
(2014) 12 AP CK 0123

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal Nos. 792 and 812 of 2014

Gorrepati Vijaya Lakshmi and Others

APPELLANT

Vs

Gorrepati Prabhakara Lakshmi and Others

RESPONDENT

Date of Decision : 19-12-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 40 Rule 1, 151

Citation : (2015) 6 ALD 208

Hon'ble Judges : A. Rajasekhar Reddy, J.

Bench : Single Bench

Advocate : S. Rahul Reddy, for the Respondent

Judgement

A. Rajasekhar Reddy, J.?These Civil Miscellaneous Appeals are filed against the Order dated 11.08.2014 passed by the learned IX Additional District Judge, Tenali, in I.A. No. 862 of 2013 in O.S. No. 39 of 2014, which was filed for grant of Temporary Injunction under Order XXXIX Rules 1 and 2, whereby the Court below passed an order appointing Advocate Commissioner as Receiver to manage the suit schedule properties denying the relief for grant of injunction.

2. The parties will be referred to as arrayed in the Trial Court.

3. The case of the petitioners is that the petitioner No. 1 is the wife and petitioner Nos. 2 and 3 are the sons of late Gorripate Venkat Reddy who inherited an extent of Acs. 05.50 cents i.e., suit schedule property after the death of Gorripate Venkat Reddy on 15.04.2012 and accordingly, they are in possession and enjoyment of the properties of late Venkata Reddy. Since the respondents are claiming the suit schedule property through will dated 17-01-2002 said to have been executed by Gorripate Venkat Reddy and trying to interfere with the possession of petitioners, they filed suit for declaration of title and consequential injunction in respect of the plaint schedule properties and interlocutory application for temporary injunction.

4. Counter affidavit is filed by the respondent No. 1, which is adopted by

respondent Nos. 2 and 3, before the Court below denying the possession of the petitioners and also stated that the petitioners never raised any crops and that petitioner No. 1 is not legally wedded wife of late Venkat Reddy as she was married during the subsistence of his marriage with his first wife by name Venktaratnam, who is alive today, and that their marriage was never dissolved and the dissolution as claimed by the petitioner No. 1 is denied. It is also stated that the suit is barred under Order 2 Rule 2 of the Code of Civil Procedure and also for non-joinder of necessary party. It is also stated that after the marriage with Venkata Reddy, the petitioner No. 1 eloped with one Gorrepati Appireddy and has been living with him as wife and husband and that the petitioner Nos. 2 and 3 were never born to late Venkata Reddy and that the marriage of late Venkata Reddy with 1st petitioner was never consummated. It is also stated that Venkat Reddy never performed any ceremonies of petitioner Nos. 2 and 3 nor attended any function much less betrothal or marriage and the so-called photographs were manipulated and they are not admissible in evidence. It is also stated that late Venkata Reddy executed his last Will in a sound and disposing state of mind while in hospital on 17.01.2012 in favour of the respondents in respect of suit schedule property. After the death of Venkat Reddy, the respondents came into possession of the same. Accordingly, the respondent No. 1 has been in continuous possession of her properties i.e., Item No. 1 and 2 through lessees. Insofar as item No. 3 concerned, R-3 was cultivating the same personally for the year 2012-2013 by raising two crops and realizing the yield, and for the year 2013-2014, she raised paddy crop. Venkat Reddy died on 15-04-2012. The obsequies of Venkata Reddy were performed by his nephew-Venkata Reddy, S/o. Gudeti Seethamma and that the first annual customary ceremony was also performed by the above said Venkata Reddy, S/o. Seethamma. It is also stated that respondent No. 1 paid cist of the wet lands bequeathed to her on 29.07.2012, but not by petitioner No. 1 on 14.08.2012. The disputes arose only when the petitioners developed evil designs to grab the properties. In furtherance of their evil design, they started creating evidence and applied for new pass books in their names enclosing alleged title deed and admitting that the previous pass book was in bank. Further, they tried to obtain passbooks from M.R.O. suppressing the Will in favour of respondents though they are fully aware of the Will right from the death of Venkata Reddy. It is also stated that in the suit in O.S. No. 277 of 2012 filed by the relative of Venkat Reddy pending on the file of Junior Civil Judge's Court, Tenali, the respondents filed Written Statement stating that no estate of the deceased Venkata Reddy developed upon them. Hence, the respondent prayed to dismiss the Petition.

