

(1995) 04 AP CK 0007

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3143 of 1994

Manne Adinarayana

APPELLANT

Vs

Manne Chintanna (died) per L.Rs. and Others

RESPONDENT

Date of Decision : 13-04-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 41 Rule 27

Citation : (1995) 2 ALD 204 : (1995) 2 ALT 219

Hon'ble Judges : Krishna Saran Shrivastav, J

Bench : Single Bench

Advocate : B. Panduranga Rao and C. Srinivas, for the Appellant; V.L.N. Gopala Krishna Murthy and Sundari Draavida, for the Respondent

Final Decision : Allowed

Judgement

Krishna Saran Shrivastav, J.—This revision is directed against the Judgment passed by the Subordinate Judge, Razole, in C.M.A. No. 10 of 1991, whereby the order and decree passed by the Principal District Munsif, Razole, in I.A. No. 187/91 in O.S. No. 19/91 granting injunction in favour of the petitioner/plaintiff has been set aside.

2. It is no longer in dispute before me that late (Sri) Manne Ramanna had executed a settlement deed bequeathing his entire property including the plaint schedule property in favour of his sons, that is to say the petitioner/plain tiff, the deceased 1st defendant and Krishna Rao @ Venkataratnam, reserving life interest in himself and his wife, Smt. Manne Ademma. He expired on 30-11-1963, whereupon his wife, Smt. Manne Ademma, obtained possession of the entire property as a life estate holder. She leased out inter alia the plaint schedule property to her son the petitioner/plaintiff (vide: un-registered lease deed dt.1-7-1967 for the year 1967-68). The deceased-1st defendant was the husband of defendant No. 2 and father of defendant No. 3. The defendant No. 4 is the son of late Krishna Rao @ Venkataratnam. The deceased, 1st defendant

sold different portions of the property left by his father to defendants Nos. 5 to 8 through separate sale deeds. He tried to disturb the possession of the petitioner/plaintiff who filed suit O.S. No. 108/67 for permanent injunction against him and his vendees i.e., defendants Nos. 5 to 8. The suit was dismissed by the trial Court; whereupon the 1st defendant and defendants Nos. 5 to 8 obtained possession of different portions out of the property left by Manne Ramanna on the strength of the sale deeds. The petitioner/plaintiff filed an appeal A.S.No.120/70 and succeeded in it. He obtained possession of the plaint schedule property in E.P. No. 94/73 on 15-10-1973. Smt. Manne Ademma also filed a suit for mesne profits against the deceased - 1st defendant and defendants Nos. 2 to 8 because they had been in wrongful possession of the plaint schedule property for the years 1970-1973 and obtained a decree as prayed for. Smt. Manne Ademma died on 1-8-1991. After death the deceased-defendant No. 1, defendants Nos. 5 to 8 unsuccessfully tried to dispossess the petitioner/plaintiff.

3. The petitioner/plaintiff sought a decree for permanent injunction against the respondents/defendants alleging that he has been in possession of the plaint schedule property right from the year 1967 and his mother had executed a will in his favour and, therefore, he is entitled to retain possession of the plaint schedule property.

4. The deceased-1st defendant through his counter denied the claim of the petitioner/plaintiff alleging that the will is bogus. After the death of his father, Manne Ramanna, sometime in the year 1984, there was a family arrangement between the petitioner/plaintiff, late Krishna Rao @ Venkataratnam and himself and by virtue of the family arrangement they were allotted separate portions of the property left by their father. But as his mother was alive she was enjoying the property as a life estate holder. Therefore, she was permitted to be in possession of the entire land in question. After her death, the defendants Nos. 5 to 8 obtained possession of the land sold to them.

5. During the pendency of the suit, the petitioner-plaintiff filed an application LA. No. 187/91 for temporary injunction and it was allowed by the trial Court after giving an opportunity of being heard to the parties to the suit.

6. Feeling aggrieved by the Judgment and decree of the trial Court, the respondents/defendants preferred C.M.A. No. 10/91. They filed certain documents during the course of arguments, which were admitted on record by the first appellate Court. The appeal of the respondents-defendants was allowed by the 1st appellate Court holding that there is no evidence on record; that the petitioner-plaintiff remained in possession of the plaint schedule property from the year 1973 upto the date of institution of the suit; that the revenue documents filed by the respondents-defendants established that the defendants were in possession of their respective lands after the death of Smt. Manne Ademma and that the petitioner-plaintiff has failed to make out a prima facie case.

7. Having heard the learned Counsel for both the parties and after perusing the records, I am of the opinion that the revision deserves to be allowed for the reasons given in the subsequent paragraphs.

8. It is well settled law that wherever the appellate Court admits additional evidence, it should record its reasons for doing so. It is only when reasons are recorded, it can be seen whether additional evidence has been properly admitted or not. Omission to record reasons is a serious defect. In the decision to record reasons is useful and necessary for the Court of revision to see if the discretion under Order 41 Rule 27 C.P.C. has been properly exercised by the Court below. The additional evidence admitted in contravention of this rule should be discarded as inadmissible.

9. This is a matter on record that the respondents-defendants did not file any application under Order 41 Rule 27 C.P.C, stating the reasons for not filing them before the trial Court. The first appellate Court admitted the documents on record during the course of arguments without assigning any reasons as to why the documents are taken on record. Under these circumstances, the documents filed by the respondents-defendants during the course of the arguments deserve to be discarded and, therefore, they are excluded from being considered.

10. It is pertinent to note that the case of the respondents-defendants is that after the death of Smt. Manne Ademma, they obtained possession of the different portions of the plaint schedule property after 1-8-1991, It is noteworthy that the petitioner-plaintiff was a lessee of late Smt. Manne Ademma and there is material on record to show that he was in possession on 15-10-1973. It is also note-worthy that the respondents-defendants have alleged that after the death of Smt. Manne Ademma, they had filed criminal complaints against the petitioner-plaintiff from which it can be inferred that they wanted to disturb possession of the petitioner-plaintiff, who was a lessee of Smt. Ademma for the year 1967-1968 and the possession of the plaint schedule property was restored to him on 15-10-1973 in E.P. No. 94/73. Then it can be safely inferred that he was in continuous possession of the plaint schedule property i.e., the agricultural lands. It was for the respondents-defendants to establish as to how and when they obtained possession of the plaint schedule property after the death of Smt. Manne Ademma on 1-8-1991.

11. The lower appellate Court has fallen in error due to oversight of the aforementioned circumstances of the case in holding that the petitioner- plaintiff was not in possession of the plaint schedule property on the date of institution of the suit. It is true that the will is disputed. It is equally true that the family arrangement of 1984 is also disputed and these questions are to be tried after recording the evidence of the parties to the suit during the trial. Thus, there is a serious question of law and fact which is going to be decided during trial and, therefore, I reach the conclusion that the petitioner-plaintiff has got prima facie case.

12. Disagreeing with the lower Appellate Court, I hold prima facie, that it appears that the petitioner-plaintiff was in possession of the plaint schedule property i.e., agricultural land and, therefore, the impugned judgment deserves to be set aside. It is needless to state that the trial Court shall decide the suit on merits of the case and shall not be influenced by the observations made by me in deciding this revision petition.

13. In the result, the revision petition is allowed and the judgment of the Subordinate Judge, Razole passed in C.M.A. No. 10/91 is set aside and the judgment and decree passed by the trial Court are restored. The respondents-defendants are restrained to disturb possession of the plaint schedule property i.e., the agricultural land, excluding the portion of the house in possession of the deceased-1st defendant and his heirs till the disposal of the suit. However, in the circumstances of the case, I order the parties to bear their own costs.