
(2005) 03 AP CK 0033
In the Andhra Pradesh High Court
Case No : SA No. 90 of 1997

K. Abdul Raheem (died) per LRs. and Others	APPELLANT
Vs	
Hajeerappa and Others	RESPONDENT

Date of Decision : 04-03-2005

Acts Referred:

Specific Relief Act, 1963 — Section 2(a), 34, 38

Citation : (2005) 3 ALD 15

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

Bench : Single Bench

Advocate : K. Soma Konda Reddy, for Laxmi Narayan Reddy, for the Appellant;
Yadaiah, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—Heard Sri Laxmi Narayana Reddy representing the appellants and Sri Yadaiah representing the respondents. The unsuccessful plaintiff K. Abdul Raheem being aggrieved by the reversing judgment dated 28.12.1996 made in AS No. 16 of 1990 on the file of the Subordinate Judge, Gooty, had preferred the present second appeal. The said Abdul Raheem died pending appeal and the Appellants 2 to 7 were brought on record as the legal representatives of the deceased first appellant by an order dated 22.1.2003 in CMP No. 24519 of 2002.

2. For the purpose of convenience, the parties will be referred to as arrayed in OS.No. 230 of 1982 on the file of the District Munsif Magistrate, Gooty.

3. The plaintiff filed the suit against the defendants for the relief of permanent injunction. The Court of first instance by judgment, dated 24.8.1987 had recorded a finding that the plaintiff had established his possession relating to the plaint schedule property and decreed the suit. Aggrieved by the same, the defendants carried the matter by way of appeal in AS No. 16 of 1990 on the file of the Subordinate Judge, Gooty and the learned Judge by judgment dated 28.12.1996 had reversed the same and aggrieved by the same, the present

second appeal is preferred.

4. Sri Laxmi Narayana Reddy, the learned Counsel representing the appellants/legal representatives of the deceased first appellant/plaintiff would contend that this is a suit for mere injunction and just on the ground that the question of title also may be incidentally gone into, the Appellate Court having recorded a finding that the document in question is a collusive one inasmuch as the same is in between the brothers, had reversed the well considered judgment of the Court of first instance. The learned Counsel also had taken this Court through the findings recorded by the learned District Munsif and also the findings recorded by the learned Subordinate Judge in this regard. The learned Counsel also placed strong reliance on a decision of the Apex Court in Rame Gowda (died) by LRs. v. M. Varadappa Naidu (died) by LRs. and Anr. 2004 (2) ALD 31 (SC), and would contend that for getting a decree of perpetual injunction, if possession is proved that would be sufficient though the title had not been established. The learned Counsel also had drawn the attention of this Court to the findings recorded by the Appellate Court and would contend that the said finding, that a suit for mere injunction without praying for declaration of title cannot be maintained, also is unsustainable and in the light of the substantial questions of law involved in the present second appeal, the appellants are bound to succeed.

5. Per contra, the learned Counsel representing the respondents/defendants had pointed out that clear findings had been recorded by the Appellate Court and also would submit that no substantial question of law is involved in the matter, and hence, the second appeal is bound to fail.

6. The plaintiff, who is no more, instituted OS.No. 230 of 1982 on the file of the District Munsif, Gooty with the following averments:

The plaintiff is the owner of the plaint schedule property purchased by him under a registered sale deed dated 6.1.1968 from one Allabakash son of Dasthagiri Saheb. Since the time of the purchase the plaintiff is in exclusive possession and enjoyment of the said property and except the plaintiff none others have any right, title or interest in the property. After purchasing the land, the plaintiff has dug a well in the schedule mentioned land for irrigation purpose and water is pumped out from the well by means of 5 H.P., electric motor. The plaintiff is raising groundnut and other crops in this land. There is also a room in this land constructed by the plaintiff and the said room is intended for the purpose of keeping the electric motor in safe condition. The schedule mentioned land is situated within the limits of Pamidi Gram Panchayath to the west of Bhaskar Touring talkies and the electric motor room is also assessed to property tax by the Gram Panchayath in Asst. No. 2043 and the door number of the said room is 1-1-442. The agricultural service connection is 668. The Electricity Board has also issued the bill card for the electricity charges for service connection No. 668. Thus the plaintiff is in exclusive and sole occupation of the schedule mentioned property in his own right as owner without any obstruction or interference from anybody openly and adversely to the knowledge of one and all and has perfected

