
(2002) 09 AP CK 0011
In the Andhra Pradesh High Court
Case No : SA No. 243 of 1995

Rasool Bee and Others

APPELLANT

Vs

Gousiya Begum

RESPONDENT

Date of Decision : 02-09-2002

Acts Referred:

Citation : (2003) 1 ALD 164 : (2003) 4 ALT 99 : (2002) 3 APLJ 81

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : K.G. Krishna Murthy, for the Appellant; R. Mahendr Reddy, for the Respondent

Final Decision : Dismissed

Judgement

G. Yethirajulu, J.—This appeal is directed against the judgment and decree in AS No. 10 of 1990 on the file of the Sub-Court, Suryapet, reversing the judgment and decree in O.S. No. 3 of 1985 on the file of the District Munsif, Suryapet.

2. The appellants are the plaintiffs and the respondent is the defendant in the suit. The plaintiffs filed the suit for permanent injunction restraining the defendant from interfering with their peaceful possession and enjoyment of the suit lands.

3. The averments of the plaint are briefly as follows:

One Mohd. Sharif was the original owner of the suit lands and some other properties. He died in the year 1966. He was the husband of the 1st plaintiff and father of plaintiffs 2 and 3. Mohd. Sharif had four sons viz., (1) Badruddin, (2) Azgar Ali and the plaintiffs 2 and 3. During the life time of Mohd. Sharif, Azgar Ali was given some property, including some portion of the suit land, and the remaining property was being enjoyed by Mohd. Sharif along with Badruddin and plaintiffs 2 and 3. Badruddin married Nadar Bee and they were issueless. Sometime after the marriage, Badruddin became mentally deranged; as such Nadar Bee left him in the year 1955 and married some other person. Badruddin,

living along with the plaintiffs, died in 1980. The plaintiffs are in possession and enjoyment of the properties of late Mohd. Sharif and the 2nd plaintiff is managing the suit lands. The defendant seems to be the daughter of Nadar Bee through her second husband. The defendant has no manner of right over the suit properties. She tried to interfere with the possession of the plaintiffs over the suit lands about since one week prior to the suit. Hence the suit for perpetual injunction.

4. The defendant resisted the suit through her written statement wherein she contended that she is the daughter of Badruddin through her mother Nadar Bee. When the defendant was five years old, her mother left her father Badruddin, who was continuously bedridden and married one Bade Saheb in Guntur District. Badruddin died on 28-11-1980. Bade Saheb brought her up and performed marriage. The defendant is the only legal heir of Badruddin. In the family settlement the suit lands and some other properties fell to the share of Badruddin. He was in exclusive possession and enjoyment of Ac.1-35 guntas in the suit lands as absolute owner till his death. After his death, the defendant became the absolute owner of the said Ac. 1-35 guntas of land and is in possession of the same. The plaintiffs are no way concerned with Ac.1-35 guntas out of the suit lands. The suit is therefore liable to be dismissed with costs.

5. The trial Court framed appropriate issues on the basis of the above pleadings.

6. The plaintiffs in order to prove their case examined P.Ws.1 to 4 and marked Exs.A1 to A5. The defendant examined D.Ws.1 to 9 and marked Exs.B.1 to B.7.

7. The trial Court after considering the evidence adduced by both parties decreed the suit through its judgment dated 22-10-1990 granted permanent injunction in favour of the plaintiffs restraining the defendant from interfering with their peaceful possession and enjoyment.

8. Being aggrieved by the judgment and decree of the trial Court the defendant preferred A.S.No. 10 of 1990 on the file of the Sub-Court, Suryapet and the learned Sub-Judge after considering the evidence available on record and after going through the judgment of the trial Court reversed the judgment of the trial Court by setting aside the same and accordingly allowed the appeal with costs through its judgment dated 21-12-1994.

9. Being aggrieved by the judgment and decree of the 1st Appellate Court, challenging its validity and legality the plaintiffs preferred this appeal.

10. The substantial question that arises for consideration is:

Whether there is a prima facie relationship between the plaintiffs and the defendant and whether the suit for permanent injunction cannot be maintained against a co-owner or a coparcener?

Point:

11. The suit schedule contains three items of lands viz., (1) Ac.3-16 guntas

(actual area Ac.1-16 guntas) dry land in S.No. 264 (2) Ac.2-10 guntas dry land in S.No. 353 and (3) Ac. 1-35 guntas wet land in S.No. 368 and 374.

12. The defendant contends that she is in possession of an extent of Ac.1-35 guntas in the suit land viz., (1) 34 guntas in S.No. 364 (2) 22 guntas in S.No. 353, (3) 8 guntas in S.No. 369, (4) 11 guntas in S.No. 374 and some other lands, which fell to the share of Badruddin in a family settlement, which was in possession of the plaintiffs during his lifetime.

