
(2006) 03 AP CK 0112
In the Andhra Pradesh High Court
Case No : CRP No. 1046 of 2006

Ganta Chinna Shankaraiah

APPELLANT

Vs

Nadunoori Swamy

RESPONDENT

Date of Decision : 02-03-2006

Acts Referred:

Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 — Section 13, 6
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1
Constitution of India, 1950 — Article 227

Citation : (2006) 3 ALD 646 : (2006) 6 ALT 178

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : P. Keshava Rao, for the Appellant; P. Hari Prasad, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Heard Sri P. Keshava Rao, Counsel for petitioner and Sri Hari Prasad, Counsel representing the respondent.

2. The unsuccessful respondent/defendant in both the Courts below had preferred the present civil revision petition under Article 227 of the Constitution of India. The respondent herein, plaintiff in the suit O.S.No. 692/2005 filed an application LA. No. 1453/2005 under Order 39 Rule 1 of the Code of Civil Procedure, hereinafter in short referred to as "Code", praying for temporary injunction. The learned II Additional Junior Civil Judge, Warangal on appreciation of Exs.P-1 to P-10 and Exs.R-1 to R-14 came to the conclusion that inasmuch as the plaintiff is claiming the property in S.No. 703 and the present revision petitioner/defendant is claiming in S.No. 704, in the light of the mutation, the other revenue records and the pahanies, the plaintiff had made out a prima facie case and hence he is entitled for the relief of temporary injunction. The Court of first instance placed reliance on State of Andhra Pradesh Vs. Prameela Modi and Others, , N.R. Srinivas Vs. Madduri Mallareddy and Others, , State of Himachal Pradesh v. Keshav Ram Ors. 1997 (2) APLJ 53 etc.

3. The unsuccessful defendant/respondent in the aforesaid application, aggrieved by the order dated 1-8-2005 made by the II Additional Junior Civil Judge, Warangal referred to supra had carried the matter by way of C.M.A No. 49/2005 on the file of III Additional District Judge, Warangal and the appellate Court at Para-8 having framed the Points for consideration discussed the facts in nutshell at Paras 9, 10, 11 and 12 and ultimately came to the conclusion that the order of the Court of first instance need not be interfered with and accordingly dismissed the Appeal, making no order as to costs. Aggrieved by the same, the present civil revision petition is filed.

4. Sri Keshava Rao, the learned Counsel representing the petitioner/unsuccessful defendant in both the Courts below would maintain that when a specific stand was taken by the petitioner that no such land in fact is in existence in S. No. 703 and by giving wrong boundaries under the guise of this order the respondent/plaintiff is trying to occupy his property in S. No. 704, the burden is on the plaintiff to establish the prima facie case in relation thereto and the observation made that it is for the petitioner/defendant to establish the same is an erroneous approach. The learned Counsel also further explained the actual extent of land they have in S.No. 703 and would maintain that even on mathematical calculations if the lands are to be calculated one may have to arrive at the irresistible conclusion that the extent of land as claimed by the plaintiff/respondent is not available on the land. The learned Counsel also would point out that the appellate Court committed yet another error in not taking into consideration the land of Gattaiah at all while calculating the extents of land and this had resulted in miscarriage of justice. The Counsel also would point out that the son of the vendor of the plaintiff/respondent, E, Pravin Chander Reddy, is said to have given a third party affidavit before the Court of first instance to the effect that the plaint schedule land was not sold to the plaintiff/respondent and in the said affidavit the age of the deponent was shown as 49 years but however he was shown as one of the witnesses in the document dated 15-3-1970 and on the said date the deponent would have been only 13 years. This itself would falsify the document in question. The learned Counsel also made an attempt to produce the said document at the Revisional stage which had not been exhibited and made certain comments in relation thereto.