his title to the plaint schedule land by adverse possession also. The plaintiff also owns land adjacent to the schedule mentioned land and that he is irrigating those lands also with the aid of the well and electric motor situated in the schedule mentioned property. The plaintiff is enjoying the entire land including the plaint schedule land as one single compact unit. The defendants are brothers and they are distantly related to the plaintiff. They have no manner of right or interest in the schedule mentioned property and that they were never in possession and enjoyment of the same. They are utter strangers to the schedule mentioned property. But the defendants in order to harass the plaintiff by executing some fictitious documents among themselves are threatening to disturb the peaceful possession and enjoyment of the plaintiff in the schedule mentioned land. They have no right to do so. The defendants are powerful people and they are supported by some unruly elements in their unjust cause out of spite and ill-will towards the plaintiff. The plaintiff has also sown the groundnut crop in the suit land. The crop is one month old. The defendants are threatening to disturb the plaintiff's peaceful possession and enjoyment of the suit land. Hence, the suit for permanent injunction.

7. The 2nd defendant filed a written statement in the suit and the same was adopted by the Defendants 1 and 3. It was pleaded in the written statement that the plaintiff is not the owner of the plaint schedule property and that he never purchased the same from Allabhakash and his title was also specifically denied. Further the allegation that the plaintiff dug a well in the suit land and has been irrigating his land by installing an electric motor and pump sets also had been denied. The plea of adverse possession and perfection of title by adverse possession also had been denied. It was further pleaded that it is also not correct to say that the defendants have manipulated some records among themselves and that they are threatening to disturb the peaceful possession and enjoyment of the plaint schedule mentioned property by the plaintiff. It is also not correct to say that the defendants are powerful and that they are supported by some unruly elements in their unjust cause not of spite and ill-will towards the plaintiff. This defendant respectfully submits that he is the owner of the plaint schedule mentioned property. Originally the said property belonged to the grand father of this 2nd defendant and after his death his two sons viz., Abdul Basheer and Kammara Jaffar Sab have inherited the suit land and after sometime these defendant's father and his father's brother have partitioned the property inherited from their father comprising S.No. 1299-B, the extent being Ac.1-50 and subsequently half share in it had fallen to the share of the defendant's father and another half share to the south of the suit land has fallen to the share of Kammara Jaffar Sab. Both the brothers have dug well in the suit land and both of them are irrigating the lands fallen to their shares for drawing water through Yetham. Patta stands jointly in the name of the defendant's father and his father's younger brother. Various Revenue records also go to show that they are the owners of S.No. 1299-B and thus they are the only owners of the plaint schedule property and also to the property fallen to the share of Kammara Jaffar

Sab. The plaintiff is not the owner of the plaint schedule property. The vendor of the plaintiff is no other than the younger brother of the plaintiff. The vendor of the plaintiff has not purchased the plaint schedule property nor he has inherited the same from his ancestors. He has no right to the schedule property. So the plaintiff cannot get better rights than his vendor. The alleged sale deed executed by the vendor in favour of the plaintiff is only a collusive transaction to lay claim to the suit land. Hence the plaintiff is not the owner of the plaint schedule property nor he was in possession of the suit land at any time. This defendant further submit that the plaintiff has approached the father of this defendant and his father's younger brother in or about 1972 after the purchase of the property bearing SNo. 1229-A and 1229-C for the supply of water to his lands from the well. They have agreed and consented for the plaintiff to draw water from the well to his land. All of them have made joint efforts and contributed expenses according to the lands they possessed for the installation of electric motor and service connection. Ever since that date the defendant's father, Kammar Jaffer Sab and the plaintiff have been using the said electric motor to irrigate their respective lands. So the plaintiff alone has not installed the machinery in the suit land and he is not the owner of the said land. After the death of defendant's father about 2 years ago all the defendants being his sons have inherited the suit land. The other defendants have executed a registered gift deed dated 12.7.1982 in favour of this defendant conveying their shares in the suit land in favour of this defendant. Thus this defendant became the owner of the entire suit land. Just prior to the filing of the suit there was altercation between this defendant and the plaintiff over the sharing of well water in their lands and the plaintiff bore grudge against the defendants and filed this unjust suit. Under the guise of ex parte injunction the plaintiff is trying to disturb the possession of this defendant from the suit land. It is false to say that the plaintiff has perfected his title to the suit land by adverse possession. He was never in possession of the suit land at any time. It is also false to say that the defendants are strangers to the suit land. It is false to say that the plaintiff has sown the groundnut crop in the land. On the other hand this defendant has carried agricultural operations and sown the land with groundnut crop. There is no cause of action against the defendant.

