
(2003) 02 AP CK 0077
In the Andhra Pradesh High Court
Case No : AS No. 1918 of 2001

R.V.S. Vara Prasad and Others

APPELLANT

Vs

Dr. V. Ramdas

RESPONDENT

Date of Decision : 21-02-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (2003) 3 ALD 566 : (2003) 3 ALT 716

Hon'ble Judges : G. Yethirajulu, J; Bilal Nazki, J

Bench : Division Bench

Advocate : B. Adinarayana Rao, for the Appellant; T. Veerabhadrayya, for the Respondent

Final Decision : Allowed

Judgement

G. Yethirajulu, J.—This appeal is directed against the judgment of the Senior Civil Judge, Sangareddy dated 29-6-2001 in O.S.No. 31 of 1982 preferred by the plaintiffs.

2. The respondent herein is the defendant in the suit. The sole plaintiff filed the suit for declaration of title and possession of suit schedule land of an extent of Ac.1-27 guntas situated in S.No. 204/2 at Ramachandrapuram Village, Sangareddy Mandal more fully described in the schedule. Plaintiffs 2 to 5 were brought on record on account of the death of the sole plaintiff.

3. The averments of the plaint in brief are as follows:

4. The plaintiff is the owner of an extent of Ac.5-00 in S.No. 204/2 and Ac.2-08 gts. in S.No. 204/3 comprising the total extent of Ac.7-08 gts. at Ramachandrapuram Village, Sangareddy Mandal, Medak District. He purchased those lands under two registered sale deeds dated 4-11-1963 and 26-5-1966 from B. Viswanadham, Masetti Sivaiah, Gollapatti Ramireddy and Basupalli Krishna Reddy. Subsequent to the said purchase, the plaintiff applied for mutation of land in his favour and the mutation was effected. The land purchased

by him is situated to the eastern side of the national highway No. 9. The plaintiff was in possession and enjoyment of the suit land till 1976. The defendant obtained permanent injunction against him by filing an injunction suit in O.S. No. 58 of 1976 on the file of the Munsif Magistrate Court, Sangareddy. Under the guise of injunction, the defendant dishonestly with an intention to have illegal gain shifted the boundary stones by about 84 ft. towards south. There was no fencing separating the land belonging to the plaintiff and of the defendant till June, 1976. The plaintiff and the defendant got the land measured and demarcated through Survey and Land Records Department on 10-1-1976 and 3-5-1976. Subsequently the defendant fixed the fencing by shifting the boundary stones prior to the date of inspection of the Commissioner on 1-10-1976. The defendant encroached into an extent of Ac.1-27 guntas of his land in about June, 1976 under the guise of injunction. The defendant enjoyed the land unauthorisedly by constructing a cinema theatre. Therefore, the plaintiff is entitled for compensation at Rs. 3,300/- per month. Hence the suit for declaration of title, recovery of possession and compensation.

5. The defendant resisted the suit through his written statement with the following averments in brief:

6. The averments of the plaint are not true. S.No. 204/2 abuts the highway to the north. The land of an extent of Ac.7-27 guntas situated in S.No. 204/2 belongs to the defendant, but not to the plaintiff. S.No. 204 was not sub-divided on 18-1-1977. It was subdivided on 15-3-1978. The land of an extent of Ac.7-27 guntas in his possession fell in S.No. 204/2. The plaintiff was never in possession of the land purchased by him under two sale deeds. The defendant filed O.S.No. 58 of 1976 for injunction in respect of the land situated in S.No. 204 and the suit was decreed in his favour and the said judgment and decree dated 10-8-1979 became final. The plaintiff clandestinely removed the boundary stones fixed along AB line and got them fixed along EF line after coming to know that his land fell short of the total extent in S.No. 204 purchased by him under two sale deeds. The defendant made an application to construct a permanent cinema theatre in S.No. 204 and obtained requisite permission from the District Revenue Officer, Medak on 26-8-1976. On 24-10-1977 the D.R.O. negatived the objection raised by the plaintiff regarding the issuance of permission for construction of cinema theatre to him. The defendant raised structures in his own land and they are authorized constructions. He is in lawful possession and enjoyment of the land up to the bund along the line CD as shown in the plaint sketch plan. One Bomma Viswanadham and three others purchased an extent of Ac.34-32 guntas situated in S.Nos. 203 to 210 under a registered sale deed dated 15-5-1957. In or about 1959 they partitioned an extent of Ac.21-00 comprising of Ac.20-35 guntas in S.No. 204 and 205 and 0-05 guntas in S.No. 206 in or about 1959. In the said partition each of them, except Gollapalli Ramireddy, took approximately Ac.5-00 to each share and gave an extent of Ac.6-00 to Ramireddy and they were enjoying their respective shares by forming bunds without any measurements. The defendant purchased the land covered by S.No. 203 and also

Ramireddy's share of land up to the bund in S.No. 204 under two registered sale deeds dated 28-6-1962 and 6-7-1963. The plaintiff purchased Viswanadham's share in S.No. 204 which lies to the east of the defendant's land under registered sale deed dated 26-5-1966. The plaintiff and one T. Gopal Rao jointly purchased the land of Basupalli Krishna Reddy comprising an extent of Ac.2-13 guntas in S.No. 204 and Ac.2-27 guntas in S.No. 205 under a registered sale deed dated 4-11-1963. No linear measurements of the boundaries of the lands were given in the sale deeds and no plans were enclosed to the sale deeds obtained by them. The plaintiff is not entitled to the reliefs as prayed for. The suit is therefore liable to be dismissed with costs.

