
(2005) 07 AP CK 0017
In the Andhra Pradesh High Court
Case No : SA No. 857 of 2004

Bheemappa (Died) and Others

APPELLANT

Vs

Gangamani (Died) and Others

RESPONDENT

Date of Decision : 20-07-2005

Acts Referred:

Citation : (2006) 1 ALD 367

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Koka Raghava Rao, for the Appellant; K. Anup Kumar, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The legal representatives of the sole plaintiff in O.S. No. 29 of 1998, on the file of the Court of Junior Civil Judge, Bichkunda, are the appellants. Two defendants, the sister and brother of the sole plaintiff, also expired during the pendency of the proceedings. Hence, their legal representatives are brought on record. The parties shall be referred to, as arrayed in the suit.

2. The plaintiff claimed that in a family partition between himself and the second defendant, the suit schedule property, in an extent of Ac.312 gts., in Sy.No. 35 I/ A of Jukkal Village, fell to his share, along with certain other properties. He stated that his sister, the first defendant, initiated proceedings before the Mandal Revenue Officer (MRO), for mutation in respect of that very land in her favour, on the strength of a gift deed dated 22-4-1997 said to have been executed in her favour by their father and that after hearing both the parties, the MRO rejected her claim, through his proceedings dated 5-8-1997. He pleaded that he continued to be in possession of the property, since the date of partition and that on the strength of the so-called gift deed, the defendants started interfering with his possession. He claimed the relief of perpetual injunction.

3. Separate written statements were filed by the defendants. The first defendant pleaded that their father acquired the entire land in Sy.No. 351, admeasuring about Ac. 10-00 and out of it, he gifted the suit schedule property to her, through a gift deed dated 22-4-1997. She stated that she made an application before the MRO, subsequent to 1997 and on consideration of the same, her name was entered in the revenue records, as pattadar. She also pleaded that she is in possession and enjoyment of the property. The second defendant did not claim any independent right over the land.

4. The trial Court dismissed the suit, through its judgment dated 31-7-2001. Thereupon, the plaintiff filed A.S. No. 59 of 2003, in the Court of VII Additional District and Sessions Judge (Fast Track Court) Nizamabad at Bodhan. Through its judgment, dated 26-4-2004, the lower appellate Court dismissed the appeal.

5. Sri Koka Raghava Rao, learned Counsel for the plaintiff, submits that proceedings dated 5-8-1997, issued by the MRO, marked as Ex.A-1 and the pahani, issued for the year 1997-98, Ex.A.2, clinchingly establish that the plaintiff is in possession of the suit schedule property. He contends that though the suit was filed for the relief of injunction simpliciter, the Courts below have undertaken extensive discussion, touching on the title and denied the relief to the plaintiff. He submits that once it is proved that the plaintiff was in possession of the property, as on the date of filing of the suit, the Courts below ought to have granted relief of injunction, irrespective of any doubt as to the title of the plaintiff, over it.

6. Sri K. Anup Kumar, learned Counsel for the defendants, on the other hand, submits that the plaintiff was unable to substantiate his claim as to the partition and the possession thereafter. He submits that Ex.A-1 was passed, without giving any opportunity to the first defendant and accordingly, she submitted another application, within a short time. He submits that on a consideration of the offer presented by the first defendant, as well as her father, the MRO issued proceedings dated 23-6-1999, marked as Ex.B-7, recognizing her title and possession and that the Courts below have thoroughly discussed the oral and documentary evidence before them, in arriving at the conclusion that the plaintiff is not entitled for any relief.

7. First defendant is the sister and the second defendant is the brother of the plaintiff. The dispute is in relation to possession over the suit schedule property. While the plaintiff claimed that it fell to his share in the family partition, which took place in 1985 under Ex.A-3, the first defendant pleaded that her father gifted that item to her, under gift deed dated 22-4-1997, marked as Ex.B-3. Since no relief of declaration of title is claimed, there was no necessity for the Courts below to undertake extensive discussion, touching on that aspect. It may be true that in a suit for perpetual injunction, reference can be made to the nature of title held by the parties. However, such consideration must be limited to the extent of ascertaining whether the plaintiff holds any semblance of title, as distinguished from an out right stranger. Beyond that, the consideration tends to

convert the suit, into one for declaration of title.

8. It is not in dispute that first defendant submitted an application, before the MRO, for mutation of her name in the revenue records, on the strength of Ex.B-3. On coming to know about the same, the plaintiff objected to it and asserted his right. It is true that the proceedings before the MRO were summary in nature. But on consideration of rival claims, he made two observations, viz. that a) the parties shall have to establish their title to the land, before a civil Court; and b) the plaintiff is found to be in possession of the land and that his name deserves to be entered as cultivator, in the revenue records. This order is marked as Ex.A-1. On the strength of this, Ex.A-2, a pahani of the year 1997 was issued, indicating the possession of the plaintiff over the "property, at that point of time.

9. If the first respondent was aggrieved by Ex.A-1, it was open to her to prefer an appeal, or to avail any other remedy. She has permitted this order to become final. However, she has chosen to approach the MRO, for the second time, for the same relief. Through proceedings in Ex.B-7, the MRO passed an order in her favour. The plaintiff, in turn filed W.P. No. 20807 of 1999, before this Court and obtained interim orders on 7-10-1999.

10. It is a settled principle of law that if a particular party is found to be in possession of the property in question, at a point of time, the party asserting otherwise, is under obligation to disclose as to how the change was brought about. The presumption, both forward and backward, deserves to be drawn, from an undisputed event or state of affairs. In the instant case, such an event viz. possession of plaintiff on the suit schedule land, is evident from Ex.A-1; unless it was set at naught, through legally known means, presumption deserves to be drawn forward, as well as backward. The first defendant is unable to show as to how the possession that was recorded under Exs.A-1 and A-2, in favour of the plaintiff, was brought to an end and how she secured the possession of the property. The most relevant consideration, in the matter of granting perpetual injunction, is as to who among the parties to the suit were in possession of the property, as on the date of filing of the suit.

11. In the instant case, the record and particularly Exs.A-1 and A-2 disclose that as on the date of filing of the suit, the plaintiff was in possession. Any amount of charges that are brought about, subsequent to that date, do not have any bearing on the grant of relief. The Courts below have undertaken extensive discussion, on the title in respect of the suit property and the lower appellate Court had, in fact, gone to the extent of finding fault with the orders passed by the MRO in Ex.A-1, as though an appeal was filed before it, against that order. It refused to take into account, the impact of the interim orders passed by this Court in W.P. No. 20807 of 1999, filed against Ex.B-3.

12. For the foregoing reasons, the second appeal is allowed and the judgments of the Courts below are set aside. The suit shall stand decreed, as prayed for. It

is, however, made clear that it shall be open to the defendants, meaning thereby their legal representatives, to file suit for declaration and for other ancillary reliefs. There shall be no order as to costs.