
(1999) 03 AP CK 0058
In the Andhra Pradesh High Court
Case No : AAO No. 2065 of 1998

Panchayat of Kokanasayanapalem

APPELLANT

Vs

Pagolu Ramaswamy

RESPONDENT

Date of Decision : 01-03-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (1999) 2 ALD 494 : (1999) 2 ALT 658 : (1999) 1 APLJ 351

Hon'ble Judges : B.S.A. Swamy, J

Bench : Single Bench

Advocate : Mr. P. Raghavendra Reddy, for the Appellant; Mr. S. Ramachandra Prasad, for the Respondent

Judgement

1. Questioning the orders of the 1st Additional District Judge, Krishna District, at Machiltpatnam in IA No.191 of 1998 in AS No.76 of 1998, the present CMA is filed by the Executive Officer, Kokanarayanapalem Gram Panchayat.

2. The brief facts of the case are that there is tank in RS No.226 (Old Sy. No.I) in Kokanarayanapalem village. It is the case of the local washerman that the schedule property (tank) in question is their private land and by washing clothes as well as by catching fish in the tank they are eking out their livelihood. While things stood thus, for the first time during the year 1994 the Gram Panchayat tried to lease out the fishing rights in the tank by public auction. Questioning the action of the Gram Panchayat, the District Panchayat Officer as well as the auction purchaser, one Mr. Pagolu Ramaswamy, representing himself and other washermen of Gudur village filed OS No.262 of 1995 seeking declaration of title in respect of the schedule tank and perpetual injunction restraining the defendants from interfering with the possession of the washerman community over the schedule tank and for the costs of the suits. During the pendency of the suit there was an injunction against the respondents from interfering with the possession of the tank by the petitioners. The 1st Additional Junior Civil Judge, dismissed the suit by his judgment and decree dated 6-6-1998 solely on the

ground that the source of title was not mentioned in any of these sale deeds. But, the fact remains that it is the case of the petitioners that since 1947 after abolition of the Estate they are in possession of the tank and the Gram Panchayat also admitted that for the first time they tried to lease out the fishing rights by way of public auction in 1994 and the tank was under possession and enjoyment of the washermen from 1947 to 1995 i.e., nearly 48 years, but the Junior Civil Judge did not consider the aspect whether the washermen perfected their title by adverse possession. Be that as it may, on an appeal preferred by the washermen, the 1st Additional District Judge in 1A No.191 of 1998 having considered these facts granted interim injunction pending disposal of the appeal.

3. Aggrieved by the said order the present CMA has been filed. Mr. Raja Rao appearing for Mr. Raghavendra Reddy strenuously contended that the Gram Panchayat not being a party to the proceedings is not bound by the injunction granted by the trial Court. The Counsel made such a statement perhaps on the basis that the Gram Panchayat was not made party defendant at the time of filing of the suit. But, subsequently the Gram Panchayat was brought on record as 4th defendant by filing IA No.919 of 1996, which was ordered on 31-12-1996. Hence, it cannot be contended that the Gram Panchayat is not a party to the proceedings and it is not bound by the injunction granted by the trial Court. Accordingly, the contention of the Counsel is rejected.

4. The next contention urged by him was that the trial Court having gone into the voluminous documentary evidence produced before it, held that the tank vests in Gram Panchayat and as such the appellate Court erred in granting injunction pending disposal of the appeal.

5. Again, such a submission was made by the Counsel without knowing the legal position. u/s 96 of the CPC, a statutory appeal is provided against the judgment and decree passed by a trial Court and that Court is empowered to go into the correctness of the findings of the trial Court both of fact and law. In other words, the appellate Court is empowered to re-assess the evidence produced by the parties before the trial Court to satisfy itself whether the findings recorded by the trial Court are in accordance with law or not. Hence, it cannot be said that the judgment and decree of the appellate Court became final and the appellate Court cannot interfere with the findings of the trial Court. The appellate Court in exercise of its appellate jurisdiction having taken the appeal on file keeping the equities in mind and felt it desirable to continue the injunction granted by the trial Court till the disposal of the appeal. In fact, the appellate Court categorically recorded a finding that since 1947 the fisherman of the village were in enjoyment of the tank and the Gram Panchayat set up its title only in 1994-95. Hence, the appellate Court is perfectly justified in granting interim injunction pending disposal of the appeal.

6. The Counsel for the Gram Panchayat lastly contended that in the interest of both the parties, the Gram Panchayat may be allowed to conduct the auction of the fishing rights and the sale produce may be deposited in the Court.

7. I cannot accept the request of the Counsel to satisfy his ego. On the other hand, the very fact that the washermen of the village were in possession of the property over a statutory period of 45 years. Prima facie, I am of the view the fisherman have perfected their title to the tank by adverse possession, even if the tank really vests in Gram Panchayat, as the same was situated in poramboke land. Further, under the provisions of the Gram Panchayat Act, the Gram Panchayat has to set apart one tank for washing of clothes and as per G.O. Ms. No.343, dated f 0-4-1978 the fishing rights in that tank have to be necessarily leased out to the washermen of that village, if necessary by registering a society under the provisions of A.P. Co-operative Societies Act.

8. For all the above reasons I do not find any merits in the contentions of the Gram Panchayat accordingly the CMA is dismissed. If the Gram Panchayat ultimately succeeds then it can work out its remedies available under law, but not at this stage.