
(2007) 11 AP CK 0077
In the Andhra Pradesh High Court
Case No : SA No. 526 of 1998

Pothuri Satyanarayana Raju and Another	APPELLANT
Vs	
State of Andhra Pradesh and Another	RESPONDENT

Date of Decision : 07-11-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80, 80(1), 80(2)

Citation : (2008) 2 ALD 747

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

Bench : Single Bench

Advocate : Sreenivasa Rao, for M. Lakshmana Sarma, for the Appellant;
Government Pleader for Arbitration, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Heard Sri Sreenivasa Rao, representing Sri M. Lakshmana Sarma, the learned Counsel for the appellants and the learned Government Pleader for Arbitration.

2. On 24.7.1998 this Court made the following order

Status quo with regard to the possession of the suit property appearing as on today shall be maintained.

3. The substantial facts of law specified in ground Nos. 2-a to h are as hereunder:

(a) Whether the lower appellate Court is right in reversing the decree when the land ceiling proceedings have not become final even by 1990, the question of taking possession in 1981 does not arise.

(b) Whether the lower appellate Court was right in holding that the revenue authorities did not move in the matter is not correct in view of the evidence on record especially when the property was attached and put up for auction according to the defendants' version in the suit?

(c) Whether the Government is entitled to bring the plaint schedule property to the auction by attachment if the property belongs to the Government as the Government cannot sell its own property by auction?

(d) Whether the lower appellate Court was right when the property belongs to third parties then only it can be brought to sale either for realizing the money due to it and not otherwise?

(e) Whether the defendants are estopped from contending that they took delivery of possession in 1981 especially when the pattadars pass books were given and taxes are being collected and the revenue accounts show that the plaintiff is in possession of the property even on the date of the suit?

(f) Whether the lower appellate Court was right in dismissing the additional evidence application I.A. No. 1777-A of 1997 simply because the appeal is allowed? The pattedars pass book would clinch the issue with regard to the possession and title of the party concerned. If the Government is in possession of the property it would not have issued the pattadar pass books for the suit land?

(g) Whether the allegation that they took possession of the land is correct since it is high income fetching wet land and it ought to have been given on lease every year or it would have been distributed to the landless poor. No document is filed to show that the land is given on lease to the third parties and the absence of evidence by the government would throw any amount of doubt that they took possession of the land?

(h) Whether the observation of the lower appellate Court that the mentioning of the year 1987 in the top of Ex.B.1 would falsify the case of the defendant especially when the plaintiff is contending that it is a fabricated document brought into existence for the purpose of the suit. The existence of this document was not mentioned in the written statement, that was originally filed or in the subsequent amended written statement. The absence of a recital with regard to this would show any amount of doubt with regard to taking possession of the defendant of the suit land?

4. Sri Sreenivasa Rao, learned Counsel representing the appellants had taken this Court through the findings recorded by the Court of first instance and also the findings recorded by the appellate Court and would maintain that the alleged possession dated 23.8.1981 cannot be said to be actual possession. At the best, it is a paper transaction and in the light of the same, the findings recorded by the Court of first instance are well considered findings and in view of the same, the decree and judgment of the Court of first instance are liable to be restored and the decree and judgment of the appellate Court are liable to be set aside. The learned Counsel also pointed out that the contention advanced relating to the non-compliance of Section 80 of the CPC also is not applicable to the respondents for the reason that an application u/s 80(2) of C.P.C., had been moved and appropriate orders had been made in the suit. Hence, viewed from any angle, the appellants are bound to succeed.

5. On the contrary, the learned Government Pleader for Arbitration would maintain that the fact that possession had been taken even on 23.8.1981 cannot be put into serious controversy. There is a presumption available that the official acts had been done in accordance with law. The very fact that the revenue officials out of ignorance had done something and that would not enure to the benefit of the appellants and hence, the findings recorded by the Court of first instance are totally unsustainable and the well considered findings of the appellate Court not to be disturbed in the second appeal.

6. Heard the learned Counsel.

7. The substantial question of law on the strength of which the second appeal had been admitted, already had been referred to supra. For the purpose of convenience, the parties hereinafter would be referred to as plaintiffs and defendants as shown in the original suit O.S. No. 98 of 1986 on the file of the Munsif Magistrate, Mummidivaram.

8. The plaintiffs instituted the suit for the relief of perpetual injunction against the defendants with the following prayer:

Suit to grant permanent injunction decree restraining the defendants and their subordinate officials from in any way interfere with the plaintiffs right, title and interest in the schedule property, award costs of the suit and grant such other relief or reliefs as are deemed fit and proper under the circumstances of the case.

