
(2011) 11 AP CK 0122

In the Andhra Pradesh High Court

Case No : Second Appeal No. 450 of 2005

Madduru Papaiah died per LRs and Others	APPELLANT
Vs	
Ch. Ramakrishna, Bendapudi Srikrishna and K. Arjun Kumar	RESPONDENT

Date of Decision : 29-11-2011

Acts Referred:

Citation : (2012) 2 ALD 768 : (2012) 3 ALT 208

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : G. Dhananjai, for the Appellant; P. Veera Reddy, Counsel for the Respondents 1 and 2 and None Counsel, for the Respondent

Final Decision : Allowed

Judgement

Sri Justice L. Narasimha Reddy

1. Legal representatives of the sole plaintiff in O.S.No.540 of 1995 on the file of the Court of Junior Civil Judge, Hyderabad West and South, Ranga Reddy District, are the appellants. For the sake of convenience, the parties are referred to, as arrayed in the suit.

2. The suit was filed for the relief of perpetual injunction in respect of 7 guntas of land in Sy.No.43 of Chandanagar Revenue Village, Ranga Reddy District. The case of the plaintiff was that his father, by name, Seethaiah was pattadar of 21 guntas of land in Sy.No.43 and that the name of his father was entered in various records, including the basic record of Khasara Phahani for the year 1954-55. It was also his case that after the death of his father, the property devolved upon himself and his brother, Anjaiah, and that since Anjaiah died issueless, he became the absolute owner of the property. He alleged that the defendants started interfering with his possession over the suit schedule property, without any basis.

3. Defendants filed a written-statement, stating that out of 21 guntas of land in Sy.No.43, an extent of 7 guntas has fallen to the share of Venkata Swamy, an

agnate of the plaintiff, and that he sold the same to Sampoorna, through sale deed dated 18-12-1964. Sampoorna is said to have plotted the land and sold 2 plots of 311 sq. yards each in favour of Venkateswara Rao, and that from Venkateswara Rao, the defendants have purchased the same through sale deeds, in the year 1988. They denied the allegations made by the plaintiff.

4. The trial Court dismissed the suit through judgment dated 14-09-1999. Aggrieved thereby, the plaintiff filed A.S.No.94 of 1999 in the Court of III Additional District and Sessions Judge, Ranga Reddy District, at L.B. Nagar. The appeal was dismissed on 18-01-2005. Hence, this Second Appeal.

5. Sri G. Dhananjaya, learned counsel for the plaintiff submits that though the trial Court recorded a finding to the effect that the plaintiff is in possession of the property, dismissed the suit on the ground that he did not furnish the correct genealogy. He contends that not only the Khasara Phahani for the year 1954-55, but also the phahanies for the subsequent years, up to the date of filing of the suit were filed and still, the relief was not granted. He submits that except filing certain sale deeds, the defendants did not place any material before the trial Court to show that they are in possession. Learned counsel further submits that a substantial question of law, viz., whether in a suit for injunction, the relief can be denied on the basis of alleged discrepancy as to the relationship pleaded by the plaintiff, even after a finding is recorded to the effect that the plaintiff is in possession of the suit property.

6. Sri P. Veera Reddy, learned counsel for the defendants on the other hand, submits that the plaintiff did not approach the Court with correct facts. He contends that with the sole objective of claiming the property for himself, the plaintiff did not mention the names of his agnates and close relations. Learned counsel submits that the defendants have placed before the trial Court, the link documents, commencing from 1964, and their possession over the property has to be presumed.

7. The trial Court framed the following issues for consideration:

1. Whether the plaintiff is in possession of the suit property?

2. Whether the plaintiff is entitled for perpetual injunction as prayed for?

8. On behalf of the plaintiff, PWs 1 and 2 were examined and Exs.A-1 to A-20 were filed. On behalf of the defendants, DWs 1 to 4 were examined and Exs.B-1 to B-4 were filed. The trial Court dismissed the suit.

9. In A.S.No.94 of 1999, the lower Appellate Court framed only one point for its consideration, viz., whether the plaintiff was in exclusive possession and enjoyment of the entire extent of land admeasuring 21 guntas in Sy.No.43, situated at Chandanagar, Ranga Reddy District as on the date of filing the suit. The point was answered against the plaintiff.

