
(2004) 12 AP CK 0087

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 5828 of 2004

Penta Urmila and Others

APPELLANT

Vs

Karukola Kumaraswamy and Others

RESPONDENT

Date of Decision : 13-12-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227

Citation : (2005) 2 ALD 130 : (2005) 1 ALT 811

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : D.V. Ramana Murthy, for the Appellant; Kouturu Vinaya Kumar, for Respondents 1 to 6, for the Respondent

Final Decision : Allowed

Judgement

V.V.S. Rao, J.—Respondents 1 to 6 herein along with another person filed a suit being O.S.No.105 of 1988 on the file of the Court of Junior Civil Judge, Palasa, for permanent injunction to restrain defendants 1 to 31, in any manner interfering with the possession of the plaintiffs in respect of agricultural lands comprised in S.Nos.232-2A1/B, 232-2A2/A, 232-1B, 232-2A1/C, 232-2A2/B, 232-1C. The suit was opposed by defendants who were in possession of the land in O.S.No.232/7 which was adjacent to suit schedule lands. The trial Court by judgment dt.31.12.2001 dismissed the suit disbelieving the version of the plaintiffs. Aggrieved by the same, plaintiffs filed regular first appeal being A.S.No.15 of 2002 on the file of the Court of Senior Civil Judge, Sompeta. When the appeal suit was coming up for arguments, plaintiffs/appellants filed I.A.No.87 of 2004 under Order XXVI Rule 9 of Code of Civil Procedure, 1908 (CPC) for appointment of Advocate Commissioner to localize the plaint schedule property and the property in S.No.232/7 with reference to Field Measurement Book (FMB) and other revenue records. This application was opposed by the defendants/respondents. Overruling objections, the learned appellate Judge by impugned order dt.9.9.2004 appointed Advocate Commissioner as prayed for directing him

to take assistance of Mandal Surveyor, give prior notice to both parties and submit a report. Aggrieved by this, the legal representatives of eighth defendant, who came on record as respondents 2, 4, 5, 7 and 8 in the appeal, filed present Civil Revision Petition under Article 227 of the Constitution of India. Learned counsel for the petitioners, Sri P. Veera Reddy, submits that the impugned order amounts to collection of evidence which is not permissible in a suit for injunction at the appellate stage. He would urge that new and additional evidence is sought to be procured by the plaintiffs after lapse of sixteen years and therefore orders of the learned Senior Civil Judge suffer from grave error apparent on the face of the record, requiring correction in the proceedings under Article 227 of the Constitution of India. Per contra, learned counsel for respondents 1 to 6, Sri Kouturu Vinaya Kumar submits that plaintiffs filed an application only for verification of the features of the suit schedule property and property claimed by the defendants, with reference to FMB and revenue records and the same does not amount to collecting evidence. Therefore, he would urge that the order of the learned Senior Civil Judge does not in any manner cause prejudice to the petitioners.

2. It is now well settled that by catena of decisions of the Supreme Court every error committed by a Court subordinate to High Court is not amenable to supervisory jurisdiction under Article 227 of the Constitution of India. The power under Article 227 of the Constitution of India is intended to avoid miscarriage of justice by improper exercise of jurisdiction by subordinate Courts or exercise of jurisdiction which primarily does not vest in lower Courts. In *Surya Dev Rai Vs. Ram Chander Rai and Others*, the Supreme Court considered the scope of Article 227 of the Constitution of India in the background of amendments to CPC in 1999 and 2002. While laying down general principles in relation to exercise of jurisdiction under Article 227, the Supreme observed. ...Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where "a stitch in time would save nine". At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge.

3. The Supreme Court in the above judgment administered caution to High Courts while exercising jurisdiction under Article 227 of the Constitution of India. When the scope of Section 115 CPC has been drastically whittle down by Parliament by resorting to liberal approach under Article 227, this Court cannot introduce appellate/revisional intervention at interlocutory stage of the suit. Such

intervention at interlocutory stages in the trial must be exercised cautiously with great circumspection or else what was sought to be avoided by Parliament would be brought to fore. It is no doubt true that as held by the Supreme Court the scope of power under Article 227 is too broad and no limitations can be imposed on exercise of such power by Parliament and whatever is intended by the two Amendment Acts 1999 and 2002 would not in any manner diminish the broad jurisdiction under Article 227. Nevertheless, as held by the Supreme Court in *Surya Dev Rai v. Ram Chander Rai* (supra) this Court must delicately balance exercise of jurisdiction on one hand and broad aspects of justice on the other while correcting - if necessary; orders of the lower Courts in interlocutory applications.

4. The above principles have to be applied to the facts of this case. The respondents 1 to 6 and another filed suit in 1988 for injunction. The suit was dismissed in December 2001 and the appeal was filed immediately thereafter in 2002. Either during the pendency of the suit or during the two years of the pendency of the appeal before the learned Senior Civil Judge, Sompeta, the plaintiffs never thought of getting Advocate Commissioner appointed for verifying the features of the suit schedule land and defendants land with reference to FMB or other revenue records. In all probability, they entirely depended on the evidence they had let in the trial of the suit. They lost the suit, but still they were presumably confident of convincing the appellate Court with the evidence on record. At a later point of time when the appeal was coming for hearing, they filed I.A.No.87 of 2004 to bring in a report of Advocate Commissioner noticing features of the land with reference to FMB. In a suit for permanent injunction, the vital and important issue is whether the plaintiffs are in possession of the suit schedule land and whether there was attempt by the defendant/s to interfere with such possession of plaintiffs. The burden is entirely on the plaintiffs to bring convincing and cogent evidence on record and for so doing, it is not permissible for them to invoke Order XXVI Rule 9, which is intended for different purpose. Further, if at this stage, Advocate Commissioner files a report, as directed by appellate Court with the assistance of the Mandal Surveyor it would certainly amount to introducing additional evidence which is ordinarily not permissible unless proper application is made under Order XLI Rule 27 satisfying the conditions therein. No such conditions were pleaded in the affidavit accompanying I.A.No.87 of 2004 and therefore it was improper for the learned appellate Judge to appoint Advocate Commissioner. This would certainly amount to improper exercise of jurisdiction and misdirection in law which would occasion failure of justice. Therefore, this Court is amply justified in interfering in this case nullifying orders of the learned Senior Civil Judge, Sompeta.

5. Accordingly, the Civil Revision Petition is allowed and the impugned order in I.A.No.87 of 2004 is set aside. No costs.