
(2002) 06 AP CK 0093
In the Andhra Pradesh High Court
Case No : CRP No. 5630 of 1999

K. Ankaiah and Others

APPELLANT

Vs

Tirumala Tirupathi Devasthanams and Others

RESPONDENT

Date of Decision : 03-06-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (2002) 4 ALD 223 : (2002) 6 ALT 170 : (2003) 1 CivCC 135 : (2003) 1 RCR(Civil) 690

Hon'ble Judges : Dubagunta Subrahmanyam, J

Bench : Single Bench

Advocate : M.S. Ramachandra Rao, for the Appellant; M. Adinarayana Raju, SC, for the Respondent

Final Decision : Dismissed

Judgement

Dubagunta Subrahmanyam, J.—This revision petition is filed against the order dated 18.12.1999 in CMA No.36 of 1999 on the file of IV Additional District Judge, Chittoor at Tirupati confirming the order dated 3-12-1999 in IA No.2111 of 1997 in OS No.1075 of 1997 on the file of Principal Junior Civil Judge, Tirupati.

2. Necessary facts for the disposal of this revision petition are as follows:

The revision petitioners are the plaintiffs in O.S. No.1075 of 1997. They were owning immovable property in Tirumala Hills. They were doing business in the shops situated in their own property. Those shop rooms and adjacent immovable property were acquired for the purpose of Tirumala Tirupati Devasthanams (hereinafter called as "TTD"). They were given compensation for acquisition of their properties. In addition to giving monetary compensation to the plaintiffs, the TTD agreed to construct some shop rooms in Second Sannadhi Street in Tirumala and allot some shop rooms to the plaintiffs. TTD did not yet construct shop rooms in Second Sannadhi Street. According to the plaintiffs pending construction and allotment of shop rooms in Second Sannadhi Street, defendants-

TTD, allotted the plaint schedule shop rooms to the plaintiffs as alternative accommodation to enable the plaintiffs to carry on their business till the shop rooms are constructed in Second Sannadhi Street and allotted to the plaintiffs. The plaintiffs filed the suit originally seeking permanent injunction restraining the defendants -TTD from interfering with their possession and enjoyment of the plaint schedule shop rooms. Along with the suit, they filed an application in I.A.No.2111 of 1997 under Order XXXIX, Rules 1 and 2 CPC, requesting the trial Court to grant temporary injunction restraining the TTD, from in any way interfering with plaintiffs peaceful possession and enjoyment of plaint schedule property with all amenities till the disposal of the suit . According to the plaintiffs TTD tried to dispossess the plaintiffs from the plaint schedule property and therefore the plaintiffs were forced to file the suit. The interim injunction application was opposed by TTD. During enquiry, the petitioners-plaintiffs marked Exs.PI to P21 and the defendants-TTD marked Exs.R1 to R10. On a consideration of the documentary evidence adduced before him, the Junior Civil Judge held that the defendants did not allot plaint schedule property to "the plaintiffs as alternative accommodation. Accordingly he dismissed the interim injunction application by order dated 3-12-1999. Aggrieved by that order, the plaintiffs preferred an appeal before the Additional District Judge at Tirupati. The appellate Judge dismissed the appeal on merits. Aggrieved by the orders of the appellate Court, the plaintiffs preferred the present revision petition.

3. The learned Counsel for the revision petitioners contended that the revision petitioners are admittedly in possession of plaint schedule property on the date of the suit, even if they are treated as trespassers or licensees, the defendants are not entitled to evict the plaintiffs from the possession of the suit property otherwise than in due process of law and till they are evicted in due process of law, they are entitled to seek protection of their possession and obtain orders of injunction in their favour. The learned Counsel for the revision petitioners relied upon various decisions in support of his contention that even trespassers or licensees after expiry of the period of licence cannot be dispossessed from the properties in their possession even by the real owner unless the real owner follows the procedure laid down by law to evict and seek possession of the properties. On the other hand the learned Counsel for the respondents-TTD contended that the plaintiffs are not entitled for interim injunction in their favour as their possession is unlawful and there are no grounds to interfere with the orders passed by the appellate Court and the trial Court.

4. It is not necessary to narrate the facts of all the decisions cited on behalf of the revision petitioners. It would suffice if the decisions of the Supreme Court and a decision of this High Court cited by the learned Counsel for the revision petitioners are discussed in the course of this order.