10. In a suit for injunction, the burden squarely rests upon the plaintiff to prove

his possession over the suit schedule property. Apart from proving possession, he must also convince the Court, as to the existence of semblance of right in him, vis-a-vis the property. The reason is that even if a person is in possession of the property, without there being any right in him, and as a trespasser, he cannot be granted the relief of injunction against the true owner. The possession over the vacant land is mostly established through the extracts in revenue records.

11. In the instance case, the plaintiff claimed rights vis-a-vis the property through succession. The defendants did not plead any rights through succession. Khasara Phahanies for the year 1954-55 happens to be an important document as to the rights of individuals over any land. That was filed as Ex.A-18 and it reflected the name of the father of the plaintiff. In contrast, the defendants did not file any documents, except certain sale deeds. Assuming that there is likelihood of change of title or possession over the property subsequent to Khasara Phahani, it needs to be seen as to whether the plaintiff has placed any reliable material before the trial Court. Exs.A-10 to A-16 are the pahanies for the years 1989-90 to 1996-97. It means that he filed the pahanies about 7 years, preceding the suit. The inference to be drawn from these pahanies can be dislodged, if only the defendants adduced any superior evidence. As observed earlier, the four documents filed by the defendants comprise of two sale deeds of the year 1964, under which, their vendor purchased the property, and two sale deeds dated 06-12-1988, through which they purchased the same. Howsoever important a sale deed may be, in establishing title, it cannot prove possession by itself, particularly when the question arises several years after the purchase is made.

12. It is important to note that the trial Court itself recorded a finding to the effect that the plaintiff is in possession of the property. The relevant portion in para 7 reads;

It is no doubt that plaintiff is in possession and enjoyment of some land in Sy.No.43, and that the defendants did not dispute the said fact, but so far it relates to 7 guntas of land, the plaintiff failed to prove that he has been in exclusive possession and enjoyment of the entire land in Sy.No.43 in his own right.

13. The basis on which the trial Court differentiated between 7 guntas of land, from the rest of the land in Sy.No.43, is not at all indicated. Further, the only reason for denial of the relief is evident from the sentence, which reads;

As the plaintiff suppressed to disclose the true facts, and he has not come to the Court with clean hands, he is not entitled to get the injunction as prayed for.

14. Suppression of facts is said to be as regards genealogy of the family of the plaintiff.

15. defendants pleaded that one Mr. Papaiah was the common ancestor and that through his first wife Yellamma, he had a son by name Veeraiah. Venkatswamy,

DW-3 is the son of Veeraiah. Through the second wife, Lachamma, Papaiah is said to have two sons by name Seethaiah and Sayanna, and that the plaintiff and one Mr. Anjaiah are the sons of Seethaiah. This is the version put forward in the written-statement. It is necessary to mention that none of the defendants are the members of the family. The genealogy was explained by DW-3, i.e. the son of Veeraiah.

16. The cross-examination the following was elicited through this witness:

My grand-father and grand-father of plaintiff was not one and the same person

17. With this, the version, which the defendants pleaded as to the relationship of the parties, collapses. Unfortunately, the trial Court took the view that the plaintiff did not present the correct facts, little realizing that DW-3 was not sure as to his relationship vis-a-vis the persons, who held the title of the property. Things would have been different, had the defendants placed any material to prove their possession as on the date of filing of the suit. As observed earlier, no such proof was forthcoming and Exs.A-10 to A-16 clearly established the possession of the plaintiff over the suit schedule property.

18. Lerner counsel for the defendants has placed reliance upon two judgments of the Supreme Court in Mohan Lal Vs. Nihal Singh, and Veerayee Ammal Vs. Seeni Ammal, . It is true that the High Court cannot reverse the concurrent findings of fact recorded by the trial Court and lower Appellate Court, and it is only when substantial question of law arises, that the High Court can reverse the decrees. In the instant case, though the trial Court recorded a finding that the plaintiff is in possession, it refused the relief on an untenable ground. That indeed would constitute a substantial question of law.

19. The, the Second Appeal is allowed and O.S.No.540 of 1995 shall stand decreed, as prayed for.

20. There shall be no order as to costs.