5. R-2 filed counter stating she lived in relationship with the deceased Venkat Reddy for about 30 years prior to his death and his second wife, the 1st petitioner herein left the deceased Venkat Reddy about 44 years back. She and Venkat Reddy were living in Door No. 5-91 of T. Surdur village. She further stated that during his lifetime, the said Venkata Reddy executed a will, dated 17-01-2012 in respect of his properties out of which an extent of Ac. 0-26 cents

was given to her and similar extent of Ac. 0-26 cents was given to his servant Mudrabiona Venkaiah (R3) and remaining property was given to his sister Vijaya Lakshmi (R1) and that the said will was announced in the house of R1 on the final day ceremony of the said Venkata Reddy on 29-04-2012 and thereafter took possession of the property given under the will and raised paddy and maize for the years 2012-13 and 2013-14 and that prior to the death of Venkat Reddy, one Yebo was cultivating the said extent and after knowing the execution of the will, the said Yebu left the land and that R1 cultivating some land personally and leased out the some land since two years and that Venkata Reddy has no issues and after his death, the other portion of his house was taken possession by the brother's wife and children and enjoying the same. She further stated that about one year back on the pretext of getting any passbook for the extent of Ac. 0-26 cents from Tahsildar Office, the 1st petitioner took away the passbook, title deed, tractor document and other documents from her available in the house of Venkata Reddy and that she applied to Tahsildar to issue family certificate and passbook and given statement and that the petitioners were never in possession of the schedule properties.

6. The counter was filed by 3rd respondent while adopting the pleadings of the respondents 1 and 2 that he is concerned only with item No. 4B of the plaint schedule which was bequeathed to him under will, dated 17-01-2012 by late Venkata Reddy while in a sound and disposing state of mind and that he served Venkata Reddy for the last about more than 10 years prior to his death and attended on him for every physical need and waited on him in hospitals and did manual help for Venkata Reddy and therefore, he was bequeathed only Ac. 0-26 cents of wet land and earlier lessees Yebu vacated during lifetime of Venkat Reddy due to an accident and after the death of Venkata Reddy, this respondent cultivated the extent and raised paddy and maize for the years 2012-13 and he raised paddy in this season and he was called by Tahsildar and given statement with true facts and therefore, while denying the other allegations prayed to dismiss the petition.

7. The Court below basing on Exs. A. 1 to A. 27 adduced on behalf of the petitioners and Exs. B. 1 to B. 47 adduced on behalf of the respondents, refused to grant temporary injunction, as sought for by the petitioners/plaintiffs, but instead appointed Advocate Commissioner as Receiver to manage the suit schedule properties until further orders and directed the Advocate Commissioner to conduct auction of lease hold rights in respect of the suit schedule properties from time to time.

8. Challenging the order passed in I.A. No. 862 of 2013 in O.S. No. 39 of 2014, C.M.A. No. 862 of 2014 is filed by petitioners and C.M.A. No. 792 of 2014 is filed by respondents.