5. Before taking up the consideration of the decisions relied upon, it is necessary to point out one important fact. The suit was originally filed for permanent injunction. In the suit as well as in the interim injunction application, the specific

case put forward by the plaintiffs is that till the allotment of regular shop rooms to be constructed by TTD, in Second Sannadhi Street, the TTD, allotted the plaintiff schedule properties to the plaintiffs. In para, 3 of the plaint, it is averred that the TTD Board passed a resolution and issued proceedings dated 6.4.1993 under which the plaintiff schedule shop rooms were allotted to the plaintiffs. The date of the above proceedings mentioned in the plaint is not admittedly correct. Proceedings were issued on 6.9.1993. Different proceedings issued to the different plaintiffs on 6.9.1993 are marked as Exs.P1 to P3. They are marked as Exs.R1 to R4 on behalf of the respondents-TTD. As pointed out by the trial Court, under the above proceedings, the plaintiffs were not at all allotted the plaintiff schedule properties as an alternative accommodation to the plaintiffs. This finding is not disputed at the time of hearing of this revision petition. Therefore, the revision petitioners prima facie failed to establish the plea taken by them in their interim injunction application as well as in the plaint. They did not show to the Court that they were in possession of the plaintiff schedule property in pursuance of the proceedings Exs.R1 to R4 issued by TTD, on 6.9.1993. This is an important fact. As per orders dated 19.4.1999 in amendment application in IA No.6SO of 1999, the plaintiffs amended the plaint. They incorporated para 7 (a) in the plaint. After institution of the suit, TTD, issued proceedings allotting some shop rooms near Vaibhava Mandapam as alternative accommodation to the plaintiffs. The amendment in para 7(a) of the plaint relates to the above proceedings of TTD, allotting alternative accommodation near Vaibhava Mandapam. The plaintiffs did not accept the said alternative accommodation. They sought for additional relief in the plaint. The additional relief asked for is a declaration that the above proceeding is illegal, void and ultra vires not binding on the plaintiffs.

6. Again the plaintiffs filed another amendment application and amended the plaint. They amended a portion of the relief already asked for by the plaintiffs. Para 7 (b) was inserted in the plaint by way of amendment. In para 7 (b) of the plaint, they pleaded that at the first instance, the plaintiffs handed over the shop rooms to TTD, and later at the request of the TTD, they handed over the remaining acquired property to TTD, and that there is an oral contract between the plaintiffs and the defendants and in pursuance of the said contract, the plaintiffs are continuing in plaintiff schedule property. They have further pleaded that they are entitled to continue in possession of the plaintiff schedule property till the defendants construct shop rooms in Second Sannadhi Street, Tirumala and allot the same to the plaintiffs. This amendment was sought for by the plaintiffs during the pendency of the present revision petition. They have subtly changed their original version. As per the original version under the proceedings dated 6.9.1993, TTD allotted plaintiff schedule properties to the plaintiffs. After it became clear that under the above proceedings dated 6.9.1993 the plaintiffs were not allotted the plaintiff schedule properties as alternative accommodation, by way of amendment during the pendency of this revision petition, they based their claim on oral agreement between TTD and plaintiffs. No material is placed before the

trial Court regarding the alleged oral agreement between plaintiffs and TTD, under which allegedly the plaint schedule properties were allotted to the plaintiffs. TTD, is an institution established under a statute. Therefore, no person is entitled to enter into any agreement with TTD.

7. It is already noticed that a portion of the relief already asked for was also amended by the plaintiffs. Originally permanent injunction alone was sought for by the plaintiffs. That relief was amended by adding words "till the defendants construct shop rooms in the Second Sannadhi Street, Tirumala, and allot the same to the plaintiffs or some other shop rooms to the plaintiffs at Tirumala as promised under Resolution No.628 dated 27.8.1993 or till evicted by due process of law".

8. In my considered opinion the present alternative relief of permanent injunction sought for by the plaintiffs disentitles them from obtaining orders of interim injunction in their favour. The reason is very simple. They want permanent injunction alternatively till regular shop rooms are constructed in Second Sannadhi Street and allotted to them or some other alternative shop rooms are allotted to them or till they are evicted by due process of law. The averments in the amended para 7 (b) of the plaint disclose that alternative accommodation was allotted to them near Vaibhava Mandapam. Inasmuch as the said-alternative accommodation was allotted to them near Vaibhava Mandapam, the plaintiffs are not *prima facie* entitled for interim injunction also in their favour till the disposal of the suit.

9. I would now consider the various decisions relied upon by the learned Counsel for the revision petitioners. In my considered opinion those decisions have no application or relevance to the facts of the present case and they are not of any help to the revision petitioners.

