

(2006) 08 AP CK 0051
In the Andhra Pradesh High Court
Case No : Appeal Suit No. 517 of 1999

Lavu Sri Krishna Rao and Others

APPELLANT

Vs

Dr. Moturi Nagendra Rao

RESPONDENT

Date of Decision : 08-08-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 7

Citation : AIR 2007 AP 25 : (2006) 6 ALD 145 : (2006) 6 ALT 496 : (2006) 3 APLJ 191

Hon'ble Judges : G.V. Seethapathy, J

Bench : Single Bench

Advocate : G. Rama Gopal, for the Appellant; K. Sarvabhoma Rao, for the Respondent

Judgement

G.V. Seethapathy, J.—This is an appeal preferred against the judgment and decree dated 24.3.1998 in O.S. No. 28 of 1989 on the file of Senior Civil Judge, Anakapalli, wherein the trial Court, while dismissing the suit filed for permanent injunction granted alternatively preliminary decree for partition and separate possession of half share in the plaint schedule property in favour of the plaintiff and allotted the remaining half share to the 4th defendant and allowing the plaintiff to be in possession of three rooms and restraining the defendants from interfering with the plaintiff's possession and enjoyment of the same till a final decree is drawn and the plaintiff is allotted his specific half share.

2. The appellants are the defendants in O.S. No. 28 of 1989 on the file of Senior Civil Judge, Anakapalli. The respondent herein filed the said suit for permanent injunction restraining the appellants-defendants from interfering with his possession and enjoyment of the plaint schedule properties comprising 435.6 square yards of site in Survey No. 125/16 and six rooms thereon situate in Aganampudi village, Gajuwaka Mandal.

3. According to the plaintiff, the suit property originally belonged to Pattabhi Ramaiah from whom it was purchased by Lavu Venkata Rama Rao under

registered sale deed dated 2.4.1980 and the plaintiff after completing his graduation in Medicine took the suit property on lease from L.Venka ta Rama Rao under lease deed dated 31.1.1988 and improved the same and opened a Clinic-cum-Nursing Home in five out of the six rooms and opened a Pharmaceutical shop in the sixth room in 1988. After the death of L.V. Rama Rao on 16.11.1988, his wife Amaravathi succeeded to his estate including the plaint schedule property and while leaving for her native place in Krishna district after the death of her husband, she sold the plaint schedule property to the plaintiff for a consideration of Rs. 85,500/- under a registered sale deed dated 16.02.1989 and ever since, the plaintiff has been in possession and enjoyment of the said property in his own right. Defendants 1 and 2 are the sons and defendant No. 4 is wife of defendant No. 3. L.V.Rama Rao was also one of the sons of defendants 3 and 4. Defendants 3 and 4 got issued a registered notice dated 26.3.1989 alleging that the suit property was purchased by defendant No. 3, but, kept in the name of L.V.Rama Rao, be nami, that it is joint family property of defendant No. 3 and his sons and on the death of L.V.Rama Rao, his 1/5th share devolved on his mother Subbamma- defendant No. 4 and also demanding payment of rent at the rate of Rs. 450/- per month. Plaintiff got issued a reply notice. The plaintiff alleges that on 17.5.1989, he left for his native place Eluru and when he returned on 19.5.1989, he found that all the furniture and wherewithal in his Nursing Home were found thrown on the street and the plaintiff learnt that defendants 1 and 2 have forcibly entered the nursing home and the medical shop with rowdy elements and caused damage to the premises and forcibly removed the inpatients. Smt. Shaik Pyari, a female nurse working in the clinic gave a report to the Gajuwaka police, who registered a case in Crime No. 335 of 1989 and later arrested defendant No. 1. The plaintiff complains that on release from jail, defendant No. 1 along with defendant No. 2 and others tried to forcibly occupy the plaint schedule property. He, therefore, filed the suit for permanent injunction restraining the defendants from interfering with his possession and enjoyment of the plaint schedule property, wherein he has been running a nursing home.

