

(2008) 02 AP CK 0047
In the Andhra Pradesh High Court
Case No : C.R.P. No. 4955 of 2007

D. Yadamma and Others

APPELLANT

Vs

G. Suryanarayana and Another

RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 47
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1
Constitution of India, 1950 — Article 227

Citation : (2008) 3 ALD 605 : (2008) 3 ALT 217

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : G. Dhananjai, for the Appellant;

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—The first respondent filed the suit against the revision petitioners and the second respondent for injunction restraining them from interfering with his possession over 537.25 sq. yards in Sy. No. 313 of Chandanagar village within the boundaries mentioned in the schedule appended to the plaint which hereinafter will be called as the suit land, inter alia alleging that he purchased the suit land under a registered document in 1967 from one V. Venkat Ramaiah, who had purchased the same in 1965 from the original owners of the land, namely Donti Narsaiah and his sons namely Veeraiah, Shankeraiah, Ramulu and Kistaiah and that those people, i.e., Donti Narsaiah and his sons also sold an extent of 537.25 sq.yards to one V. Radha Krishna Murthy, who is the eastern side neighbour to the suit land and the said Radha Krishna Mutiny developed the property and constructed a residential apartment with the name Balaji Apartment and subsequently, he constructed a compound wall to protect the suit land and that the revision petitioners, who are his neighbours, are trying to encroach upon the suit land in spite of his protest.

2. In the above suit, first respondent filed a petition under Order 39 Rule 1 CPC seeking an injunction during the pendency of the suit, restraining the revision petitioners from interfering with his possession over the suit land, which was contested by the revision petitioners by filing a counter, inter alia contending that the mother of the first revision petitioner by name Chandamma filed O.S. No. 5 of 1971 on the file of the Court of District Munsif, Hyderabad West and South, Ranga Reddy District, for partition and separate possession of her share in the properties mentioned in the schedule appended to the plaint, which was decreed, which was confirmed by both the appellate Courts and thereafter, a final decree was passed whereunder Chandamma was put in possession of Sy. No. 313, which is an agricultural land. After the death of Chadramma, the revision petitioners developed the property allotted to the share of Chandamma between 1965 to 1967. As there is no division of the land either into plots or Sub-division, no Sub-division Sy. No. 313/3 was there between 1965 to 1967 and so the sale deeds relied on by the first respondent are sham, nominal and are fraudulent. As no lay out was sanctioned in Sy. No. 313 and as construction of apartment by respondent No. 1 adjacent to the suit land has nothing to do with the land belonging to them and as the first respondent has no land in or around Sy. No. 313, he is not entitled to the injunction sought.

3. First respondent marked five documents and the revision petitioners marked six documents in support of their contentions but did not adduce any oral evidence. The trial court allowed the petition of the first respondent and granted injunction sought in favour of the first respondent. Aggrieved thereby, the revision petitioners preferred an appeal to the appellate Court, which was dismissed by the order under revision. Hence, this revision.

4. The main contention of the learned Counsel for the petitioners is that the trial court and appellate Court were in error in observing that the first respondent established a prima facie case and the other two ingredients required for granting of an injunction in his favour, failing to note that he did not produce any document to establish his possession over the suit land, and that the sale deeds relied on by the first respondent, which are of the years 1965 and 1967 obtained when Section 47 of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short, "the Act") was in force are null and void, as sale of agricultural land at that time can be effected only after obtaining permission from the Tahasildar, and as the first respondent failed to produce any document to show that any such permission was obtained from the Tahasildar, and so the Courts erred in passing order in favour of the first respondent without keeping in view the fact that the photographs produced by the first respondent have no evidentiary value and cannot establish title or possession ok the first respondent.

5. It is his contention that in the decree for partition obtained by the grandmother (sic. mother) of the first revision petitioner, she was allotted 14 guntas in Sy. No. 313, which includes the suit land, and in view of that decree passed by a competent civil Court, revision petitioners have a prima facie case

and the balance of convenience also is in their favour, as the documentary evidence adduced by the revision petitioners in the shape of Commissioner's report, panchanama and the rough sketch filed by the Commissioner etc. clinchingly establish the possession of Chandramma, the mother of the first revision petitioner and as the revision petitioners became entitled to the said land after the death of Chandramma and contended that the revision petitioners also filed another suit seeking an injunction in respect of the suit land and filed a petition under Order 39 Rule 1 CPC seeking injunction against the first respondent in that suit and the trial Court granted ex parte injunction in their favour, which after contest by the first respondent, was heard with this petition and the trial court by separate orders allowed the petition filed by the first respondent and vacated the injunction granted earlier and dismissed the petition for injunction filed by for the revision petitioners.