10. The decision of the Supreme Court in *Ram Rattan and Others Vs. State of Uttar Pradesh*, , arises out of criminal prosecution. It does not relate to any principle of law regarding grant of interim injunction in a petition filed under Order XXXIX, Rules 1 and 2 CPC. Further, the opening observations made by the Supreme Court in the above judgment are against the contentions advanced on behalf of the revision petitioners. The relevant passage reads as follows:

"It is a peculiar feature of our criminal law that where a trespasser has succeeded in taking recent wrongful possession of the property vested in the public for common enjoyment, the members of the village or the real owner are not entitled in law to throw out the trespasser but have to take recourse to the legal remedies available, and if any member of the public tries to secure public property from the possession of the trespasser, he is normally visited with the onerous penalty of law".

11. The facts in the decision in *Samir Sobhan Sanyal Vs. Tracks Trade Pvt. Ltd. and others*, , are as follows:

The appellant before the Supreme Court was a tenant. His landlady inducted him into the possession of the disputed property on 27.3.1969. Long thereafter on 17.10.1985, she entered into an agreement of sale with the 6th respondent. 6th respondent filed a specific performance suit against the landlady. In her written statement the landlady specifically stated that her tenant was in possession of the disputed property. Even then 6th respondent did not take any steps to implead the appellant before the Supreme Court as a defendant in the suit filed by him. Subsequently he obtained a decree against the landlady. While he was trying to take possession of the suit property by executing the decree of specific performance in his favour, the appellant-tenant filed a petition under Order XXI, Rules 98 and 99 CPC, claiming adjudication of his right to remain in possession of the said property. By the time the matter came up before the Supreme Court, the tenant was dispossessed from the suit property. The Supreme Court held that without any decree or order of eviction, the appellant was unlawfully dispossessed from the suit property and without any due process of law and therefore he is entitled to seek restoration of possession of the suit property. Therefore, the above facts and principles of law laid down have no application to the facts on hand. The principles of law laid down in the above decision do not relate to the principles of law governing the grant of interim injunction in favour of any plaintiff till the disposal of the suit.

12. The facts of the decision in Krishna Ram Mahale (Dead), by his Lrs. Vs. Mrs. Shobha Venkat Rao, , are as follows:

The plaintiff was in settled possession of the suit property as a licensee to conduct business of Restaurant. She was subsequently dispossessed by the licensor unlawfully and behind her back. Thereafter he filed the suit for recovery of possession obviously u/s 6 of the Specific Relief Act. In that context it was held that it is a well settled law in this country that where a person is in settled possession of property , even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. In my considered opinion this principle of law is not helpful to the revision petitioners. The question to be considered in this revision is whether a person having no right to remain lawfully in possession of the property can file a suit and seek injunction against the true owner. This is the crucial question to be decided in the present revision petition. This question did-not fall for consideration in the above decision as well as in the other decisions relied upon by the learned Counsel for the revision petitioners. In the present case, the plaintiffs had given up the original stand that under particular proceedings dated 6.9.1993 the plaintiff schedule properties were allotted by the defendants-TTD to the plaintiffs. Subsequently they twisted the version and pleaded that there is an oral agreement under which the plaintiff schedule properties were allotted to the plaintiffs by the defendants. That oral agreement was not proved. Therefore, the plaintiffs have not shown that they have got any right to be in possession of the suit property. Therefore, the question to be considered is whether persons having no title or right in the disputed property and such persons, who are not having

any right to remain lawfully in possession of the suit properly, can seek interim injunction against the true owner concerned.

13. The facts of the decision in *State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others*, , have no application to the facts of the present case. There was a lease in favour of the plaintiffs in respect of Nazool land. Later the Government forfeited the lease and cancelled the lease deed. The cancellation of the said lease deed fell for consideration before the Supreme Court in a proceedings launched by the lessee before the High Court under Article 227 of the Constitution of India.

