

(1954) 10 AP CK 0016

In the Andhra Pradesh High Court

Case No : Second Appeal No. 1778 of 1950

Municipal Council, Rajamundry

APPELLANT

Vs

Simhadri Ranganayakalu and Others

RESPONDENT

Date of Decision : 19-10-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 9
Evidence Act, 1872 — Section 114

Citation : AIR 1955 AP 107

Hon'ble Judges : Subba Rao, C.J

Bench : Single Bench

Advocate : P. Satyanarayana Raju and V.V. Raghavan, for the Appellant; G. Chandrasekhara Sastri, for the Respondent

Judgement

(1) The main question in this second appeal is whether the Government is a necessary party to the suit.

(2) The relevant facts are: The plaintiff is the owner of the property described in the plaint schedule and the house bearing Door No. 236 in the 15th Ward of the Rajamundry Municipality. His father and uncle purchased, the same under a sale-deed, dated 30-6-1901, from one Kotta Manikyam. the defendant, the Municipal Council of Rajamundry, through its Commissioner, issued a notice to the plaintiff directing him to remove the pails, stone pavement and the tiled eaves of his house on the ground that they were encroachments on the public street. To avoid the execution of the threatened action, the plaintiff filed O. S. No. 40 of 1949 on the file of the Court of the District Munsif of Rajamundry, against the Municipality for a declaration of his title and for a permanent injunction restraining the Municipality from interfering with his possession.

(3) The defendant, inter alia, contended that Government was a necessary party to the suit and also the suit was barred by reason of S. 14, Madras Survey and Boundaries Act.

(4) The learned District Munsif accepted the contentions of the Municipality and dismissed the suit. On appeal, the learned Subordinate Judge rejected the pleas raised by the defendant and decreed the suit. The Appellate Court found that the plaintiff was the owner and that there was no encroachment.

(5) The first question is whether the Government is a necessary party to the suit. A number of cases has been cited at the bar in support of the respective contentions. Untrammelled by the said decisions, let me consider the legal position. There is an essential distinction between a necessary party and a proper to a suit. Necessary parties are parties necessary to the constitution of the suit and without whom no decree at all can be passed. Proper parties are those whose presence enables the Court to adjudicate more effectually and completely the questions raised in the suit. See "Civil Procedure Code by D. F. Mulla, 12th Edn., page 520". Can it be said that Government is a necessary party to the suit in the aforesaid sense? The plaintiff, claiming to be the owner filed the suit against the Municipality who threatened to infringe his right. He had no grievance against any other person other than the defendant for no one interfered with his right. It is not the duty of the owner of a property to make a roaming search of all possible claimants and make them parties. His title against the defendant would be finally decided in the suit, and on that basis, he would get an effective relief against him. If he defendant intended to raise a plea of "JUS TERTIT" it is always open to him to apply for making the third party a party to the suit. The plaintiff is not asking for any relief against the Government.

(6) In -- M.M.P.L. Chokkalingam Chettiar Vs. M.L.R.M. Lakshmanan Chettiar and Another, a Division Bench of the Madras High Court, consisting of Leach C. J., and Clark J., laid down the position in clear terms as follows :

"The plaintiff had built a house on his own land and the Municipality was threatening to demolish it, if not removed because it imaginable that it encroached on a public street. As there was no encroachment, the Municipality had no right to issue the notice and still less the right to take steps against the plaintiff. The Government was not concerned with the issue of the notice or the threat which the Municipality made. The responsibility rested entirely with the Municipality. The granting of the relief, which the plaintiff asked for in the plaint, would affect no right vested in the Government. Therefore, the Government was not a necessary party to the suit".

I respectfully agree with the observations.

(7) The judgment of Venkataramana Rao J., in -- G. Krishnaswami Naidu Vs. The Municipal Council and Another, does not really touch the question now raised. There, the plaintiff claimed a declaration that he was the owner of a vacant site and that the Municipality had no right to interfere with any use he made of it and the main defence of the Municipality was that title to the site vested in the Government. The learned Judge held that in cases where the plea of "Jus Tertit" is set up, it is generally considered desirable to make the person whose title is

set up, a party to the suit to avoid multiplicity of litigation and that in cases where the interests of the public are involved and the ownership of the Government is in question, it is very desirable and sometimes quite necessary to make the Government a party to avoid multiplicity of proceedings. This decision is not an authority for the position that Government is a necessary party to all such suits and that the objection of their not being made a party to the suit is fatal to its maintainability. This is authority only for the position that, ordinarily and under certain circumstances, Government is a proper party to such suits.

