

(2013) 02 AP CK 0062

In the Andhra Pradesh High Court

Case No : Second Appeal No. 1184 of 2012

M.C.V. Prasad, M.C. Harish, M.C. Sreelatha and M.C. Anitha	APPELLANT
Vs	
M.Subba Raju, G.K. Gopal and B. Gopal Reddy	RESPONDENT

Date of Decision : 13-02-2013

Acts Referred:

Citation : (2013) 4 ALD 495 : (2013) 5 ALT 194

Judgement

L. Narasimha Reddy, J.—Appellants are the plaintiffs in O.S. No. 488 of 1997 on the file of the I Additional Junior Civil Judge, Madanapalle. The suit was initially filed for the relief of perpetual injunction in respect of Ac. 1.12 cents of land in Survey No. 766/2 of Chinnathippasamudram Village of Chittoor District. It was pleaded that the suit land is part of large extent of land admeasuring Acs. 12.04 cents in the survey number and that they purchased the same through a sale deed, dated 10.03.1984. According to them, the 1st defendant filed O.S. No. 484 of 1997 in the Court of the I Additional Junior Civil Judge, Madanapalle with fictitious boundaries in respect of the said land and citing the decree obtained therein, they started interfering with their possession. The 1st respondent alone contested the suit. The 2nd respondent who figured as the 1st defendant has filed a written statement, but did not participate in the further proceedings in the suit.

2. The 1st respondent pleaded that the appellants were never in possession of the suit schedule property and it is he i.e. the 1st respondent who developed a Vanka Poramboke by removing the thorny bushes, levelled the same and has grown coconut and other trees, for the past about two decades.

3. The appellants have also filed I.A. No. 109 of 1997 under Order 39 Rules 1 and 2 C.P.C. The trial Court dismissed the same. Thereupon, the appellants filed an application seeking permission to amend the suit to incorporate the prayer for recovery of possession, and it was allowed.

4. Through its judgment, dated 26.02.2007, the trial Court decreed the suit as prayed for. The 1st respondent, who figured as the 3rd defendant, alone filed

A.S. No. 47 of 2007 in the Court of the VII Additional District Judge (Fast Track Court), Madanapalle. The appeal was allowed through judgment, dated 22.03.1012. Hence, this second appeal.

5. Sri B. Nalin Kumar, learned counsel for the appellants, submits that the evidence on record established beyond any pale of doubt that the appellants have title over the suit schedule property and that even the 1st respondent pleaded that he occupied the land under the impression that it is Vanka Poramboke. He contends that the small discrepancy as to the description of the property was given undue importance and the judgment and the decree passed by the trial Court were reversed by the lower appellate Court. He submits that whatever be the defect as to the description of the property, once the 1st respondent has stated that he occupied the land under the impression that it is part of Vanka Poramboke and once the appellants have established their title over it, the appeal ought to have been dismissed, and the decree passed by the trial Court, confirmed.

6. Sri N. Pramod, learned counsel for the 1st respondent, on the other hand, submits that the plaint itself was defective, since the property was not described, as required under Rule 3 of Order VII C.P.C. He contends that even after the property was identified by the Commissioner appointed by the trial Court, the appellants committed mistake while carrying out the amendments to the plaint, that too about the schedule. He contends that the trial Court failed to take note of the important requirement under Order VII C.P.C. and decreed the suit and that the lower appellate Court has corrected the patent mistake.

7. As observed earlier, the suit was initially filed for the relief of perpetual injunction. On dismissal of the application filed under Order 39 Rules 1 and 2 C.P.C., the appellants got the plaint amended, to incorporate the prayer for recovery of possession.

8. The 3rd respondent (2nd defendant) remained ex parte. The actual contest was only by the 1st respondent (3rd defendant). In his written statement, the 1st respondent did not claim any independent ownership vis-?-vis the suit property. He was categorical in his plea that being under the impression that the schedule property is part of Vanka Poramboke, he occupied, levelled and developed the same and that he is in enjoyment of the property for about two decades.

9. The trial Court framed the following issues for its consideration:

- (1) Whether the plaintiff is entitled for permanent injunction as prayed for?
- (2) Whether the defendant has perfected his title by adverse possession?
- (3) Whether this Court has no pecuniary jurisdiction to entertain the suit?

10. On behalf of the appellants, P.Ws. 1 to 3 were examined and Exs. A1 to A14 were filed. On behalf of the 1st respondent, D.Ws. 1 to 6 were examined and Ex.

B1 was filed. The report of the Commissioner and other related documents were taken on record as Exs. C1 to C12. The suit was decreed by the trial Court. In the appeal preferred by the 1st respondent, the lower appellate Court framed the following points for its consideration:

(1) Whether the plaintiffs 2 to 5 are entitled for permanent injunction, restraining the defendants from interfering with their peaceful possession and enjoyment of the plaint schedule property and alternatively for possession of the plaint schedule property?

(2) Whether the judgment and decree passed by the lower Court are sustainable under law?

The appeal was allowed.

11. This is a rare case in which the assertion of title by the plaintiff, in respect of the suit property was not contested by the defendant. In fact, he was so benevolent that he stated that he occupied the property under a mistaken impression. With this background, there should not be any difficulty for any Court to decree the suit and in fact, the trial Court did the same. However, one serious, if not fatal, mistake on the part of the appellants has brought about, a different situation.