4. Defendant No. 1 filed a written statement and defendants 2 to 4 adopted the same.

5. Defendant No. 1 denied the averments of the plaint and contended that the plaint schedule property belonged to the joint family of defendant No. 3 and his sons defendants 1, 2 and deceased L.Venkata Rama Rao having been purchased with the joint family assets, but, however, the sale deed was obtained in the name of L. Venkata Rama Rao, who was the eldest son and all the members of the joint family were in joint possession and enjoyment of the suit property and in one of the rooms, defendant No. 1 started Amaravathi Engineering works. The defendants further contend that the marriage of L.V.Rama Rao with Amaravathi was never consummated as Amaravathi has not attained puberty at all and hence she did not acquire the status of wife of Venkata Rama Rao. According to the defendants, defendant No. 4, the mother alone was Class 1 heir of late L.

Venkata Rama Rao. They further plead that the plaintiff approached defendant No. 3 and late Venkata Rama Rao seeking lease of two rooms on a monthly rent of Rs. 450/- agreeing to vacate as and when demanded and the plaintiff fell in arrears of rent from 1.12.1988. According to them, the lease deed dated 31.1.1988 is a forged document and the same is not binding on them. They further plead that as Amaravathi had no right to the suit property, the alleged sale deed dated 16.2.1989 said to have been executed by her in favour of the plaintiff is neither valid nor binding on the defendants and the said document is fraudulently brought into existence. Thus, according to the defendants, the plaintiff was only a tenant in respect of two rooms and the defendants are in possession of the remaining four rooms and so the plaintiff is not entitled for any injunction.

6. On the above pleadings of the parties, the trial Court framed the following issues:

(1) Whether the plaintiff was in exclusive possession and enjoyment of suit property by the date of suit?

(2) Whether the suit is not bad for non-joinder of necessary parties?

(3) Whether the plaintiff is entitled for the relief of permanent injunction prayed for ?

(4) To what relief ?

7. During trial, PWs.1 to 4 were examined on plaintiff's side and Exs.A-1 to A-8 were marked. DWs.1 to 4 were examined on defendant's side and Exs.B-1 to B-21 were marked on their behalf.

8. On conclusion of trial, the learned Senior Civil Judge while dismissing the suit filed for permanent injunction, however, granted a preliminary decree for partition of the plaint schedule property into two equal shares and separate possession of one such share in favour of the plaintiff and allotting the remaining half share to defendant No. 4. It was further directed by the trial Court that till a final decree is drawn, the arrangements made in the order dated 14.11.1989 in A.A.O.1506 of 1989 and AAO 1507 of 1989 on the file of this Court be continued and the plaintiff be allowed to be in possession of three rooms and defendant shall not interfere with the plaintiff's possession and enjoyment of the said three rooms till a final decree is drawn and the plaintiff's half share is specifically allotted to him.

9. Aggrieved by the said judgment and decree dated 24.3.1998, the defendants preferred the present appeal.

10. Arguments of learned Counsel for appellants and respondents were heard.

11. The respondent-plaintiff filed the suit for permanent injunction seeking to restrain the appellant-defendants from interfering with his possession and enjoyment of the plaint schedule property comprising six rooms. The plaintiff has

not prayed for any other relief or any alternative relief. It is his specific case that he is the absolute owner of the plaint schedule property and he is in possession and enjoyment of the same in his own right and that the appellants-defendants tried to unlawfully interfere with his possession and enjoyment of the plaint schedule property, wherein he has been running a nursing home and also a pharmaceutical shop. According to him, the plaint schedule property originally belonged to L.Venkata Rama Rao and he took the same on lease from the said Venkata Rama Rao under lease deed-Ex.A-1, dated 31.1.1988, and subsequently, on the death of the said Rama Rao, his wife Amaravathi being the sole legal heir succeeded to the estate of Rama Rao including the plaint schedule property and she sold the suit property to the plaintiff for a valuable consideration of Rs. 85,500/- under a registered sale deed-Ex.A-2 dated 16.2.1989 and thus, the plaintiff, who was initially a tenant, has subsequently become absolute owner of the suit property by virtue of his purchase under Ex.A- 2. He further contends that the defendants 3 and 4 who are the parents and defendants 1 and 2, the brothers of deceased L.V.Rama Rao have absolutely no right, title or interest in the suit property. The plaintiff filed the suit for injunction complaining that the defendants made attempts to interfere with the plaintiff's possession and enjoyment of the suit property and to dispossess him therefrom highhandedly.

