
(2006) 12 AP CK 0076
In the Andhra Pradesh High Court
Case No : SA No. 608 of 1996

Koppula Kotaiah (died) and Others

APPELLANT

Vs

Gummadi Vasantha Rao

RESPONDENT

Date of Decision : 12-12-2006

Acts Referred:

Citation : (2007) 3 ALD 764 : (2007) 3 ALT 682

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : P. Gopal Das, for the Appellant; G.S. Reddy, for the Respondent

Final Decision : Dismissed

Judgement

G. Yethirajulu, J.—This second appeal has been preferred by the defendant in O.S. No. 6 77 of 1984 on the file of the II Additional Munsif Magistrate, Guntur.

2. The plaintiff filed a suit against the defendant for ejectment. The suit was decreed as prayed for. Being aggrieved by the judgment and decree of the trial Court, the defendant preferred A.S. No. 61 of 1990 on the file of the II Additional District Judge, Guntur. The appeal was also dismissed by confirming the judgment and decree of the trial Court. Being aggrieved by the judgment and decree of the appellate Court, the defendant preferred the present appeal by raising the following points as substantial questions of law to be considered by this Court:

(a) Whether the plaintiff's suit for ejectment can be decreed without asking for declaration of title or amendment of the plaint when the defendant raised a defence that they are in adverse possession of the property since last 25 years and neither the plaintiff nor his predecessors are having any subsisting title ?

(b) Whether the lower Courts can order for eviction even after finding that there was no jural relationship of landlord and tenant between the plaintiff and defendant.

(c) Whether the lower Courts can pass eviction decree without reading the relevant portion of the documents and written statement which amount to "no reading at all ?"

3. The plea of the plaintiff is that he is the owner of the plaint schedule property and he constructed zinc sheeted shed and let out the same to the defendant for Rs. 20/- per month. The defendant paid rent for one month and subsequently he committed default in payment of rent. Therefore, the plaintiff issued a termination notice against the defendant, as there was no reply from him. Hence, the termination of tenancy is confirmed. But, the defendant continued to be in possession as an unauthorised occupant. As the defendant and others filed a suit for permanent injunction, the plaintiff could not get him vacated, therefore, he filed a suit for ejection.

4. The defendant did not plea that he is the owner of the property. He contended that he occupied the land along with others about 27 years back and he has been in possession and enjoyment of the same and he perfected title by adverse possession. The plea of adverse possession was rejected by the trial Court by observing that except two receipts there is no material placed by the defendant to say that he is in possession of the property for more than 12 years uninterruptedly to the knowledge of the plaintiff. The cist receipts did not connect to the property. Therefore, the trial Court came to a conclusion that the defendant failed to prove either title or adverse possession over the property in question. Hence, he has no right over the property and accordingly the suit was decreed directing eviction of the defendant from the suit property. The appellate Court also concurred with the view expressed by the appellate Court and dismissed the appeal.

5. The learned Counsel for the appellants contended that the plaintiff filed the suit for ejection by treating the defendant as a tenant but the trial Court as well as the appellate Court while observing that there is no landlord and tenancy relationship between the parties ordered eviction of the defendant, which is not based on the pleadings of the parties. Therefore, the decrees and judgments passed by the Courts below are illegal and they cannot be accepted. In support of his contention, he relied on certain judgments.

(i) In *Mir Niyamath Ali Khan Vs. Commercial and Industrial Bank Ltd. and Others*, , the Division Bench of this Court held as follows:

Normally the Court will not grant relief to the plaintiff on a case for which there was no foundation laid in the pleadings and which the defendant was not called upon to meet. But when the alternative case which the plaintiff could have made was admitted by the defendant either in his written statement or in his evidence and the parties adduced evidence relating to such an alternative claim, there would be nothing improper in giving the plaintiff a decree upon such alternative claim.

(ii) In *Trojan and Co. Ltd. Vs. Rm. N.N. Nagappa Chettiar*, , the Supreme Court

held as follows:

The decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint the Court held was not entitled to grant the relief not asked for.

(iii) In *A.V.G.P. Chettiar and Sons and Others Vs. T. Palanisamy Gounder*, , the Supreme Court held that the parties are bound to base their contentions before Court on their pleadings and reasoning and conclusions of the Court should not be far removed from the pleadings of the parties.

6. The learned Counsel for the appellant also cited a judgment in *Allam Gangadhara Rao Vs. Gollapalli Gangarao*, , for similar purpose.

7. There is no dispute regarding the principles laid down by the Supreme Court and this Court on the aspects mentioned in the judgments. But, the principles laid down in those decisions are not applicable to the facts of the present case.

8. In this case, the plaintiff produced the registered title deed claiming that he is the owner of the property. He sought for ejectment of the defendant by contending that he is in unauthorised possession of the property.

9. The defendant conceded that he trespassed into the property but claimed that since he is in possession and enjoyment of the property since more than 27 years, he perfected title by adverse possession. Therefore, he is not liable to be evicted.

10. The Courts below gave categorical findings about the issuance of the sale deed proceeds by the plaintiff and the failure of the defendant proved his continuous possession for more than 12 years. The Courts below held that in the absence of any proof that he is in continuous possession of the property for more than 12 years to the knowledge of the plaintiff, the defendant is not entitled to claim adverse possession, therefore, he is liable to be evicted. As there is a concurrent finding of fact, I do not wish to interfere with the finding of fact.

11. So far as the substantial questions of law raised before this Court are concerned, the plaintiff though accidentally mentioned that the defendant was once upon a time a tenant under him, did not plead further that he continues to be the tenant. It is the specific case of the plaintiff that the tenancy was terminated with effect from 1-7-1983 and there is no continuation of tenant from then onwards and the defendant is continuing in possession as an unauthorised occupant. The defendant also denied tenancy and claimed that he is the trespasser of the property but he is in continuous possession of the property, therefore, he perfected his title by adverse possession.

12. After verification of the entire record and the legal possession, I am convinced that the judgment rendered by the Courts below are within the scope of the pleadings of the parties and the trial Court did not go beyond the scope of pleadings. Therefore, there is no illegality committed by the Courts below in

ordering eviction of the defendants. I do not find any perversity in the judgments of the Courts below warranting interference by this Court. In the light of the above circumstances, I do not find any grounds to interfere with the judgments of the Courts below.

13. In the result, the second appeal is dismissed. No costs.