
(2011) 02 AP CK 0018

In the Andhra Pradesh High Court

Case No : Second Appeal No. 681 of 1999

Podili Kotamma (died) and Others

APPELLANT

Vs

Munepalli Desapathi and Others

RESPONDENT

Date of Decision : 21-02-2011

Acts Referred:

Citation : (2011) 5 ALD 35 : (2011) 6 ALT 252

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : V. Venugopala Rao, for the Appellant; A. Rajendra Babu, for the Respondent

Final Decision : Allowed

Judgement

R. Kantha Rao, J.—This second appeal is filed against the decree and judgment dated 28.01.1999 passed by the IV Additional District Judge, Guntur in A.S. No. 64 of 1992 reversing the decree and judgment dated 05.03.1992 passed by the Principal District Munsif, Guntur in O.S. No. 316 of 1985.

2. I have heard Sri V. Venugopala Rao, learned Counsel appearing for the Appellants and Sri A. Rajendrababu, learned Counsel appearing for the Respondents.

3. The Plaintiffs are the Appellants. For the sake of convenience, the parties will be referred to as "the Plaintiffs and the Defendants".

4. The brief facts of the case necessary for considering the second appeal may be stated as follows:

The version of the Plaintiffs is that the deceased first-Plaintiff Podili Kotamma encroached upon a site belonging to the Guntur municipality in Venkataraonagar in the year 1965 and constructed two huts therein and she has been in possession and enjoyment of the said property, which is hereinafter referred to as "the plaint schedule property". She filed the suit for permanent injunction

against the Defendants.

5. It was the contention of the Defendants that the first Defendant purchased the Plot No. 13, which is an extent of 78.3/9 sq. yards for a consideration of Rs. 300/- and the second Defendant purchased the plot No. 11, which is an extent of 54 sq. yards for a consideration of Rs. 189/- under registered sale deeds from the Guntur Municipality and took possession of the respective house sites. Under the said sale deeds, they constructed houses and they have been living therein. They admitted that the Plaintiffs are the owners of Plot No. 12, but the contention of the Defendants is that the Plaintiffs have never been in possession and enjoyment of plot Nos.11 and 13 purchased by them and therefore, they are not entitled for the relief of injunction.

6. The trial Court framed the following issues and additional issue:

1. Whether the Plaintiff is in possession of suit property?
2. Whether the Plaintiff is entitled for injunction as prayed for?
3. To what relief?

Additional Issue:

Whether the plaint schedule property is situated between the house sites of 2nd Defendant and her husband?

7. Before the trial Court, PWs. 1 to 7 were examined and Exs. A.1 to A. 19 were marked on behalf of the Plaintiffs and DWs. 1 to 3 were examined and Exs. B. 1 to B. 21 were marked on behalf of the Defendants.

8. The consistent case of the Plaintiff is that she has encroached upon municipal site of an extent of 200 sq. yards in the year 1965, having raised two huts, residing therein with her four sons and has been making representations to the municipality to issue patta in her favour. It is also her case that 60 other persons of Guntur town also occupied the land in the same vicinity constructed thatched houses/huts and have been residing there since 29 years prior to the filing of the suit.

9. The entire documentary evidence let in by the Plaintiffs is nothing but the correspondence with the officials of Guntur Municipality and revenue authorities seeking issuance of patta in her name. Among the documents, Exs. A.18 is the notice issued by the Commissioner-cum-Special Officer, Guntur Municipality, Guntur to the Plaintiffs asking them to remove the encroachment, whereas Ex. A.19 is the office copy of the reply notice issued by the Plaintiff to the Commissioner of Guntur Municipality. From the correspondence, it can be understood that undoubtedly the Plaintiff has been in possession of the schedule mentioned property and she has been making sincere efforts to obtain patta from the Guntur Municipality. Even Exs. B.1 and B.2-sale deeds filed, by the Defendants also indicate that in between their sites purchased from the municipality, the site under occupation of the Plaintiff is situate.