9. It was pleaded that the plaint schedule property originally belonged to Alluri Satyanarayana Raju son of Satyanarayana Raju of Nadvapalli Village. The said Alluri Satyanarayanaraju sold away the said property to the plaintiffs for Rs. 36,000/- and the vendor received Rs. 36,000/- at the time of settlement of bargain was in summer 1984 and promised to get it registered later. But he did not comply with. Hence the plaintiffs were obliged to present the document for compulsory registration before the Sub-Registrar, Mummidivaram as the time for getting the document registered was expiring. The Sub-Registrar refused to register the document without any justification. Hence the plaintiffs preferred appeal to the Registrar, Kakinada who ordered registry of the document, after making enquiry. As per the said order of the Registrar, the Sub-Registrar, Mummidivaram registered the document. Thus, irrespective of the date of registration, the plaintiffs are owners of the property described in the schedule from the date of execution of the sale deed as the sale deed comes into operation from the date of its execution itself, though the registry is done subsequently. The plaintiffs have been in possession and enjoyment of the property described in the schedule as owners in pursuance of the registered sale deed in their favour. Alluri Satyanarayana Raju, the plaintiffs predecessor-in-title ceased to have interest in the property. He has no title, right and interest in the property from the date of execution of the sale deed in favour of the plaintiffs. While so the plaintiffs came to know that the defendants got attached the schedule property and other property describing it to be that of Alluri

Satyanarayanaraju for recovery of the amount due from Alluri Satyanarayanaraju. Thereupon the plaintiffs got issued a registered notice dated 7.7.1986 to the District Collector, East Godavari, Kakinada, Revenue Divisional Officer, Amalapuram and Mandal Revenue Officer, Katrenikona, informing them about their title by virtue of purchase and their possession and enjoyment of the property and requesting to release the schedule property from attachment. But yesterday they came to know that the second defendant in his official capacity as Mandal Revenue Officer published sale of the schedule property on 31.7.1986. As such the plaintiffs are obliged to file the suit to protect their right, title and interest in the schedule property and prevent the defendants from proceeding with the sale of the property belonging to the plaintiffs. The plaintiff in the notice to consider the said notice as a claim to the property but the defendants did not oblige. The said Alluri Satyanarayanaraju has no right, title and interest in the schedule property. It does not belong to him. By virtue of the sale deed the plaintiffs became entitled to the property and in fact they are in possession and enjoyment of the property. None of the defendants filed any suit so far for declaration that the alienation of the property in favour of the plaintiffs is a fraudulent one as required in law. As such the defendants cannot proceed against the schedule property for recovery of any amount due from Alluri Satyanarayanaraju. The proceedings as against the schedule property taken by the defendants for recovery of the amount due from Alluri Satyanarayanaraju are illegal, unlawful and unauthorized. None of the defendants have any right to proceed against the schedule properties. To protect the plaintiffs right, title and interest in the property, the plaintiffs are obliged to file the suit for permanent injunction restraining the defendants and their subordinates from interfering with the plaintiffs right, title and interest in the property. The defendants are fully aware that the schedule property ceased to be that of Alluri Satyanarayanaraju and that the plaintiffs are the owners having possession and enjoyment of the same by virtue of the sale deed. But the defendants ignoring the sale deed in favour of the plaintiffs are proceeding against the schedule property. Further there is no valid attachment as required in law. The publication of the sale by the second defendant of the schedule property is not in accordance with law. The alleged attachment is subsequent to the sale deed in favour of the plaintiffs. Anyhow the plaintiffs being the owners of the property since long back and neither themselves nor the schedule property purchased by them is liable for discharge of the amount on behalf of Alluri Satyanarayanaraju. The defendants are not entitled to proceed against the schedule property for the amount due from Satyanarayanaraju.

10. The first defendant filed written statement denying the averments and it was pleaded that the suit is not maintainable and the suit is unsustainable for want of notice u/s 80 of C.P.C. It is also pleaded that the defendant has no knowledge about the alleged sale in favour of Alluri Satyanarayanaraju with Potturi Satyanarayanaraju and Potturi Ramaraju. The said Alluri Satyanarayanaraju is ex-village Munsif of Nadavapalli Village and his property was attached under

