

(2007) 03 AP CK 0055

In the Andhra Pradesh High Court

Case No : CMA No"s. 1482 and 1483 of 2003

Paidimarri Rama Rao

APPELLANT

Vs

Immadi Naga Prasanna Laxmi

RESPONDENT

Date of Decision : 13-03-2007

Acts Referred:

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

Citation : (2007) 3 ALD 626 : (2007) 4 ALT 60

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : G. Vidyasagar, for the Appellant; G. Jhansi, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—These two civil miscellaneous appeals are filed as against a common order made by the learned Senior Civil Judge, Khammam in IA Nos. 1652 of 2002 and 1753 of 2002 in OS No. 198 of 2002, dated 6-1-2003.

2. The appellant in both the appeals, the plaintiff in the above suit filed IA No. 1652 of 2002 as against the respondent-defendant praying for temporary injunction restraining the respondent-defendant from interfering with his peaceful possession and enjoyment of the plaint schedule property till the disposal of the suit. Likewise, the respondent herein, the defendant in the suit, filed an application IA No. 1753 of 2002 praying for temporary injunction against the plaintiff from interfering with his peaceful possession and enjoyment of the plaint schedule property. The learned Judge heard both the applications and in view of the commonality involved, disposed of both the applications by a common order dismissing the application IA No. 1652 of 2002 and allowing the application IA No. 1753 of 2002, however with a further direction to the respondent-defendant to furnish third party security for Rs. 1,00,000/- on or before 24-1-2003 and to receive the rents from the tenant-K. Veeriah and if the defendant failed to furnish third party security on or before 24-1-2003, the tenant is directed to deposit the rent into Court till the defendant furnished third

party security. It is stated that the third party security as directed by the Court had been furnished by the respondent herein, the petitioner in IA No. 1753 of 2002, defendant in the said suit. It is needless to say that in pursuance of the direction referred to supra, made by the learned Senior Civil Judge, Khammam, at present the respondent-petitioner in IA No. 1753 of 2002, the defendant, has been collecting the rents.

3. Sri G. Vidyasagar, learned Counsel representing the appellant in both these appeals would submit that the parties are brother and sister and the brother filed the suit for perpetual injunction and prayed for temporary injunction in IA No. 1652 of 2002 in OS No. 198 of 2002. The Counsel also would submit that the defendant filed an application IA No. 1753 of 2002 in the said suit praying for a positive relief of temporary injunction restraining the plaintiff from interfering with her possession. The Counsel would maintain that this application cannot be maintained in the light of the view expressed by this Court in the judgment reported in Javvaji Sambamurthy v. Cheukumalli Srinivasa Rao 1987 (2) ALT 630 : 1987 (2) APLJ 97. The learned Counsel also would contend that though several documents were relied upon by the parties, the learned Judge except referring to a few documents here and there, had not appreciated the documentary evidence placed before the Court in proper perspective and the documents placed before the Court also had not been marked for the purpose of proper appreciation and hence serious prejudice had been caused to the appellant by virtue of the said order made by the learned Judge.

4. Per contra, Smt. G. Jhansi, learned Counsel representing the respondent-defendant would submit that the learned Judge in the peculiar facts and circumstances, on appreciation of the documents placed before the Court, recorded findings relating to the prima facie case and balance of convenience and ultimately came to the conclusion that restraint order is to be made as against the plaintiff from interfering with the possession of the defendant. The learned Counsel also would submit that apart from the said temporary injunction granted in favour of respondent-defendant, further the learned Judge directed the respondent-defendant to furnish third party security of Rs. 1,00,000/- within the specified time and permitted to receive the rents from the tenant. The learned Counsel would submit that this portion of the order wherein the directions given had been complied with and such order was made more on the ground of equity in exercise of powers u/s 151 of the CPC and hence that portion of the order needs no disturbance at the hands of this Court.

5. Heard both the learned Counsel.

6. The stand taken by the appellant as plaintiff is as hereunder:

One Lakshadri is having wife by name, Annapurnamma. They are having two sons i.e., (1) P. Krishna Murthy, (2) P. Raja Gopal. Krishna Murthy died issueless. Rajagopalam married one Yasodamma and was blessed with four sons i.e., (1) Nageswar Rao (2) Rama Rao (plaintiff) (3) Satyanarayana and (4) Leela Vijaya