9. Both the counsels insisted for disposal of main C.M.As.

10. The learned senior counsel for petitioners/appellants, Mr. Lakshma Reddy in

C.M.A. No. 812 of 2014 and respondents in C.M.A. No. 792 of 2014, submitted that the Court below has misconstrued EXs. A. 1 to A. 27 and held that the petitioners are not in possession of the suit schedule property. He further contended that Exs. A. 22 to A. 27, which are Residence Certificate, Study Certificate, SSC certificate and Voter ID of petitioner No. 2, Aadhar Card of 1st petitioner and Aadhar Card of 3rd petitioner, show that late Venkata Reddy is the father of petitioner Nos. 2 and 3 and husband of 1st petitioner and these documents are prior to the death of late Venkata Reddy. It is also submitted that the Court below accepted that 1st petitioner is the wife and the petitioner Nos. 2 and 3 are sons of Venkata Reddy and hence, they are entitled to succeed to the estate of late Venkata Reddy being Class 1 heirs, as such, the respondents cannot interfere with the possession of the petitioners. He further submitted that even if it is taken that the petitioners are not in possession, there is nothing wrong in appointing receiver when there is scramble for possession. Since the Court below found that both the parties are not in possession, to safeguard the interests of both parties and also to safeguard the suit schedule property, suo motto appointed receiver to manage the suit schedule properties until disposal of the suit. He further submitted that even children born out of second marriage, have a right in ancestral property as well in self-acquired properties of his father. In support of his contentions, the learned counsel for petitioners relied upon the following decisions:

1. Revanasiddappa and Another Vs. Mallikarjun and Others,
2. Mahila Mathuro Bai and Others Vs. Ramwati and Others,
3. Rasala Surya Prakasarao and others Vs. Rasala Venkateswararao and others,
4. AIR 1971 ANDHRA PRADESH 380

11. On the other hand, the learned counsel for the respondents in C.M.A. No. 812 of 2014 and appellants in C.M.A. No. 792 of 2014, contends that admittedly even as per the petitioners, petitioner No. 1 is the second wife of late Venkat Reddy and petitioner Nos. 2 and 3 are born out of their wedlock and though it is pleaded that divorce has taken between first wife and late Venkata Reddy, there is no proof in respect of the same. As such, the petitioners are not entitled to seek any right over the suit schedule property. The learned counsel also submitted that the petitioners have admitted that no estate of the deceased late Venkata Reddy devolved upon them, as per their counter in I.A. No. 862 of 2013 in O.S. No. 235 of 2013 and also in their Written Statement in O.S. No. 235 of 2013. He further submitted that the petitioners also admitted that for the last 40 years, the petitioners are not living with late Venkata Reddy. It is also contended that even according to the petitioners, the estate of late Venkata Reddy had not devolved upon the petitioners, as such question of being in possession over the suit schedule property as on the date of filing of the suit does not arise. He also contended that the conduct of the parties have also to be taken into consideration for grant of injunction. In support of his contentions, he relied upon

the following judgments:

1. Bharatha Matha and Another Vs. R. Vijaya Renganathan and Others,
2. Taste Hotels Private Limited Vs. Medisetty Jayasri and Nainala Chaitanya,
3. Doppalapudi Venkata Subbamma and Another Vs. Doppalapudi Ramaiah and Another,
4. Yerra Venkatesh Vs. Nathi Mallesh and others,
5. T. Krishnaswamy Chetty Vs. C. Thangavelu Chetty and Others,
6. C. Rajendra Prasad Vs. G.M. Corporation and others,

12. In view of rival contentions, the points that fall for determination in this appeal are:

1. Whether the petitioners are in possession of suit schedule property if so whether they are entitled for grant of injunction?
2. Whether the Court below can appoint a receiver in an I.A. filed under Order XXXIX Rules 1 and 2 and Section 151 of CPC?

POINT No. 1:

13. Admittedly, the suit schedule property admeasuring Acs. 5-50 cents is the ancestral property of late Gorripati Venkat Reddy. Whereas petitioner No. 1 is claiming the suit schedule property as second wife of late Gorripati Venkat Reddy, petitioner Nos. 2 and 3 are claiming as sons of late Gorrepati Venkat Reddy after his death on 15-04-2012.

14. The respondents are claiming the suit schedule property by virtue of will deed dated, 17-01-2012. Respondent No. 1 is the sister of late Gorrepati Venkat Reddy and R2 as his mistress and R3 as his worker.

15. Now the present appeals arise out of interlocutory order for grant of temporary injunction pending suit. The only aspect, which needs to be considered at his stage is, who is in possession of the suit schedule property as on the date of filing of the suit.

