
(1991) 12 AP CK 0042

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3224 of 1991

K. Subba Naidu and Others

APPELLANT

Vs

G. Subbaiah and Others

RESPONDENT

Date of Decision : 22-12-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 115

Citation : (1992) 1 ALT 290

Hon'ble Judges : V. Neeladri Rao, J

Bench : Single Bench

Advocate : P.S. Narayana, for the Appellant; P. Ramakrishna Raju, for the Respondent

Judgement

V. Neeladri Rao, J.—The defendants in O.S. No. 327/90 on the file of the Principal Subordinate Judge, Tirupati are the revision petitioners. The respondents herein filed a suit for injunction in regard to an extent of Ac.7.18 cents in Sy. Nos.298 and 299 in Vemuru village, Tirupati Rural Mandal. They also filed LA. No. 2131/91 praying for temporary injunction pending disposal of the suit. The temporary injunction was granted as prayed for by order dated 5-2-1991. The same was assailed in C.M.A. No. 4/91 on the file of the IIIrd Additional District Judge, Chittoor at Tirupati and the same was dismissed on 30-9-1991. The same is attacked in this revision petition.

2. The plea of plaintiffs respondents is as under: The Plaint Scheduled land is covered by original paimash No. 389 and the same was assigned to these Plaintiffs in 1976 and each one of them was allotted Ac.1-00 or Ac.1-04 cents as referred to in the plaint and from that time they were in possession of the same. The defendants are owning land in an extent of Ac.0-33 cents in Sy. No. 297 which corresponds to paimash No. 389-A and by erasing "A" in 389-A they fraudulently obtained patta u/s 11 of the Estates Abolition Act for an extent of 2-95 cents in Section Nos.298 and 299. It is now challenged before the Director of Settlements. Having obtained that patta the defendants are interfering with

their possession and enjoyment of the plaint schedule land and hence they are constrained to file this revision petition.

3. The case of the defendants is as under: The defendants have purchased Ac.I-00 of land under Ex.B-I0 dated 2-7-1909 and they got lease of the remaining Ac. 1-20 cents and when the plaintiffs attempted to interfere with their possession of the same they filed O.S. No. 312/80 for injunction and it was decreed. The courts below erred in granting temporary injunction against the defendants which is contrary to the decree for injunction in their favour in O.S. No. 312/80 as against the Plaintiffs-respondents.

4. The appellate court referred to Exs.A-11, A-14 and A-15 to held that the plaintiffs were put in possession of the Plaint Schedule land after the assignment and the defendants destroyed the crop therein in 1978 and thus the Plaintiffs are in possession of the same. The appellate court further held that O.S.No. 312/80 is in regard to the land covered by Mettugadda while the Plaint schedule land is in regard to Mettu Vagu.

5. It may be noted that even in O.S. No. 312/80 Sy. Nos.298 and 299 are also referred to. It is not clear from the Judgment of the Appellate court as to whether the plaintiffs are cultivating the Plaint Schedule land jointly or whether they are cultivating separately the lands assigned to them respectively. It is also not clear from the Judgment of the Lower Court as to whether there is any bund separating the admitted land of the defendants in Sy. Nos.297, and the disputed land. It is also not stated as to what crop was raised in the Plaint schedule land. While it is stated for the Plaintiffs that in view of the injunction in their favour their February, 1991 they raised crop in the Plaint schedule land. It is submitted for the defendants that in view of the injunction in their favour in O.S. No. 312/80 they raised crop in the Plaint schedule land. So in the circumstances, I feel that it is just and proper to remit the matter back to the trial court for fresh enquiry in I.A. No. 2131/90 after giving opportunity to both parties to file additional affidavits with relevant averments in view of the observations herein and for consideration of the same on merits.

6. An Advocate receiver has to be appointed to sell the standing crop on the plaint scheduled land and he has to deposit the sale proceeds to the credit of the suit, and the same had to be paid to the successful party. If for any reason IA cannot be disposed of by the trial court before the commencement of the next agricultural season, the parties can move the Lower Court for necessary arrangements pending disposal of the same. It is also open to either of the parties to have an advocate receiver to note features in regard to the bunds etc., if they feel it necessary.

7. The Region petition is ordered accordingly. No costs.