12. On the other hand, the specific plea of the defendants is that the suit property belonged to the joint family, which comprised defendants 1 to 3, the deceased L.V. Rama Rao and two others sons of defendant No. 3, who are not parties to the suit and the said property was purchased by defendant No. 3 with the joint family funds, but the sale deed was obtained in the name of L.V.Rama Rao and therefore, on the death of L.V.Rama Rao, his wife did not succeed to the entirety of the estate of Rama Rao. The defendants also pleaded that the lease deed-Ex.A-1 said to have been executed by Rama Rao in favour of plaintiff is a fabricated document and the sale deed-Ex.A-2 executed by Amaravathi in favour of the plaintiff is sham and nominal and not binding on the defendants and the said Amaravathi had no competence to execute the sale deed as she was not the absolute owner of the property. According to the defendants, the plaintiff approached defendant No. 3 for lease of two rooms out of six rooms on a rent of Rs. 450/- per month agreeing to vacate as and when demanded and that the plaintiff fell in arrears of rent from 1.12.1988 and defendants have been in possession and enjoyment of the remaining four rooms till orders were passed by this Court in A.A.O. Nos. 1506 of 1989 and 1507 of 1989 by virtue of which the plaintiff came into possession of three rooms. Thus, the defendants have categorically denied the claim of the plaintiff that he is the absolute owner of the suit property or that the plaintiff has been in possession and enjoyment of the suit property in all the six rooms initially as a lessee and subsequently as owner thereof.

13. Based on the above pleadings, the only material issues, which arise for consideration in the suit for injunction, are whether the plaintiff was in exclusive possession and enjoyment of the suit property by the date of the suit and

whether the plaintiff is entitled to the relief of perpetual injunction. In fact, the said issues were settled as issues 1 and 3 by the trial Court. Both parties adduced evidence pertaining to those issues, which were settled on the basis of the respective pleadings. The trial Court in para 35 of its judgment answered issue No. 3 in favour of the plaintiff holding that he was in exclusive possession and enjoyment of the suit property by the date of the suit. The trial Court however held that since defendant No. 4 as a co-sharer is entitled for half share in the schedule property, the plaintiff is not entitled for permanent injunction as prayed for in respect of the entire suit property. The trial Court further observed that the plaintiff is entitled for some alternative relief. Accordingly, the trial Court held as follows:

In view of my findings, in issues 1 and 4 aforesaid it was held that, D.4 mother of deceased Lavu venkata Ramarao, is entitled for half share in the schedule property and that the sale transaction in favour of plaintiff, under Ex.A-2, is valid to the extent of half share of the said Amaravathi and in such circumstances, instead of granting perpetual injunction decree as prayed for by plaintiff, I am of the opinion that a preliminary decree for partition and separate possession of half share in the suit schedule property, can be granted in favour of the plaintiff, even though there is no amendment of the plaint to the said effect and I am also of the view that till the final decree is drawn in terms of preliminary decree, the arrangements made vide orders dated 14.11.1989, in A.A.O.1506 and 1507 of 1989, on the file of Hon'ble High Court of A.P wherein the plaintiff was allowed to be in possession of three rooms shall continue.

14. Accordingly, the trial Court while dismissing the suit for permanent injunction alternatively passed a preliminary decree for partition and separate possession for half share in the suit property in favour of the plaintiff and allotting the remaining half share to the fourth defendant.

15. Learned Counsel for the appellants-defendants contended that when the plaintiff himself has not prayed for the relief of partition, or for that matter, any alternative relief, and when it is also not the case of the defendants that the plaintiff is entitled for any share in the suit property and in the light of the specific contention of the defendants that the plaintiff has absolutely no rights whatsoever in the suit property, the trial Court is not justified in passing a preliminary decree for partition by way of an alternative relief, which is not asked for by either of the parties. The learned Counsel for the appellants further contended that in the absence of any pleadings or any issues in that regard and when the parties have not gone for trial on the aspect of partition, it is not open for the trial Court to pass a preliminary decree for partition and hence the same is liable to be set aside.