16. Petitioners/appellants in C.M.A. No. 812 of 2014 have not produced any documents to show that they have been in possession of the suit schedule property except stating that they are legal heirs of late Gorripati Venkat Reddy who died in the year 2012 and since they are the legal heirs they automatically succeed to the suit schedule property and presumption should be drawn that they are in possession of the suit schedule property. Exs. B. 23, which is written statement filed by the petitioners in O.S. No. 277 of 2012 and Ex. B. 25 copy of the counter affidavit in I.A. No. 862 of 2013 in O.S. No. 235 of 2013 filed by petitioners and signed by them on 3.12.2012 reads "the father of the defendant deserted the family long ago while this defendant and his brother were minors

and he resided separately till his death. No estate of the deceased Venkatreddy devolved upon either on this defendant and defendants 1 and 2", in which it is categorically admitted by petitioner Nos. 1 and 2 that they have not inherited any property of late Gorripati Venkat Reddy and they are living separately from Venkat Reddy which is an admission in judicial proceedings. Even the case of petitioner No. 1 is that she is second wife of Venkat Reddy after divorce from 1st wife and suit schedule property is ancestral property. Unless, divorce is proved, petitioner No. 1 and petitioner Nos. 2 and 3 will not be entitled to claim suit property since it is admittedly ancestral property. As per law laid down in Bharatha Matha and Another Vs. R. Vijaya Renganathan and Others, , it is held that the children born of void or voidable marriage, can only claim share in self-acquired properties of parents but cannot claim inheritance in ancestral coparcenary properties. In those circumstances, it can be presumed that deceased Venkat Reddy might have executed Will in favour of the respondents and though the said view was not accepted in a decision reported in Revanasiddappa and Another Vs. Mallikarjun and Others, , and the same is referred to larger bench but the judgment reported in Bharatha Matha and Another Vs. R. Vijaya Renganathan and Others, , (supra) holds field and in view of same the judgments cited by learned counsel for petitioner in Mahila Mathuro Bai and Others Vs. Ramwati and Others, , and Rasala Surya Prakasarao and others Vs. Rasala Venkateswararao and others, , cannot come to the rescue of petitioner. More so, petitioners have also not explained under what circumstances such admission is made and not binding on them. Admission made in Exs. B-23 and B-25 is clear and positive. Such admission can safely be taken into consideration as held in Taste Hotels Private Limited Vs. Medisetty Jayasri and Nainala Chaitanya, . Respondent No. 1 has specifically pleaded in the counter that she raised crop in suit schedule property in 2012-2013 and 2013-2014. It is also stated that obsequies of Venkat Reddy are performed by his sister's son. No rejoinder is filed by petitioners denying the same, which also goes against them. The assertion made by petitioners that they inherited suit property after the death of Gorripati Venkat Reddy and are in possession runs counter to admission made in Exs. B. 23 and B. 25, which are signed on 03.12.2012. Prima facie, the assertion that petitioners/appellants cultivated the suit property for the year 2012-2013 also appears to be incorrect since in Exs.B-23 & B-25 signed on 03.12.2012, they stated that no property of Venkat Reddy devolved upon them. Conduct of the parties have also to be taken for grant of injunction as held by this Court in Doppalapudi Venkata Subbamma and Another Vs. Doppalapudi Ramaiah and Another, . No documentary evidence is filed to establish that petitioners are in possession of said property except assertions in the affidavit which run contrary to admission made in Exs. B23 & B25 as such petitioners failed to establish that they are in possession. Since petitioners failed to prove that they are in possession of suit property as on the date of filing of suit, question of grant of injunction does not arise and as the same balance of convenience and irreparable loss to petitioners does not arise as held in Yerra Venkatesh Vs. Nathi Mallesh and others, .

17. In Doppalapudi Venkata Subbamma and Another Vs. Doppalapudi Ramaiah and Another, , it is held as follows:

"It is settled law that while passing an interim order of injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908, the Court is required to consider three basic principles namely, a) prima facie case, b) balance of convenience and inconvenience and c) irreparable loss and injury. In addition to the above mentioned three basic principles, a Court, while granting injunction must also take into consideration the conduct of the parties. It is also established law that the Court should not interfere only because the property is a very valuable one. Grant or refusal of injunction has serious consequences depending upon the nature thereof and in dealing with such matters the Court must make all endeavors to protect the interest of the parties."

