
(1996) 04 AP CK 0001

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 790 of 1996

Chepana Peda Appalaswamy

APPELLANT

Vs

Chepana Appalanaidu and Others

RESPONDENT

Date of Decision : 02-04-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Specific Relief Act, 1963 — Section 34, 38

Citation : (1996) 2 ALT 389

Hon'ble Judges : C.V.N. Sastri, J

Bench : Single Bench

Advocate : C. Sadasiva Reddi, for the Appellant; M. Bhaskara Lakshmi, Caveator, for the Respondent

Final Decision : Dismissed

Judgement

C.V.N. Sastri, J.—This Revision is directed against an order dismissing an application for the amendment of the plaint filed at the appeal stage.

2. The petitioner filed O.S.No. 157 of 1986 on the file of the Court of the Principal District Munsif, Bobbili against the respondents herein for a permanent injunction restraining the respondents/defendants from interfering with his possession and enjoyment of the plaint schedule land. The plaintiff based his claim on a "D" form patta alleged to have been granted in his favour by the Government. The respondents/defendants resisted the suit inter alia on the ground that the suit land is a zeroyathi patta land which is being enjoyed by the defendants along with the plaintiff in equal shares and that the plaintiff has no exclusive possession over the suit land. After framing the appropriate issues, the Trial Court dismissed the suit on the ground that the plaintiff cannot maintain a suit for a bare injunction without a prayer for declaration of his title to the suit land. Aggrieved thereby, the petitioner/plaintiff has filed A.S.No. 19 of 1992 on the file of the Subordinate Judge, Bobbili. In the said appeal, the petitioner-plaintiff filed I.A.No. 625 of 1995 for amendment of the plaint introducing the relief of

declaration of title to the suit land. The said application for amendment was opposed by the respondents/defendants on the ground that the proposed amendment changes the nature and character of the suit and if allowed it would cause prejudice to them and that in any case, the application which is filed at a belated stage in the appeal cannot be permitted. After hearing both parties, the lower Appellate Court dismissed the application for amendment mainly on the ground that it is filed at a belated stage. The lower Appellate Court observed that the suit was filed on 2-6-1986, that the defendants filed their written statements on 15-11-1987 denying the title of the plaintiff, that the plaintiff should have therefore taken appropriate steps for amendment in the Trial Court itself and that the amendment sought for is likely to cause prejudice to the defendants. The lower Appellate Court has also made some observations on the merits of the rival contentions and appears to have been inclined to agree with the Trial Court's view that a suit for bare injunction without a prayer for declaration of title is not maintainable. The lower Appellate Court however made it clear that any observations made by it touching the merits of the respective contentions are only for the limited purpose of disposing of the application for amendment and that the main appeal will have to be disposed of on merits without in any way being influenced by these observations made by it in its order.

3. In this Revision Petition, the learned counsel for the petitioner has contended that both the Courts below have grossly erred in their view that a suit for injunction is not maintainable without a prayer for declaration of title. He also contended that the proposed amendment does not bring any new cause of action and no new facts are sought to be introduced, that the amendment of the plaint does not involve adducing of any further evidence in the suit and there is also no necessity to remand the matter for further evidence and that it is well settled that amendment of pleadings can be permitted at any stage of the proceedings including at the appeal stage.

4. In support of his contentions, the learned counsel for the petitioner has relied on a decision of Madras High Court in Muthayyan Swaminatha Sastrial and Others Vs. S. Narayanaswami Sastrial and Others, and a judgment of the Bombay High Court in Fakirbhai Bhagwandas and Another Vs. Maganlal Haribhai and Another, .

5. On the other hand, the learned counsel for the respondents has tried to sustain the order of the lower Appellate Court by reiterating the reasons given by the lower Appellate Court in its order.

6. There appears to be a rather wide-spread misapprehension about the nature and scope of a suit for permanent injunction for we frequently come across such orders where the Subordinate Courts seem to hold that a suit for a bare injunction without a prayer for declaration of title is not maintainable.

7. Section 38 of the Specific Relief Act 1963 deals with the grant of perpetual injunction. According to Sub-section (3) of Section 38 of the Act, a perpetual

injunction may be granted to the plaintiff when the defendant invades or threatens to invade the plaintiff's right to or enjoyment of property where the invasion is such that compensation in money would not afford adequate relief and where the injunction is necessary to prevent a multiplicity of judicial proceedings.

8. It is well settled that in a suit for injunction, the primary question to be considered is one of possession. Of course, the question of title also may be gone into incidentally. It is also well settled that a person in possession, though without title, can resist interference from another who has no better title than himself and get injunction See *M. Kallappa Setty Vs. M.V. Lakshminarayana Rao*, .

9. In *Fakirbhai Bhagwandas and Another Vs. Maganlal Haribhai and Another*, a Division Bench of the Bombay High Court held that it is not necessary for the person claiming injunction to prove his title to the suit land. 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 whatsoever.

10. In *Muthayyan Swaminatha Sastrial and Others Vs. S. Narayanaswami Sastrial and Others*, it is held that where the allegations of the plaintiff are 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 a declaration of his rights.

11. It can, therefore, be stated as a matter of law, that a suit for bare injunction without a prayer for declaration of title is maintainable.

12. In this connection, it may be necessary to refer to Section 34 of the Specific Relief Act which deals with declaratory decrees. It provides that any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief: Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

13. It is therefore clear from proviso to Section 34 that a suit for mere declaration is not maintainable where the plaintiff, being able to seek further relief omits to do so. But the same thing cannot be said of a suit for mere injunction which is perfectly maintainable without a prayer for declaration of title.

14. Whether the plaintiff in a given case has valid title to and possession of the suit land is a question to be decided on the evidence adduced in the case. In the instant case, the plaintiff claims that the suit land was assigned to him by the Government and that he is in exclusive possession and enjoyment of the same and that the defendants have been trying to unlawfully interfere with his possession and enjoyment of the suit land. On the other hand, the defendants contend that the plaintiff has no exclusive title or possession to the suit land,

that the same is a zeroyathi land which has been in the joint possession and enjoyment of the defendants and the plain tiff and that as such the plaintiff is not entitled for a permanent injunction against them. These questions will have to be ultimately decided in the appeal A.S.No. 19 of 1992 which is pending before the lower Appellate Court in the light of the oral and documentary evidence on record.

15. The above observations with regard to nature and scope of a suit for permanent injunction are only intended to clear the misconception or misapprehension which appears to be prevalent and the saie observations cannot be considered as having any bearing on the merits of the appeal before the lower Appellate Court. In view of the settled legal position there appears to be no need at all for the plaintiff in the instant case to seek any amendment of the plaint so as to introduce a prayer for declaration of title. In this view of the matter, I do not propose to go into the other reasons given by the lower Appellate Court for dismissing the application for amendment. It is of course well settled that delay by itself is no ground to reject an application for amendment of the plaint. In appropriate cases an amendment can be allowed even at the appeal stage.

16. With the above observations the C.R.P. is dismissed. The lower Appellate Court is directed so dispose of the appeal A.S.No. 19 of 1992 on merits in accordance with law and in the light of the observations made above. There will be no order as to costs.