12. Whatever be the nature of rights claimed by the parties, the subject matter thereof must be clearly described. Various aspects turn around it. Not only the parties, but also the Court, must be clear about the subject matter of adjudication. This is particularly so if the subject matter of the dispute is an item of immovable property. Realising the importance of this, the Legislature has incorporated a specific Rule in the C.P.C. Rule 3 of Order VII C.P.C. reads as under:

Where the subject-matter of the suit is immovable property:-Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

13. It does not need elaboration as to why the Parliament insisted on the description of the property to be in such a way that one should be able to identify it. In case the immovable property is a house, it contains house number assigned by the concerned local authority. If on the other hand, it is a vacant land, it can be identified with reference to the survey numbers or any other description, that may be given to it. In addition to that, the boundaries of the property must be clearly mentioned. It is not without any reason that even if there is any omission of description as to the survey number, the boundaries furnished in a schedule or documents would prevail, in ascertaining the property.

14. The Rule assumes importance not only from the point of view of the facility being created for the parties to know the subject matter as regards which they

are litigating, but also from the point of view of executability of a decree. Even if a plaintiff is successful in making out a case, he cannot get the decree executed effectively.

15. There is division of opinion as to the nature and purport of Rule 3 of Order VII C.P.C. While some Courts have taken the view that the provision is mandatory, other High Courts have taken the view that the provision is directory in nature, and the defect referable to it is curable. In *Chutahru Bhagat and Others Vs. Hialal Sah and Others*, , the Patna High Court took the view that the provision is mandatory, and unless the plaintiff in a suit furnishes the identity of the immovable property through boundaries, or by means of a map, it would be difficult, if not possible, to decide the title in respect thereof and that a suit can be dismissed on that ground. It was also observed that in the event of a decree being granted, difficulty would be faced at the stage of execution. Accordingly, the provision was treated as mandatory. Same view was taken by the Allahabad High Court in *Abdul Majid and Others Vs. Abdul Gaffar and Others* .

16. Some other High Courts, including the Calcutta High Court have expressed the view that the provision is directory in nature, and even where any defect is noticed, the plaintiff can be given an opportunity to rectify the same. It was also observed that a plaint cannot be rejected or the suit cannot be dismissed, on the sole ground that the description of the property does not accord with Rule 3 of Order VII C.P.C. As a matter of fact, the Patna High Court in *Nagar Khan and Others Vs. Gopi Ram Agarwala*, , expressed such a view.

17. The correct view appears to be that, if it is found in a suit that the plaintiff did not describe an item of immovable property, which is the subject-matter of the suit, as provided for under Rule 3 of Order VII C.P.C., he can be permitted to seek necessary amendment. At the same time, it is no part of the duty of the Court to remind the plaintiff, of his duty, to ensure that the property, regarding which he is claiming the relief, is properly described. If, in spite of the defect being noticed or detected or pointed out, the plaintiff fails to take any steps to cure the same, or the steps taken by him do not bring about compliance with the provision of law, the defect would certainly constitute a ground for denial of relief. Such an approach is not only warranted from the point of view of granting the relief in respect of an unknown property, but also would avoid the difficulty, at the stage of execution.

18. In the instant case, though the appellants claim relief in respect of Ac. 1.12 cents of land in Survey No. 766/2, they did not furnish the boundaries. The schedule in the suit, that too after it was amended reads as under:

Chittoor District - Madanapalle Sub-District-Madanapalle Mandal,
Chinnathippasamudram Village - S. No. 766-2 Dry Extent Acs. 4.04 cents out of
the above Acs. 1.12 cents more fully described in the commissioner's report,
sketch green marked portion with coconut trees, teak wood trees, sugarcane,
paddy crops and harvested ragi crop.

19. Whatever may have been the circumstances under which such a fatal omission took place, at least when the plaint was amended to incorporate the plea of recovery of possession, proper attention ought to have been paid.

20. The record discloses that the appellants themselves had some doubt about the location of the suit schedule property and accordingly, prayed for appointment of a Commissioner. The Commissioner submitted a detailed report indicating the extents and particulars of lands that are in possession of the 1st respondent. The respective bits, with reference to the survey numbers, were shown in different colours in the map. It is stated that Ac. 1.12 cents of land forming part of Survey No. 766/2 under occupation of the 1st respondent was shown in red colour. It is rather shocking and surprising that the appellants sought and carried out amendment to the schedule of the plaint on the basis of the report of the Commissioner and got included the land shown in the map in green colour, instead of the one shown in red colour. The result is that the suit schedule property, as it stands now, reflects a property which is not at all the one in Survey No. 766/2. The lower appellate court took this into account and reversed the decree passed by the trial Court.

21. Assuming that the appellants established their title over the property and made out a case for recovery of possession, the lapse on their part, in properly describing it has become fatal. The decree drawn by the trial Court, by showing the property with the description, is incapable of being executed. If the lower appellate Court has reversed the decree on account of the serious defect in the schedule and non-compliance with Rule 3 of Order VII C.P.C., it is only the appellants that have to squarely blame themselves. This Court does not find any substantial question of law in this second appeal.

22. The second appeal is accordingly dismissed. There shall be no order as to costs. The miscellaneous petition filed in this appeal shall also stand disposed of.