
(2014) 04 AP CK 0136

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2557 of 2013

Kammagani Nadham

APPELLANT

Vs

Vangala Raja Malla Reddy

RESPONDENT

Date of Decision : 10-04-2014

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2014) 4 ALD 476 : (2014) 6 ALT 84

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : Bankatlal Mandhani, Advocate for the Appellant; B. Narayana Reddy, Advocate for the Respondent

Judgement

R. Kantha Rao, J.—Heard the learned counsel appearing for the revision petitioners/defendants and the learned counsel appearing for the respondent/plaintiff.

2. The revision petitioners-defendants filed the civil revision petition under Article 227 of Constitution of India aggrieved by the order, dated 15.04.2013 passed by the learned Senior Civil Judge, Janagaon in C.M.A. No. 7 of 2012.

3. Short facts necessary for considering the revision are that the respondent is the absolute owner and possessor of the open house plot admeasuring 968 square yards equivalent to Ac.0.08 guntas covered by Survey No. 478 of village. He purchased the plaint schedule land under a registered sale deed dated 12.01.1982 from K. Soma Narsaiah, K. Somaiah, and K. Pullaiah. He has been in possession and enjoyment of the same since the date of purchase. The name of the respondent has been mutated in the revenue records and the gram Panchayat also granted permission for construction of RCC building in the plaint schedule. He erected fencing around the suit plot. He filed the suit for permanent injunction alleging that the revision petitioners-defendants who are the agnates of his vendor have been trying to occupy a portion of the petition schedule land with an evil idea to grab away the same. In the suit, the respondent filed I.A. No.

226 of 2012 in O.S. No. 62 of 29012 seeking temporary injunction pending disposal of the suit. The learned Additional Junior Civil Judge, Janagaon by his order dated 04.12.2012 dismissed the injunction petition. Feeling aggrieved, the respondent filed C.M.A. No. 7 of 2012 which came to be heard by the learned Senior Civil Judge, Janagaon and the learned Senior Civil Judge, Janagaon reversed the order passed by the learned Additional Junior Civil Judge and granted temporary injunction pending disposal of the suit besides issuing a direction to dispose of the suit within a period of six months.

4. Challenging the said order, the present civil revision petition is filed by the defendants.

5. The revision petitioners/defendants have not disputed the ownership or possession of the respondent-plaintiff in respect of the open house plot measuring 968 square yards equivalent to 8 guntas covered by Sy. No. 478. Their contention is that the western boundary mentioned in the plaint schedule property is not correct. The western boundary in the plaint schedule is mentioned as open place of Government Hospital and the house of K. Sulochana. According to the revision petitioners the open place of government hospital is not abutting the plaint schedule land. The land of the revision petitioners admeasuring about 287 square yards is adjacent to the land of the respondent on the western side. They sold the said land to the defendant No. 4 and R. Srihari under two registered sale deeds dated 29.02.2012 and 11.05.2012 respectively. It is the version of the revision petitioners that by furnishing incorrect western boundary, the respondent has been trying to grab away the said 287 square yards of land. According to them, on the date of purchase by the petitioners, the Zilla Parishad road was about 50" width and it was expanded to 100" subsequently and it was converted into P.W.D. road and the said road occupies 160 square yards. The respondent who kept quiet at the time of widening the road is now trying to grab away the property of the respondents on the western side of an extent of 287 square yards. The revision petitioners contended that they sold away the open land of 287 square yards between the plot of the respondent and the house of K. Sulochana to defendant No. 4 and R. Srihari, the respondent suppressed the real facts by furnishing incorrect boundary of the western side and has been trying to grab away the said extent of land.

6. Before the learned Additional Junior Civil Judge, Janagaon, Exs. P-1 to P-9 were marked on behalf of the respondent/plaintiff and Exs. R-1 to R-3 were marked on behalf of the revision petitioners/defendants. The learned Junior Civil Judge, Jangaon found that perusal of Ex. P-1 reveals that the western boundary under the sale deed is open place of Government Hospital and the house of K. Sulochana is not mentioned as part of western boundary in Ex. P-1 sale deed. The other documents filed by the respondent showing the possession over the property are not much relevant because the revision petitioners/defendants have not been denying the title or possession of the respondent in respect of 968 square yards equivalent to 8 guntas of land in Sy. No. 478. Their contention is

