

(2007) 11 AP CK 0062
In the Andhra Pradesh High Court
Case No : SA No. 1223 of 2007

Lakkireddy Narasimha Reddy	Vs	APPELLANT
Lakkireddy Yella Reddy		RESPONDENT

Date of Decision : 14-11-2007

Acts Referred:

Citation : (2008) 2 ALD 142 : (2010) 5 ALT 784

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : B. Mahender Reddy, for the Appellant; A. Bhaskara Chary, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The respondent herein filed O.S. No. 36 of 1999 in the Court of the Junior Civil Judge, Siricilla against the appellant, for the relief of perpetual injunction as regards the use of a passage, marked in the sketch, appended to the plaint. He pleaded that the passage in question is the only access for him to reach the Gram Panchayat road, for the last several decades. Apart from the right on account of the prolonged usage, he also claimed right to the extent of one-fourth share vis-a-vis the passage on account of purchase of an item of property from one Smt. Lakkireddy Rajawa, a close relation of the appellant. He complained that the appellant is obstructing the use of passage, without any basis.

2. The appellant filed a written statement denying the claim of the respondent. He pleaded that the respondent had an independent access and he does not have any right whatsoever to use the passage in question. Objection was also raised as to the maintainability of the suit in the absence of any relief for declaration.

3. Through its judgment, dated 3.6.2006, the trial Court dismissed the suit. The respondent filed A.S. No. 4 of 2006 in the Court of the Senior Civil Judge, Siricilla. The same was allowed by the lower appellate Court on 17.9.2007 and

the suit was decreed, as prayed for. Hence, the second appeal.

4. Sri B. Mahender Reddy, the learned Counsel for the appellant submits that the respondent himself realized that a mere suit for injunction cannot be maintained and accordingly, filed I.A. No. I 12 of 2007 with a prayer to amend the suit to incorporate the plea of declaration and having dismissed the I.A., the lower appellate Court allowed the appeal. He submits that apart from dismissing the I.A. for amendment, the lower appellate Court has also recorded a finding to the effect that the respondent failed to prove his plea that he acquired one-fourth share in the front yard and despite that, the suit was decreed.

5. Sri A. Bhaskara Chri, the learned Counsel for the respondent, on the other hand, submits that his client was using the passage for the last several decades and on the basis of evidence before it, the lower appellate Court recorded a clear finding in favour of the respondent and decreed the suit.

6. The substantial questions of law that arise for consideration in this second appeal are:

(a) Whether a suit for mere injunction can be maintained as regards the right to use of a passage?

(b) Whether the relief of perpetual injunction can be granted even after holding that the plaintiff failed to prove his prima facie rights that constituted the foundation?

7. A suit for perpetual injunction without the relief of declaration of title can be maintained, if the plaintiff claims right of exclusive possession over the property. Even if there exists any dispute as to title, the primary concern of the Court would be to verify as to who among the parties were in possession of the property as on the date of filing of the suit. If the possession was found to be otherwise tenable, grant of injunction would be a matter of course, irrespective of absence of title in the plaintiff. The defendant would be enjoined from interfering with the possession, but, it would left open to him to seek eviction through the process of the Court.

8. The right to use a passage, however, stands on a different footing. No one can claim exclusive possession over a passage or a road. The usage can be either on the strength of any legal rights or on the basis of easementary rights. Either way, a declaration as to the right to use passage must be sought and the relief of injunction has to be claimed as a corollary. In the instant case, the respondent did not claim the relief of declaration of any nature. The trial Court dismissed the suit. The necessity of incorporating the relief of declaration was felt by the respondent, may be after the dismissal of the suit. He filed I.A. No. I 12 of 2007. The lower appellate Court dismissed the same while disposing of the appeal. However, it proceeded to decree the suit for perpetual injunction. Therefore, a serious legal infirmity had crept into the judgment of the lower appellate Court.

9. Even assuming that the suit for mere injunction in a matter of this nature is

tenable, the relief could have been granted, if only the facts pleaded by the plaintiff, as constituting the foundation were proved. The only basis for the defendant in claiming the relief of injunction was that he had acquired one-fourth share in the open yard, abutting the passage. Had this plea been accepted, there would have been some justification for granting the relief. In the words employed by the lower appellate Court itself, the finding is as under:

It is the contention of the plaintiff that previously, he is the owner of the house bearing No. 12-1-44 and subsequently, he purchased the house, just abutting to the said house, on the east, bearing D. No. 1-2-43/1 from the daughters of Smt. Lakkireddy Rajavva and also purchased her one-fourth right in the front yard. It is also contention of the plaintiff that after purchase, he made both the houses as one and the same, and so, the Gram Panchayat allotted H. No. 1-3-27 in the place of old House Nos. 1-2-44 and 1-2-43/1. Except the oral evidence, the plaintiff has not filed any documentary evidence before the Court that he purchased the House No. 1-2-43/1 from the daughters of Smt. L. Rajavva, besides one-fourth share in the front courtyard. In other words, the plaintiff has not proved his title over the one-fourth share in the front courtyard as contended above.

Having recorded this finding, the lower appellate Court proceeded as though this pales into insignificance, since the title of the respondent over his house bearing No. 1-2-43/1 is not disputed. Admittedly, the passage does not abut the said house. Therefore, the decree granted by the lower appellate Court can be said to be the result of perverse approach.

10. For the foregoing reasons, the second appeal is allowed and the decree passed by the lower appellate Court is set aside. It is, however, made clear that it shall be open to the respondent to file a suit for declaration of his rights and consequential reliefs by pleading necessary facts, in accordance with law. There shall be no order as to costs.