Kumar and 5 (five) daughters i.e., (1) Lakshmi Veelasa Lakshmi (2) Bhagya Lakshmi (3) Bharata Lakshmi (4) Vijaya Lakshmi and (5) Naga Prasanna Lakshmi (defendant). Thus, the plaintiff and defendants are own brothers and sisters. As per the case of the plaintiff, Lakshadri died, more than 60 years ago, whereas the first son of Lakshadri, P. Krishna Murthy died within 2 or 3 years after the death of Lakshadri at the age of his 19 years. Lakshadri did business in vegetables. Rajagopalam first worked as a Clerk in the Oil Mill of one Arvapalli Rama Krishnamma by name Radha Krishna Oil Mill at Hanuman Temple Road, Khammam, about 55 years ago and later on started kirana business in the partnership of Vemulapalli Nagabhushanam about 45 years back and did his business until 1983 and presently he is aged 79 years. The plaintiff is stating that after the death of his father and his elder brother P. Krishna Murthy, Rajagopalam was looking after his mother Annapurnamma and he purchased the country tiled house bearing No. 5-2-56/57 in a Court permitted private sale on 12-9-1962 in the name of Annapurnamma. That house was in an extent of 334.58 square yards. As the said house was old one, Rajagopalam demolished it and constructed a Madras terraced roofed house in plinth area of 1522.17 square feet. The said house was renumbered as 2-2-35 and 2-2-36 which is the suit schedule property which will be hereinafter referred as the suit schedule house. The plaintiff is stating that the said Rajagopalam in the year 1976 got executed a Will Deed by his mother as though she bequeathed the house bearing Nos. 2-2-35 and 2-2-36 to his wife Smt. P. Yashodamma. In the year 1990, father of the plaintiff i.e., Rajagopalam, constructed first floor over the southern part of Madras terraced roofed building re-informed cement concrete. The father of the plaintiff performed the marriages of his daughters by 1989 giving sumptuous amounts and gold ornaments at the times of their marriages. The plaintiff since 1983 started his kirana business in the name and style of Paidimarri Rama Rao Wholesale Kirana Merchants, Gandhi Chowk, Khammam, in the rented shop of Ananthula Rathaiah, for a period of 3 years up to 1986. Then plaintiff shifted his house to the suit schedule property and later ran it until 1996. Plaintiff is stating that in the year 1991, the properties of joint family were partitioned among P. Rajagopalam and his sons including the plaintiff through an unregistered partition deed dated 13-7-1991 and in that partition all the properties except the shed in Industrial area were partitioned. As per the partition deed, the H.No. 2-2-35 was given to the plaintiff, whereas H.No. 2-2-36 was nominally put in the name of Yashodamma. He also stated that at the time of said partition, Yashodamma consented to put the suit house in the hotchpot of the joint family property of plaintiff, his father and brothers and this is in the knowledge of the defendant too. Later on, plaintiff had placed RCC slab to the south-west of his shop and removed stairs. The plaintiff paid Rs. 46,250/- to P. Satyanarayana on 15-6-1992, as per the partition deed to equate the value of the brothers as decided by the elders in the partition deed. The plaintiff leveled the flooring by raising it to a higher level and constructed lavatory and bath room to the south of the room and got a new electric meter bearing No. 27759 for commercial purpose under Category-II. The plaintiff has ration card and also identity card of

his name and for his wife, telephone connection bearing No. 24673. The plaintiff is stating that in the year 1996 plaintiff shifted his residence from the suit house to a rented house in Venkata Laxmi Talkies Road, Khammam as Yashodamma i.e., his mother used to pick up quarrel with his wife P. Vimala Kumari. The plaintiff also shifted his business from the northern side of suit schedule property and let out to the Brook Bond Distributors for 8 months and later in the year 1997, he let out the same to one Kandukuri Veeraiah for running Ambica Mess and the said Veeraiah executed Registered Lease to the plaintiff on 24-9-2002 accepting to pay Rs. 3,780/- per month for a period of two years until i.e., 30-11-2004. The plaintiff closed his kirana business from the back side building and gave the same on lease to one Tirumala Srinivasa Gunny Trading Company since 2001. The plaintiff is stating that his mother was dominating her daughters-in-law, and so none of her sons were with her and Sri P. Rajagopalam i.e., father of the plaintiff also could not contain her domination on him too any more. As such, he left his wife and family members and went to an unknown place on 27-8-2001. A crime was registered for man missing and the same was referred as undetectable. Thus, the whereabouts of Rajagopalam are not known from 25-8-2001. The plaintiff is stating that I Rajendra Prasad, the husband of the defendant who is resident of Kodad asked Rajagopalam to give him third party security for obtaining bank loan for his business purpose. After Rajagopalam left the place, the defendant and her husband were claiming rights over the suit schedule property since one month prior to filing of the suit. Plaintiff immediately took steps to protect his possession and ownership over the property and he got registered lease deeds from his tenants and 10 days prior to filing of the suit the husband of the defendant came to Khammam and asked the defendants to vacate the suit schedule property as the tenants were refusing to vacate the husband of the defendant, obtained signatures of the tenants on stamp papers. In the meanwhile, plaintiff took some time to secure money to validate the partition deed through Registration Office, Khammam. Thereafter, plaintiff received a copy of Caveat from the defendant claiming rights and ownership of possession through a registered gift deed obtained from P. Yashodamma on 19-7-2002.