6. It is his contention that since the Courts below did not appreciate the documentary evidence in proper perspective, the orders passed by them are liable to be set aside and the petition of the first respondent is liable to be dismissed.

7. Significantly, the revision petitioners in the counter filed by them did not take a plea that the sale deeds relied on by the first respondent are not valid in view of the non-obtaining of permission u/s 47 of the Act from the Tahsildar. Their specific plea is that they are sham, nominal and fraudulent documents. As the revision petitioners failed to take a plea about the sale deeds relied on by the first respondent being hit by Section 47 of the Act, first respondent did not have an opportunity to say what he has to say on that aspect. So, revision petitioners at the stage of revision filed under Article 227 of the Constitution of India questioning the concurrent judgments of the Courts below, cannot be permitted to raise a plea, which relates to a mixed question of fact and law, when it was not taken before the trial Court and the appellate Court. So, I do not wish to consider the question relating to application of Section 47 of the Act for disposal of this petition.

8. The specific case of the first respondent is that he purchased the suit land in 1967 under a registered sale deed from one Venkat Ramaiah, who had earlier purchased the same from Donti Narsaiah and his sons in 1965. Chandramma, the mother of the first revision petitioner, filed O.S. No. 5 of 1971 against Donti Veeraiah, Pentaiah, Ramulu, Kishtaiah, China Shankaraiah, Rajmallaiah, Swamy and Narsamma. It is significant to note that revision petitioners did not dispute Donti Veeraiah and others selling land, which is adjacent to the suit land, to Radha Krishna Murthy, and the said Radha Krishna Murthy constructing a house in the land purchased by him, which is adjacent to the suit land. The description of the suit land shows that its eastern boundary is Balaji Apartments belonging to V. Radha Krishna Murthy. In view of the sale of land in Sy. No. 313 by Donti Narsaiah and his sons to Venkata Ramaiah even in 1965 and the said Venkata Ramaiah selling the land purchased by him to the first respondent in 1967 under

a registered sale deed, it is clear that by 1971, Donti Veeraiah and his sons were not having title to the suit land and the land sold to Radha Krishna Murthy, because they were already alienated to V. Venkat Ramaiah and V. Radha Krishna Murthy. Neither the said Venkat Ramaiah nor the first respondent were made parties to O.S. No. 5 of 1971 filed by Chandramma, seeking partition of her share in the family properties. So, prima facie, the decree passed in O.S. No. 5 of 1971 in respect of the land sold by Veeraiah does not bind the purchasers, i.e., the first respondent and others.

9. As the suit land is a vacant land, and as it is not the case of the revision petitioners also that there are constructions therein, the presumption under law that possession follows title has to be invoked. As the first respondent, prima facie, has title to the suit land by virtue of the registered sale deed in his favour, it should be presumed that he is in possession of the suit land, because question about the validity of the sale in favour of the first respondent in view of Section 47 of the Act need not be considered at this interlocutory stage, for the reasons mentioned above. The decree obtained by Chandramma does not bind the purchasers of the land from Veeraiah-one of the defendants in the suit, who are not made parties thereto, that too when the sale in favour of those purchasers was not in question in that suit. The eastern boundary of the suit land is Balaji Apartments and the western boundary thereto is grama kantam. In view thereof and in view of registered sale deed in their favour, it has to be taken that first respondent is in possession of the suit land. Balance of convenience is in maintenance of status quo during the pendency of the proceedings. The concurrent findings of the trial court and the appellate court that first respondent is entitled to injunction do not call for any interference in a petition under Article 227 of the Constitution of India.

10. So, the Civil Revision Petition is dismissed. No order as to costs. The trial Court shall dispose of the suit on the basis of the evidence to be adduced without being influenced by the observations made by this order.