

(2011) 11 AP CK 0073

In the Andhra Pradesh High Court

Case No : Second Appeal No. 1010 of 2010

Penumuncha Ramakrishna Reddy (died) Per LRs.	APPELLANT
Vs	
Doraswamaiah (died) Per LRs	RESPONDENT

Date of Decision : 08-11-2011

Acts Referred:

Citation : (2011) 11 AP CK 0073

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : V. Jagapathi, for the Appellant; S.V. Muni Reddy, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Mr Justice L. Narasimha Reddy

1. The plaintiff in O.S. No. 357 of 1974 on the file of the Principal Junior Civil Judge, Puttur, is the appellant. During the pendency of the appeal, he died, and his legal representatives are brought on record. They feel aggrieved by the judgment rendered by the Court of Senior Civil Judge, Puttur, in A.S. No. 44 of 1990.

2. One Sri P. Ramakrishna Reddi filed the suit for the relief of injunction-simplicitor, in respect of Ac.10.24 cents of land in Sy. No. 50 of Venkataperumallarajupuram Village, to restrain the respondents from trespassing into, or otherwise interfering with the possession of the suit schedule property. It was pleaded that the land was originally held by one Sri Kosuru Subbaraju and others, and that they sold the same to one, Guravaraju, and from him, he purchased it, through sale deed dated 16-11-1966, for a consideration of Rs.2,000/-. It was pleaded that the respondents are interfering with his possession without any basis and right.

3. On behalf of the respondents, written-statements were filed. According to them, neither Subba Raju, nor Guravaraju have any title over the land and the

so-called sale deeds were fabricated. They stated that the land was owned by Yalapalle Peddachengaiah and Chintaparthi Venkatapathi, constituting a compound family, with each branch having half share, and that Venkatapathy sold his share in favour of Devaragudi Subramanyapillai, through sale deed dated 27-05-1932. They have furnished the particulars of the manner in which the rights are said to have accrued to them, vis-?-vis the land, ever since then.

4. The trial Court decreed the suit through judgment dated 08-10-1984. Aggrieved thereby, the respondents filed A.S. No. 44 of 1990. The appeal was allowed, initially on 22-09-1993, and aggrieved thereby, the original plaintiff filed S.A. No. 562 of 2003. The respondents, on the other hand, filed cross-objections. This Court allowed the appeal and cross-objections, through order dated 27-02-2004, remanding the matter to the lower Appellate Court. After, remand, the lower Appellate Court allowed A.S. No. 44 of 1990 in its entirety, through judgment dated 17-08-2010. Hence, this Second Appeal.

5. Heard Sri V. Jagapathi, learned counsel for the appellants, and Sri S.V. Muni Reddy, learned counsel for the respondents.

6. Though the suit was filed for the relief of injunction-simplicitor, the trial Court framed the following issues for its consideration:

1. Whether the plaintiff has title or possession of the suit property?
2. Whether Kosuru Subbaraju and others had title or possession of the suit property and whether the sale deed dt. 17-12-63 executed by the said Kosuru Subbaraju and others will confer any right on K. Guravaraju?
3. Whether the sale deeds 17-12-63 executed by K. Subbaraju and others in favour of K.Guravaraju and the sale deed dt. 16-11-66 executed by Guravaraju in favour of the plaintiff are true and valid?
4. Whether the defendants are the owners of the suit property as claimed by them in their written statement?
5. Whether the plaintiff is entitled for an injunction as prayed for?
6. Whether the suit is bad for non-joinder of necessary parties?
7. Whether the suit without a prayer for declaration and possession is maintainable?
8. Whether there is any cause of action for the suit?

7. On behalf of the appellants PWs 1 to 4 were examined and Exs.A-1 to A-13 were filed. On behalf of the respondents, DWs 1 to 5 were examined and Exs.B-1 to B-5 were filed. The Commissioner's report and plan were taken on record, as Exs.C-1 and C-2. The suit was decreed and in the appeal preferred by the respondents, the lower Appellate Court has taken on record, Exs.A-14 to A-18 and Exs.B-6. At one stage, the appeal was partly allowed, and that resulted in filing of Second Appeal and Cross-objections by the parties before this Court. The

Second Appeal was allowed, and the matter was remanded. After remand, the appeal was allowed in its entirety.

8. This Court is, in fact, shocked to see the manner in which the trial Court had dealt with the suit. Through the relief was the one of perpetual injunction, to restrain the respondents from trespassing into the land or otherwise interfering with the possession, it has proceeded to frame issues, touching upon the title, not only of the appellants, but also of their two predecessors in succession. In addition to that, it proceeded to examine the question of title of the defendants also. It is only as incidental question, that too, in the limited context of knowing whether the plaintiff is claiming the right of possession, with any semblance of right, or only as an out-right trespasser, that the trial Court, in an injunction suit, would deal with the question of title as an ancillary issue. The adjudication of the title, as an independent issue, can be undertaken only in a suit for declaration of title. Further, in a suit for declaration of title also, it would not have been possible for the trial Court to pronounce upon the validity of the series of documents, referred to by the plaintiffs and defendants.

9. The very fact that the trial Court felt that it is necessary to pronounce upon the title of the appellants as well as the respondents, independently, was sufficient to require the parties to seek adjudication in a properly constituted proceedings. There was absolutely no justification for it to undertake the task by itself, without ensuring the existence of proper pleadings, payment of Court fee, and other ancillary issues. When such is the glaring and patent illegality committed by the trial Court, naturally the lower Appellate Court was entitled to interfere. However, in the process, the lower Appellate Court committed patent illegality, even after the remand was made by this Court.

10. Though the Second Appeal has to be allowed, by setting aside the judgment of the lower Appellate Court, the result thereof would be that the judgment rendered by the trial Court, which is patently illegal, would remain in force. This Court cannot permit such state of affairs. Either way, the root cause for the present proceedings, which are spread over the past three and half decades happens to be institution of a suit for injunction-simplicitor, though the parties themselves feel that it is necessary to seek the pronouncement upon their respective titles. Neither the judgment rendered by the trial Court, nor the one, rendered by the lower Appellate Court can be sustained in law.

11. Hence, the Second Appeal is allowed, setting aside the judgment rendered by the lower Appellate Court in A.S. No. 44 of 1990, and that of the trial Court in O.S. No. 357 of 1974. It is left open to the parties to institute proceedings of their choice. It is also made clear, that in case a suit for injunction is filed, the trial Court shall not undertake any adjudication, except the one, pertaining to that relief. If, on the other hand, the parties pray for the relief of declaration of title, it shall adjudicate the same in accordance with the relevant provisions of law. In such an event, none of the observations in this set of proceedings shall be treated as final.

12. There shall be no order as to costs.