
(2006) 06 AP CK 0099
In the Andhra Pradesh High Court
Case No : C.R.P. No. 6186 of 2005

G. Trinadha Swamy

APPELLANT

Vs

Gandham Satyanarayana and Others

RESPONDENT

Date of Decision : 12-06-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1

Citation : AIR 2006 AP 381 : (2006) 4 ALD 781 : (2006) 4 ALT 627 : (2006) 4 CivCC 393 : (2007) 5 RCR(Civil) 267

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : P.R. Prasad, for the Appellant; V.S.R. Anjaneyalu, for the Respondent

Judgement

L. Narasimha Reddy, J.—The petitioner filed O.S.No. 610 of 2004, in the Court of Principal Junior Civil Judge, Machilipatnam, against the respondents, for the relief of perpetual injunction. He filed I.A.No. 1158 of 2004, under Order 39 Rule 1 C.P.C., for temporary injunction.

2. The petitioner pleaded that four items of suit schedule property, being agricultural lands, were purchased by his father, through sale deed, dated 12-5-1960, under Ex.P-1. He stated that after the death of his father in the year 1964, his mother was in possession and enjoyment of the said land. Petitioner pleaded that his mother executed a Will, dated 29-1-2003, and after her death in the year 2003, the suit schedule properties have devolved upon him and his brother.

3. The petitioner complained that the 1st respondent, who is none other than his brother-in-law, and his brother, the 2nd respondent herein, started interfering with their possession, with the co-operation and assistance of 3rd respondent. It was urged that the 1st respondent initially got the suit schedule properties leased in favour of the 3rd respondent, and thereafter, started cultivating the land by himself, up to the year 2004, high handedly. It is said that on 6-9-2004, when the petitioner and this brother were cultivating the land, the 1st

respondent attacked them with the help of some other persons and that, in turn, resulted in filing of complaints and registration of cases. The petitioner has filed the title deeds, as well as cist receipts, up to the year 1985.

4. The 1st respondent, on the other hand, pleaded that items 2(a) and (b) of the suit schedule were given to his wife towards Pasupu Kunkuma, at the time of her marriage with him, and that as regards the land in items, 1, 3 and 4, his father was initially lessee from 1978, and after his death in 1992, he is continuing as lessee.

5. The trial court dismissed the I.A., through order dated 1-2-2005. Thereupon, the petitioner filed C.M.A.No. 2 of 2005, in the Court of I Additional District Judge, Krishna at Machilipatnam. The C.M.A. was dismissed on 6-9-2005. Hence this C.R.P.

6. Sri P.R. Prasad, learned Counsel for the petitioner, submits that the trial court as well as the lower appellate court, did not take into account, the fact that the title of the petitioner over the land is beyond any pale of doubt, and that the payment of cist upto 1985, clinchingly prove the possession and enjoyment of the petitioner over the suit schedule property, and a presumption of forward, deserves to be drawn, till any fact, which is preponderance and adverse to the interest of the petitioner, is pleaded and proved. He contends that taking advantage of his relationship with the family of the petitioner, the 1st respondent is highhandedly trespassing into the land and causing hardship to them. learned Counsel points out that both the courts have misinterpreted the purport of Ex.R-1, the report, said to have been submitted by the brother of the petitioner to the police.

7. Sri V.S.R. Anjaneyulu, learned Counsel for the respondents, on the other hand, submits that it is for the petitioner, to prove that he is in possession of the suit schedule property, as on the date of filing of the suit, and even if there was any weakness in the case of the respondents, the same cannot ensure to the benefit of the petitioner. learned Counsel points out that when the petitioner failed to prove the payment of cist, beyond 1985, the question of drawing any presumption in his favour as to possession, as on the date of filing of the suit, does not arise. He further contends that the recitals in Ex.R-1 indicate that the petitioner and his brother have admitted the possession of the 1st respondent over the land.

