
(2003) 12 AP CK 0041
In the Andhra Pradesh High Court
Case No : SA No. 294 of 1993

Ronda Narapa Reddy and Others

APPELLANT

Vs

Ronda Suryanarayana Reddy

RESPONDENT

Date of Decision : 23-12-2003

Acts Referred:

Specific Relief Act, 1963 — Section 39

Citation : (2004) 4 ALD 52 : (2004) 4 ALT 765 : (2004) 3 CivCC 560 : (2005) 1 RCR(Civil) 204

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

Bench : Single Bench

Advocate : Vijaya Chowdary, for M. Ramaiah, for the Appellant; T.S. Anand, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Heard Sri Vijaya Chowdary, learned Counsel representing the appellants and Sri Anand, Counsel representing the respondents.

2. Sri Vijaya Chowdary, learned Counsel representing the appellants had raised the following substantial question of law in the present second appeal.

Whether the Courts below are legally justified in granting the relief of mandatory injunction, though such a relief was not prayed for ?

3. The learned Counsel for the appellants had taken this Court through all factual details, the evidence of P.W.1 to P.W.3, D.W.1 to D.W.3, Exs.A-1 and A2 and Exs.B1 and B2 and also Exs.C1 and C2 in detail and also had taken this Court through the findings recorded by both the Courts below and had commented that definitely the Courts below are not legally justified in granting the relief of mandatory injunction without a plea or without a prayer in relation thereto. The Counsel also would maintain that even on facts both the Courts had totally erred and had recorded erroneous findings and had pointed out to the relevant portion of such finding recorded by both the Courts below. The Counsel also would

maintain that Ex.B2 F.M.B. plan clearly goes to show that alternative source of irrigation is available, but despite the same, an incorrect finding has been recorded in this regard.

4. Per contra, Sri Anand, learned Counsel representing the respondent had drawn the attention of this Court to the findings recorded by both the Courts below in general and the findings recorded by the appellate Court at Para 18 of its Judgment in particular and had pointed out that it is clear from the 2nd Commissioner's report that subsequent to the granting of temporary injunction, the defendants closed the canal obstructing the flow of water and hence, taking all the facts and circumstances into consideration in fitness of things, the relief of mandatory injunction also had been granted. The learned Counsel in all fairness submitted that this relief of mandatory injunction was granted on the ground of equity suo motu and there is no specific relief prayed for in this regard in the pleadings. However, the Counsel would maintain that in the peculiar facts and circumstances of the case, if the relief of mandatory injunction is disturbed on this technical ground, substantial justice would not be done to the respondent-plaintiff, inasmuch as it is clear from the facts that he would suffer heavy loss.

5. Heard both the Counsel and also perused the oral and documentary evidence available on record and the findings recorded by the Court of first instance and also the appellate Court.

6. The respondent herein, the plaintiff in the suit O.S. No. 163 of 1989 on the file of Principal District Munsif, Chirala prayed for declaration that the plaintiffs has got right to take water from Voosamallaya Sona through "T.V. ABCD" Channel shown in the plaint plan and for consequential permanent injunction restraining the defendants and their men from interfering with the said channel in taking water from plaintiff's land shown as Plot Nos. 1 and 2.

7. The plaintiff had pleaded in the plaint as hereunder:

The plan filed with the plaint may be read as part and parcel of the plaint. Plots 1 and 2 of the plaint plan shown as GHLK is called Gudichati Chenu. Defendants 1 and 2 are the owners of plots 3 and 4 shown as EFGH in the plan. Plots 5 to 7 belongs to Ronda Pattabhi Rami Reddy who is the brother of the plaintiff. All lands are cultivated as wet lands under Sona. The Sona spring channel shown as "X" in the plan as called Vusa Mallay Sona and the plaintiff, his brother and Defendants 1 and 2 have got right to take water from the same to plots 1 to 7. The right of the plaintiff and his brother in the Sona Channel "X" and the new Sona spring shown as (Y" in the plan are incorporated in the partition deed between plaintiff's father and his uncle's sons which is dated 7-10-1950. The Vusa Mallaya Sona channel "X" and new Sona "Y" have been in existence for more than 40 years and the plaintiff and his brothers have been taking water from Vusa Mallaya Sona to their lands without any interruption to the knowledge of one and all they perfected their right to the same. Plaintiff and his brother constructed water pipe and shed for supply of water from the said Sona channel