16. Learned Counsel for the respondent-plaintiff merely contended that, in order to avoid multiplicity of proceedings, the trial Court has granted the relief of partition as the evidence disclosed that the suit property belonged to the deceased Rama Rao and he died leaving behind his wife Amaravathi and mother-

defendant No. 4, who are entitled for a half share each, and so, the sale deed-Ex.A-2 executed by Amaravathi in favour of plaintiff is valid and enforceable to the extent of her half share, the remaining half share pertaining to defendant No. 4.

17. As stated supra, the respondent-plaintiff filed the suit for a permanent injunction claiming to be the absolute owner of the entire plaint schedule property and further claiming that he has been in exclusive possession and enjoyment of the same, originally as a tenant and subsequently as a purchaser in his own right. He categorically denied that the defendants have any sort of right or interest in the suit property. According to him, the suit property was self-acquired property of deceased Rama Rao. The defendants, on the other hand, contend that the suit property was joint family property of defendant No. 3 and his sons, defendants 1 and 2, deceased L.V.Rama Rao and two others, who are not parties to the suit. No issues were framed in the suit as to whether the suit property was self-acquired property of Rama Rao or joint family property as contended by defendants. It is also not the case of the defendants that defendant No. 4 was entitled to a half share in the suit property. In fact, defendant No. 1 filed written statement and defendants 2 to 4 filed a memo adopting the same. In the written statement, the plea of the defendants is that the property belongs to the joint family of defendant No. 3 and all his sons. Thus, neither of the parties have pleaded for partition of the suit property.

18. In a more or less identical situation, the High Court of Patna in Gobind Prasad Sinha Vs. Mst. Kulwanti and Others, , held as follows:

In the present case, the plaintiff as well as the contesting defendant both alleging independent right, title and interest over the disputed plot, it was not for the Court of appeal below to make out a new case for the parties and to hold that the plaintiff and the contesting defendants were entitled to half and half and that they were in joint possession. The Court cannot make out a new case for a party. It is true that the Courts are bound to take into consideration all the rights of the parties to the suit, both legal and equitable, and give effect thereto by their decrees as far as possible but the Courts are not at liberty to grant a relief either not sought for in the plaint or that does not naturally flow from the grounds of claim as stated in the plaint.

19. In the present case also, the parties to the suit have set up rival claims of right, title and interest in respect of the entirety of the suit property and it is not the case of either of the parties that the plaintiff and defendant No. 4 are co-sharers and are entitled for half share each.

20. In Nagayasami Naidu and Others Vs. Kochadai Naidu and Others, , it was held by High Court of Madras that:

It has to be recognized that a party cannot be awarded relief on a basis not pleaded by him and on which there is no issue, merely taking advantage of some statements in the pleadings or in the evidence made or given for a different

purpose and with reference to a different issue. Such deviation from the pleading is permissible, very rarely and only in exceptional circumstances, if it cannot be postulated that the other side has unambiguously and unequivocally admitted completely the factual or the legal basis on which relief could be moulded. In other words, it is the clear admission of the opposite party in the pleadings that confers jurisdiction upon the Court to award relief on a basis different from one covered by the issues on which parties went into trial.

21. It is well settled that the relief granted must be founded on the pleadings and the Court is not at liberty to grant relief not pleaded in the plaint or that does not follow naturally from the claim as stated in the plaint. In other words, the Court cannot make out a new case altogether. It is not even a case, where alternative relief of partition is granted based on any admission by the defendants in their pleadings, which admission, may in a given case, confer jurisdiction on the Court to grant an alternative relief.

22. When the pleadings are confined to the relief of permanent injunction claimed by the plaintiff and opposed by the defendants and when specific issues were framed in respect of specific pleadings and the parties have gone to trial adducing evidence in support of their respective contentions pertaining to those issues, there is absolutely no justification for the trial Court in travelling beyond the pleadings, the issues and the evidence and grant a totally different relief not asked for by either of the parties. The parties were not required to adduce any evidence beyond the scope of the pleadings. Hence, they had no opportunity to put forth any evidence regarding the partition proposed by the Court. In fact, two other sons, who are said to be members of the joint family of the defendants, are also not parties to the suit. However, the trial Court, unmindful of the limited scope of the pleadings and the issues arising therefrom went on to grant a larger relief of partition of the suit property. When a larger relief is prayed for and the claim for the same is not duly established, but when the evidence justifies grant of a smaller relief, granting of such smaller relief is permissible under Order VII Rule 7 CPC, which reads as under:

Order VII Rule 7 CPC:

Relief to be specifically stated.-Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.

