
(1952) 10 KAR CK 0001
In the Karnataka High Court
Case No : Second Appeal No. 362 of 1949-50

Periera

APPELLANT

Vs

H.K. Siddalingappa and Others

RESPONDENT

Date of Decision : 22-10-1952

Acts Referred:

Limitation Act, 1908 — Section 109

Citation : AIR 1954 Kar 35

Hon'ble Judges : Vasudevamurthy, J

Bench : Single Bench

Advocate : V. Krishnamurthy, for the Appellant; D. Puttaswamy, for the Respondent

Judgement

1. The plaintiff's suit for damages by way of loss of rent occasioned to him by the defendants who were in unlawful possession of the plaint schedule property which he had purchased at a Revenue sale was decreed partially by the Second Munsiff, Mysore. On appeal the Additional Subordinate Judge, Mysore, dismissed the suit and the plaintiff has come up in second appeal.

2. The suit was originally brought against two defendants who were brothers of one H.K. Sivanna who is now dead. The suit property was sold by the Revenue authorities for recovery of the balance of the House Building Advance which had been borrowed to put up the suit house by the deceased Sivanna who was an employee in the Mysore Government Electrical Department. After purchasing the property the plaintiff applied for delivery of possession but he was prevented from taking possession on account of obstruction caused by the defendants, who had also filed a suit for declaration of their rights and for permanent injunction and had also obtained orders of temporary injunction in the course of those proceedings. Defendant 2 died subsequent to the suit and defendants 2(a) & 2(b) and defendant 1 were brought, on record as his legal representatives. In this appeal, only defendants 2(a) and 2 (b) are represented by Counsel on behalf of a guardian appointed by Court. Defendant 1 though served has not appeared,

3. The learned Munsiff found that the defendants did obstruct the plaintiff and prevented him from taking possession of the suit property or recovering any rents from "the tenant Srinivasa Iyer. He was of the opinion that there was no substance in the contention that as the plaintiff had failed to prove that the defendants were actuated by any malice in filing their suit and obtaining orders of temporary injunction he was not entitled to recover rents by way of damages. He also found that the plaintiff was entitled to such damages by way of rent from 19-5-41 to 3-10-45 at Rs. 15/- per month as against a somewhat larger claim which had been made by the plaintiff. The learned Subordinate Judge was, however, of the view, that the plaintiff had not made out either malice or want of reasonable and probable cause on the part, of the defendants and that he had also failed to make out that the defendants obstructed him in obtaining possession.

I think it is quite clear from the evidence in this case, documentary and oral, that the defendants did obstruct the plaintiff and prevent him from recovering possession. The plaintiff as P. W. 1 had deposed that after obtaining Ex. B, the sale certificate, he applied for possession through Revenue authorities and they directed him to approach the Civil Court. He then filed a petition for delivery of possession in the Court of the First Munsiff, Mysore, and that Court ordered such delivery. The defendants then filed O. S. No. 9-42-43 in the Subordinate Judge's Court, Mysore, and applied for and obtained an ad interim order of temporary injunction on 1-8-42 restraining the plaintiff from taking delivery of possession of the property in suit, pending disposal of the application. Later on, on that order being vacated by the learned Munsiff they filed Misc. Appeal No. 25 of 42-43 before the District Judge & secured an order in their favour by which the ad Interim order was restored. O. S. No. 9/42-43 was later on dismissed after trial and the defendants filed an appeal against that Judgment in R.A. 90/43-44. Along with their appeal they applied for and again obtained an order of temporary injunction from the District Judge which was in force till the appeal was ultimately disposed of against them, in support of their application for temporary injunction before the District Judge they filed an affidavit Ex. H wherein it was expressly stated that the properties belonged to a joint family of themselves and deceased Sivanna and that though the appellants were residing in the premises of the suit property, if the present plaintiff was not restrained from taking possession of the property, substantial and incalculable injury would result to them and they would be wrongfully deprived of possession of the property by virtue of proceedings which were not binding on them.