8. Normally, this Court would be slow to interfere with the concurrent findings of fact, in an application filed under Order 39 Rule 1 C.P.C., in a suit for perpetual injunction. Where, however, the circumstances, demand, this Court does not hesitate to intervene.

9. In the instant case, the title of the petitioner over the land in question, is almost beyond any doubt, particularly in the limited context of a suit for perpetual injunction. Further, the respondents did not plead any title of their own. Possession is a phenomenon, which is fraught with its own uncertainties

and several complications. The finding as to possession, has to be recorded, on the basis of several facts pleaded by both the parties. There does not exist any mechanism, for this, similar to an acid test. Title of plaintiff as regards the property, plays an important role, in the matter of drawing presumption as to possession.

10. Law provides for drawing of presumption forward and backward, particularly in the context of possession. If the plaintiff is in a position to point out that backed by his title, he is in possession of the property, up to a particular point of time, the same state of affairs deserves to be presumed in a forward direction. Such presumption must however stop, if it meets a road block, in the form of a more assertive and evident proof or probability of the defendant being in possession of the same property. Another important aspect is that though the weakness of a defendant in a suit cannot be treated as the strength of the plaintiff, in the course of relative assessment of claims, such a weakness, if exists, would have its own role to play. The reason is that cases cannot be expected to exist in a set or moulded pattern. The Court has to weigh the probabilities, than to require the plaintiff to prove his case beyond any reasonable doubt. Such a course is adopted only in criminal cases. If as between the versions put forward by the plaintiff on the one hand, and the defendant on the other hand, the probability is more towards the plaintiff being in possession, Court should not hesitate to grant the relief, and reject it, if it is otherwise.

11. It is a matter of record that the petitioner has filed title deeds and cist receipts up to the year 1985. The reasons, as to why cist receipts for subsequent period are not filed, are not actually forthcoming. The fact, however, remains that in respect of that land, cist was not either received, or paid, subsequent to 1985, by any one. An inference can be drawn that the same state of affairs continued. The only plea raised by the 1st respondent was that his father was a tenant from the year 1978 onwards, and after the death of his father in 1992, he continued in possession. If that were be so, he could have certainly placed evidence of some sort, in support of the plea of existence of such tenancy. It can be in the form of a registered or unregistered lease deed, receipts for payment of cist, receipt for payment of makta or affidavits by persons, who are acquainted with the existence of such lease. Except the oral assertion of the 1st respondent, nothing is forthcoming, in this regard.

12. Ex.R-1 was a complaint said to have been given by the brother of the petitioner. The question as to whether the facts mentioned therein can be attributed to the petitioner is a different thing, altogether. Even assuming that the facts mentioned in Ex.R-1 can be taken on their face value, at the most, they reveal the alleged attack by the 1st respondent and his supporters upon the complainant. It was mentioned that the attack took place when complainant was cultivating the land. That also would shake the version of the 1st respondent that he is in possession of the suit schedule property. Ex.R-2 is the copy of petition in ATC No. 6 of 2004. It is stated that ATC was filed by the 1st respondent for a

declaration that he is the tenant in respect of a piece of land. If he were to be in possession of his land, in the natural course of conduct, he would have filed an application for injunction, particularly, when criminal cases have ensued, in relation to the enjoyment of the land. The very fact that he did not file any petition for injunction, despite the registration of criminal cases between the parties, discloses that he is not in possession or lawful entitlement of the property.

13. So far as items 2-A and B are concerned, except making a oral assertion, the 1S1 respondent did not place any material before the trial court, to substantiate the contention that they were given to his wife towards Pasupu Kunkuma. At any rate, if the lands were given as Pasupu kunkuma to his wife, the 16th respondent cannot have any right over the same, except through his wife.

14. For the foregoing reasons, the C.R.P. is allowed, and the order of the trial court, as confirmed by the lower appellate court, is set aside. Consequently, the I.A.No. 1158 of 2004 is allowed, and there shall be a temporary injunction in favour of the petitioner, till the disposal of the suit. There shall be no order as to costs.