitioner is that he was first inducted as a tenant on the land by the said Krishnaji and later he entered into an agreement to purchase the said property for a consideration of Rs. 16,000/- and paid an advance of Rs. 1000/-. Pursuant to the said agreement, his possession was continued in part performance of such agreement After the death of the said Krishnaji, the first respondent inherited the property and took a

further advance of Rs. 1,000/- in accordance with the earlier agreement to sell. He. therefore, continued to be in possession of the property. But, the first respondent filed O. S. No. 25 of 1958 in the Court of the Munsiff at Kundgol for a permanent injunction against the petitioner and obtained an order of Temporary injunction therein. Subsequent to the latter order of injunction. he leased the property to respondents 2 and 3. During the pendency of the said suit, the temporary injunction continued to be in operation. But the suit was eventually dismissed on 18-11-1969. It was held therein that the first respondent herein was not in possession of the suit land and that the present petitioner was in possession of it on the date of the suit. An appeal was taken up in R. A. No. 214 of 1969 before the Civil Judge at Hubli, and it is stated that it was pending on the date of the present suit. An attempt of the first respondent herein to secure a further temporary Injunction in the course of the said appeal was unsuccessful. Later, allegedly at the instigation of the present first respondent, respondents 2 and 3 herein instituted O. S. No. 90 of 1969 in the Court of the Civil Judge at Hubli for an injunction. In the said suit, although an ad interim injunction was Issued in the first instance, it was later vacated on the ground that respondents 2 and 3 were not in possession and "wahivat" of the suit land. Their appeals against the said order vacating the temporary injunction in M. A. No. 7 of 1970 was also dismissed. The matter was brought up further before this Court in C. R. P. No. 1559/70. The said C. R. P. was also dismissed. It is after the aforesaid proceedings between the Parties that the present suit came to be filed by the petitioner herein for a permanent injunction. The trial Court granted the temporary injunction and the lower appellate Court set aside the same. Hence, this revision by the plaintiff.

4. Before advertng to the contentions urged on behalf of the parties, it is relevant to give a few more details relative to the earlier proceedings. In O. S. No. 25/58. it has been clearly held that the first respondent herein was not in possession of the land on the date of the said suit and that the Petitioner has been in lawful possession pursuant to an oral agreement to sell the suit land in his favour. In the next suit. O. S. No. 90 of 1969 filed by the respondents 2 and 3. claiming under the first respondent as tenants of the suit land, an order of temporary injunction was sought and the same was refused. On appeal, the said order was confirmed on the ground that respondents 2 and 3 were not in possession of the suit land. When the matter came to be dealt with at the instance of respondents 2 and 3 in C. R. P. No. 1559/ 70. this Court, while dismissing the revision petition, has observed thus:--

".....The trial Court as also the appellate Court have refused to grant temporary injunction in favour of the petitioners on the ground that after trial the Court of the Munsiff has recorded a finding in L. C. S. No. 25/58 to the effect that on 12-6-1958 the Angelis (respondent 1) were not in possession and that the respondents herein (petitioner herein and others) under an oral agreement of sale, have been put in lawful possession by the Angelis. The petitioners who claim under the Angelis and have been put in possession by the Angelis during

the pendency of the suit, can have no His her right or better right than the Ingalgis. The Courts below were right. in my opinion, in refusing an order of temporary Injunction when there is a judgment recording findings on the basis of the evidence regarding possession of the suit land....."

5. It is clear from the above observations that respondents 2 and 3 herein have failed to establish their lawful possession of the suit land as on the date of the institution of their suit.

6. The principal contention urged on behalf of the petitioner herein is that the order under revision was passed on extraneous and irrelevant considerations, and therefore, the same is tantamount to an order made by an improper exercise of jurisdiction by the lower appellate Court. I am clearly of opinion that this contention deserves to be upheld.

7. It is seen from the Order as a whole, that it proceeds on the assumption that once a temporary injunction had been granted in O. S. No. 25/58 which was a suit by the first respondent herein, the petitioner had lost possession and therefore, must establish the circumstances under which he regained possession after the dismissal of the said suit, This is how the passage in question runs;

".....that there is nothing on record of this suit to show as to when and how the plaintiff took possession of the suit land after he was first restrained by temporary injunction granted in O. S. No 25 of 1958 in the year 1958. although that suit has been dismissed on 18-11-1969. that when much water has flown below the bridge after filing of the suit in O. S. No. 28 of 1958 that the suit land has been leased out in favour of defendants 2 and 3 by defendant No. 1 in 1961 during the pendency of that suit and that they have been cultivating the suit land during the pendency and after dismissal of that suit and even subsequently, that the plaintiff ought to have filed a suit as contemplated by the proviso to Section 135 of the Mysore Land Revenue Act; that he could have also filed a suit for specific performance of the contract or purchase if his claim was justifiable when such efficacious relief was available to him that he has failed to avail him-self of that relief but he has merely filed a suit for injunction against defendant No. 1 who is admittedly a true owner of the suit land and as such the plaintiff Will have to show that he has got lawful possession of the suit land on the date of this suit....."

8. The view taken by the learned District Judge in the above passage is clearly erroneous. He seems to have made an assumption that once a temporary injunction was granted against the present petitioner, he would have lost possession and therefore, even if the suit is dismissed, he would not be entitled to be considered as being in possession of the land. This, in my view, is clearly an erroneous approach to the question.

9. The purpose and the effect of an order of temporary injunction has been clearly enunciated in the decision of Durg Transport Co. Private Ltd. Vs. Regional Transport Authority and Others, . on which reliance was placed on behalf of the

petitioner. This is what the learned Chief Justice has observed in para 4 of the said report:--

"A stay order or an ad interim injunction is issued to maintain and preserve the status quo existing at the time of the institution of the proceedings. The real point, which has to be decided when an application for stay or for a temporary injunction is made, is not how the question ought to be investigated; but it is whether the matter should not be preserved in status quo until the question can be finally disposed of. A stay order or an order of injunction is not granted to disturb the status quo. It is no doubt granted to restore the status quo. but it is never granted to establish it new state of things differing from the state which existed at the date when proceedings were instituted."

(The underlining is mine).

10. If the judgment in O. S. No. 25/58 is examined in the light of the above enunciation. It would be clear that by the said judgment, what has been declared is that the first respondent was not in possession of the suit land on the date of the suit, thereby sustaining the possession of the suit land by the present petitioner. If this be the true position, to insist that the present petitioner must establish his re-entry on the land like any other fact after the disposal of that suit, would be an unnecessary formality. In this context, it is relevant to recall the observations of this Court, in C. R. P. No. 1559/70 extracted earlier. It is seen from those observations that the claim for a temporary injunction made on behalf of respondents 2 and 3. who it must be noted claimed possession under the first respondent, was rejected exclusively on the score that the respondent had failed to establish his possession in the earlier suit O. S. No. 25 of 1958. I am clearly of the view that the same reason equally applies to the facts of the present case, unless it is shown that between the year 1958 and the date of the present suit the present petitioner had lost possession and the first respondent entered into possession of the suit land lawfully. It is the case of no one here that the first respondent, in fact, entered into possession of the suit land lawfully during the aforesaid period. For all these reasons, I am clearly of opinion that the order under revision cannot be sustained.

11. In the result, this revision petition succeeds and is allowed. The Order made by the Second Additional District Judge at Dharwar. in M. A. No. 29 of 1971 is hereby set aside and the order made by the learned Civil Judge, Hubli, on I. A. I. in O. S. No. 48 of 1971. stands restored,

12. In the circumstances of the case, the parties will bear their own costs.