(1999) 09 AP CK 0023

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1515 of 1999

Pogiri Jagannadharao APPELLANT

Vs

Gorla Venkatinaidu and Others RESPONDENT

Date of Decision : 10-09-1999

Acts Referred:

Citation : (2000) 1 CivCC 634

Hon'ble Judges : Vaman Rao, J

Bench : Single Bench

Advocate : Addapalli Suryanarayana, for the Appellant; A. Ravishankar, for the Respondent

Final Decision : Dismissed

Judgement

Vaman Rao, J.—This revision petition is directed against the order passed by the District Judge, Srikakulam dated 28.12.1998 passed in C.M.A. No. 60 of 1996 dismissing the appeal preferred against the order of the II Addl. District Munsif passed in I.A. No. 229 of 1996 in O.S. No. 216 of 1996 refusing temporary injunction in favour of the plaintiff in the suit.

2. The admitted facts as emerging from the affidavit filed on behalf of the petitioner and respondent No. 1 in the I.A. may be stated as follows:

The plaint schedule properly belongs to one Gorle Jagannadhamnaidu, maternal grandfather of the petitioner who gave the plaint schedule properties to his daughter Ramudamma, the mother of the petitioner, under a registered settlement deed dated 10.6.1950, the registration extract of which has been marked as Ex. A-1. Ramudamma enjoyed the properties till her death. Ramudamma had four issues i.e., two sons and two daughters, one of the daughters Appalanarasamma died unmarried and whereabouts of her second son Narasingarao is not known since so many years. The petitioner is the other son and his sister Gorle Venkataratnam who is the wife of the first respondent is the other daughter of said Ramudamma, who died in the year 1980.

3. However, the petitioner''s case is that Gorle Venkata Ratnam the wife of the first respondent i.e., the sister of the petitioner never claimed the plaint schedule properties and she died in the year 1980. According to the petitioner, after his mother''s death, his father enjoyed the property and after his father''s death, he is in enjoyment of the properties inasmuch as his brother''s whereabouts are not known, his another sister Appalanarasamma died unmarried and the other sister i.e., wife of respondent No. 1 never claimed any interest in the suit properties. It is on this basis, the petitioner asserts that he has been in physical possession of the suit properties for all these years by paying land revenue and house-tax etc.

4. The respondents counter this assertion and contend that after the death of the petitioner''s mother, Venkatarathnam, wife of the first respondent and the petitioner succeeded to the properties from their mother Ramudamma. As the properties in question are stridhana properties of Ramudamma, her daughter Venkatarathnam, the wife of the first respondent, succeeded to the same and the said Venkatarathnam and her husband, the respondent No. 1 herein, have been in exclusive possession and enjoyment of the properties and after the death of said Venkatarathnam, the first respondent and her sons respondents 2 to 4 are in possession and enjoyment of the properties.

5. The question for consideration is whether the findings of the both the Courts below that the petitioner has failed to make out prima facie possession in his favour suffer from any infirmity, irregularity or impropriety?

6. As pointed out by the learned District Judge, the contention of the petitioner that his sister Venkatarathnam never claimed the properties appears false from the record. The very fact that he filed suit in OS. No. 104 of 1978 on the file of the District Munsif. Cheepurupalli (subsequently transferred to Prl. District Munsif Srikakulam) against the first respondent and his wife. Venkatarathnam, belies this contention. Apparently, the petitioner has suppressed the facts relating to this previous litigation altogether. There is no reference to this litigation in the affidavit of the petitioner filed in support of the petition. However. E.x.B-2, certified copy of decree and judgment in O.S. No. 352 of 1981 speaks for itself as to the previous litigation. This judgment shows that originally the petitioner filed the suit for the relief of permanent injunction and subsequently amended the suit to incorporate the relief for recovery of possession as per the orders in I.A. No. 1059 of 1982. That suit was decreed for partition of plaint schedule land into two equal shares and I.A. was filed for appointment of the Commissioner pursuant to the judgment and decree for partitioning the plaint schedule lands into two equal shares. However, an appeal was preferred against the said judgment and decree for partition in A.S. No. 64 of 1987 by the respondent herein (subsequently it was numbered as A.S. No. 22 of 1988 on the file of the Addl. Sub-Court. Srikakulam) and the said appeal was allowed and the judgment and decree in O.S. No. 104 of 1978 for partition was set aside and the suit was remanded to the lower Court for fresh disposal in terms of the relief asked for by the plaintiff The judgment and decree in A.S. No. 22/1988 is marked as Ex.B-3.

