
(2006) 11 AP CK 0113
In the Andhra Pradesh High Court
Case No : SA No. 115 of 1997

Kachana Padmavathi and Another	Vs	APPELLANT
Proddatur Municipality and Others		RESPONDENT

Date of Decision : 28-11-2006

Acts Referred:

Citation : (2007) 3 ALD 614 : (2007) 4 ALT 58

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : R. Subba Rao, for the Appellant; S.I. Newton, SC for Municipality, for the Respondent No. 1., for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The appellants filed O.S. No. 238 of 1983, in the Court of Principal District Munsif, Proddatur, for the relief of perpetual injunction, to restrain the respondents herein, from interfering with the possession of the suit schedule property, particularly, a strip of land, that was sought to be converted into a road. The relief of mandatory injunction was also prayed for, to direct the respondents herein, to remove the road laid by them.

2. The appellants pleaded that their paternal grandmother, by name Veeramma, was the owner of Ac. 3-00 of land in Sy. No. 315/1 and 2 of Proddatur, and out of it, she bequeathed an extent of Ac. 1-00 of land, through a will dated 26-2-1974. They pleaded that on 17-8-1983, the defendants trespassed into the land and laid road, across it. They pleaded that the respondents do not have any right to lay the said road.

3. On behalf of the respondents, a written statement was filed, stating, inter alia, that out of Ac. 3-00 of land, a part of its was sold during the lifetime of Veeramma, and another part by the father of the appellants, by name Suryanarayana Reddy, to third parties, and across the suit schedule property, a way was provided to the said plots. It was alleged that there existed a way,

across the suit schedule property, and to provide amenities, the road was laid.

4. The trial Court dismissed the suit, through its judgment dated 31-7-1989. Aggrieved thereby, the appellants filed A.S. No. 22 of 1989, in the Court of Subordinate Judge, Proddatur. The appeal was dismissed on 2-9-1996. Hence this second appeal.

5. Learned Counsel for the appellants, submits that though the suit was for the relief of perpetual injunction and mandatory injunction, the Courts below have taken upon the task of verifying the entitlement of the father of the appellants to sell the property, and to examine whether the said sales were true and binding. He submits that once the respondents did not dispute the title of the appellants over Ac. 1-00 of land, and since there was nothing on record to disclose that a road existed in the plaint schedule property, the relief claimed by his clients ought to have been granted.

6. Sri S.I. Newton, learned Standing Counsel for the 1st respondent, on the other hand, submits that the relief of perpetual injunction, on the one hand, and mandatory injunction, on the other hand, could not have been claimed, simultaneously, unless any declaratory relief was claimed by the appellants. He contends that from the evidence of DWs. 3 to 6, it is evident that there existed a path from the suit schedule property, to have access to the plots purchased by them from the father of the appellants.

7. The trial Court framed as many as seven issues, taking the pleadings of the parties, into account. To prove their case, the appellants examined PWs. 1 to 4 and filed Exs. A1 to A3. On behalf of the respondents, DWs. 1 to 6 were examined and Ex. B1 was filed. Apart from that, the Court took on record, Exs. X1 to X3, sale deeds, said to have been executed by the father of the appellants. Exs. C1 to C4 are the reports and enclosures submitted by the Commissioner.

8. The trial Court has undertaken extensive discussion, with reference to the sale of plots said to have been effected by father and grandmother of the appellants. One thing, which becomes evident, is that the entire land held by the grandmother of the appellants was not left open, nor the ownership remained intact. Out of Ac. 3-00 held by her, she bequeathed only Ac. 1-00, to the appellants, and rest of it was sold by, either Veeramma, or Suryanarayana Reddy. There is every possibility of access being provided, to the sold out plots, across the lands of the appellants. Be that as it may, by the time the suit was filed, the road was already laid.

9. The relief of perpetual injunction, on the one hand, and mandatory injunction, on the other hand, cannot be claimed, in respect of the same property, simultaneously, without claiming the relief of declaration. The reason is that whenever a plaintiff seeks the relief of mandatory injunction, it is presumed that the defendant has not only encroached the property in question, but also had brought about improvements. Therefore, it becomes impossible for the Court, to grant the relief of perpetual injunction, which presupposes the plaintiff, being in

possession of the property.

10. It may be possible to plead that the relief of perpetual injunction is to be granted, as a consequence of the one, for perpetual (sic mandatory) injunction. In other words, if, as a result of the relief of mandatory injunction, the property is clear from all the encroachments or construction, the possession of the plaintiff may be protected, through the decree for perpetual injunction. For this exercise, the Court has to be convinced and must come to a conclusion that the structures or developments, brought about by the defendant, which are sought to be removed, have come into existence, in violation of the rights of the plaintiff. It would be possible to the Court to form an opinion, if only the declaration as to the illegality of the acts undertaken by the defendant is prayed for.

11. In the instant case, such a relief was not prayed for. Even on the showing of the appellants, the road was laid by the respondents, and unless a declaration as to the illegality of such an action was claimed, the possibility of granting the relief of mandatory injunction and the consequential perpetual injunction, did not exist.

12. The Courts below have examined the matter from the proper perspective, and this Court does not find any basis to interfere with the same. The second appeal is accordingly dismissed. It is, however, observed that it shall be open to the appellants, to seek the relief of declaration and other consequential reliefs, if they are so advised, and if it becomes otherwise permissible in law. There shall be no order as to costs.