

(1991) 03 AP CK 0027

In the Andhra Pradesh High Court

Case No : Second Appeal No. 140 of 1991

Kanakappagari Chinnabha Reddy

Date of Decision : 13-03-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Specific Relief Act, 1963 — Section 37, 38

Citation : (1991) 3 ALT 14

Hon'ble Judges : P.L. Narsimha Sarma, J

Bench : Single Bench

Advocate : P.S. Narayana, for the Appellant;

Final Decision : Dismissed

Judgement

P.L. Narsimha Sarma, J.—Suit itself was filed for declaration of title of the plaintiff to the plaint schedule property and for permanent injunction restraining the defendants and their men from interfering with peaceful possession of the plaintiff.

2. The suit was based on the claim that the plaintiff purchased the property for a valuable consideration and the same was delivered to him and ever since the said date, he has been in possession and enjoyment thereof in his own right and that the defendants are trying to interfere with his possession and enjoyment. The same was resisted by the defendants stating that it is Government Poramboke and that the same was assigned them by the Government and they have been in possession each of the extent of Ac. 0-03 cents for over 40 years and that the plaintiff was never in possession.

3. The Trial Court dismissed the suit. It held that P.W. 1 may be in possession of the suit site by the date of the suit, but he obtained possession not through legal means but by trespass. The learned Judge also mentioned that P.W. 2 might have occupied the suit site prior to the date of suit, but being a trespasser, he is not entitled to injunction. In that view of the matter, the learned Judge dismissed the suit.

4. The plaintiff carried the matter in appeal. The appellate Judge considered the case of the plaintiff with reference to title as well as possession and stated that there is nothing to show that the suit property was the ancestral property of P.Ws. 1 and 2 and that there was any partition between them and In that partition the suit property fell to the share of P.W. 2. It was further held that there was no evidence that P.Ws. 1 and 2 or their ancestors have ever been in possession and enjoyment of the suit site. Finally, the learned appellate Judge observed that in as much as the plaintiff failed to establish the title to and possession of the property, dismissed the appeal. Questioning the said order, this Second appeal is filed.

5. It is true that the Trial Court held that just before the filing of the suit, the plaintiff trespassed into the suit site and that he is in possession, but his possession is that of a trespasser. Therefore, the Trial Court was not inclined to grant injunction, while the appellate Court categorically held on the evidence on record that neither he has possession nor title to the property. In view of the appellate Court's finding recorded on the basis of the evidence on record that the appellant has neither title to nor possession of the property, which is binding on me, this Second Appeal does not deserve to be admitted. One of the contentions raised before me by the learned counsel for the appellant is that the Trial Court held that he was in possession of the property as on the date of the suit and that the plaintiff had injunction throughout the Proceedings and that should be taken into consideration in this Second Appeal. I am afraid that it cannot be countenanced. The Trial Court also held that he is a trespasser of the suit land. A person who trespassed into the suit site cannot claim to have an equitable remedy of injunction. The Trial Court did not exercise its jurisdiction for granting injunction in favour of the plaintiff. I see no defect or error of law in the said order. A trespasser, according to him, is not entitled to any equitable relief, much less injunction in the suit. Further, the appellate Court also categorically found that the plaintiff is not in possession of the property even on the date of suit and he has no title. On these two findings of fact which are binding on me, this Second Appeal is dismissed at the admission stage itself.