Subsequent to the remand, the suit for recovery of possession was dismissed by judgment dated 28.8.1990 which is marked as Ex.b-2 referred to above. The petitioner preferred appeal A.S. No. 130 of 1990 on the file of the district Court. Srikulam, which was subsequently transferred to Addl. Sub-Court. Srikulam and numbered as A.S. No. 53 of 1991 and the said appeal was dismissed on 28.8.1990. Surprisingly, the petitioner again filed a suit for perpetual injunction in the present round of litigation. The earlier judgment leads to an inescapable inference that on 28.8.1990 the petitioner was not in possession of the plaint schedule properties. However, the petitioner seeks to make good his case for possession by relying on the documents marked on his behalf. Ex. A-2 is ryotwari pass-book issued to the petitioner in respect of plaint ''A'' Schedule agricultural lands. It is dated 30.3.1996. Exs. A-3 to A-5 are the copies of the Adangals in which the petitioner''s possession is said to have been shown. Exs.A-6 to A-9 and A-16 and A-17 are the cist receipts showing the payment of land revenue. Exs. A-10 to A-15 are the house-tax receipts.

7. The learned Counsel for the petitioner contends that in view of fresh documentary evidence filed in the suit, the petitioner has made out prima facie case of his possession over the schedule properties. The learned Counsel for the respondents on the other hand contends that these documents have been manipulated and are not authenticated and as such injunction cannot be granted on the basis of these documents.

8. It is no doubt true that although the record of rights is not a document of title, Court is perfectly entitled to take into consideration the entry in the records of rights for coming to a conclusion that certain person is the owner of the land in question as held in the case of Secretary to Government of India, Ministry of Defence and Another Vs. Indira Devi and Another,

9. It is true that presumption of correctness arises entries in the records of rights but what is the extent of such presumption and what value can be attached to such entries depends on the facts and circumstances of the case. The presumption so arising is not conclusive and is rebuttable presumption. To rebutt such presumption, it is not necessary that specific evidence has to be adduced by the person disputing the correctness of such entries. The presumption may stand rebutted from the facts and circumstances appearing in the case.

10. In this case, the fact that the petitioner herein filed earlier suit in O.S. No. 104 of 1978 initially for grant of permanent injunction and later amended the prayer for including the relief of recovery of possession, the fact that the said suit was dismissed ultimately is a circumstance which erodes the presumptive value of the subsequent revenue records considerably.

11. The contention that while A.S. No. 53 of 1981 was pending, the respondents left the suit land and thereafter the petitioner has taken possession of the suit land and started cultivating the same appears farfetched notwithstanding the filing of Memo Ex.A-18 to the effect in this suit. The learned District Judge

mentioned in his order in CMA about the observation of the learned Sub-Judge that when notice of this memo was given to the advocate appearing for the respondents therein, he sought time for filing counter and there was no admission that the respondents left the possession of the land.

12. The question is whether in the background of these facts, the documentary evidence relied upon by the petitioner in this case can be said to have made out prima facie case of the possession of the petitioner?

13. It is significant to note that the petitioner''s claim is that he acquired possession over the plaint schedule land in April, 1991 after the dismissal of suit for possession. If so, his possession should have been reflected in the Adangals for the years 1991 onwards but the petitioner relies selectively on the copies of Adangals of the year 1996. It would appear that having obtained pattadar pass-book under Ex-A-2 dated 30.3.1996, the entry of the petitioner''s name in the revenue records would naturally follow on the basis of ryotwari pass-book Ex. A-2. The land revenue receipts, except A-8 and A-9, pertain to the years 1981 and 1982, the other land revenue receipts Exs. A-16 and A-17 pertain to the years 1976 and 1971. Exs.A-3 to A-5, are the entries in the village account No. 3. Thus, these documents mostly relate to the period just before filing the suit in the year 1996. Similarly, the house-tax receipts Exs. A-10 to A-12 are dated 15.3.1996 i.e., about the time the suit was filed. Though the house tax receipts Exs. A-14 and A-15 relate to 1974, 1975 and 1976, they are too remote from the date of the suit.

14. Considering the background of the earlier litigation and a definite finding of the Court in the earlier suit that the petitioner was not in possession of the suit properties, the subsequent documents lose much of their probative value. The presumption of correctness arising from the revenue records in this case in the background of the earlier litigation is so weak that it was rightly not acted upon by the learned Junior Civil Judge and the learned District Judge. It may be mentioned that the grant of temporary injunction is a discretionary relief.

15. Considering the totality of the circumstances, it is not possible to hold that the Court below exercised its discretion improperly and erroneously.

16. In the result, the Civil Revision Petition is dismissed. No costs.

17. After the order was pronounced, it is mentioned that the observation in this order might be considered as some kind of finding which may adversely influence the mind of the trial Court. To disabuse any such apprehension, it is made clear that the observations made in this order are strictly for the purpose of decision of the matter in this case. It is obvious that the trial Court will come to its own conclusions in respect of all the matters on the basis of evidence adduced before it. Considering the circumstances, the suit shall be disposed of at the earliest at any rate within a period of six months from date of receipt of copy of this order.

