

(2013) 03 MAD CK 0108

In the Madras High Court

Case No : S.A. No. 135 of 2013 and M.P. No. 1 of 2013

K. Krishnamurthy (deceased), K. Padmavathy, K. Gopi, K.
Raji and K. Yamuna

APPELLANT

Vs

K. Suresh Kumar

RESPONDENT

Date of Decision : 19-03-2013

Acts Referred:

Citation : (2013) 03 MAD CK 0108

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : P. Sidharthan, for the Appellant;

Judgement

G. Rajasuria J.

1. This Second appeal is focussed by the legal heirs of the original plaintiff, namely, K. Krishnamurthy, animadverting upon the judgment and

decree dated 26.7.2012 passed by the First Additional City Civil Judge, Chennai in A.S. No. 161 of 2011, reversing the judgment and decree

dated 31.10.2007 passed by the XIII Assistant City Civil Judge, Chennai, in O.S. No. 4826 of 2003, which was one for permanent injunction.

The parties, for the sake of convenience, are referred to hereunder according to their litigative status and ranking before the trial Court.

2. Combendiously and concisely, the germane facts absolutely necessary for the disposal of this second appeal would run thus:

(i) The original plaintiff-Krishnamurthy filed the suit seeking the following reliefs:

to grant permanent injunction restraining the defendant, his subordinates, representatives, their men, etc from in any way interfering with the

plaintiff's peaceful possession and enjoyment of the suit schedule property either

by trespassing or alienating in any manner disturbing the suit property i.e. plaintiff's house.

b) for the cost of the suit.

on the main ground that he has been in possession and enjoyment of the suit property ever since the period of the original owner of the suit

property, namely, Veerabadhra Mudaliar, who died subsequently issueless. The plaintiff is none but Veerabadhra Mudaliar's brother's grand son.

Similarly, the defendant also is Veerabadhra Mudaliar's one other brother's son.

(ii) While so, the plaintiff was in receipt of the advocate notice dated 24.1.2004-Ex.B1 sent by the defendant. According to the plaintiff, even

though he has been in possession and enjoyment of the suit property for over four decades, the defendant was trying to alienate the schedule

mentioned property and also trying to trespass into the suit property and dispossess the plaintiff with the help of henchmen.

(iii) Per contra, the defendant filed the written statement impugning and challenging, refuting and denying the allegations/averments in the plaint. A

thumbnail sketch of the same would run thus:

(a) The admitted original owner of the suit property, namely, Veerabadhra Mudaliar executed a gift settlement deed dated 17.2.1988-Ex.A1,

settling the entire suit property in favour of the defendant and as such, he is the absolute owner of it.

(b) Taking into consideration the near relationship of the plaintiff, the defendant in a purely legal manner sent legal notice calling upon the former to

vacate the premises, and at no point of time, the defendant attempted to dispossess him forcibly, with the help of henchmen, from the suit property.

(c) Whereupon issues were framed. Up went the trial, during which, the plaintiff examined himself as P.W.1 and marked Exs.A1 to A4. The

defendant examined himself as D.W.1 and Exs.B1 to B5 were marked on his side.

(d) Ultimately the trial Court decreed the suit partly as under:

In the result, this suit is partly decreed in favour of the plaintiff as against the defendant for permanent injunction restraining him from interfering with

the plaintiff's peaceful possession and enjoyment of the suit property by way of evicting the plaintiff from the suit property without due process of

law. The suit is dismissed against the relief restraining the defendant from

alienating the suit property. No costs.

(e) Challenging and impugning the judgement and decree of the trial Court, the defendant preferred the appeal. Whereupon, the first appellate

Court set aside the judgement and decree of the trial Court and dismissed the entire suit.

3. Being aggrieved by and dissatisfied with the judgement and decree of the first appellate Court, the legal heirs of the original plaintiff filed this

second appeal on various grounds and also suggesting the following substantial questions of law:

1. Whether the lower appellate Court is right in allowing the appeal and dismissing the injunction suit filed especially when it is admitted and

established by evidence that appellant is in settled possession.

2. Whether the lower appellate Court is right in holding that issuance of the legal notice Ex.B3 claiming vacant possession and damages for use and

occupation grants a mandatory relief for an order of eviction without instituting suit before the court of law, within the period of limitation provided

under the Limitation Act and specific relief Act.

3. Whether the lower appellate Court is right in dismissing the relief of injunction especially when the appellant is in settled possession and once

appellant is in such possession he can be evicted only by recourse to law.

4. Whether the lower appellate Court is right in holding that the plaintiff is not entitled to seek the relief against the defendant in the absence of any

interference especially when the plaintiff has pleaded in the plaint about the threat given by the defendant after the issuance of notice by the

defendant under Ex.B3.

5. Whether the lower appellate Court is right in holding that an occupier of the premises whose possession in the premises is in capacity of

trespasser can be evicted without following the due process of law?

(extracted as such)

4. The learned counsel for the plaintiff would pyramid his arguments which could succinctly and precisely be set out thus:

(i) Having given a categorical finding that the plaintiff has been in established possession of the suit property, the rejection of the prayer for

injunction is against law.

(ii) The trial Court itself has not granted injunction so as to restrain the defendant from alienating the suit property. However, the first appellate

Court simply, on assumption and presumptions, without any good reason set aside the order of the trial Court and dismissed the entire suit itself.