The learned Munsiff has properly given considerable weight to Ex. H but the learned Subordinate Judge was of the view that even assuming that the facts stated in it were true they were insufficient to hold, in the absence of proof of malice and want of reasonable and probable cause, to entitle the plaintiff to recover damages for use and occupation and that, in spite of the statement in Ex. H, the plaintiff had to make out affirmatively that the defendants did

obstruct the-plaintiff. I think that this is not at all the proper way in which this matter has to be viewed. The defendants had, on oath, admitted in Ex. H that they were in possession of the property and in the absence of very clear evidence to the contrary they could not ask the Court to treat Ex. H so lightly. The plaintiff has sworn that when he went to take possession defendant 1 obstructed him, that the other defendant was also present and that the Taluk authorities drew up a mahazar and made a report. Mr. Puttaswamy, learned Counsel who appears for the-defendants, says that the plaintiff should have summered the mahazar. But I fail to see why it was necessary for him to do so in view of their repeated statements in the course of the proceedings in O. S. No. 9 of 42-43 and R. A. No. 90/43-44 and Mis. A. No. 25/42-43 that they were in possession.

4. Mr. Puttaswamy next contends, that the plaintiff has admitted that defendant 2 was not residing in the suit house at any time and that the property might have been in the possession of one Srinivasa Iyer who has been examined on commission as a lessee under Puttabasamma, widow of Sivanna Srinivasa Iyer 116 doubt says that defendant 1 was not residing in the house during the period when he was occupying it and that he was a tenant of one Puttabasamma in the house. He obstructed the delivery of possession being made to the plaintiff as per Ex. I(a) on 12-9-45 but he was ejected. It is difficult, to believe his evidence. He says there was a lease deed executed by him in favour of Puttabasamma written on an ordinary plain paper. The defendants have not summoned even that paper. The witnesses has no references to show that he ever paid rent to Puttabasamma. He says he sent some of the rents by M. O. but he has not presorted any of the M. O. coupons. He says Puttabasamma had written a letter as per Ex. IV(a) on 9-7-42 in which she asked him not to pay rents to any body else except to herself, and also to pay .the taxes due on the house directly to the Municipa lity. That letter is said to have been delivered "muddam" to him and there is no other proof that it was written by Puttabasamma. No taxes" appear to have been paid by the witness as required by Ex. IV-a. The witness has not produced any receipts for having paid any vents or taxes nor does he even say that he acted according to the terms of Ex. IV-a and accounted for the balance of rents to Puttabasamma.

Puttabasamma who is a close relation of the defendants, has not been examined and, though defendant 1 says that she is not well disposed towards him it is not likely that she would not have supported the defendants as against a stran- ger like the plaintiff.

5. A person must be held liable for the natural and probable consequences of his, conduct and ac tion and if the defendants persisted in making claims "which have" now turned out to be false about their ownership of the property and have kept away the plaintiff from securing the bene- fits of the Revenue sale in his favour they are bound to compensate him by way of damage. He would be entitled to recover from them by way of mesne profits or damages the loss he

has sustained by their conduct. In my opinion it is immaterial if defendant 2 was not living in the house or if only defendant 1 was living in it. If they successfully kept the plaintiff out of possession they cannot complain that the tenant did not pay them any rents or paid someone else the rents when the Court has accepted their statement and issued temporary injunctions in their favour. Defendant 2 has made common cause with defendant 1 in all those proceedings and is a joint tortfeasor with him.

6. The learned Subordinate Judge erred in considering that this was a suit for damages for obtaining injunction orders wrongfully. He thought that it was necessary in a suit like the present for the plaintiff to make out want of bona fides on the part of persons obtaining those orders. But the present suit is for damages by way of mesne profits by an owner who has been kept out of possession by the defendants. The injunctions were obtained in the course of legal proceedings merely with the object of keeping the plaintiff out of such possession and the defendants must compensate the plaintiff if it is found that they were responsible for keeping the plaintiff wrongfully out of possession.