Revenue Recovery Act for the realization of misappropriated land revenue to the tune of Rs. 80,070.94 ps. and brought to sale on 31.7.1986. The facts about possession and enjoyment of the suit schedule property by the plaintiffs as alleged in Para 4 of the plaint as owners of the schedule property in pursuance of the registered sale deed in their favour is not known to the defendant nor to the Mandal Revenue Officer, Katrenikonda before attachment or after attachment. The plaintiffs to protect their right title and interest in the property ought to have approached the Mandal Revenue Officer for change of Revenue Registration in their favour by mutation of names in the Revenue Registers, to prove their bona fides. The plaintiffs have not applied for change of revenue registration in their favour till now. The lands of Alluri Satyanarayanaraju are attached along with suit schedule lands and the facts were published in East Godavari District Gazette on 22.4.1986. According to Gazette Publication the sale was fixed on 31.7.1986. The plaintiffs in their registered notice requested to eliminate the said Ac 2.00 suit schedule land from the sale alleging that they purchased the said land in 1984. The suit summons issued by this Court are served on Mandal Revenue Officer on 30.7.1986. In view of the above facts and to avoid further complications, the above mentioned Ac 2.00 (of the suit schedule property) deleted from the sale conducted on 31.7.1986 at 11 a.m., at Nadavapalli Gram Panchayat Office. The vendor of the plaintiffs have no title over the schedule property. Hence he cannot transfer the ownership to the plaintiffs. The sale deed in favour of plaintiffs dated 26.9.1984 is not binding on the defendants (as amended in I.A. No. 707/90 in O.S. 98/86 dated 16.4.1991) The plaintiffs are not entitled to the permanent injunction against the defendant as prayed for unless they prove that the said sale transaction is genuine and bona fide and entered not to defeat the interest of the State and as the suit schedule land is already eliminated from the sale and suit becomes in fructuous and unnecessary and this defendant prays to dismiss the suit with costs against the defendant.

11. The first defendant further amended the written statement by pleading that the vendor of the plaintiffs have no title over the schedule property. Hence he cannot transfer the ownership to the plaintiffs. The sale deed in favour of the plaintiffs dated 26.9.1984 is not binding on the defendants. The plaintiffs are not entitled to the permanent injunction against the defendant as prayed for unless they prove that the sale deed transaction is genuine and bona fide and entered not to defeat the interest of the State and as the suit schedule land is already eliminated from the sale and suit becomes in fructuous and unnecessary and the defendant prays to dismiss the suit with costs against the defendant.

12. The second defendant filed adoption memo adopting the written statement of the first defendant.

13. Subsequent to the amendment to the written statement, again a rejoinder was filed taking the plea that the denial of the title of the vendor of the plaintiffs cannot be sustained. The certificate filed by the defendants does not bind the plaintiffs. It is learnt that the plaintiffs' vendor was served with a notice showing

the particulars of property and very recently he filed a written statement showing the properties proposed to be surrendered by him. Hence, the contention of the State that the Government took possession of the property in pursuance of the Land Ceiling Act even prior to the sale deed of the plaintiffs cannot be a sustainable stand. The proposed sale of property in public auction itself is a proof that the Government did not take possession of the property under the Land Ceiling Act. If the property really had been taken possession, they could not have proceeded to auction the property.

14. On the strength of the pleadings, the following issues were settled:

- (1) Whether the suit is maintainable under law?
- (2) Whether the suit not sustainable against the defendants for noncompliance of Section 80 notice?
- (3) Whether the alleged sale is genuine and bona fide?
- (4) Whether the sale is binding on the defendants?
- (5) Whether the suit has become infructuous?
- (6) To what relief?

15. The trial Court also settled certain further additional issues:

- (1) Whether the vendor of plaintiffs have no title over the schedule property and the sale deed is not binding on the defendant?
- (2) To what relief?

16. Before the trial Court PWs. 1 to 4 were examined and Exs.A1 to A8 were marked on behalf of the plaintiffs and on behalf of the defendants, DWs. 1 to 4 were examined and Exs.B. 1 to B3 were marked.

17. The Court of first instance decreed the suit. Aggrieved by the same, the matter was carried by way of appeal A.S. No. 9 of 1992 on the file of the Senior Civil Judge, Amalapuram and the appellate Court framed the following points for consideration:

- (1) Whether the suit is bad for want of Section 80 notice?
- (2) Whether the plaintiff is entitled to the permanent injunction prayed for?
- (3) To what relief?

18. The appellate Court recorded reasons in detail commencing from Paras 16 to 39 and ultimately allowed the appeal setting aside the decree and judgment of the Court of the first instance. Hence, the present second appeal had been preferred.

19. Prior to the institution of the suit, the plaintiffs issued a notice under Ex.A6, dated 7.7.1986. Exs.A3 to A5 are the postal acknowledgments evidencing service

of notices on 9.7.1986 of District Collector-Mandal Development Officer and Mandal Revenue Officer respectively. The suit was filed on 30.7.1986. Hence, it is clear that the suit was filed within one month after the issuance of Ex.A6 notice. Here is no expiration of 60 days prior to the institution of the suit after service of notice Ex.A6. However, the plaintiffs appeared to have filed an application to dispense with the said notice as contemplated u/s 80 of the CPC and the same was allowed. Section 80 of the CPC reads as hereunder:

(1) Save as otherwise provided in Sub-section (2), no suit shall be instituted against the Government including the Government of the State of Jammu and Kashmir or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of-

(a) in the case of a suit against the Central Government, except where it relates to a Railway, a Secretary to that Government;

(b) in the case of a suit against the Central Government where it relates to a Railway, the General Manager of that Railway;

(c) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or the Collector of the District; and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) A suit to obtain an urgent or immediate relief against the Government including the Government of the State of Jammu and Kashmir or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by Sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of Sub-section (1).