5. Per contra, Sri Hari Prasad, the learned Counsel representing the respondent/plaintiff would contend that in the light of the reasons recorded in detail by both the Courts below, this is not a fit case to be interfered with under Article 227 of the Constitution of India. The learned Counsel also would maintain that in a suit for perpetual injunction simpliciter, while deciding an application for temporary injunction, prima facie proof relating to possession may have to be appreciated. The learned Counsel pointed out that pahanies Exs.P-4 to P-10 would clearly establish the possession of the vendor of the plaintiff and subsequent thereto of the plaintiff in relation to the property. The learned Counsel also would maintain that the Revenue authorities in fact had conducted an enquiry and not only had mutated the revenue accounts but also issued pattadar pass book and also title

deed to an extent of Acs.2-10 gts. in S.No. 703. The learned Counsel would maintain that these entries made by the competent revenue authorities are to be taken to be valid unless the contrary is established. The Counsel also would submit that on land the extent is available and the contention raised by the other side that such land is non-existent and under the guise of this order the plaintiff is trying to encroach upon the land in S. No. 704 is not the correct stand. The learned Counsel also would comment that Exs. R-13, R-14 and also R-12 relied upon by the Revision petitioner/defendant i.e., ryth passbook, title deed and the other documents marked as Exs.R-1 to R-9 are not in serious controversy. The Counsel would maintain that it is pertinent to note that Exs.R-12, R-13 and R-14 relate to S.No. 704 in which the plaintiff/respondent is not claiming any interest. The Counsel also would maintain that even if there is any dispute relating to the actual identify of the property and in the event of some boundary dispute being there in between S.No. 703 and S.No. 704, the matter may have to be decided at the appropriate stage. In view of the fact that both the Courts had arrived at a conclusion that the plaintiff/respondent made out a prima facie case and balance of convenience is in his favour, the impugned order need not be disturbed by this Revisional Court while exercising powers under Article 227 of the Constitution of India.

6. For the purpose of convenience, the parties hereinafter would be referred to as "plaintiff and "defendant".

7. It is needless to say that the unsuccessful defendant/respondent in the temporary injunction application is the revision petitioner. The stand taken by the plaintiff is that his father purchased the property in question in the name of the plaintiff on 15-3-1970 and since then he has been in possession and enjoyment of the said property. It was also stated that in November 2003 he had applied for mutation of his name in Revenue records and for grant of pattadar passbook and title deed and the Revenue authorities after putting notice in the village Mucharla and waiting for 15 days ordered for mutation of his name in the Revenue records after payment of stamp duty and registration charges and no objections were received from anybody. It is also stated that the M.R.O., Hasanparthy regularised the sale deed under A.P. Rights in Land and Pattadar Pass Books Act 1971 and issued passbook in his name. After issuance of certificate u/s 13(b) of the said Act his name had been entered in the revenue records and pahani also was issued for the year 2003-2004. It is also stated that the defendant is the owner of land in S.No. 704/1/2 adjacent to the suit land and he is trying to occupy the property and he is trying to interfere with the property inasmuch as this land is a more fertile land. In the said circumstances, a suit for permanent injunction was filed and application for temporary injunction was moved as aforesaid.

8. Initially urgent notice was ordered and the defendant/Revision petitioner having entered appearance filed counter taking a stand that one Inugala Sujatha Bai was the owner, possessor and pattedar of the land bearing S.Nos. 704, 705 and 706 of Mucharla Village of Hasanparthy Mandal and the defendant purchased

Acs. 4-15 gts. from her under a simple sale deed dated 15-11-1964 for a valid consideration and obtained possession and since then he has been in possession of the property. He also purchased Ac. 1-00 of land in Sy. No. 704 from her on 20-1-1988. Out of total land of Acs.5-14 gts., he had gifted Acs. 1-20 guntas in S.No. 704 to his daughter and the remaining land is in his possession. Specific stand was taken that the plaint schedule property is part and parcel of the land possessed by him in S.No. 704. He also purchased Acs.3-00 from the said Sujatha Bai in S.Nos. 705 and 706 and his name was mutated in revenue records and ryot pass book, pattadar pass book and title deed had been issued. Thus the plaintiff is neither the owner of this extent of land nor he is in possession of the land in question. Both the Courts recorded reasons and ultimately came to the conclusion that the plaintiff made out a prima facie case and granted temporary injunction. The same is being seriously assailed in the present revision.