to their lands through channels. The channel from "X" Sona and Dhoruvu shown in the plaint plan is in existence for more than 40 years. T.V.ABCD field channel through which the water is being supplied for the lands of the plaintiff and his brother is in existence more than 40 years, they have been taking water through the said Sona, The channel PQRS is through the lands of D.1 and D.2 for the supply of water to the plaintiff's land and it is in existence since more than 40 years as a continuous channel from AB, and the plaintiff has been taking water through the said PQRS channel from the "X" Sona through T.V.ABCD channel openly without interruption to the knowledge of the defendant. Except the said Channel the plaintiffs have no other channel to take water to their lands from Vusa Mallaya Sona. D.3 is the henchman of Defendants 1 and 2. Defendants 1 and 2 falsely claimed title for plots 1 and 2 by filing a caveat and as the same was denied by the plaintiff they gave up their claim and now are falsely denying the plaintiff's right in PQRS Channel. They have no right to do so. They conspired and began to close the channel at PQRS on 2-8-1989 clandestinely, on seeing the same the plaintiff gave a report to the Police, who asked him to report the matter to the Mandal Revenue Officer. Then the plaintiff reported the matter to the Mandal Revenue Officer on 4-8-1989. The defendants are powerful people and the plaintiff cannot resist their acts.

8. The 2nd defendant filed a written statement with the following allegations:

The plan filed along with the plaint is incorrect. The plan filed by these defendants along with the written statement may be read as part and parcel of the written statement. The defendant and his father or his grand father never permitted to dig a field channel in his land and there was no field channel at all in the defendants land much less PQRS channel shown in the plaint plan. The allegation that the said channel is in existence for the last 40 years and the plaintiff and his brother have been taking water through the same from Vasu Mallaya Sona openly and they perfected their right in it are false. There is no T.V. ABCD channel in the lands of the defendants. The plaintiff has got separate source of irrigation in Survey No. 123 i.e., completely west of the patta lands of the defendants and plaintiff. There are two Doruvus opposite to Vasu Mallaya Sona and Kotta Sona and the plaintiff is lifting water from them and cultivating his lands. There is no connecting channel between Vasu Mallaya Sona and Kotta Sona and the same was also shown in FMB in respect of Survey No. 123, which is filed with the written statement, it believes the plaintiff's case.

During the absence of this defendant and his father in the village, the plaintiff hatched a plan, filed this suit, obtained ex parte order of injunction and under the guise of ex parte injunction, they dug the alleged PQRS channel in the lands of this defendants by spoiling the seedlings which were raised in the said portion. Then they took out a Commissioner behind the back of the defendants to collect evidence. The plaintiff has no right to dig a channel in the lands of the defendants and take water through it to his lands. The alleged partition deed dated 7-10-1950 is not binding upon these defendants. The plaintiff never

received water through PQRS channel, the width of which is not mentioned neither in the plan nor in the plaint. The plaintiff has not pleaded as to under what document and under what arrangement the channel was created. When the Defendants 1 and 2 wanted to sell their land to the 3rd defendant for the market price against the low price offered by the plaintiff, the plaintiff wantonly closed the regular source of irrigation channel in Sy.No. 123 and high handedly dig a channel in the defendants land in their absence.

9. Defendants 1 and 3 filed an adoption memo adopting the written statement of the 2nd defendant.

10. On the respective pleadings of the parties, the Court of first instance settled the following issues:

1. Whether the plaintiff is entitled to take water through the channel as prayed for ?

2. Whether the plaintiff is entitled for injunction?

3. To what relief ?

11. Before the Trial Court, P.W.1 to P.W.3 were examined and Ex.A1 and A2 were marked. Likewise, D.W.1 to D.W.3 were examined and Ex.B1 and B2 were marked. Ex.C1 and C2 were marked through the Advocate Commissioner P.W.3.