7. Mr. Puttaswamy has next urged that the learned Munsiff erred in making a decree for mesne profits for a period earlier than three years before suit. He urges that the plaintiff's suit is one for recovering mesne profits by way of damages falls under Article 109, Limitation Act which prescribes a period of three years for such suit time begins to run when the profits are received; and that Section 15, Limitation Act on which reliance has been placed by the Munsiff to award a decree for a longer period has no application. That position appears to be correct. Section 15, Limitation Act in terms does not apply to the facts and circumstances of this case as the injunction was not against the institution of any suit or any execution or application for recovery of rents or mesne profits but only against taking possession of the property. Mr. Puttaswamy has in this connection referred to a case in -- "*Bashesar Das v. Diwan Chand*" AIR 1933 Lah 615 (A), which fully supports him. In that case the plaintiff purchased certain property at an auction sale. Objections were raised by the defendant on the execution side that the plaintiff was entitled to get only a 1/3rd share in the house. Both parties then filed declaratory suits to establish their rights and ultimately the plaintiff was declared the sole owner of the house by virtue of the auction sale and the suit of the defendant failed. In the course of the litigation the defendant had obtained stay of delivery of possession twice. After the plaintiff obtained possession of the property he brought a suit to recover mesne profits and contended that the running of limitation for the recovery of mesne profits was suspended when execution was stayed. It was held by the Lahore High Court that the stay order merely related to delivery of possession and was no bar for the institution of a suit for mesne profits, The cause of action for recovery of those profits was accruing every time those profits were received by the defendants and the only way by which the plaintiff could keep the claim within limitation was apparently by instituting suits for recovery of the profits within three years of the receipt of the same by the defendants. It was observed

that those suits would probably have been stayed pending the decision of the question of title but that course though inconvenient was under the circumstances necessary to save limitation. It was pointed out that the plaintiff cannot be allowed any extension of time to save limitation merely on equitable considerations unless the extension is provided by statute.

In -- Ram Charan Sahu and Another Vs. Goga and Others , which is referred to in the Lahore case it was held that even before a claim to mesne profits is in dispute the starting point of limitation for a suit for mesne profits would be the date when the profits are received, and the limitation cannot start instead, from the date of adjudication of the rights between the parties, In such cases the proper practice is for the plaintiff to institute a suit for mesne profits before the time expires and allow it to be stayed pending disposal of the former litigation.

8. In -- "Ramaiya v. Suryanarayana" AIR 1949 Mad 279 (C); the plaintiff, purchased certain property in execution, of a mortgaged decree. Some of the defendants then filed, a suit impugning the mortgage, which was dismissed both in the trial Court and ultimately on appeal in the High Court. Pending disposal of the appeal, the defendants had obtained an order of temporary injunction restraining the plaintiff from interfering with their possession. After the plaintiff obtained possession he sued for and was granted a decree for mesne profits for four years and for doing so reliance was placed on Section 15, Limitation Act On appeal Horwill, J. held negating that contention that that section did not apply as the institution of the suit for mesne profits was not stayed by any order of injunction and that the institution of a suit can never be said to be futile if it would thereby prevent the running of limitation.

9. In -- "43 Mys H.C.R. 1 (D)", it was observed that the stay of execution of a decree for delivery of possession in a suit between two rival claimants to a jodi village did not serve to extend time u/s 15, Limitation Act in respect of a suit for rent against the kadim tenant as the order of stay of execution made by the appellate Court in that case did not stand in the way of the successful claimant filing a suit earlier against the latter for such recovery.

10. In the light of these decisions the mesne profits due and payable to the plaintiff can only be for a period within three years prior to the suit. The plaintiff obtained delivery of possession on 3-10-1945 and as his suit was filed on 28-11-45. the plaintiff can recover mesne profits only for 34 months less 5 days.

11. Mr. Krishnamurthi has urged that his client is entitled to recover interest on these mesne profits from the dates when the claims to them accrued. The learned Munsiff, however, did not grant him that relief and the plaintiff did not take up the matter in appeal. I think in the circumstances of this case the plaintiff may be awarded interest only from the date of suit till date of payment on the aggregate amount of mesne profits found due to him.

12. In the result this appeal is allowed, the judgment and decree of the lower appellate Court are set aside and there will be a decree in favour of the plaintiff

for mesne profits for a period within three years before suit at Rs. 15/- per mensem, i.e., for Rs. 510/- with interest thereon at 6 per cent per annum from date of suit till payment with proportionate costs against defendant 1 and against the assets of defendant 2 In the hands of his legal representatives. The plaintiff will get his costs from the defendants in this Court as well as in the lower appellate Court.

13. Appeal allowed.