18. In the present case, petitioners admitted in Exs. B. 21, B. 23 and B. 25 as on 25-05-2012 and 03-12-2012 and living separately that no property of Venkat Reddy devolved on them but for the first time on 05-08-2013 in present suit, they stated that they came into possession immediately after death of Venkat Reddy, which is inconsistent, which tells upon their conduct and as such not entitled for injunction.

19. Now the second point to be determined is:

Whether the Court below can appoint a receiver in an I.A. filed under Order XXXIX Rules 1 and 2 and Section 151 of CPC?

20. Ex. B. 13 original will dated 17-01-2012 and third party affidavits filed under Exs. B. 14, B. 15 and Ex. B. 16 cist receipt, Exs. B. 27 and B. 28 show respondent is in possession, Ex. B. 26 which are the photos showing that the son of another sister of Venkat Reddy performed obsequies of late Gorripati Venkat Reddy, shows that the petitioners are not looking after Gorripati Venkat Reddy and not living with him. The petitioners admitted in Exs. B. 23 & B. 25 that no property of Gorripati Venkat Reddy devolved on them. The above admissions can be taken into consideration. R. 1 is in possession of medical bills, certificates - Exs. B. 7 to B. 12 and discharge certificates of late Gorripati Venkat Reddy, which prima facie show that she was taking care of Venkat Reddy when the petitioners left the company of late Gorripati Venkat Reddy. In those circumstances it can be presumed that deceased Venkat Reddy might have executed will in favour of his sister and others.

21. No doubt, as per judgment reported in Ravi Lakshmaiah Vs. Nagamothu Lakshmi and Another, and C. Rajendra Prasad Vs. G.M. Corporation and others, , the receiver can be appointed under Order 40 Rule 1 of the C.P.C. in an application filed under Order 39 Rule 1 of C.P.C. when there is scramble for possession between the parties but the admissions of petitioners in Exs. B. 23 and B. 25 clearly goes to show that they have not inherited any property of Gorripati Venkat Reddy and evidence adduced by respondents indicate respondents are in possession of suit property as such question of scramble for

possession does not arise.

22. When there is no proof at this stage that the first wife was divorced and that the petitioners are entitled to the property of late Gorripati Venkat Reddy it cannot be held that they succeeded to the properties automatically. For the first time after the death of Gorripati Venkat Reddy they claim that they are in possession of his property. There is no quarrel about the principle that receiver can be appointed in an application under Order 39 Rule 1 of C.P.C. but in present case since it is found respondents/appellants in C.M.A. No. 792 of 2014 are found to be in possession of suit property, that possession cannot be disturbed by appointing receivers.

23. In *T. Krishnaswamy Chetty Vs. C. Thangavelu Chetty and Others*, , it is held as follows:

"(1) The appointment of a receiver pending a suit is a matter resting in the discretion of the Court.

(2) The Court should not appoint a receiver except upon proof by the plaintiff that prima facie he has a very excellent chance of succeeding in the suit.

(3) Not only must the plaintiff show a case of adverse and conflicting claims to property, but, he must show some emergency or danger or loss demanding immediate action and of his own right he must be reasonably clear and free from doubt. The element of danger is an important consideration.

(4) An order appointing a receiver will not be made where it has the effect of depriving a defendant of a "de facto" possession since that might cause irreparable wrong. It would be different where the property is shown to be "in medio", that is to say, in the enjoyment of no one."

24. In view of above facts and circumstances and law laid down in the judgments cited supra, I am of the view that trial Court rightly refused to grant injunction after holding petitioners are not in possession of suit property but erroneously appointed receiver.

25. Accordingly, C.M.A. No. 792 of 2014 filed for setting aside appointment of receiver is allowed and C.M.A. No. 812 of 2014 is dismissed confirming the order in so far as refusal to grant injunction and any observations made in these appeals are only made for the purpose of deciding these appeals filed against the Interlocutory orders. However, the trial Court shall dispose of the suit without being influenced by any of the observations made herein. There shall be no order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.