
(2007) 01 AP CK 0066
In the Andhra Pradesh High Court
Case No : SA No. 692 of 1996

Pochareddy Radhakrishna Reddy

APPELLANT

Vs

Gopalakrishna Rice Mill

RESPONDENT

Date of Decision : 24-01-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Partnership Act, 1932 — Section 56, 69, 69(1), 69(2)
Presidency Small Cause Courts Act, 1882 — Section 19

Citation : (2007) 5 ALD 162

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

Bench : Single Bench

Advocate : V.S.R. Murthy, for the Appellant;

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Heard Sri V.S.R.Murthy, the Counsel representing the appellant.

2. The only substantial question of law argued in elaboration by the learned Counsel representing the appellant is as hereunder:

Whether the suit is maintainable in view of the bar imposed by Section 69(2) of the Indian Partnership Act, 1932?

3. The unsuccessful defendant in both the Courts below preferred the present second appeal. The respondent herein - the plaintiff Sri Gopalakrishna Rice Mill, Gudur, represented by its Managing Partner filed the suit O.S. No. 354/86 on the file of District Munsiff, Gudur, praying for the relief of permanent injunction.

4. On the respective pleadings of the parties, the Court of first instance settled the issues, recorded the evidence of P.W.1 and D.W.1, marked Ex.A.1 to Ex.A.7 and also Exs.B.1 to Ex.B.4 and ultimately decreed the suit. Aggrieved by the same, the defendant preferred appeal A.S. No. 6/93 on the file of Subordinate Judge, Gudur, and the appellate Court at para 10 framed the points for

consideration and discussed the oral and documentary evidence commencing from paras 11 to 28 and ultimately dismissed the appeal with costs.

5. The parties hereinafter would be referred to as plaintiff and defendant as shown in O.S. No. 354/86 on the file of District Munsif, Gudur for the purpose of convenience.

6. The plaintiff averred in the plaint as hereunder:

The plaint schedule property originally belonged to Peruru Varadaiah and V. Narasimhulu Setty and Company. Its partners Peruru Lakshman Gupta and Raja Venkatasessaiah sold it to the plaintiff firm on 1-4-1967 under registered sale deed. It is stated that after sometime, one of the partners of the plaintiff-firm Mummadisetti Obaiah Setty died and his wife Ammanamma was made as partner in the partnership-firm. It is also stated that she also died on 27-10-1981. Subsequently, the present partnership was constituted and the plaintiff-firm is in possession and enjoyment of the schedule property. It is further stated that while so, the defendant occupied 2 feet space of the site while constructing his southern compound wall about 15 years back and he is now digging trenches breaking open his southern compound wall to a length of 10 feet towards sought of his compound wall. It is further stated that the defendant is bent upon violence and therefore this suit for permanent injunction.

7. The defendant pleaded in the written statement as hereunder:

The defendant did not know about the purchase of the plaint schedule property by plaintiff-firm. It is stated that the plaintiffs partnership is not validly constituted and that the original partnership is deemed to have been dissolved with the death of M. Obaiah Setty and the subsequent partnership also dissolved with the death of Ammannamma. It is also stated that the plaintiff-firm did not file the partnership deed and therefore, it is not validly constituted. It is further stated that he was not aware about the source of title of the plaint schedule property. The vendors of the plaintiff-firm were neither in possession nor enjoyment of the schedule property which was a vacant site. The defendant had 3 feet site to the south of his compound wall. On the south of the said site, Sanduveedi is situated and it was running from West to East. The Sanduveedi forms the southern boundary of all houses and it was judicially recognized as per the judgment in O.S. No. 139/86, that there was a road running from West to East on the West of defendant's house upto the GNT Road. If the plaintiffs predecessor had any site, it must be on the south of the said sanduveedi. The suit is barred by limitation. The plaint averments show that the defendant came into possession of the site about 15 years ago and he had perfected his title by adverse possession. With a view to secure safety from anti-social elements, the defendant pulled down his old compound wall and built the present wall enclosing his own site situated on the north of sanduveedi and therefore he did not encroach into the site of the plaintiff at all. The compound wall had been built in exercise of the right of ownership and therefore, this suit is liable to be dismissed.

8. On the strength of the respective pleadings of the parties, the following issues and additional issue had been settled:

(1) Whether the plaintiff is entitled for the permanent injunction?

(2) To what relief?