(8) Strong reliance is placed by the learned Counsel for the appellant on the judgment of Ramaswamy J., in -- Proddattur Municipal Council Vs. Gurnam Hanumanthu and Others, (C). There the suits were filed by certain residents of Proddattur against the Proddattur Municipality for a declaration of their title in respect of their lands forming the subject matter of encroachment and for an injunction against the municipality from disturbing their possession. The suits were filed under S. 14, Madras Survey and Boundaries Act. The learned Judge after considering the various decisions cited before him, came to the conclusion that Government was a necessary party and that the suits, without impleading Government were not maintainable. The basis of the learned Judge's judgment is found at p. 480.

"Under S. 14, Madras Survey and Boundaries Act, the plaintiff is required to join as parties all person whom he has reason to believe to be interested in the boundary which is the subject -- matter of the dispute. Therefore, inasmuch as the Municipality dealing with the street is subject to the control of the Government, the relief of declaration which the plaintiffs in these suits seek, cannot be granted without making the Government a party to the suits".

(9) But they are observations in the course of the judgment which are wider in scope and which really support the contention of the appellant.

(10) I regret my inability to accept the said observations as laying down the correct legal position.

(11) The aforesaid decision bring out the distinction between a necessary party and a proper party to the suit. Where the plaintiff sets up his own title to the property and seeks a relief against a Municipality infringing that title, the presence of the Government is not necessary for adjudicating upon his title, or for giving a relief against the defendant, though under certain circumstances Government may be a proper party. But, where the plaintiff claims a right by adverse possession, against the owner, the Government would obviously be a necessary party for the Government is the owner of the site. In the instant case, the plaintiff claimed to be the owner and the appellate Court found on the question of title in his favour. The plaintiff did not purport to have acquired any title by adverse possession against the Government, nor did he allege that the Government interfered with his title. In such circumstances, it is manifest, that Government is not a necessary party.

(12) The next question is whether the order of the Survey authorities demarcating the alleged encroached plot as a road is binding upon the plaintiff. It would be binding on the plaintiff, if valid notices of the survey were served on him.

(13) The plaintiff raised the plea that no such notices were served on him. Exhibit B-4 dated 11.11.1913, and Exhibit B-1 dated 28.2.1928 purport to be two notices issued under the Act, They do not "Ex facie" show that they were served on the plaintiff. There is also no evidence either oral or documentary, that the said notices or similar ones were served on the plaintiff. In such circumstances, the question arises whether the presumption laid down in Section 114, Evidence Act, can be invoked. Section 114 reads ;

"The court may presume the existence of any fact which it thinks likely to have happened, regard being and to the common course or natural events, human conduct and public and private business in their relation to the facts of the particular case".

Illustration (e) under the said section reads as follows :

"The Court may presume that judicial and Official acts have been regularly performed".

(14) But, relying upon the section read with this illustration, it is contended that the Courts shall presume that the notices Exhibits B-4 and B-1 have been duly served on the plaintiff.

(15) Woodroffe J. had succinctly stated the scope of S. 114(e) -- "In Narendra Lal Khan v. Jogi Hari", 32 Cal 1107 (D) and follows :

"The meaning of Section 114(e), Evidence Act, is that if an official act is proved to have been done, it will be presumed to have been regularly done. It does not raise any presumption that an act was done, of which there is no evidence and the proof of which is essential to the plaintiff's case".

(16) The same view has been expressed by Rajamannar J., as he then was, in -- Murugappa Chettiar Vs. Thirumalai Nadar and Others, at p. 194 (E), the learned Judge observed :

"It is true that Illustration (e) to S. 114, Evidence Act, declares that judicial and official acts may be presumed to have been regularly performed. But it does not say that it may be presumed that any particular judicial or official act has been performed. No doubt when the only evidence is that a particular judicial or official act has been performed and there is no other evidence on record, it may be presumed that particular judicial or official act was regularly performed. But when the dispute is whether a particular judicial or official act was performed or not, I think there is nothing in law which enables a court to presume that act was as a matter of fact performed".

(17) I agree with the observations of Woodroffe J., and Rajamannar J. in the

aforesaid two decisions. If so, the question is whether, in the present case, there is any evidence to establish that a notice to the plaintiff was issued and served on him. It is not permissible to presume that a statutory notice was duly issued and served on the plaintiff in the absence of any evidence that a notice was as a matter of fact, issued and served on him. There is neither oral nor documentary evidence to show that a notice was given to the plaintiff and served on him. The question of presumption that such notice was issued in compliance with the provisions of the Act cannot therefore obviously arise. In the result I hold that the conclusion arrived at by the lower Court is correct.

(18) The appeal fails and is dismissed with costs. No leave.

(19) Appeal dismissed.