However, under the guise of the said provision, a relief larger than the one claimed by the plaintiff in the suit cannot be granted.

In *Rajendra Tiwary Vs. Basudeo Prasad and Another*, , the Apex Court held: "Where the relief prayed for in the suit is a larger relief and if no case is made out for granting the same but the fact, as established, justify granting of a

smaller relief, Order VII Rule 7 permits granting of such a relief to the parties. However, under the said provisions a relief larger than the one claimed by the plaintiff in the suit cannot be granted.

23. In view of the above decision of the Apex Court, it is not open for the trial Court to have granted a larger relief of partition deciding the question of title, that too, in the absence of other two sons of defendant No. 3, who are also members of the joint family, in a suit filed for bare injunction. In a given case, the Court may, look into the aspect of title incidentally while considering grant of relief of injunction, but, however, deciding contentious questions of title on the face of rival and opposite claims, that too, in the absence of necessary pleadings and issues and evidence, and fixing the shares among some of the parties in respect of the suit property and granting a decree for partition, which is not prayed for by either of the parties is totally unwarranted and impermissible under law.

24. Learned Counsel for the respondent-plaintiff relied upon a decision in P. Narasimham v. P. Venkata Narasimha Rao 1962 (1) ALT 425 wherein it was held as follows:

Even without an amendment, in a suit for possession of certain property with sole and exclusive rights therein, a decree for partition could be granted notwithstanding the absence of an alternative prayer, provided such a relief would not result in such prejudice or injustice to the other side.

25. Relying upon the above decision, learned Counsel contended that applying the same analogy to the present case, the decree for partition granted by the trial Court is sustainable.

26. In the above case, the suit was filed for recovery of possession. The trial Court granted a decree for partition. During the hearing of the appeal, the plaintiff in the above suit applied for permission to amend the plaint by adding the relief of partition and separate possession of half share in the suit property in the alternative in order to obviate the difficulties arising out of the original frame of the suit. On the basis of the factual matrix and evidence available on record in the above case, the High Court held that it would be meaningless to drive the plaintiff to another suit and therefore allowed the proposed amendment to the plaint holding that the amendment should be allowed in order to adjudicate upon the real issues arising in a case and there cannot be any insuperable difficulty to allow a plaintiff to amend the plaint seeking an alternative relief in furtherance of justice and if it does not involve the other side in real hardship. It was further observed that even without an amendment, in a suit for possession of certain property, decree for partition could be granted notwithstanding the absence of an alternative prayer, provided such a relief would not result in such prejudice or injustice to the other side.

27. In the present case, the suit is filed for bare injunction and there is no alternative prayer made either in the original plaint or by way of any

amendment. Further, the defendants have been opposing the claim of the respondent-plaintiff tooth and nail. It is not a case where an alternative relief can be granted though not prayed for because such a course would certainly cause prejudice to the other side in view of their rival claim of title over the suit property. The decision cited by the learned Counsel for the respondent -plaintiff is therefore not applicable to the present case at all. Learned Counsel for the respondent-plaintiff finally submitted that in the event of his contentions not meriting acceptance, the matter may be remanded for fresh disposal and the respondent-plaintiff may be given an opportunity to seek amendment of the plaint.

28. In these circumstances and for the reasons stated above, the judgment and decree of the trial Court are held liable to be set aside and they are accordingly set aside. In the circumstances of the case it is considered just and proper to remand the matter to the trial Court for fresh adjudication in accordance with law without in any way being influenced by the observations made in this judgment. It is open to the trial Court to consider such an application for amendment of plaint if any filed by the plaintiff and dispose of the same on merits.

29. The appeal is disposed of accordingly. In the circumstances of the case, each party do bear their own costs.