14. Reliance was placed on a judgment of the Supreme Court in *Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Others*, . The matter before the Supreme Court arose out of a suit filed u/s 6 of Specific Relief Act, 1963. There is a conflict of opinion between the two learned Judges of the Supreme Court who heard the above matter. His Lordship Mr. Justice N.M. Kasliwal held in para 12 of his judgment that the possession of a tenant holding over is entirely different from the case of a licensee remaining in occupation after the expiry of the term of the licence. His Lordship held that the position of such licensee is no better than a trespasser and if a true owner comes into possession of the premises without using any force or on account of fire or other act of vis major, it would not be in the interest of justice to grant a decree for possession in favour of such licensee u/s 6 of the Act. The other learned Judge Mr. Justice K. Ramaswamy took a different view. His Lordship held that law respects possession even if there is no title to support it, no one is permitted to take law in one's own hands and to dispossess the person in actual settled possession without due course of law. As there are conflicting judgments of the two learned Judges who presided over the Bench, the matter was placed before the Hon'ble the Chief Justice of India for constituting a Larger Bench for resolving the conflict. It is not known what was the final decision pronounced in the above matter by the Supreme Court.

15. As reliance was placed by the learned Counsel for the revision petitioners on the observations made by Sri Justice K. Ramaswamy, I would like to refer to another decision of His Lordship in *APSRTC v. A". Jayalakshmi* 1989 (2) ALT 247. In that judgment, His Lordship was deciding an appeal arising out of ad-interim injunction granted by the trial Court. His Lordship held that unlike a tenant licensee never had and does not have juridical possession. A licence is grant of a mere right, in its absence, possession is unlawful and this is the characteristic of licence as distinct from lease and in the case of licence, legal possession remains with the owner. His Lordship further held that possession is permissive only during the subsistence of licence without any juridical possession and terminates with the expiry of period. His Lordship allowed the appeal and set aside the order of interim injunction granted by the trial Court.

16. The other decision relied upon is a judgment of the Supreme Court in *M/s. Anamallai Club Vs. Government of Tamil Nadu and others*, , The facts of that

case are a licence was granted by the Government in respect of the Government land in favour of the appellant before the Supreme Court. After she remained in long and settled possession, his licence was terminated by the Government by serving a notice u/s 3 Government Grants Act. Immediately the land was resumed and possession was taken by the Government without giving any opportunity to appellant and without following the procedure prescribed under Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975. The Supreme Court held that the Government should have issued proper notice to the appellant and given him time to vacate the premises. However, the Supreme Court did not give any relief to the appellant as the possession of the land was already resumed and taken by the Government. Therefore, the above decision has no application to the facts of the present case.

17. Another decision relied upon is a judgment of the Supreme Court in *Yeshwant Singfi v. Jagdish Singh* AIR 1968 SC 620. It deals with the provisions of Qanoon Ryotwari Gwalior State Samvat, 1974. It was held that the landlord has no right to re-enter under the provisions of the said Act and he must approach the Court for dispossession of the tenant u/s 137 of the above Act. Therefore, this decision is also not relevant for deciding the real dispute involved in the present revision petition.

18. A decision of High Court in *Sri Balaji Trading Company v. Veeraswamy Srinivasan* 1980 (1) An.WR 28, is relied upon. In this decision a single Judge of this Court held that possession of tenant in demised premises after expiry of lease is that of tenant at sufferance and he can ask for protection of such possession, by way of injunction, if the landlord threatens to dispossess him and he need not wait till he is dispossessed. It was held that there is a distinction between possession held by a trespasser and possession held by a tenant at sufferance. In the present case the plaintiffs are not pleading that they are the tenants. Further, they set up a proceedings under which they are allotted the plaint schedule property. In fact they were not allotted the plaint schedule property under the proceedings relied upon by the plaintiffs. Subsequently the plaintiffs set up oral agreement. That oral agreement was also not proved. Therefore, this decision is of no assistance whatsoever to the plaintiffs-revision petitioners.

19. Before taking up the consideration of the last decision of the Supreme Court relied upon by the learned Counsel for the revision petitioners, it is necessary to refer to a judgment of this Court in *N. Rama Raju Vs. Tirumala Tirupathi Devasthanams and others*, , relied upon by the learned Counsel for the respondents-TTD. In this case TTD, is the defendant. TTD granted licences in favour of the plaintiffs therein to run Janatha Canteens at different places on Tirumala Hills. After expiry of the period of licence, they requested the TTD to renew the licences and extend the period. The TTD refused to renew the licences and called upon them to vacate the canteens. Then the plaintiffs filed the suit and sought for interim injunction in their favour. The trial Court dismissed the

temporary injunction application. His Lordship Mr. Justice C. V.N. Sastri held in the above decision that possession of a licensee after expiry of the licence period is unlawful and a person in unlawful possession is not entitled to equitable relief of injunction. In the present case also according to the defendants-TTD, the licence in favour of the plaintiffs already expired. The above decision is applicable to the facts of the present case. In view of the principle of law laid down in the above decision by this Court, it is very clear that the revision petitioners are not entitled for interim injunction in their favour.

