
(2001) 04 AP CK 0011
In the Andhra Pradesh High Court
Case No : C.R.P. No. 8 of 2001

P. Sathaiah and Others

APPELLANT

Vs

Jakkala Malliah and Others

RESPONDENT

Date of Decision : 13-04-2001

Acts Referred:

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

Citation : (2001) 3 ALT 652 : (2001) 1 AnWR 94

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : Kuriti Bhaskara Rao, for the Appellant;

Final Decision : Dismissed

Judgement

D.S.R. Varma, J.—This revision petition is filed against the order dated 9-10-2000 passed by the Court of the Principal District Judge, Nalgonda in C.M.A.No. 9/2000. By the said order, the lower appellate Court dismissed the appeal filed by the defendants in the suit, and confirmed the order of interim injunction granted by the trial Court in LA. No. 646/1998 in O.S.No. 226/1998, dated 25-1-2000. Aggrieved by the above orders of the Courts below, the defendants in the suit have filed this revision petition.

2. The learned Counsel for the petitioners submitted that the total extent involved in the suit is about Ac. 13.00 and in that, the petitioners made an application before the M.R.O. seeking certain entries in the revenue records, to an extent of Ac. 10.00, and the same was dismissed. He further submitted that against the order of dismissal by M.R.O., the petitioners have preferred an appeal before the Revenue Divisional Officer and the Revenue Divisional Officer, after considering all the material available on record, remanded the matter to the M.R.O. for reconsideration and accordingly the Mandal Revenue Officer after reconsideration, has passed orders in favour of the petitioners to the extent of Ac. 10.00. The learned Counsel for the petitioners further submitted that the respondents/plaintiffs have been in possession and, therefore, at least to the

extent of Ac. 10.00, as ordered by the M.R.O., there shall not be any injunction.

3. The above contention cannot be accepted for the reason that the suit was only for perpetual injunction. The Courts below had found that there was prima facie evidence to show that the plaintiffs have been in possession of the suit land as on the date of filing of the suit and as the defendants could not prove their possession over the suit land, the Courts below granted interim injunction in favour of the plaintiffs. Further the orders passed by the M.R.O. are subsequent to the orders passed by the lower appellate Court and as such they were not on record before the Courts below before passing of the orders. This Court at this stage cannot look into the said orders of the M.R.O. inasmuch as the same were not made part of the record and however, it is for the trial Court to go into the aspect of evidence with regard to possession as on the date of the filing of the suit and decide the same. The contention of the defendants that they have right title over the suit land to an extent of Ac. 10.00 is not sufficient to seeking for an order of injunction. The only question that falls for consideration in an application filed under Order 39 Rule 1 is with regard to possession, but not the title. Therefore, as the plaintiffs could prove the possession as on the date of filing of the suit, the Courts below granted temporary injunction. Hence I do not find any illegality or jurisdiction error in the impugned orders.

4. However, it is open for the petitioners-defendants, to file a suit for declaration of title and for recovery of possession on the basis of the orders passed by the M.R.O. or on some other material in their favour.

5. For the above reasons, I pass the order as under:--

The revision petition is dismissed. No costs.