
(2013) 08 AP CK 0082

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 579 of 2013

Hydrogen Fuel Systems

APPELLANT

Vs

Smt. Praveena Madan

RESPONDENT

Date of Decision : 08-08-2013

Acts Referred:

Citation : (2013) 5 ALD 676 : (2013) 5 ALT 453

Hon'ble Judges : M.S. Rama Chandra Rao, J

Bench : Single Bench

Advocate : Nazir Ahmed Khan, for the Appellant; M.V. Pratap Kumar, Counsel for Mr. Naresh Reddy Chinnola, Counsel, for the Respondent

Judgement

M.S. Rama Chandra Rao, J.—This appeal is filed under Order XLIII Rules 1 and 2 of C.P.C. challenging the order dt. 03.06.2013 in I.A. No. 217 of 2012 in O.S. No. 2182 of 2012 of the IV Senior Civil Judge's Court, City Civil Court, Hyderabad. The appellant is the plaintiff in the above suit. He filed the suit for perpetual injunction restraining the respondent from interfering or dispossessing it from the plaint schedule property without following due process of law. Admittedly, the said suit was filed on 28.12.2012.

2. The case of the appellant is that he is a tenant in the suit schedule property owned by the respondent; that the tenancy commenced on 10.03.2010 and lease agreement dt. 25.02.2010 was entered into between the parties; that it entered into possession of the property and was doing business therein under the name and style of M/s. Hydrogen Fuel Systems; subsequently, the lease was further extended for a period of 3 years under a deed dt. 01.04.2011; that the respondent was pressurising the appellant to vacate the property and threatening the appellant that she would forcibly occupy the property; and therefore, in view of the threat of the respondent and her husband, it has filed the present suit.

3. Along with the suit, the appellant also filed I.A. No. 217 of 2012 seeking

temporary injunction against the respondent and her men or persons claiming through her from interfering or obstructing or dispossessing the appellant from the plaint schedule property without following due process of law. The appellant reiterated the plaint allegations in this application also.

4. On 07.03.2013, an ex parte injunction order was granted in favour of the appellant.

5. The respondent filed a counter affidavit denying the plaint averments and contended that the lease was granted not to the appellant but to an entity by name M/s. Global Hydrogen Systems and Companies; that the appellant has no locus to file the suit; that the suit is not maintainable due to non-joinder of necessary party one Syed Hashmi, who had also signed the lease agreement along with Mohd. Musthaq Ahmed, who represents the appellant; that the appellant has not approached the Court with clean hands; that Mohd. Musthaq Ahmed representing M/s. Global Hydrogen Systems and Companies, approached the respondent in November, 2012 and stated that he is not in a position to carry on business in the plaint schedule property and would vacate the premises; that he also promised to pay the outstanding amount to the respondent but he vacated the premises on 31.12.2012; that subsequently, the respondent entered into a lease w.e.f. 01.02.2013 in favour of M/s. Paramount Communications and from 01.01.2013, the tenant M/s. Global Hydrogen Systems and Companies or its representatives Mohd. Musthaq Ahmed and Syed Hashmi were not in possession of the plaint schedule property as lessee. She also contended that even though the suit was filed on 28.12.2012, appellant did not seek injunction and obtained an ex parte injunction order till 07.03.2013 by which date the appellant was not in possession of the property and M/s. Paramount communications was in possession thereof; that she also filed a complaint with the Inspector of Police, Punjagutta Police Station on 23.02.2013 complaining about the illegal acts of Mohd. Musthaq Ahmed; that on 10.03.2013, the said person again threatened the newly inducted tenant and therefore, the application should be rejected.

6. In the Court below, the appellant marked Exs. P.1 to P.24 and the respondent marked Exs. R.1 to R.11.

7. By order dt. 03.06.2013, the Court below dismissed the I.A. No. 217 of 2012. It held that the respondent had strongly disputed the possession of the appellant in the plaint schedule property and the burden lies on the appellant to show its possession w.e.f. 31.12.2012 as the tenancy prior thereto was not disputed; that such a strong plea taken by the respondent has to be rebutted by the appellant and it should prove that it is continuing in possession of the plaint schedule property after 31.12.2012 also; and that the appellant has failed to prove this fact. It also referred to the material filed by the parties and held that it does not show the possession of the appellant after 31.12.2012. It referred to a third party affidavit filed on behalf of the appellant and held that the third party affidavit filed on behalf of the respondent is more credible.

8. Aggrieved thereby, this appeal is filed by the petitioner/appellant.

9. Heard Sri Nazir Ahmed Khan, counsel for appellant and Sri M.V. Pratap Kumar, counsel representing Sri C. Naresh Reddy, counsel for respondent.

10. The counsel for appellant contended that the respondent having admitted the possession of the appellant as on the date of filing of the suit i.e., 28.12.2012 till 31.12.2012, the Court below erred in dismissing the appellant's application for temporary injunction pending disposal of the suit. He also contended that merely because respondent raised a plea that subsequent to filing of the suit the appellant had delivered possession of the property or vacated the property, the Court below could not have dismissed the I.A. for temporary injunction, particularly when the material placed on record by the respondent is not adequate to prove the said fact. He also contended that the admission made by the respondent that the appellant is in possession as on 28.12.2012 upto 31.12.2012 has to be taken into account because u/s 114 of the Indian Evidence Act, 1872 (for short "the Act"), the Court has to presume the existence of any fact which it thinks likely to have happened; under illustration (d) to Section 114 of the Act the Court has to presume that a thing or state of things, which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence; the third party affidavit filed by the appellant should have been taken into account and not the third party affidavit filed by the respondent; and that the order passed by the Court below is perverse and contrary to evidence on record and should be set aside.