that on account of mis-description of the western boundary, the respondent-plaintiff is claiming an extent of 1245 square yards. But, the fact is that he purchased only 968 square yards under Ex. P-1 sale deed. The learned Junior Civil Judge perused Exs. R-1 and R-2 sale deeds dated 29.02.2012 and 11.05.2012 respectively relied on by the revision petitioners under which they sold away 287 square yards of land in between the suit plot and land of Sulochana to defendant No. 4 and one Racha Srihari. The learned Junior Civil Judge also noticed the fact that the boundaries mentioned in the plaint schedule and also boundaries mentioned in Ex. P-1 sale deed are different for the reason that the house of K. Sulochana is not mentioned in Ex. P-1 registered sale deed; whereas it is mentioned in the plaint schedule. The learned Junior Civil Judge expressed the view that despite taking objection in the counter about the mis-description of schedule property by the defendants, the plaintiff has not clarified the same. Accordingly, the learned Junior Civil Judge arrived at the conclusion that the respondent-plaintiff is guilty of suppression of true facts and therefore is not entitled for injunction. In the appeal filed by the respondent-plaintiff, the learned Senior Civil Judge, Janagaon, however, considering the fact that Exs. R-1 and R-2 are subsequent to the filing of the suit, the boundaries recited therein need not be taken into account and also taking into consideration the fact that the documents filed by the plaintiff show his possession and enjoyment of the plaint schedule property, reversed the order passed by the learned Junior Civil Judge and granted temporary injunction pending disposal of the suit within a period of six months.

7. The crucial issue that arises for consideration in this revision is what is the extent of the land in the boundaries specified by the respondent-plaintiff in the schedule annexed to the plaint as well as in the petition within the boundaries mentioned by him.

8. It requires to be noticed in this context that the respondent-plaintiff is not claiming more than 968 square yards in Sy. No. 478. The revision petitioners-defendants also admit the fact that the plaintiff has title to 968 square yards in Sy. No. 478 of Palakurthy village and he is in possession of the same. Their only contention is that by furnishing incorrect western boundary, he is claiming about more than 1245 square yards which includes the land belonging to the revision petitioners which they sold to respondent No. 4 and one Racha Srihari under Exs. R-1 and R-2 sale deeds dated 29.02.2012 and 11.05.2012 respectively. The respondents also filed an application seeking appointment of commissioner in the C.M.A. for the purpose of measuring and localization of the suit land with reference to the documents relied on by both parties, the learned Senior Civil Judge dismissed the said petition on the ground that they can file a petition in the suit but not in the appeal which is filed against the order passed in the interlocutory application seeking temporary injunction. In my view, the learned Senior Civil Judge ought to have allowed the said petition since localization of the suit land solves the entire dispute between the parties. In any event, unless the respondent-plaintiff prima facie proves that he is in possession of the land within

the specified boundaries as on the date of suit, he is not entitled for equitable relief of temporary injunction.

9. From the contentions raised by both parties and the documents relied on by them obviously there is a contentious dispute with regard to extent of the land within the boundaries mentioned in the schedule annexed to the plaint. This Court while admitting the revision, directed both parties to maintain status quo.

10. The question therefore arises for consideration is whether the order passed by the learned Senior Civil Judge is liable to be set aside.

11. From the facts of the case and also from the contentions urged by the revision petitioners, it appears that the respondent is proposing to make construction in the plaint schedule land and for the said purpose, he obtained permission from the gram Panchayat. The apprehension of the petitioners is that under the guise of injunction, the respondent would make construction in an extent of 1245 square yards of land which includes 287 square yards belonging to the plaintiff which was sold away by them to defendant No. 4 and one R. Srihari. While granting or refusing injunction, the Court has to assess the comparative loss caused to the parties.

12. In the instant case, the injunction is sought in respect of the vacant land. The loss that is going to be caused to the petitioners by granting injunction is greater than the loss that is going to be caused to the respondent-plaintiff by refusing the injunction. In this context, it is relevant to refer to the judgment of the Hon'ble Supreme Court in *Maharwal Khewaji Trust (Regd.) Faridkor v. Baldev Dass* whereunder while dealing with the identical facts, the Supreme Court held as follows:

White it is true that the lower appellate Court did go into the question of prima facie case and held that the appellant had not made out any such case, the High Court did not go into that question at all.

Be that as it may, Mr. Sachhar is right in contending that unless and until a case of irreparable loss or damage is made out by a party to the suit, the Court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case, no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of the this case, the lower appellate Court and the High Court were justified in permitting the respondent to change the nature of property by putting up construction as also by permitting the alienation of the property, whatever may be the condition on which the same is done. In the event of the appellant's claim being found baseless ultimately, it is always open to the respondent to claim damages, or, in an appropriate case, the Court may itself award damages for the loss suffered, if

any, in this regard. Since the facts of this case do not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same, we think both the Courts below, namely, the lower appellate Court and the High Court erred in making the impugned orders. The said orders are set aside and the order of the trial Court is restored.

13. In the instant case also, I am of the view that under the guise of injunction, if the respondent-plaintiff proceeds with the construction, it would cause irreparable loss to the petitioners-defendants and it would also lead to multiplicity of litigation between the parties. Therefore, in the circumstances of the case, I am of the view that both parties can be directed to maintain status quo till the disposal of the suit.

14. Consequently, the impugned order passed by the first appellate Court is set aside. Both parties are directed to maintain status quo till the disposal of the suit and the trial Court is directed to dispose of the main suit within a period of four months from the date of receipt of a copy of this order. The revision is accordingly allowed. There shall be no order as to costs.

15. Miscellaneous petitions, if any, filed in this revision shall stand closed.