Additional Issue:

Whether the Suit is not maintainable as it was hit by Section 69(2) of LP. Act?

9. On behalf of the plaintiff, P.W.1 was examined, Ex.A.1 to Ex.A.7 and on behalf of defendant, D.W.1 was examined and Ex.B.1 to Ex.B.4 were marked. P.W.1 is the Managing Partner of the plaintiff-firm and D.W.1 is the defendant in the suit.

10. The bar of Section 69(2) of the Indian Partnership Act, 1932 in the context of the maintainability of the suit had been argued in elaboration and both Courts recorded certain findings in this regard and on appreciation of the language of Section 69(2) of the Act aforesaid, it was held that inasmuch as this is not a dispute arising from a contract, the said bar is not applicable. The evidence of the Managing Partner of the plaintiff-firm - P.W.1 and the other documentary evidence had been dealt with at length. Likewise, the evidence of D.W.1 and also the documentary evidence placed before the Courts on behalf of the defendant also had been appreciated. The stand taken by P.W.1 is that the defendant encroached 2 feet width of the site belonging to the firm. The visit of the Commissioner and report of the Commissioner also had been taken into consideration. Positive findings had been recorded that during the pendency of the suit, the defendant constructed a new compound wall having annexed 50 feet x 2 feet site width having dug new trenches to the south of his southern compound wall. Further positive finding had been recorded that the defendant cannot change the state of things during the pendency of the suit. In *Virendra Dresses Vs. Varindra Garments*, , it was held that u/s 69(2) of the Indian Partnership Act, 1932 a suit to enforce a right arising from a contract against a third party is barred unless the firm is registered and the application of bar u/s 69(2) of the Act aforesaid does not extend to the enforcement of rights not arising from contract. Section 69 of the Indian Partnership Act, 1932 reads as hereunder:

Effect of Non-Registration:-(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suits to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

(3) The provisions of Sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect--

(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realize the property of a dissolved firm; or

(b) the powers of an official assignee, receiver or Court under Presidency-towns Insolvency Act, 1903 (3 of 1909), or the Provincial Insolvency Act, 1920 (5 of 1920), to realize the property of an insolvent partner.

(4) This section shall not apply--

(a) to firms or to partners in firms which have no place of business in the territories to which this Act extends, or whose places of business in the said territories are situated in areas to which, by notification u/s 56, the Chapter does not apply, or

(b) to any suit or claim or set-off not exceeding one hundred rupees in value which, in the Presidency-towns, is not of a kind specified in Section 19 of the Presidency Small Causes Courts Act, 1882 (15 of 1882), or outside the Presidency-towns is not of kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887 (9 of 1887), or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.

11. In the light of the findings recorded by both the Courts below on the maintainability of the suit, this Court is of the considered opinion that the said findings need be confirmed in the facts and circumstances of the present case. Further reliance was placed on Bhupatlal Govindji Vs. Bhanumati Dayalal, , relying upon AIR 1951 Pat. 546, it was held that where the first appellate Court found that the plaintiff was the tenant of suit godown and that she and her predecessor were in possession of godown right from 1955 and this being a finding of fact is binding in second appeal and the plaintiff was in possession even during pendency of suit till the ad interim injunction stood vacated because of dismissal of suit by trial Court and during the period when the injunction did not operate because of dismissal of suit and the filing of appeal, the defendant prevented plaintiff from entering godown by locking the door and the appeal being continuation of suit, as the defendant is shrewd enough to overreach the legal process, the Court should put its foot down and see that this shrewdness does not stand rewarded and the Court should restore the legal possession which would have continued had the defendant not taken benefit of that intervening period and hence it was held that the first appellate Court was correct in granting ad interim injunction coupled with delivery of possession without there being any formal prayer. In the light of this decision also, positive finding had been recorded and both the Courts below by recording concurrent findings, came to the conclusion that the respondent herein - the plaintiff is entitled to the relief prayed for. No other points had been put forth before this Court. As already

referred to supra, except the substantial question of law, which had been pointed out, referred above, all other questions being predominantly questions of fact, such concurrent findings relating to the questions of fact need no disturbance at the hands of this Court in a second appeal in view of the limitations imposed on this Court u/s 100 of the Code of Civil Procedure. In view of the same, the second appeal is devoid of merit and the same shall stand dismissed. Since none represents the respondent plaintiff, the parties to bear their own costs.