20. The last decision of the Supreme Court relied upon by the revision petitioners is a decision in Prataprai N. Kothari Vs. John Braganza, . In that case the plaintiff was in possession of the suit property continuously for a long period. He filed the suit against the defendant seeking permanent injunction. The defendant did not take the plea that he was the owner of the suit property. The Supreme Court held that it is a settled principle of law that a person who has been in long continuous possession of an immovable property can protect the same by seeking an injunction against any person in the property other than the true owner. The principle of law laid down in the above decision negatives against the various contentions advanced on behalf of the revision petitioners. The relevant passage in para 11 of the judgment reads as follows:

"It is quite obvious that the learned single Judge had not taken note of the principle of possessory title or the principle of law that a person who has been in long continuous possession can protect the same by seeking an injunction against any person in the world other than the true owner"..

21. Therefore, the plaintiffs can seek an injunction against any person other than the true owner. In the present case the defendant-TTD is the true owner. The plaintiffs failed to establish the plea set up by them regarding the source of title to them. Their possession is prima facie unlawful inasmuch as the alleged licence in their favour already expired. They had not shown that they have got any right to be in lawful possession of the plaint schedule property. Therefore, they cannot seek temporary injunction against the defendants-TTD, who are the true owners of the suit property.

22. The learned Counsel for the revision petitioners invited the attention of this Court to the provisions in Sections 83 and 118 of A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987. According to him the TTD, has to follow the procedure laid down in Section 83 of the above Act to evict the revision petitioners even if they are treated as encroachers on the suit property. In the present revision petition it is not necessary for this Court to consider and decide what is the procedure to be followed by TTD, to evict the revision petitioners from petition schedule property and seek possession from them. If the Court enters any discussion on this aspect, it would be speculative in nature. The plaintiffs are not questioning any notices by any authority regarding their eviction from the plaint schedule property. It is not desirable to consider and decide speculative issues in the present proceedings Such discussion is not

necessary for deciding this revision petition.

23. All the decisions relied upon by the learned Counsel for the revision petitioners do not relate to the principles of law applicable for the disposal of a petition filed under Order XXXIX, Rules 1 and 2 CPC. The principles governing grant or refusal of ad-interim injunction invoking the provisions of Order XXXIX, Rules 1 and 2 CPC, are well known. Any party seeking interim injunction pending disposal of a civil suit shall satisfy the Court about his prima facie title or right over the disputed property, possession on the date of the suit and the balance of convenience. In the present case the revision petitioners took divergent stands regarding their source of right over the disputed property. They pleaded at on stage that under a document, namely, proceedings issued on 6.9.1993, the disputed property was allotted to them as an alternative accommodation. They failed to prove the said source. Another source pleaded by them is oral agreement between them and the TTD. They have not proved this source of title or right. Though plaint was amended to take the plea about oral agreement, the averments in the affidavit filed in support of interim injunction application remain unaltered. The only plea in the affidavit is about proceedings dated 6.9.1993. The affidavit remains silent about oral agreement. Therefore, there is no prima facie title or right over the suit property in their favour. Regarding possession, at best they can be treated as licensee continuing in possession after expiry of period of the licence. The said possession is unlawful possession. Therefore, on the date of the suit they have no prima facie right to be in lawful possession of the disputed property. Their possession cannot be treated as settled possession or long or continuous possession. Further, they are not entitled to seek injunction against the true owner on the basis of their sole unlawful possession or possession without any right to be lawfully in possession of the disputed property. Regarding balance of convenience, it is to be stated that allowing the revision petitioners to continue in possession till the disposal of the suit will cause hardship and hindrance to innumerable pilgrims attending the renowned temple. Their possession is causing obstruction for the development activities of the temple. Therefore, the revision petitioners failed to satisfy any of the principles governing the grant of interim injunction pending disposal of the suit.

24. Consideration of various decisions cited at the time of hearing of this revision petition clearly indicate that" person not having any legal right over disputed property, even if he is in possession of the disputed property, when such a person is not lawfully entitled to continue in possession of the disputed properly and any person whose possession is to be treated as illegal or unlawful possession, will not be entitled to seek the relief of injunction against the true owner. For all the reasons stated above, I do not find any merits in the revision petition. There are no grounds to set aside the orders of the appellate Court as well as the trial Court.

25. In the result, the revision petition is dismissed. No costs.