12. On appreciation of the oral and documentary evidence, the Court of first instance had arrived at a conclusion that the plaintiff is entitled to the reliefs pray for and also had granted the relief of mandatory injunction suo motu directing the defendants to restore T.V. ABCD channel to its original position as per the plan annexed to C-1 within 30 days, failing which the plaintiff can execute the decree and get the said channel restored at his expenses and recover the same from the defendants. Aggrieved by the same, the defendants preferred A.S. No. 64 of 1992 on the file of Subordinate Judge, Chirala and the appellate Court at Para 11 of the judgment had framed the following points for determination in the appeal;

1. Whether the judgment and decree passed by the Trial Court are sustainable in law?

2. Whether the plaintiff is entitled for the declaration of his right to take water through T.V. ABCD canal and for permanent injunction?

13. The learned Subordinate Judge, Chirala after discussing the oral and documentary evidence available on record in detail had arrived at a conclusion that the reliefs granted by the Court of first instance need not be in any way disturbed and had dismissed the appeal with costs. But, however, the appeal in relation to the imprisonment imposed on 3rd defendant for violating of injunction orders in I.A. No. 1004 of 1989 was allowed with a direction to the Trial Court to conduct enquiry afresh and pass a separate orders. Aggrieved by the same, the present second appeal is preferred.

14. No doubt, the availability of the alternative irrigation facility had been seriously canvassed, but findings in this regard had been recorded by both the Courts below. It is needless to say that it is a finding of fact, which cannot be disturbed in a second appeal.

15. The oral and documentary evidence had been discussed in detail and the reports of the Commissioner Exs.C1 and C2 had been carefully examined and findings had been recorded in relation thereto. The appellate Court at Para No. 18 had observed as hereunder:

As seen from the 2nd Commissioner's report subsequent to the grant of temporary injunction, the defendants have closed the PQRS canal obstructing the flow of water from VSD Sona to plots 1 and 2. Since the Commissioner brought it to the notice of the Court the learned District Munsif by relying upon a decision reported in Sujit Pal Vs. Prabir Kumar Sun and Others, , granted mandatory injunction against the defendants directing them to remove the obstructions to the PQRS canal within a period of 30 years, from the date of judgment. The learned advocate appearing for the defendants contended that since there is no prayer for mandatory injunction, the Trial Court ought not to have granted it suo motu. It is an established principle of law that Civil Court is a fountain of justice. It is its duty to undo the wrong done by one party to the other during the pendency of the suit. It is under obligation to protect the rights of the parties. Hence, it cannot be said that the mandatory injunction granted by the trial Court is not sustainable in law.

16. No doubt, at Para 19, the appellate Court had recorded certain findings in relation to the nature of evidence in I.A. No. 1004 of 1989 filed under Order 39, Rule 2- A of the CPC against the 3rd defendant in the suit for disobeying the injunction order granted in I.A. No. 898 of 1989 on 7-8-1989, It is no doubt true that in the light of the peculiar facts and circumstances, the Court of first instance thought it fit to grant the relief of mandatory injunction moulding the relief in the appropriate form. Section 39 of the Specific Relief Act, 1963 dealing with mandatory injunctions reads as hereunder:

Mandatory Injunctions: When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts, which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

17. It is no doubt true that there should be a plea and there should be a relief prayed for and normally in the absence of the same, such relief cannot be granted. But, here is a case where reasons had been recorded by both the Courts below, under what circumstances on the ground of equity the plaintiff is entitled to the relief of mandatory injunction also. Clear findings had been recorded that this relief is essential to undo certain acts, which were committed by the appellants subsequent to the granting of temporary injunction. It is needless to say that these are all findings based on facts, which cannot be disturbed in a

second appeal. The only question canvassed is that in the absence of a specific prayer in relation to the relief of mandatory injunction, such relief suo motu cannot be granted. Here is a case where findings had been recorded by both the Courts below that in violation of the order of the Court certain acts had been committed and to undo such unlawful acts committed, granting of the relief of mandatory injunction was held to be suitable relief in the peculiar facts and circumstances of the case. While granting the equitable relief like one involved in the present second appeal, technicalities should not defeat the substantial justice to be done in between the parties.

18. In view of the peculiar facts and circumstances of the case, and also the concurrent findings recorded by both the Courts below on appreciation of both oral and documentary evidence, I do not see any compelling reason to disturb such factual findings and accordingly, the second appeal shall stand dismissed being devoid of merits. No costs.