8. On the strength of the respective pleadings of the parties, the following issues were settled:

1. Whether the plaintiff is entitled for the injunction as prayed for?

2. To what relief ?

9. PWs.1 to 5 were examined and Exs.A1 to A41 were marked. Likewise DWs.1 to 5 were examined and Exs.B1 to B5 were marked. On the strength of the oral and documentary evidence, the Court of first instance decreed the suit and against the same an appeal in AS No. 16 of 1990 on the file of the Subordinate Judge, Gooty had been preferred.

10. The Appellate Court framed the following points for consideration in the

appeal:-

1. Whether the plaintiff is in possession and enjoyment of the suit schedule property? If so, he is entitled the equitable relief of permanent injunction?
2. Whether the vendor of the plaintiff has any saleable interest in the suit schedule property to convey the same to the plaintiff under Ex.A1, registered sale deed dated 6.10.1968?
3. Whether the plaintiff has perfected his title over the suit schedule property by adverse possession?
4. Whether the suit for bare injunction without prayer for declaration of title is maintainable?
5. Whether the judgment and decree of the lower Court suffers from any factual or legal infirmities. If so, whether they deserve to be interfered within this appeal? If so, to what extent?

11. On considering the above points, the Appellate Court recorded a specific finding that Ex.A1 sale deed is nothing but a collusive document and there are no documents of title in favour of the plaintiff and further recorded a finding that a suit for injunction without praying for the relief of declaration cannot be maintained and ultimately, allowed the appeal. Hence, the present second appeal.

12. The following substantial questions of law arise for consideration in the present second appeal:

1. Whether the Appellate Court is correct in observing that a suit for injunction cannot be maintained without praying for the relief of declaration of title?
2. Whether the question of title to be necessarily gone into in a suit for injunction?
3. Whether the plaintiff can sustain his action on the strength of possessory title?

13. At the outset, it may be stated that though there is an assertion on the part of the plaintiff that he had perfected his title by adverse possession and based his title on possessory title too the same had been specifically denied by the respondents/ defendants. No issue in this regard had been framed, most probably, for the reason that it is only a suit for mere injunction and hence, the question of title may have to be incidentally gone into. In Rame Gowda (died) by LRs. case (supra) the three Judge Bench of the Apex Court held that when a suit was filed with an allegation that the defendant is trying to encroach the land of the plaintiff and the Court found that the plaintiff proved his possession but he failed to prove his title, suit can be decreed granting injunction. In the present case, no doubt there is specific denial as far as the question of title is concerned. The vendor and the vendee had been examined as PWs.1 and 5 and apart from these witnesses. PWs.2, 3 and 4 also had been examined. Ex.A.1 is the registered sale deed executed by PW.5 in favour of PW1. Exs.A2 and A3 are the

demand notices. Exs.A4 to A6 are the house tax receipts. Ex.A7 is the bill card for the Electricity charges for HSC 668. Exs.A8 to A40 are the electricity consumption receipts. Ex.A41 is the receipt for the purchase of electric motor. As against this evidence, D.Ws.1 to 5 were examined. Ex.B1 is the certified copy of the patta. Ex.B2 is the certified copy of No. 2 adangal for faslies 1382 to 1390. Ex.B3 is the registered gift deed. Exs.B4 and B5 are the relevant entries in 10(1) account and 10(2) account had been marked on behalf of the defendants. Clear findings had been recorded by the Court of first instance on the aspect of possession. But the stand taken by the defendants is that the plaintiff was permitted at a particular point to time to use the property and the relationship of the parties also had been deposed in detail. The main ground on which the findings recorded by the Court of first instance had been reversed by the Appellate Court is that Ex.A1, on which the claim is made by the plaintiff, was executed by PW.5, who is none other than the brother of PW.1, the plaintiff and it is just a collusive transaction and hence, no title is established. Incidentally, it may be referred to here that the suit is for mere perpetual injunction, where a plea of possessory title also had been pleaded. In *P. Fatesh Ahamed Saheb v. Sandur Usman Saheb* 1997 AIHC 3082, it was held that when the plaintiff proved his possession, he is entitled for permanent injunction though he had not established his title. It is true that when specifically the title had been denied and when the said question incidentally may have to be gone into even in a suit for mere injunction, it may be advisable to suitably amend the pleading and pray for the relief of declaration of title too, but on that ground alone, the plaintiff cannot be non-suited.

