
(1998) 09 AP CK 0005
In the Andhra Pradesh High Court
Case No : CRP No. 3266 of 1989

Kathapalli Suryanarayana

APPELLANT

Vs

Bandikatla Anjaneyulu

RESPONDENT

Date of Decision : 07-09-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144, 151

Citation : (1998) 6 ALD 82 : (1998) 5 ALT 613 : (1999) 1 CivCC 65

Hon'ble Judges : R. Bayapu Reddy, J

Bench : Single Bench

Advocate : Mr. B. Adinarayana Rao, for the Appellant; Mr. G. V. Sitarama Rao, for the Respondent

Judgement

1. This revision is filed by the petitioner in EA 638 of 1988 in OS 364 of 1982 on the file of the I Additional Munsif Magistrate, Guntur questioning the impugned orders dated 3-7-1989 dismissing the said petition which was filed under Sections 144 and 151 CPC seeking restitution of the suit property.

2. The respondent herein, who is the plaintiff in OS 364 of 1982, had filed the said suit contending that the lease granted under a registered deed in his favour by the defendant is an usufructuary mortgage and therefore, he is entitled for redemption of mortgage and for recovery of possession and profits. During the pendency of the suit, plaintiff filed IA 1575 of 1983 for temporary injunction against the defendant pending disposal of the suit and the said petition was allowed granting such interim injunction. The defendant filed appeal against that order and the said appeal was dismissed. Subsequently, the suit was tried by the trial Court and it was dismissed. Thereupon, the plaintiff filed AS 146 of 1986 and the said first appeal also was dismissed. Thereupon, the plaintiff filed SA 779 of 1987 in the High Court. After the disposal of AS 146 of 1986, the defendant filed EA 638 of 1988 under Sections 144 and 151 CPC seeking restitution of the suit property from the plaintiff, contending that on account of the temporary injunction orders passed by the trial Court during the pendency of the suit, the

plaintiff dispossessed him (defendant) taking advantage of such interim injunction and he continues to be in possession and enjoyment of the same unlawfully and that inasmuch as the suit was finally dismissed and as the first appeal filed by him was also dismissed, the defendant is entitled for restitution of the property from the plaintiff. The plaintiff opposed the said petition contending that there is no order passed by the Court directing delivery of possession of the property to him and such possession was not taken by him through Court and as such Section 144 CPC has no application to the present case. The learned District Munsif, on the basis of the evidence adduced before him, dismissed the petition holding that the plaintiff, who is said to be the landlord of the defendant, is in possession of the property as such landlord and the defendant is claiming possession as tenant; that the decree passed in the suit has not become final as Second Appeal filed by the plaintiff is still pending in the High Court and that the defendant can seek his remedy only under the provisions of the Tenancy Act but not u/s 144 CPC. Questioning such orders, the present revision is filed.

3. Heard the Counsel.

4. The only point that arises for consideration in this revision is whether the petitioner (Defendant) is entitled for restitution of the suit property u/s 144 or u/s 151 CPC and whether there are any valid reasons to interfere with the orders of the lower Court?

5. It is seen from the facts of this case that the suit was filed by the plaintiff for redemption of the mortgage and for recovery of possession of the property, contending that the registered deed executed in favour of the defendant is only in the nature of an usufructuary mortgage and not a lease deed. He also filed IA No, 1575 of 1982 for interim injunction pending disposal of the suit and such interim injunction was granted by the trial Court and such orders of interim injunction were confirmed by the appellate Court in the Civil Miscellaneous Appeal filed against the orders of temporary injunction. But subsequently, the suit was dismissed by the trial Court and the first appeal filed by the plaintiff was also dismissed. Subsequently the plaintiff filed SA No.779 of 1987 which is also since dismissed on 25-3-1994 thereby confirming the decree and judgment of the trial Court passed in the suit. After the first appeal was dismissed and when the second appeal was still pending in the High Court, the defendant filed EA 638 of 1988 under Sections 144 and 151 CPC seeking restitution of the property from the plaintiff on the ground that the plaintiff dispossessed him by taking advantage of the orders of temporary injunction passed by the trial Court and confirmed by the appellate Court. It is further to be seen that the plaintiff did not take delivery of the property from the defendant through Court on the basis of any orders passed by the Court so as to say that inasmuch as such orders were subsequently set aside, the defendant is entitled to get back possession of the property by way of restitution as contemplated u/s 144 CPC. When there was no delivery of property in pursuance of any order of Court and if the plaintiff had dispossessed the defendant unlawfully on the basis of a temporary injunction

order which does not contemplate any such delivery of the property to the plaintiff, the defendant is not entitled to take recourse to provisions of Section 144 CPC for seeking restitution of the property, and his only remedy is to file a suit for recovery of possession. Such view is clearly expressed by various High Courts including our own High Court.