11. Per contra, Sri M.V. Pratap Kumar, counsel for respondent contended that the order passed by the Court below does not suffer from any error in fact or in law; even if the appellant was in possession of the plaint schedule property as on the date of filing of the suit, the Court is bound to take into account the subsequent event of his vacating the premises, in view of the law laid down in Pasupuleti Venkateswarlu Vs. The Motor and General Traders, ; this fact has been established by the respondent by placing material before the Court below and the appellant has not rebutted the said evidence; that the appellant did not come to the Court with clean hands because having filed the suit on 28.12.2012, till 07.03.2013 he did not press for any interim injunction in the Court below; and by 07.03.2013, the appellant had ceased to be in occupation of the plaint schedule property. He also contended that the Court below did not go into the contentions of the respondent that the lease was in favour of M/s. Global Hydrogen Systems and Companies and not in favour of the appellant and therefore, the appellant had no locus to file the appeal. He also contended that there is no prima facie case or balance of convenience in favour of the appellant and no irreparable injury would be caused to the appellant if injunction is not granted.

12. I have noted the submissions of both the counsel.

13. The appellant contends that the respondent had granted a lease in favour of the appellant on 25.02.2010 and this was subsequently extended on 01.04.2011 and it is subsisting as on the date of filing of the suit. The respondent contended that the lease was granted in favour of M/s. Global Hydrogen Systems and Companies and not the appellant, although she admitted that Mohd. Musthaq Ahmed, who represents the appellant, also represented M/s. Global Hydrogen Systems and Companies. The respondent also admitted that Mohd. Musthaq Ahmed was in possession of the plaint schedule property prior to 31.12.2012 and he vacated it on that day without informing the respondent and from 01.01.2013, the respondent is in possession of the property.

14. Neither the appellant nor the respondent have filed the lease agreement to ascertain whether the lease is in favour of the appellant or M/s. Global Hydrogen Systems and Companies. This is a matter which ought to be considered in the suit by the Court below.

15. In view of the admission by the respondent in the counter affidavit filed in I.A. No. 217 of 2012 that Mohd. Musthaq Ahmed was in possession of the plaint schedule property till 31.12.2012, and the suit itself was filed on 28.12.2012, it has to be held that the appellant was in possession of the plaint schedule property through Mohd. Musthaq Ahmed as on the date of filing of the suit. Under illustration (d) to Section 114 of the Act, the Court may presume that a thing or state of things, which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence. Since the appellant is in possession as on the date of filing of the suit i.e., on 28.12.2012, that state of affairs is presumed to continue unless the respondent adduces evidence to show that the appellant had vacated and delivered possession of the property.

16. In *Ambika Prasad Thakur and others v. Ram Ekbal Rai and others* A.I.R 1966 SC 605, the Supreme Court noticed illustration (d) to Section 114 of the Act and held that if a thing or a state of things is shown to exist, an inference of continuity within a reasonable proximate time both forwards and backwards may sometimes be drawn.

17. The evidence placed before the trial Court by the respondent in support of her allegation that the appellant vacated the premises on 31.12.2012 are Exs. R.1 to R.11. Ex. R.1 is the lease agreement entered into by the respondent with M/s. Paramount communications. This document in my opinion is not sufficient to rebut the presumption that the appellant is in possession of the plaint schedule property because the said document is not a registered document and its admissibility is a factor which needs to be considered by the trial Court in the suit. Ex. R.2 is letter dt. 18.04.2013 issued by the Station House Officer, Punjagutta Police Station to the Duty Doctor, Yashoda Hospital. This is also not relevant to prove the possession of the respondent. Exs. R.3 to R.11 are photographs and no conclusion about possession of a party can be drawn merely on the basis of photographs. It is true that subsequent events can also be

considered as held by the Supreme Court in Pasupuleti Venkateswarlu's case (1 supra) but such subsequent events if disputed by the appellant, need to be proved by the respondent during trial. Merely because a pleading is taken by the respondent/defendant that the appellant/plaintiff had vacated the premises after filing the suit, it cannot be accepted as gospel truth.

18. As regards the plea of the counsel for respondent that the appellant has come to the Court with unclean hands (as the respondent was allegedly harassed by the appellant by filing certain criminal complaints) is concerned, I am of the view that a conclusion cannot be drawn that the appellant has approached the Court with unclean hands. A party facing a situation where it is likely to be dispossessed of property, has both remedies in civil law and criminal law. Merely because a party avails both the remedies in its anxiety to protect its possession, it cannot be said that its conduct in approaching the authorities by invoking the criminal law would disentitle it to the relief of temporary injunction in a civil proceeding.

19. As the suit is for a perpetual injunction and the interim application is for temporary injunction pending the suit, normally only possession of the plaintiff on the date of filing of the suit is to be considered. It is true that subsequent events such as the plaintiff voluntarily vacating the premises would also be relevant. In the present case, the respondent had not been able to establish that the appellant had vacated the premises on 31.12.2012 although she admitted that the appellant was in possession till that date. Therefore, I am of the view that the Court below erred in dismissing the I.A. filed by the appellant seeking temporary injunction to protect its possession pending the suit.

20. Therefore, the appeal is allowed and the order dt. 03.06.2013 in I.A. No. 207 of 2012 in O.S. No. 2182 of 2012 of the IV Senior Civil Judge's Court, City Civil Court, Hyderabad is set aside. No costs. As a sequel, miscellaneous applications pending, if any, in this appeal shall stand closed.