(iii) It is a common or garden principle of law that a person in established possession can approach the Court and seek for injunction and he can

very well get an injunction to the effect that he should not be dispossessed otherwise in accordance with law. Even that limited injunction was

denied to the plaintiff by the first appellate Court, warranting interference in second appeal.

5. Per contra, in a bid to slap down and torpedo, pulverise and challenge the arguments as put forth and set forth on the side of the plaintiff, the

learned counsel for the defendant would advance his arguments, which could tersely and briefly be set out thus:

(i) An injunction cannot be granted simply for the sake of asking for it.

(ii) No doubt, the possession of the suit property by the plaintiff is an admitted fact by the defendant. But the defendant did not admit that the

plaintiff is having any legal right to occupy the suit property or that he could occupy it forever. There should be a cause of action for filing a suit.

Absolutely there is no shred or shred, molecular or jot of evidence to demonstrate and display that the defendant, with the help of some henchmen

attempted to dispossess the plaintiff forcibly from the suit property.

(iii) The issuance of a legal notice is not a sin; it is to take legal action and that would not pave any cause of action for filing the suit for injunction by

the recipient of the notice. Without any cause of action no injunction can be granted by the Court. Hence, on that ground, the first appellate Court

correctly and appropriately, legally and appositely dismissed the suit, warranting no interference in second appeal.

6. On hearing both sides, I have formulated the following substantial question of law to the limited extent to the knowledge of both sides.

Whether in the wake of the admitted established possession of the plaintiff over the suit property, the first appellate Court was justified in leaving

the plaintiff without any remedy whatsoever, so as to protect his possession to the limited extent possible?

7. Heard both sides.

8. It is quite obvious and axiomatic that injunction cannot be granted simply for the asking of it. I would like to extract hereunder the relevant

portions of the decision of the Honourable Apex Court reported in Rame Gowda (D) by Lrs. Vs. M. Varadappa Naidu (D) by Lrs. and Another,

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8. It is thus clear that so far as the Indian Law is concerned the person in peaceful possession is entitled to retain his possession and in order to

protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of

land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the

property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the

trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful

owner from using force or taking law in his own hands and also by restoring him in possession even from the rightful owner (of course subject to

the law of limitation). If the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior

peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property

may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy

character or recurring, intermittent, stray or casual in nature or has just been committed, while the rightful owner did not have enough time to have

recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true

owner.

9. It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the

true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by

a catena of decisions ...

(emphasis supplied)

9. The Honourable Apex Court, in the aforesaid judgment visualised various

circumstances and arrived at the conclusion that even a trespasser in settled possession could be evicted by the true owner only by having recourse to law. Forcibly such a person in possession cannot be dispossessed.

10. No doubt on the one hand, the defendant would place reliance on the settlement deed dated 17.2.1988-Ex.A1 executed by the admitted original owner-Veerabadhra Mudaliar. Whereas, the plaintiff simply filed the suit for injunction without any prayer for declaration. His prayer for injunction, so as to restrain the defendant from alienating the suit property, undoubtedly was a misconceived one, in the absence of a prayer for declaration. However, a person in established possession, when he apprehends that there is likelihood of himself being dispossessed otherwise in accordance with law, can approach the Court for injunction in view of the decision of the Honourable Apex Court, referred to supra.

11. The learned counsel for the defendant would submit that there is not even a jot or pint, molecular or miniscule, iota or shred evidence to display and demonstrate that the defendant attempted to dispossess the plaintiff forcibly. Even without any injunction the plaintiff can continue in possession till he is dispossessed as per law and over and above that if any injunction is granted, that might come in the way of the defendant herein taking legal action to recover possession from the plaintiff herein.

12. I would like to disambiguate the ambiguity if any. The defendant already issued the lawyer's notice. But subsequently, he has not filed any suit at all. If any suit is pending for recovery of possession from the plaintiff, then the matter would be different and in such an event this Court can simply drive the plaintiff to go to the Court wherein already the suit which is pending at the instance of the defendant, seeking interim relief. But here, the apprehension on the part of the plaintiff cannot also be pooh-poohed, belittled or slighted.

13. No doubt, the submission of the learned for the defendant would give some support and satisfaction to the other side. But once the Court is satisfied that the parties are fighting at arms length, up to the High Court, relating to this small issue, the apprehension on the part of the plaintiff cannot simply be discarded and he cannot be left high and dry purely to be at the mercy of the defendant.

14. Not to put too file a point on it, and without any more unnecessary elaboration, I would like to set aside the judgment and decree of the first appellate Court and restore the judgment and decree of the trial Court, by indicating that the injunction granted shall be to the limited extent that the plaintiff shall not be dispossessed otherwise than in accordance with law. I, for clarity sake, make it clear that this granting of limited injunction would not be cited as a defence by the plaintiff herein, if any steps have been taken by the defendant for dispossessing him, legally. Similarly, both the parties are at liberty to raise whatever legal points available in their favour to fight out the litigation, if any, initiated by either of them.

15. On balance, the substantial question of law is answered to the effect that in the wake of the admitted established possession of the plaintiff over the suit property, the first appellate Court was not justified in leaving the plaintiff without any remedy whatsoever, so as to protect his possession to the limited extent possible. The second appeal is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.