
(2005) 08 AP CK 0067

In the Andhra Pradesh High Court

Case No : Second Appeal No. 1183 of 2004

Kotla Srinivas Reddy and Others

APPELLANT

Vs

Danya Bashaiah and Others

RESPONDENT

Date of Decision : 22-08-2005

Acts Referred:

Citation : (2006) 1 ALD 861 : (2005) 6 ALT 822

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Vilas V. Afzulpurkar, for the Appellant; L. Prabhakar Reddy, for the Respondent

Judgement

L. Narasimha Reddy, J.—Plaintiffs in O.S.No. 122 of 1998, on the file of the Junior Civil Judge, Ibrahimpatnam, R.R. District, are the appellants. They challenge the judgment and decree dated 21-7-2003 passed in that suit, as well as the judgment and decree dated 3-2-2004, passed by the First Additional District Judge, R.R. District, in A.S.No. 87 of 2003.

2. The appellants claimed that they have purchased the suit schedule property, through a sale deed dated 21-5-1992, marked as Ex.A-10. They complained that though the respondents do not have any claim over the suit schedule property, they started interfering with the possession, and sought the relief of perpetual injunction.

3. The respondents pleaded that the appellants were never in possession of the suit schedule land, either before or subsequent to the purchase under Ex.A-3, and that they themselves have been in possession to it, as tenants, for the past 40 years. It was also pleaded that the appellants filed O.S.No. 38 of 1993, on an earlier occasion, for the same relief, in respect of the same property, and against the same parties, and having permitted that to be dismissed, the present suit is filed, on the basis of certain documents, which are said to have been obtained, on the strength of the interim orders passed in that suit.

4. Sri Vilas V. Afzulpurkar, learned Counsel for the appellants, submits that in a suit for perpetual injunction, the only question that assumes importance is, as to who among the parties are in possession of the concerned property, as on the date of filing of the suit, and the Courts below have erred in insisting that the appellants ought to have established their possession, as on the date of filing of the earlier suit, in the year 1993. He submits that O.S.No. 38 of 1993 was dismissed, for non-prosecution, and it does not give rise to any consequences, either in favour of the respondents, or against the appellants.

5. Sri L. Prabhakar Reddy, learned Counsel for the respondents, on the other hand, submits that the Courts below have assigned cogent reasons that warranted the deviation from the ordinary rule in the matter of grant of perpetual injunctions, and have taken note of the fact that it is on the strength of the orders of temporary injunction obtained in O.S.No. 38 of 1993, that the various documents, which are sought to be now relied upon, were obtained. He further submits that the appellants did not place any independent material, to convince the Courts that they were in possession of the land.

6. The suit was filed for the relief of perpetual injunction simpliciter. On behalf of the appellants, P.Ws.1 to 3 were examined and Exs.A-1 to A-16 were marked. The respondents examined D.Ws.1 to 3 and filed Exs.B-1 to B-33 on their behalf. Much of the controversy, in the present set of proceedings, revolved around the consequences that flow from the dismissal of O.S.No. 38 of 1993 filed by the appellants, on an earlier occasion. That suit was filed in respect of the same property, against the same parties, and with similar relief. For one reason or the other, it came to be dismissed, for non-prosecution. The fact remains that no findings as such, were recorded therein. The trial Court, as well as the lower appellate Court, took the view that inasmuch as O.S.No. 38 of 1993 was pending till 28-10-1998 i.e. two weeks before filing of the instant suit, the same needs to be treated, as a precursor to the present suit, and that the appellants are under obligation to prove their possession, as on the date of filing of that suit. Such an approach does not accord with the settled principles of law.

7. By its very nature, possession is not a static concept or phenomena. It may keep on changing, either with the consent of the parties, or without it. Whenever a suit for the relief of perpetual injunction is filed, the Court has to examine, whether the plaintiff therein has proved the possession of the property, with a semblance of entitlement, as distinguished from the claim of an out-right trespasser of recent origin. It is true that O.S.No. 38 of 1993 filed by the appellants ended in dismissal. Such a dismissal is of hardly any consequence, since no findings were recorded therein. Even in a case, where a suit for perpetual injunction is dismissed on merits, it shall always be open to the plaintiff therein to file a subsequent suit for similar relief, in case he is able to satisfy the Court that he got the possession of the property, at a subsequent date. It must be noted that while the grant of injunction enables the party to protect the possession on the strength of it, denial of the same does not disable

him from protecting it otherwise, or to resume it, through known means recognized under law. Further, rejection of the relief of injunction to a plaintiff, cannot be treated as a grant of decree, in favour of the defendant therein, or a finding, amounting to dispossession.

8. Even assuming that certain entries came to be made in the revenue records, in favour of the appellants, on the strength of an order of temporary injunction granted by the trial Court, in the earlier suit, it cannot be a basis for the Court to refuse the relief in the present suit. The very fact that an order of temporary injunction was granted, discloses that the Court was prima facie satisfied about the possession of the appellants, and by granting an order of temporary injunction, the Court had accorded its protection. The subsequent withdrawal of such a facility, may not be treated, as leaving the appellants herein, bereft of any rights.

9. The cumulative effect of the factors referred to above, is that the Courts below were under obligation to examine, as to whether the appellants herein were in possession of the suit schedule property, as on the date of filing of the present suit, and whether the same deserves any protection from Court. A perusal of the judgments of both the Courts discloses that they took the view that the appellants were under obligation, to prove their possession in the year 1993, though the present suit was filed in the year 1998. In that view of the matter, the Second Appeal is allowed, and the judgment and decree of the trial Court, as well as the lower appellate Court, are set aside, and the matter is remanded to the trial Court, for fresh examination and disposal.

10. The trial Court shall decide the matter, on the lines indicated above, but no observation made herein, shall be treated as any finding, or pronouncement, on the question of possession. The trial Court shall dispose of the matter, after giving opportunity to both the parties, as early as possible and not later than six months, from the date of receipt of a copy of this order. If any order of temporary injunction was granted in favour of the appellants, during the pendency of the suit, the same shall continue to be in force, till the disposal of the suit. There shall be no order as to costs.