9. The scope of Article 227 of the Constitution of India and the limits and the parameters within which this Court can exercise the powers interfering with such impugned orders are well settled and the said principles need not be repeated again. It is not doubt true that the Court of first instance and also the appellate Court had been mainly guided away by the fact that inasmuch as the plaintiff had taken the specific stand that the plaintiff schedule property is in S.No. 703 and the revenue records also do show about the prima facie possession, it is a fit case where temporary injunction to be granted. No doubt some attempt was made by the learned Counsel representing the revision petitioner/defendant before this Court even if the mathematical calculations to be taken into consideration, the stand taken by the plaintiff relating to the existence of an extent of Acs.2-10 gts. in S.No. 703 cannot be sustained or believed. This is no doubt a controversial question which may have to be gone into at the appropriate stage. The main contention of the defendant is that by showing some wrong boundaries and by obtaining the present order of temporary injunction the plaintiff is trying to encroach upon his property which in fact is located in S.No. 704. This is yet another question which may have to be gone into by actually identifying the property and locating the property if need be with the help of an Advocate Commissioner. It is also no doubt true that the mutation appears to be very recent. Equally the ryot passbook and the title deed also had been obtained by the plaintiff recently. However, the procedure under A.P. Rights in Land and Pattedar Passbooks Act 1971 and the Rules framed thereunder had been followed. Section 6 of the aforesaid Act dealing with Presumption of correctness of entries in record of rights specifies that every entry in record of rights shall be presumed to be true until the contrary is proved or until it is otherwise amended in accordance with the provisions of the Act. No doubt the other provisions contemplate some procedure which may have to be followed. Certain suspicious circumstances had been pointed out even pointing out an exhibited document before this Court. This Court is not inclined to express any opinion relating to the said aspect since it is an unexhibited document and for the first time at the Revisional stage the same cannot be looked into. Be that as it may, it is suffice to

comment that certain suspicious features of the said document had been pointed out and it was also brought to the notice of this Court that on the strength of such suspicious document, the ryotwari passbook, title deed and the mutation had been obtained. It is also made clear that these questions also may have to be agitated at the appropriate stage. It is suffice to observe that all these serious and controversial questions which had been raised by Sri Keshava Rao, the learned Counsel for the revision petitioner/defendant may have to be gone into at the time of final disposal of the suit.

10. The well settled principles of strong prima facie case, balance of convenience and irreparable loss while exercising the discretion, either granting or refusing temporary injunctions, being well known, the said principles need no repetition at the hands of this Court. It is no doubt true that no uniform rule can be laid down that under no circumstances the High Court can interfere in a matter of this nature under Article 227 of the Constitution of India. However, the power to be exercised very sparingly and the interference to be slow and cautious, especially when relating to the ingredients to be satisfied either for granting or refusing temporary injunction, prima facie, concurrent findings had been recorded in a particular way by the Courts below. In the light of the limitations imposed on this Court while exercising powers under Article 227 of the Constitution of India, this Court is not inclined to disturb the orders made by the Court of first instance which had been confirmed by the appellate Court. Accordingly the civil revision petition shall stand dismissed.

11. It is stated that the pleadings of the parties in the suit are complete and in view of the same, the learned Judge to proceed with the main suit and to decide the same, preferably within a period of four months from the date of receipt of the order. It is needless to observe that the parties are at liberty to move appropriate application for appointment of Commissioner for identification or location of the property both in S.No. 703 and in S.No. 704, if they are so advised. No costs.