13. The plaintiffs examined P.Ws.1 to 4 and all of them denied the relationship of the defendant as natural daughter of Badruddin. They deposed in one voice that when Badruddin became mad within one year after the marriage, Nadar Bee deserted him and married another person and there were no issues to Nadar Bee through Badruddin by the time she left the house of Badruddin. The witnesses examined in support of the case of the defendant deposed that the defendant was born to Nadar Bee through Badruddin and Nadar Bee left Badruddin about five years after her birth. The defendant in order to make out a prima facie case that she is the legal heir of Badruddin relied on Exs.B.1 to B.3 documents. Ex.B.1 is said to be the record sheet issued by the Head Master of Mandal Primary School, Dilawarpur to show that the father's name was mentioned as Badruddin. In the said record sheet the date of birth of the defendant is shown as 6-4-1954. She is alleged to have been admitted on 9-8-1962 and left the school on 14-6-1965. Ex.B.2 is the marriage certificate dated 1-1-1973 wherein she was described as the daughter of Badruddin, The witnesses of the defendant supported the version of the defendant about her relationship with Badruddin.

14. This is a suit for injunction simplicitor filed by the plaintiffs to restrain the defendant from interfering with their possession and enjoyment of the suit property by denying the relationship of the defendant with Badruddin. We are mainly concerned as to who was in possession of the suit property as on the date of filing the suit. In order to prove the possession and enjoyment of the suit property the plaintiffs filed Ex.A.1 certified copy of the pahani for the year 1969-70. This document indicates that Mohd. Sharif was the pattadar of the suit lands and the name of the second plaintiff is shown as the person in possession and enjoyment of the property. Ex.A2 is the copy of the pahani for the year 1982-83. It indicates that it is the joint property of Badruddin, the plaintiffs 2 and 3 and others and in the possession column the name of the 2nd plaintiff is shown as the person in possession and enjoyment of 32 cents in S.No. 368/A and Ac.1-03 cents in S.No. 374/A i.e., Item No. 3 of the plaint schedule. In Ex.A3 -pahani for 1983-84 the names of Badruddin, plaintiffs 2 and 3 are shown as owners of the property, but the column relating to possession is left blank. The suit was filed in 1985. These documents relate to the period prior to the suit.

15. Ex.A4 is the faisal patti of the year 1983-84. It indicates that there was mutation of the name of the defendant in the place of the name of Badruddin (deceased). This document is also indicating that the Tahisildar passed an order on 16-1-1984 in Lr.Dis.No. B.5/248/84 mentioning that as per the wish of the

late Badruddin before his death, the name of the defendant is incorporated as the joint owner of the suit lands along with plaintiffs 2 and 3 and their brother Azghar Ali. Ex.AS is the certified copy of the decree in OS No. 22 of 1982 on the file of the District Munsif, Suryapet filed by the 4th plaintiff against plaintiffs 2, 3 and their brother Azghar Ali for declaration of title, perpetual injunction and rectification of wrong entries in records in respect of 8 cents in S.No. 3.68, 11 cents in S.No. 374, 13 cents in "S.No. 364 and 14 cents in S.No. 353 and the suit was decreed in her favour. Since it was a dispute inter se between the plaintiffs and it does not disclose any information about the title or possession of the defendant, it may be useful to the plaintiffs to contend that the defendant was not in possession of the property at any time prior to the suit.

16. The defendant in order to prove that she is in possession of certain portions of the suit lands, relied on Exs.B4 to B.7-documents. Ex.B4 is a copy of faisal patti. It contains an endorsement that as per the order of the Tahsildar, the names of the Legal Representatives of the pattedars were incorporated in the faisal patti register, and in page No. 2 the name of the defendant is shown as joint pattadar for the suit lands and other lands. Exs.B5 to B7 are the copies of the pahanies for the years 1984-85, 1985-86 and 1986-87. They relate to the period subsequent to the filing of the suit. These documents reflect that the name of the defendant is also shown as pattadar along with others and some specific extents are shown against the name of the defendant, but there is no indication that she was in possession of separate extent in each survey number. The name of the defendant is not finding place in any of the above documents in the possession and enjoyment column in respect of all the survey numbers.

17. In some of the copies of the adangals, the name of the 2nd plaintiff was shown as the person in possession of the suit lands, but the suit was filed by all the plaintiffs that they are in possession and enjoyment of the suit lands. The defendant mentioned in the written statement that she is in exclusive possession and enjoyment of an extent of Ac. 1-3 5 guntas whereas it was suggested to the plaintiffs" witnesses that the defendant is in possession and enjoyment of Ac.3-18 cents of land. The defendant contends that in pursuance of a family settlement late Badruddin was given specific extents of properties, but she could not say whether there was any document to that effect, if not the date on which the oral arrangement was made giving specific extents of properties to late Badruddin. If the defendant is so confident that she is in possession and enjoyment of specific extents of lands in the respective survey numbers, nothing prevented her from giving the boundaries of each item situated in each survey number, which would have clinchingly established that she is in possession and enjoyment of specific extents of land either due to tentative arrangement or on permanent settlement.

