
(2005) 10 AP CK 0068

In the Andhra Pradesh High Court

Case No : SA No"s. 1062 and 1174 of 2005

Potte Ramanna and Another

APPELLANT

Vs

Mukka Rajanna and Others

RESPONDENT

Date of Decision : 25-10-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2006) 1 ALD 162 : (2005) 3 APLJ 389

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : V. Venkataramana, for the Appellant;

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—Second Appeal No. 1062 of 2005 arises out of A.S. No. 85 of 2001 and O.S. No. 43 of 1996. Second Appeal No. 1174 of 2005 arises out of A.S. No. 84 of 2001 and O.S. No. 163 of 1996. The defendants are appellants. As the plaintiffs and appellants are one and the same and the trial Court as well as appellate Court disposed of the matter by common judgment, it is expedient to dispose of both these appeals by common order. The parties are referred to by their status in suit.

2. One Boya Madanna @ Potte Madanna was owner of agricultural land admeasuring Acs.5.00 in Survey No. 506 of Atmakur Village in Anantapur District. He was also in occupation of assigned land admeasuring Acs.4.80 in Survey No. 454-2 of the same village. He died on 6-4-1991. After his death, one Akkamma and her elder son Mukka Rajanna filed O.S. No. 43 of 1996 for permanent injunction restraining defendants Potte Ramanna and Kamakka from interfering with peaceful possession and enjoyment of land in Survey No. 506. Subsequently, the two plaintiffs filed I.A. No. 725 of 1999 to delete Akkamma as plaintiff No. 1 and add her other three sons Ramanjaneyulu, Akulappa and Dhanunjaya as plaintiffs 2 to 4. While the suit was pending on the file of the Court of the Principal Junior Civil Judge, Anantapur, the plaintiffs in O.S. No. 43

of 1996 also filed O.S. No. 163 of 1996 on the file of the same Court against Kamakka restraining her from in any manner interfering with plaintiffs' possession and enjoyment of land in Survey No. 454-2. The plaintiffs in both the suits allege that Boya Madanna @ Potte Madanna had no children and he treated Akkamma who is his niece as his daughter, that Akkamma was looking after Boya Madanna, who was living with her till his death, and that on 24-1-1991 Madanna executed registered will bequeathing his property in favour of the plaintiffs. They also allege that after the death of Madanna, they approached the Mandal Revenue Officer and got the property mutated in the name of the plaintiffs and have been paying the cist regularly when the defendants threatened to occupy the suit land by force. The case of the defendants in O.S. No. 43 of 1996 and the sole defendant in O.S. No. 163 of 1996 is similar. They allege that Kamakka is the daughter of Potte Madanna that she is alone the legal heir to succeed to the estate of Madanna, that the Will dated 24-1-1991 is fabricated by Village Administrative Officer by using an imposter and that the plaintiffs are not in possession of the property.

3. Based on the pleadings, the trial Court framed six issues and two additional issues in O.S. No. 43 of 1996 and framed seven issues and two additional issues in O.S. No. 163 of 1996. The plaintiffs examined three witnesses and marked Exs.A.1 to A. 16. To prove their case and also to rebut the evidence of the plaintiffs, the defendants examined three witnesses and marked Exs.B.1 to B.5. On consideration of oral and documentary evidence, the trial Court came to the conclusion that the execution of Ex.A.1, Will, by Potte Madanna came into existence under suspicious circumstances. The trial Court also held that the defendants failed to prove their case and came to the conclusion that plaintiffs proved their possession by filing Exs.A.6 and A.7, which are copies of Adangals for Faslis 1398 to 1405. Accordingly, both the suits were decreed.

4. The two defendants filed A.S. No. 85 of 2001 against O.S. No. 43 of 1996 and the sole defendant filed A.S. No. 84 of 2001 against O.S. No. 163 of 1996. The Court of the III Additional District Judge (Fast Track Court), Anantapur thought it fit not to go into the question of validity of Ex.A.1, Will, as it is a suit for permanent injunction. The appellate Court also observed that the defendants have not placed any oral and documentary evidence to disprove the Will. It then proceeded to consider Exs.A.6, A.7 and A. 13 and came to the conclusion that plaintiffs proved their possession on the date of filing of the suit and accordingly dismissed both the appeals.

5. In these appeals, the learned Counsel for the appellants/defendants, Sri Vedula Venkata Rarnana, submits that when the title of the plaintiffs is itself seriously disputed by the defendants, it was incumbent for the trial Court as well as the-appellate Court to go into the question of validity of the Will and that when the trial Court disbelieved the Ex.A.1, Will, it would not be proper for the first appellate Court not to consider the same. Secondly, he contends that the approach of the appellate Court in deciding the suit for permanent injunction

applying the trinity principles of possession, prima facie case and balance of convenience and hardship is grossly illegal and therefore a substantial question of law would arise for consideration in these appeals u/s 100 of Code of Civil Procedure, 1908. He placed reliance on Nagar Palika, Jind Vs. Jagat Singh, Advocate, and Rattan Dev Vs. Pasam Devi, .

6. In a suit for permanent injunction simplicitor, it is well settled, the most relevant issue is whether the plaintiff is in possession of the land on the date of filing of the suit. The relief of injunction is discretionary. Even if the plaintiff proves his possession, in a given case, the Court in its discretion can deny the relief. In the event of the Court accepting the case of the plaintiff, the Court has to apply the principles, prima facie case and balance of convenience and hardship. This trinity of principles applicable to interlocutory injunctions are equally applicable even in suit for permanent. Be that as it is, the plaintiffs claim to be the beneficiaries of Ex.A.1, Will. They also allege that after death of the testator, the suit property was mutated in the name of the plaintiffs as per the order of Mandal Revenue Officer and that subsequently the plaintiffs alone paid the cist as evidenced by Exs.A.6, A. 17 and A. 13. Therefore, the real issue for injunction was whether the plaintiffs were in possession of the property or not ? The issue whether Ex.A.1, Will, was validity executed was not the crux of the matter, especially when the plaintiffs never pray for declaration of title. Their case was that the mother of the plaintiffs Akkatnma was brought up by Boya Madanna, who took care of her in his last days, as a result of which, he executed Will in the name of the plaintiffs, who were children of Akkamma. The trial Court in O.S. No. 43 of 1996 framed the issue whether the suit is maintainable for want of probate and letter of administration. Similarly, in O.S. No. 163 of 1996 the issue was framed whether the plaintiffs' possession of suit land under Ex.A.1, Will, is legal and valid. However, in recording the finding, the trial Court observed that Ex.A. 1, Will, came into existence under suspicious circumstances but relied on Exs.A.6, A.7 and A. 13 to come to the conclusion regarding plaintiffs possession. Therefore, the issue before the trial Court as well as the appellate Court was whether the plaintiffs proved their possession pursuant to Ex.A.1, Will. In such a case, even if Ex.A.1, Will, is not properly proved, the suit for permanent injunction would still be maintainable. The appellate Court rightly ignored Ex.A.1, Will, and considered question of possession only. This approach cannot be faulted especially when the appellate Court was conforming the judgment and decree, recording a finding of possession of plaintiffs as on the date of filing of suit. In that view of the matter, the decision in Nagar Palika, Jind v. Jagat Singh (supra) is distinguishable.

7. After perusal of the judgments of the trial Court and appellate Court and after giving anxious consideration to the submissions made by the learned Counsel for the appellants, this Court does not find any error nor illegality in the judgments of the Courts below, the Courts have rightly adverted to the relevant issues and recorded findings in favour of the plaintiffs. No substantial question of law would arise in these second appeals.

8. The second appeals are accordingly dismissed.