
(2006) 03 AP CK 0144
In the Andhra Pradesh High Court
Case No : CRP No. 6768 of 2005

Masini Shekar Reddy and Others

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 10-03-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151

Citation : (2006) 4 ALD 89 : (2006) 5 ALT 23 : (2007) 1 CivCC 12 : (2007) 5 RCR(Civil) 479

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Kiran Palakurthi, for the Appellant; Government Pleader for Arbitration for Respondent Nos. 1 to 3 and Pingali Lakshmi, for Respondent Nos. 4 to 6, 8 and 9, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioners filed O.S. No. 66 of 2005 in the Court of Junior Civil Judge, Nalgonda, for the relief of declaration of title and perpetual injunction against the respondents herein. While respondents 1 to 3 are Revenue Authorities, respondents 4 to 11 are private individuals. They also filed I.A.No. 229 of 2005 under Order 39 Rule 1 CPC. The trial Court granted an order of status quo on 8-6-2005. Subsequently they filed I.A.No. 1081 of 2005 with a prayer to protect their possession and enjoyment over the suit schedule property in Sy.No. 204 of Velugupally Village, Nalgonda Mandal and District. The LA. was dismissed on 17-11-2005, directing that the suit schedule property be put to auction and the proceeds thereof be deposited in the Court. The same is challenged in this C.R.P.

2. Learned Counsel for the petitioners submits that his clients placed voluminous documentary evidence before the trial Court to prove the possession over the suit schedule property and despite the same, the trial Court had passed the order under revision. He contends that the 3rd respondent, Mandal Revenue

Officer, filed a counter-affidavit in I.A.No. 229 of 2005, admitting that the petitioners are in possession of the suit schedule property and still, the trial Court refused injunction.

3. Learned Government Pleader for respondents 1 to 3, on the other hand, submits that the record discloses that the possession of the land was taken by the Government long back, and a stray sentence in the counter-affidavit, filed by the 3rd respondent, was emphasized by the appellants. Learned Counsel for the respondents 4 to 11 submits that after the dismissal of W.P. No. 10234 of 1994, her clients have resumed possession of the land, and no interference is called for, with the order under revision.

4. The petitioners pleaded that they are in possession of the suit schedule property since last several decades, and when it was noticed that the land was assigned in favour of respondents 4 to 11, they purchased the same under the registered sale deeds dated 21-7-1987 and 11-8-1987. Reference is made to the decree in O.S. No. 1556 of 1987. The proceedings under A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (Act 9 of 1977) ensued thereafter. It is not necessary to refer to them, in detail.

5. The present suit is filed for declaration of title of the petitioners, and an application was filed under Order 39 Rule 1 CPC. Instead of recording a finding as to whether the petitioners are in possession of the suit schedule property as on the date of filing and passing appropriate orders in the I.A., the trial Court has chosen to grant an order of status quo on 8-6-2005. That, naturally resulted in scrambling for possession. It was under these circumstances, that the petitioners filed I.A. No. 1081 of 2005 u/s 151 C.P.C.

6. The certified copies of pahanies for the years 2000-01 and 2001-02 marked as Exs.P-25 and P-26 disclosed the possession of the petitioners over the suit land. The learned Junior Civil Judge, Nalgonda, refused to take them into account by observing that the entries were made without there being any order of the Court. Having regard to the fact that the rights of the petitioners were recognized for the past several decades, it cannot be said that restoration of their name in the pahanis, marked as Exs.P-25 and P-26, is something extraordinary.

7. A perusal of the counter-affidavit filed by the 3rd respondent clearly discloses that during the course of his inspection he noticed that the crop raised by the petitioners was standing on the ground, and despite his instructions, the petitioners did not vacate the land. That fact was sufficient for the trial Court to grant an order of temporary injunction in favour of the petitioners.

8. In case the trial Court found that the petitioners are not in possession of the land, the matter ought to have been left at that Directing auction of the leasehold rights; is an exercise to be undertaken mostly, in applications filed for appointment of receivers. Such a course would complicate the matters, if adopted in an application filed under Order 39 Rules 1 and 2 C.P.C.

9. For the foregoing reasons, the order under revision is set aside and the C.R.P. is allowed.

10. To avoid further complication in the matter, it is directed that there shall be temporary injunction in favour of the petitioners, till the disposal of the suit, and the trial Court shall dispose of the suit by the end of December, 2006, uninfluenced by any of the observations made by this Court in this C.R.P., or the order passed by it, in the I.A. There shall be no order as to costs.