18. According to the plaintiffs, Badruddin became mad within one year after the marriage whereas the defendant contents that late Badruddin became mad when she was five years old. Late Badruddin alleged to have died on 28-11-1980. None

of the. witnesses of the defendant speaks about the mental condition of late Badruddin, whether he was in a position to communicate his feelings, whether he was able to understand the conversation, whether he was capable of personally cultivating the lands or getting the lands cultivated through others. As per the version of both the parties, late Badruddin was not in a sound state. Therefore, there was no possibility for him to manage his alleged share of lands.

19. The defendant has taken a plea that her father Badruddin gave her those properties through a Will, but that was not accepted by the Courts below. The defendant further pleaded that after the death of late Badruddin she inherited those properties and she entered into possession of the same. The defendant was not in a position to give either the boundaries or the survey numbers of the specific extents of lands alleged to be in her possession. It is an undisputed fact that the defendant is not residing in the village where the lands are situated. She was not frequently visiting the village and her husband was also not visiting the village frequently. In the absence of specific entries in the revenue records and in the absence of furnishing boundaries to the extents said to be in possession of the defendant and in the absence of proof regarding the nature of crops raised, the persons who cultivated the land, the returns they used to get from the crops etc., it is very difficult to accept the version of the defendant that she is in possession and enjoyment of specific extents of lands in the respective survey numbers. Therefore, irrespective of the proof of relationship of the defendant with the plaintiffs after the death of late Badruddin, the defendant became joint owner to the suit lands as per the entries in. the exhibits marked by both parties. Therefore, the defendant can be treated as co-owner of the suit schedule lands, unless the contrary is proved by the plaintiffs.

20. The plaintiffs alleged that the defendant with the help of her husband who is a driver in Police Department threatened to dispossess the plaintiffs. Therefore, they filed the suit. The plaintiffs did not say in specific words as to who threatened them, what was the nature of threat, whether the threat of dispossession was to the extent of the share of late Badruddin or for the entire suit land, who were the persons who accompanied the defendant's husband at the time of the alleged threat. In the absence of specific evidence regarding the alleged threat, it cannot be automatically accepted that the defendant who is a resident of another place resorted to hurl threats to dispossess the plaintiffs without any manner of right. It is not the plea of the defendant that the plaintiffs are causing any waste or damage to the property. It is also not the plea of the plaintiffs whether the defendant or her men caused any damage at the time of the alleged threat or prior thereto. Since the suit property is the common property of the co-owners, each of them will have right over inch of the property till it is divided by metes and bounds according to the entitlement of each co-owner. The plaintiffs being the co-owners are not supposed to ask for an injunction against the defendant restraining her from interfering with the suit property for ever, unless they establish that such interference is causing any waste or damage to the property and interference in peaceful enjoyment

resulting in loss. No injunction can be issued when there is legitimate interference by the co-owner in the process of enjoyment without denying the title of the tenants in common over the said property. Injunction can be granted where the action of the co-owner is detrimental to the interest of the other co-owners either by raising constructions or by causing damage to the property and also from alienating the property to others without the consent of other co-owners.

21. The trial Court basing on the mere allegation of threat of dispossession granted perpetual injunction against the defendant restraining her from interfering with the peaceful possession and enjoyment of the suit property by the plaintiffs. The 1st appellate Court reversed the judgment on the footing that the defendant is in possession and enjoyment of specific items of property, ignoring the fact that there was no consistency in the version of the defendant regarding the extent of land possessed by her and lack of proof that she is in possession and enjoyment of specific extents of land. The 1st appellate Court reversed the judgment on the ground that as the defendant is in possession and enjoyment of the lands fell to the share of Badruddin, the plaintiffs are not entitled for injunction.

22. Wish to further clarify that a co-owner has an interest in the whole property and in every parcel of it. The possession of the joint property by one co-owner is, in the eye of law, possession of all, even if all, but one, are actually out of possession. A mere possession of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all. Every co-owner has a right to use the joint property not inconsistent with similar right of other co-owners. The remedy of a co-owner not in possession or not in possession of a share of the joint property is by way of a suit for partition or for actual possession, but not for ejectment. If there is any little truth in the version of the plaintiffs that the defendant resorted to threaten them to dispossess, I wish to caution that the remedy for such co-owner out of possession of the property is to seek for partition according to law.

23. In the light of the discussion in the above paragraphs, I conclude that there is a prima facie material to show that the defendant is also joint owner of the suit schedule lands along with the plaintiffs. Therefore, an injunction against a co-owner cannot be granted at the instance of other co-owners unless they establish that the acts of the defendant are resulting in causing damage to the property. Though there is no sufficient proof that the defendant is in possession and enjoyment of specific extents of land, in the light of the above facts and circumstances, I am inclined to confirm the judgment of the 1st Appellate Court on a different footing that the co-owners are not entitled for injunction against another co-owner and I do not find any merits in the appeal.

24. In the result, the appeal is dismissed by confirming the judgment and decree of the 1st Appellate Court in A.S. No. 10 of 1990, but under the circumstances without costs.