7. It appears that the defendant had lodged a Caveat and notice was ordered. The stand taken by the defendant in her counter is that Annapurnamma with her own money purchased the suit schedule property and she herself reconstructed their house and got mutated the suit house in her name and as an absolute owner, she bequeathed the property to her daughter-in-law i.e., Yashodamma and so, Yashodamma got absolute right over the suit schedule property and that Yashodamma herself let out the house No. 2-2-35 to tenants and was receiving rents and as the none of the brothers and sisters of the defendant were looking after Yashodamma, the defendant took away Yashodamma to her house at Kodad and looking after Yashodamma and due to love and affection and also as Yashodamma promised at the time of the marriage of the defendant that she will give some immovable property to the defendant, Yashodamma executed a

registered gift deed dated 17-7-2002 and thereafter, the property was mutated in the name of the defendant and the defendant executed Lease Deed in favour of the defendant and the defendant also disconnected electric connection which was in the name of the plaintiff and obtained electric connection in her own name.

8. On the strength of the respective stands, the following points were framed for consideration by the learned Judge at Paragraph 4:

1. Whether the prima facie case of possession is in favour of the plaintiff or defendant?

2. Whether the balance of convenience is in favour of the plaintiff or defendant?

3. To what relief?

9. The learned Judge proceeded to record reasons on Point No. 1 from Paragraphs 5 to 14 and came to the conclusion that the plaintiff failed to establish prima facie case and on the other hand the defendant is having prima facie ownership and possession. The learned Judge further proceeded with the discussion on Point No. 2 at Paragraph 15 and came to the conclusion that in the facts and circumstances it would be better to direct the defendant to give third party security for Rs. 1,00,000/- by fixing a date and to receive the rents from the tenant with a default clause. While answering Point No. 3, the application IA No. 1652 of 2002 was dismissed and application IA No. 1753 of 2002 was no doubt allowed but with certain further directions.

10. At the outset it may be stated that a temporary injunction of this nature under Order 39 Rules 1 and 2 of the CPC cannot be granted at the instance of the defendant as against the plaintiff in a suit filed by the plaintiff for the relief of perpetual injunction. This is the view expressed by the learned Judge of this Court in Javvaji Sambamurthy's case (supra). Without touching the merits and demerits of the matter, it is suffice to state that the learned Judge though recorded reasons, had not marked any documents which had been produced by the parties. No doubt there is some discussion relating to the documents in the order made by the learned Judge. In view of the facts and circumstances, this Court is of the considered opinion that inasmuch as it is stated that the respondent-defendant already had furnished third party security of Rs. 1,00,000/- and has been collecting the rents from the tenant as per the directions of the learned Senior Civil Judge, this Court is of the opinion that it would not be just and proper to disturb the said portion of the order.

11. In view of the peculiar facts and circumstances, the order of dismissal made in IA No. 1652 of 2002 is hereby set aside and also the portion of the order made in IA No. 1753 of 2002 allowing the application restraining the plaintiff from interfering with the possession of the defendant over the suit schedule property also is hereby set aside. However, inasmuch as status quo as on today to be maintained, the relevant portion of the order "However, the defendant is directed to furnish third party security for Rs. 1,00,000/- (Rupees one lakh only)

on or before 24-1-2003 and to receive the rents from the tenant-K. Veeraiah and if the defendant fails to furnish third party security on or before 24-1-2003, the tenant will be directed to deposit the rents into Court till the defendant furnished the third party security" would stand until further orders are made in accordance with law by the learned Judge. It is needless to say that inasmuch as that portion of the order of making deposit had been complied with, till appropriate orders are passed by the learned Senior Civil Judge, Khammam, the said order relating to receiving of rents from the tenant by respondent-defendant would continue.

12. Accordingly to the extent indicated above, the impugned orders, made in the common order in IA Nos. 1652 of 2002 and 1753 of 2002 are hereby set aside and the matter is remitted to the learned Senior Civil Judge, Khammam, to give opportunity to both parties and also to mark all the documentary evidence which may be placed by the parties, record appropriate reasons in accordance with law keeping in view the ratio laid down in Javvaji Sambamurthy's case (supra) and pass appropriate orders in accordance with law.

13. Accordingly both the civil miscellaneous appeals are allowed to the extent indicated above. There shall be no order as to costs.