

(2003) 07 AP CK 0066

In the Andhra Pradesh High Court

Case No : Second Appeal No. 542 of 1992

Koppara Krishna Rao and Others

APPELLANT

Vs

Voppangi Jagannadha Das and Another

RESPONDENT

Date of Decision : 22-07-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, 151
Specific Relief Act, 1963 — Section 38
Transfer of Property Act, 1882 — Section 53A

Citation : (2003) 6 ALT 758 : (2003) 3 APLJ 433

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : M.S.R. Subrahmanyam, for the Appellant; K.V. Subrahmanya Narsu, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—Defendants 2 and 5 who are the son and daughter of K. Suryanarayana, the 1st defendant in O.S.No. 30 of 1981 on the file of the Code of the District Munsif, Palakonda, Srikakulam District and the widow of the said K. Suryanarayana are the appellants in this Second Appeal.

2. Respondents filed the said suit against Suryanarayana, appellants 1 and 2 others for an injunction restraining them from interfering with Ac. 1.42 cets of wet land situated in Kopparavalasa, Palakonda Taluk specified in the plaint schedule, hereinafter referred to as the suit land, alleging that V. Ramamurthy father of the first respondent and husband of the second respondent, purchased it from the appellants under an agreement of sale dated 14-3-1973 and was put in possession thereof, and that as per the terms of the agreement he discharged the debts undertaken to be discharged by him under the said agreement and after the death of Ramamurthy appellants with the help of their henchmen are trying to interfere with their possession over the suit land. On behalf of himself and appellants 1 and 2 Suryanarayana filed his written statement contending

that the agreement of sale dated 14-3-1973 relied upon by the respondents is not true, and that Ramamurthy was never in possession of the suit land. Basing on the pleadings the trial court framed three issues for trial. In support of their case respondents examined P.Ws. 1 to 3 including the first respondent and marked Exs.A-1 to A-28. On behalf of Suryanarayana and appellants 1 to 2 four witnesses were examined as D.Ws.1 to 4 and Exs.B-1 to B-10 were marked. On the basis of the evidence on record the trial court held that the agreement dated 14-3-1973 (Ex.A-1) relied upon by the respondents is true valid and that Ramamurthy by discharging the debts undertaken to be discharged by him, paid the entire consideration payable under Ex.A-1 and that he was put in possession of the suit land and hence is entitled to the protection u/s 53-A of the Transfer of Property Act (for short "the Act") and decreed the suit. Appeal preferred by Suryanarayana, appellants 1 and 2 and other defendants in A.S.33 of 1988 to the Court of the Subordinate Judge, Rajam, was dismissed. Since Suryanarayana died thereafter, this Second Appeal is preferred by his widow and his son and daughter, i.e., Defendants 2 and 5 in the suit.

3. The contention of the learned counsel for the appellants is that since the respondents were never in possession of the suit land, question of their invoking protection u/s 53-A of the Act does not arise because the sine qua non for invoking the benefits of Section 53-A of the Act, is the purchaser being put in possession of the land agreed to be sold. He placed strong reliance on AIR 1940 1 (Privy Council) and Patel Natwarlal Rupji Vs. Shri Kondh Group Kheti Vishayak and another, . The contention of the learned counsel for the respondents is that since the courts below concurrently found that respondents are in possession and enjoyment of the suit land the concurrent finding of fact cannot be interfered in a second appeal.

4. One of the contentions of the learned counsel for the appellants is that since interim injunction granted by the trial Court in I.A.52 of 1981 was vacated by the appellate Court, it is clear that respondents had no injunction in their favour during the pendency of the suit and so it cannot be said that they are in possession of the suit land. The interim injunction granted in favour of the respondents in I.A.No. 52 of 1981 seems to have been vacated by the appellate Court on the basis that the interim injunction was ordered to be in force for a limited period. In my considered opinion the question whether an injunction granted under Order 39 Rule 1 C.P.C. or Section 151 CPC was in force or not, is not very relevant for deciding the issue in the suit relating to the eligibility of the plaintiff to seek a decree of perpetual injunction. The issue in the suit has to be decided on the basis of the evidence adduced in the suit but not on the basis of the interlocutory orders passed in the suit. It is well-known that interlocutory orders operate only during the pendency of the suit and do not operate as res judicata in the suit. So the question as to whether there was an injunction in force during the pendency of the suit in favour of the respondent or not is wholly irrelevant for considering the issues in the suit, which have to be decided on the basis of the evidence adduced in the suit.

5. Irrespective of the question whether the suit is filed invoking Section 53-A of the Act, or Section 38 of the Specific Relief Act, if a plaintiff in a suit for a perpetual injunction fails to establish his possession over the property covered by the suit, question of granting injunction protecting his possession does not arise. Both the Courts, on the basis of the evidence on record, concurrently found that respondents and their father Ramamurthy have been in possession of the suit land from the date of Ex.A-1. Suryanarayana, the 1st defendant admittedly was Village Officer of the Village in which the suit land is situated. He issued some of the land revenue receipts in favour of the respondents. The plea of the 1st defendant Suryanarayana that he issued those land revenue receipts in favour of respondents in respect of the land taken on lease from one S. Appala Naidu and his brother Durga Rao, but not in respect of the suit land which is situated in the Same S.No. is disbelieved by both the Courts below. Concurrent findings of fact based on the evidence on record need not and cannot be interfered within a Second Appeal by this Court.

6. The two decisions relied upon by the learned counsel for the appellants have no application to the facts of this case. The ratio in those decisions is that Section 53-A of the Act can be used only as a shield but not as a sword. Such shield can be used either as a plaintiff or as a defendant. So I find no force in the contention of the learned counsel for the appellants that those two decisions lay down that Section 53-A of the Act cannot be invoked by a plaintiff. As long as the relief sought is protection of possession it would mean that Section 53-A of the Act is being used as a shield. If a positive relief of declaration of title and the like is sought it amounts to using Section 53-A as a sword. So merely because respondents are seeking injunction as plaintiffs, by invoking Section 53-A of the Act, it does not mean that they are using the said section as a sword. In fact in Ram Gopal Reddy Vs. Additional Custodian Evacuee Property, Hyderabad, a Constitution Bench held that the Section 53-A of the Act can be used as a shield but not as an independent claim either as a plaintiff or as a defendant. Since respondents filed the suit seeking an injunction to protect their possession they are using Section 53-A of the Act only as a shield but not as a sword. In Patel Natwarlal Rupji case (2nd supra) the plaintiff intended to use Section 53-A of the Act as a sword to defraud a creditor of his vendor and so it was held that he is not entitled to use Section 53-A for that purpose. The facts in that case are entirely different from the facts in this case. The evidence on record and the findings of the Courts below do not support the contention of the learned counsel for the appellants that respondents lost their possession over the suit land during the pendency of the suit. Therefore, I find no merit in the second appeal.

7. In the result, the second appeal is dismissed, but in the circumstances without costs.