10. The learned trial Court considering the above mentioned documents and evidence of Plaintiff and 6 other witnesses examined on her behalf, gave a definite and specific finding that though the Plaintiff has no title to the schedule mentioned property, she has been in possession of the same since 9 years prior to the filing of the suit and the respective sites of Defendants claimed under Exs. B.1 and B.2 sale deeds are different, the Plaintiff though an encroacher, the injunction sought for not being against true owner, she is entitled for the said equitable relief against the Defendants, who are strangers and she can protect her possession from the Defendants. Further from the evidence on record and from the admissions made by the witnesses on behalf of the Defendants, the learned trial Court also came to the conclusion that though the sale deeds were obtained by the Defendants, they never took possession of the property under the said sale deeds and therefore, they shall not interfere with the possession and enjoyment of the Plaintiffs of the plaint schedule property, i.e. Plot No. 12.

11. In the appeal filed by the Defendants, the first appellate Court took an erroneous view of the matter, unnecessarily indulged in meticulous examination of the documents filed by the Plaintiffs, doubted their genuineness without any basis and held that the property mentioned by the Plaintiff is not described properly by her in the schedule attached to the plaint. The Plaintiff being an encroacher, the appellate Court held that she is not entitled for the equitable relief of injunction. However, it requires to be noticed that even the first appellate Court gave a specific finding that the Plaintiff shall not interfere with the possession and enjoyment of the Defendants of plot Nos. 11 and 13 and ultimately reversed the judgment passed by the learned trial Court. In fact, there is no specific finding recorded by the first appellate Court in regard to the Plot No. 12 of the schedule mentioned property, which is admittedly in possession of the Plaintiff.

12. The learned first appellate Court recorded a finding that the Plaintiffs failed to establish their possession in relation to a specific site belonging to the municipality and their evidence is at variance regarding the extents and boundaries and ultimately doubted the version of the Plaintiffs and reversed the judgment passed by the trial Court in their favour.

13. As rightly pointed out by the learned Counsel appearing for the Plaintiffs, there is nothing in the written statement filed by the Defendants indicating that the Plaintiffs do not have plaint schedule property. In fact, the Defendants admitted that the Plot No. 12 belonging to the Plaintiffs is in between Plot Nos. 11 and 13. The grievance of the Defendants is that the Plaintiffs are trying to encroach upon their sites which are different. Further nothing has been suggested to the Plaintiff or her witnesses that she does not have any site in between Plot Nos. 11 and 13 or anywhere in the said locality belonging to the municipality.

14. It is true that unless substantial question of law arises for consideration, the second appeal cannot be entertained. It is also true that the finding of the first

appellate Court insofar as the fact is concerned is final and normally, the said finding cannot be interfered with in the second appeal. However, the first appellate Court while reversing the finding of the trial Court has to record proper reasons and its decision should be based on the evidence available on record and it shall not be perverse. If the findings recorded by the first appellate Court are perverse and contrary to the evidence on record, this Court can interfere with the said findings in the second appeal.

15. In the instant case, the Plaintiffs admit to be encroachers, but to protect their possession from the Defendants, who are third parties, they filed the suit for simple injunction. The trial Court basing on the evidence available on record and admissions of the Defendants held that the Plaintiff is in possession of the schedule mentioned property, which is Plot No. 12. The learned trial Court specifically held that even the encroacher is entitled to seek the relief of injunction against the persons, who are not real owners of the property and that she cannot be evicted except in accordance with due process of law. On the said analysis and reasoning, the learned trial Court passed a decree granting injunction in favour of the Plaintiff and against the Defendants in respect of Plot No. 12, which is the schedule mentioned property.

16. The impugned judgment rendered by the learned first appellate Court is wholly perverse and it is not based on evidence on record. Moreover, it goes contra to the case of the Defendants, who admit the possession of the Plaintiff in respect of Plot No. 12. The first appellate Court only said that the Plaintiff shall not interfere with the possession and enjoyment of the Defendants" of Plot Nos. 11 and 13. It is not the case of the Plaintiff that she has any claim over Plot Nos. 11 and 13. If that is so, absolutely, there is no basis for the first appellate Court to reverse the finding of the trial Court, which is based on evidence and reasoning. The findings recorded by the learned first appellate Court are, therefore liable to be set aside in the second appeal being perverse and contrary to the evidence on record and settled principles of law relating to injunctions.

17. For the foregoing reasons, the decree and judgment, dated 28.01.1999 passed by the IV Additional District Judge, Guntur in A.S. No. 64 of 1992 are set aside confirming the decree and judgment dated 05.03.1992 passed by the Principal District Munsif, Guntur in O.S. No. 316 of 1985. The second appeal is allowed. There shall be no order as to costs.