6. In the decision of the Madras High Court reported in *Periyasamy Theran v. Karuthiah Thevan*, AIR 1918 Mad.1293, it is observed that when the defendants did not lose their possession because of any action taken under the decree, but were forcibly dispossessed by the plaintiffs, the defendants remedy in respect of such an act of the plaintiff is only by way of a suit and not by seeking restitution. The said view was followed in a subsequent decision of the Madras High Court reported in *Govinda v. Muniswami*, AIR 1937 Mad. 315, the facts in which are quite similar to the present facts. In that case also, the defendant is alleged to have been dispossessed by the plaintiff in view of temporary injunction orders passed in the suit and subsequently the defendants sought for restitution of the property u/s 144 CPC when the suit was finally dismissed. The Court held, by relying upon the earlier decision reported in *Periyasamy Theran v. Karuthiah Thevan* (supra), that the party was not entitled for seeking restitution of the property and his only remedy is to file a suit for recovery of possession. It was observed in that decision that if in pursuance of the orders of temporary injunction, delivery of the properties was given to the plaintiff through Court, the provisions of Section 144 CPC can be applicable and that inasmuch as the plaintiff therein is said to have acted in excess of what was granted to him in the orders of temporary injunction and forcibly and unlawfully dispossessed the defendant from the suit properties. It is not a matter of restitution and that the remedy is only to file a suit for recovery of possession. The above cited two decisions of the Madras High Court were subsequently followed in another decision of the same Court reported in *Begum Janammal Vs. Selva Arasu and Others*, . The same view was also held by the Orissa High Court in the decision reported in *Banchhanidhi v. Bhanu Sahuani*, AIR 1974 Ori. 148.

7. In the decision of our own High Court reported in *Krishnareddy v. Kota Reddy & Others*, 1980 (1) ALT 428 also, the same point arose for consideration and it was held by following the above cited two decisions of the Madras High Court, that the defendant did not lose his possession through the process of the Court in pursuance of any orders of the Court granting delivery of such possession to the plaintiff and that when the plaintiff is said to have unlawfully dispossessed the defendant taking advantage of any interim orders of injunction passed in the suit, the defendant is not entitled to seek restitution of the property from the plaintiff after the dismissal of the suit and that his only remedy is to file a suit for recovery of possession. The facts in that case are exactly similar to the facts in the present case also. Therefore, in view of all these circumstances, the petitioner, who is the defendant in the suit, cannot be said to be entitled to seek any relief for recovery of possession by way of restitution either u/s 144 or u/s 151 CPC.

8. The learned Counsel for the revision petitioner has, however, tried to rely upon the decision of our own High Court reported in *Savamma v. Radhakrishna Murthy*, 1985 (1) ALT 436 in support of his contention that restitution can be ordered u/s 144 CPC or u/s 151 CPC. But a perusal of the said decision clearly shows that the facts in that case are completely different from the present facts and the observations made therein cannot be made applicable to this case. It is clear from a perusal of the said decision that the plaintiff in that case filed the suit on the footing that he is a tenant and obtained an interim injunction restraining the defendant from interfering with his possession and simultaneously he had obtained a positive order from the Court appointing an Advocate as Commissioner to be present at the work spot and to enable him to complete the construction of the disputed wall pending disposal of the suit and as such, the Court has given its assistance to the plaintiff in executing such work during the pendency of the suit. Ultimately, the suit was dismissed after the object of construction of the disputed wall was fulfilled. Under those circumstances, it was observed by the Court that restitution can be ordered either u/s 144 or u/s 151 CPC to put back the parties in the same position and that no separate suit need be filed for such purpose. But the facts in the present case are completely different, as already stated above. It is further to be seen that in the above cited decision, on which the learned Counsel for the revision petitioner tries to rely upon, the above cited earlier decision of our High Court reported in *Krishnareddy v. Kotareddy and others* (supra) as well as the decision of the Madras High Court reported in *Govinda v. Muniswamy* (supra) were also referred and both those decisions were distinguished on facts. As already stated above, the facts in the present case are exactly the same as the facts in the above cited decisions reported in *Krishnareddy v. Kotareddy and others* (supra) and *Govinda v. Muniswamy* (supra). Therefore, in view of all these circumstances, the orders of the lower Court dismissing the petition filed for restitution cannot be interfered with.

9. The learned Counsel for the revision petitioner further tries to contend that the only grounds on which the lower Court dismissed the petition are that the second appeal filed in the High Court was still pending and the decree and judgment of the trial Court cannot, therefore, be said to have become final and the petitioner is entitled to seek his remedy only under the Tenancy Act and not u/s 144 CPC; that the second appeal is, however, since dismissed and there is no provision under the A.P. Tenancy Act for seeking redelivery of the property from the landlord by tenant; that both such grounds, basing on which the lower Court dismissed the petition, do not hold water and as such, the orders of the lower Court are liable to be set aside. It is no doubt true that the lower Court has not based its conclusion for dismissing the petition on the ground that restitution cannot be ordered as the plaintiff did not take possession of the property from the defendant through Court in pursuance of any orders of such Court. But simply on account of such circumstance, the revision petitioner cannot be granted relief u/s 144 or u/s 151 CPC when he is really not entitled for any such

relief for the reasons already discussed above. Therefore, such contention of the learned Counsel for the revision petitioner cannot be accepted. In any view of the matter, the orders of the lower Court cannot be interfered with in this revision as the revision petitioner is not entitled to seek restitution of the property either u/s 144 CPC or u/s 151 CPC.

10. In the result, the revision petition is dismissed. No costs.