14. In *Rajendra Reddy v. State of Andhra Pradesh*, AS No. 333 of 1980, dated 6.7.1987 (Unreported), this Court no doubt held that a suit for mere mandatory injunction against a person denying the title without asking further relief of declaration of title is not maintainable.

15. Section 34 of the Specific Relief Act, 1963 (hereinafter referred to as "the Act") dealing with discretion of the Court as to declaration of Status or Right reads as hereunder:

"Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying or interested to deny his tide to such character or right and the Court may in its discretion, make therein a declaration that he is so entitled and the plaintiff need not in such suit ask for any farther relief:

Provided that no Court shall make any such declaration where the plaintiff being able to seek further relief than a mere declaration of a tide, omits to do so".

Section 38 of the said Act dealing with perpetual injunction when granted reads as hereunder:-

"(1) Subject to the other provisions contained in or referred to by this chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an

obligation existing in his favour, whether expressly or by implication.

(2) When any such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II.

(3) When the defendant invades or threatens to invade the plaintiff's rights to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases, namely: -

(a) where the defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(c) where the invasion is such that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

It may be appropriate to have a look at Section 2(a) of the Act which defines "obligation" as obligation includes every duty enforceable by law.

16. In a suit for mere injunction, it is no doubt true that possession is to be established by the plaintiff and possession must be of such a nature, which can be protected by a Court, a lawful possession or a juridical possession. Lawful possession may be of varied forms, necessarily in all the cases the plaintiff need not be the owner of the property. There may be other cases where the possession may be lawful and the exhaustive illustrations cannot be enumerated in this regard. At any rate, the view expressed by the Appellate Court that a suit for mere injunction is not maintainable without praying for the relief of declaration of title cannot be accepted in the light of the views expressed in *Sannasi Ambalagarau v. Venkatapathy Chetty* 2 I.C. 420(DB) (Mad), *Muslim Wakf Board and Another Vs. Municipal Board*, , *A.L.V.R.Ct. Veerappa Chettiar v. Arunachalam Chetti* AIR 1936 Mad. 200, *Muthayyan Swaminatha Sastrial v. S. Narayanaswami Sastrial* AIR 1936 Mad. 936, *Potturi Saraswati v. Vallbhaneni Veerabhadra Rao* 1985 (1)ALT 1 , *Indumatiben Chimanlal Desai Vs. Union of India and Another*, , *Mulji Umershi Shah and etc. Vs. Paradisia Builders Pvt. Ltd. and Others*, and *Megavarnam Chettiar Vs. Krishnan Chettiar and Another*, . However, in *Balamoni Kistanna v. V. Narayana Reddy* 1982 (2) ALT 408, it was held that where plaintiff is not in possession of the suit property a suit for mandatory injunction without a prayer for declaration of title or for recovery of possession is not maintainable. This question need not detain this Court any longer, in the light of the decision of the Apex Court referred to in *Rame Gowda* (died) by LRs. case (supra). In the light of the specific denial relating to the title and in the light of the finding recorded by the Appellate Court in relation to Ex.A1, in view of the fact that there should be an enforceable obligation in the light of Section 38 of the Act, too, in the peculiar facts and circumstances, it would be appropriate for the appellants to pray for declaration to title too. At this

juncture, the principles that can be enumerated in this regard are specified hereunder:-

(1) A suit for permanent injunction without prayer for declaration of title is maintainable.

(2) When title is specifically denied and cloud cast on the title to be cleared, it would be safe to pray for the relief of declaration too in such a suit.

(3) In a suit for permanent injunction, the question of title may be incidentally gone into.

All these aspects may have to be decided in the light of the Section 38 of the Act, read with Section 2(a) of the aforesaid Act.

17. Apart from this aspect of the matter, the plea of adverse possession and perfection of title by adverse possession had been specifically taken and the same had been denied. No specific issue had been framed in this regard. It is also brought to the notice of this Court, that this Court while admitting the second appeal granted interim order and the same is in force.

18. For the foregoing discussion, it would be just and proper to set aside the judgment and Decree of the Appellate Court and remand the matter to the Court of first instance so as to enable the parties to adduce further evidence, if any, relating to the plea of possessory title too and if necessary to suitably amend the relief in this regard, if they are so advised.

19. Accordingly, the second appeal is hereby allowed and the matter is remanded to the Court of first instance for affording opportunity to both the parties to adduce further evidence, if any, in the light of the views expressed supra. The parties do bear their own costs.