(3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in Sub-section (1), if in such notice-

a. The name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in Sub-section (1); and

b. The cause of action and the relief claimed by the plaintiff had been substantially indicated.

20. The words "may be instituted with the leave of the Court, without serving any notice as required by Sub-section (1)" would assume importance. No doubt, Sub-section (2) further specifies "but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit."

The proviso, no doubt, further specifies that "provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of Sub-section (1)". Though the findings recorded by the Court of the first instance may not be sustainable findings, in view of the findings recorded by the appellate Court that an application u/s 80(2) of the CPC had been moved and the same was allowed, it cannot be said that the institution of the suit is defective for want of service of notice u/s 80 of the Code of Civil Procedure.

21. It is the case of the plaintiffs that they entered into an agreement of sale with A. Satyanarayana Raju for purchase of the plaint schedule property for Rs. 36,000/- and paid consideration thereunder to the vendor and had taken possession of the property on the said date and subsequently, the vendor had executed a sale deed, dated 26.9.1984 and failed to get the same registered. Hence, the plaintiffs presented the sale deed for registration and got it registered by orders of the Registrar, Kakinada. It is also the case of the plaintiffs that they came to know that the Government attached the plaint schedule property and got the said property to sale under Revenue Recovery Act for recovery of amounts misappropriated by the Village Munsif in the capacity as Village Officer of Nadavapalli. The sale was scheduled to be held on 31.7.1986. Ex.A2 is the xerox copy of the said sale notice. It appears Ex.A2 was marked subject to objection on the ground that this being xerox copy, the secondary evidence is not admissible under the provisions of the Indian Evidence Act, unless the conditions are satisfied. It is in serious controversy that the State Government attached this property and published sale notice and the sale was scheduled to be held on 31.7.1986. Aggrieved thereby, the suit was instituted.

22. During the pendency of the suit, the State Government appears to have realized that the vendor of the plaintiffs submitted a declaration before the land ceiling authorities and had surrendered possession of the schedule property along with some other properties and the Government already had taken possession of the said properties even in the year 1981 under Ex.B1. It is no doubt true that despite the same, the revenue officials once again brought the self-same property to sale as though the said properties were held by the declarant A. Satyanarayanaraju. Ex.B.1 is namoona-10 evidencing taking possession of the property surrendered under the Land Ceiling Legislation. It

specifies the date as 23.8.1981. There is a specific column in the said form. DW2- Revenue Inspector, who signed Ex.B1 deposed in relation to the relevant facts in this regard. DW1 is the Village Servant, who no doubt deposed relating to the torn torn charges and obtaining the signature in Ex.B3. The evidence of PWs.1, 3 and 4 and DWs.1 to 4 had been appreciated by the appellate Court. Ex.A.1 is the Photostat copy of the registered sale deed executed by A. Satyanarayana Raju, dated 26.9.1984. Ex.A.2 is the Photostat copy of the auction notice. Exs.A3, A4 and A5 are acknowledgments. Ex.A6 is the notice, dated 7.7.1986 issued by the plaintiffs to the defendants. Ex.A7 is the original of Ex.A1. Ex.A8 is Form 10. Likewise, Ex.B-1 is Namoon-10 8(3) (2) and (5) of A.P. Land Ceiling and Agricultural Holdings Swadheenapu Dhruva Patram. Ex.B2 is the Photostat copy of the order in Crl. Petition No. 3950 of 1991 of the High Court of Andhra Pradesh, Hyderabad. Ex.B3 is Form-9. When the evidence of DW2 is available on record, well supported by the evidence of DWs.1, 3 and 4 especially in the light of Ex.B1 and since the official acts are presumed to have been carried on in accordance with law, the findings recorded by the appellate Court cannot be found fault.

23. Hence, taking of possession in pursuance of the surrender under the Land Ceiling Legislation on 23.8.1981 cannot be doubted.

24. The mere fact that the revenue officials by mistake again had brought these properties to sale as though they belong to the vendor of the plaintiffs may not confer any right whatsoever on the plaintiffs and the sale deed under Ex.A1 dated 26.9.1984 cannot be said to be valid and binding on the defendants. It is true that the evidence of PW2 is available on record. When PW2 has no right at all to alienate the schedule property registered on 26.9.1984, it is needless to say that the appellants-plaintiffs would not get any title whatsoever.

25. Hence, the findings recorded by the appellate Court being well considered findings, the said findings need not be disturbed in the second appeal.

26. Accordingly, the second appeal being devoid of merit, shall stand dismissed. The parties to bear their own costs.