7. On the basis of the above pleadings the Trial Court framed the following issues after recasting the original issues:

(1) Whether the finding of the possession given by the District Munsif in O.S.58/76 and upheld by the Addl. District Judge in AS No. 72/79 holding that the defendant is in possession up to AB line in the sketch map from 11-11-1962, operates as the doctrine of res judicata, if so, the plaintiff is barred from claiming the same again against the defendant?

(2) Whether the plaintiff is entitled for declaration of title and also recovery of possession?

(3) Whether the defendant perfected his title by adverse possession of the suit schedule property?

(4) Whether the plaintiff is entitled to past and future profits?

(5) Whether the suit is not valued properly and Court fee paid is insufficient?

(6) To what relief?

8. The plaintiff in order to prove the suit claim examined P.Ws.1 to 3 and marked Exs.A.1 to A.82. The defendant examined D.Ws.1 to 3 and marked Exs.B.1 to B.35. The Court marked Exs.C.1 to C.12.

9. The Trial Court after considering the oral and documentary evidence adduced by both parties dismissed the suit by denying the reliefs to the plaintiffs through its judgment dated 29-6-2001.

10. The plaintiffs being aggrieved by the judgment and decree of the Trial Court preferred this appeal challenging its validity and legality.

11. During the course of arguments, the learned Counsel for the appellants conceded that he is not pressing the plea of adverse possession.

12. After going through the grounds of appeal and after hearing the arguments of the learned Counsel, the following points are taken up for consideration:

(1) Whether the judgment in O.S. No,58 of 1976 of the District Munsif Court, Sangareddy upheld by the Additional District Judge in AS No. 72 of 1979

operates as res judicata for the present suit?

(2) Whether the defendant was in possession of the suit land up to AB line as shown in the sketch annexed to the plaint in O.S.No. 58 of 1976?

(3) Whether the plaintiff is the owner of the suit land and was in possession of the same at any time after the purchase?

(4) Whether the plaintiff is entitled for declaration of title and recovery of possession as prayed for?

Point No. 1:

13. The defendant filed O.S. No. 58 of 1976 against the 1st plaintiff for a perpetual injunction simplicitor on the basis of a plan without giving the extent of land in the schedule. Since the defendant produced the sale deeds and other records to show that he purchased an extent of 6 acres of land and as the documents of the 1st plaintiff were reflecting that he purchased an extent of Ac.7-08 guntas out of the total extent of Ac. 13-08 guntas, the learned District Munsif was pleased to grant perpetual injunction in favour of the defendant and it was confirmed by the appellate Court. The learned District Munsif did not touch the aspect relating to title of the defendant over the suit property and it was incidentally gone into for the purpose of granting the relief of injunction without seriously caring for the correct extent of land in possession of the defendant. There was no finding of the District Munsif in O.S. No. 58 of 1976 touching upon the title of the defendant over the property referred in the plan of that suit. Before putting to test whether the judgment in O.S. No. 58 of 1976 operates as res judicata against the plaintiffs in filing the present suit, we would like to refer Section 11 CPC, which deals with res judicata, and the same reads as under:

11. Res judicata :--No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

X X X X

Explanation IV :--Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

X X XX

14. According to Section 11, in order to attract the principle of res judicata the matter in the subsequent suit shall be directly and substantially in issue which was directly and substantially in issue in the former suit between the same parties litigating under the same title and finally decided by such Court. The earlier suit was for an injunction simplicitor. The present suit is for declaration of

title and recovery of possession of the property. Therefore, it cannot be said that the matter in the present suit is directly and substantially in issue in O.S. No. 58 of 1976. The Supreme Court while considering the provisions of Section 11 C.P.C. in Gram Panchayat of Village Naulakha Vs. Ujagar Singh and Others, , held:

The earlier suit by the respondent against the Panchayat was only a suit for injunction and not one on title. No question of title was gone into or decided. The said decision cannot, therefore, be binding on the question of title.

15. In the above decision, the Supreme Court referred to a decision in Sajjadanashin Sayed Md. B.E.Edr. (D) By Lrs. Vs. Musa Dadabhai Ummer and Others, , and held:

Where, on a detailed consideration of law in India and elsewhere held, that even if, in an earlier suit for injunction, there is an incidental finding on title, the same will not be binding in a later suit or proceeding where title is directly in question, unless it is established that it was "necessary" in the earlier suit to decide the question of title for granting or refusing injunction and that the relief for injunction was founded or based on the finding on title.

16. The principle laid down by the Supreme Court in the above decision makes the position clear that a decision of a Civil Court in the earlier suit for injunction cannot operate as *res judicata* in a later suit between the same parties for declaration of title and recovery of possession. In Ex.A.44-certified copy of the judgment of the appellate Court in A.S.No. 72 of 1979 relating to the earlier suit, the appellate Court held as follows:

Suit being one for injunction simplicitor, investigation of title is relevant only to the extent it probabilise the claim of possession of the plaintiff and nothing more. It is open to the affected to file a suit for declaration of title and for recovery of possession.

17. This finding of the appellate Court in the earlier suit is also an indication that the issue relating to title of the parties was left open. In the light of the above discussion, we have no hesitation to hold that the present suit is not barred by *res judicata*. This point is accordingly answered in favour of the appellants and against the respondent.

Points Nos. 2 to 4:

18. P.W.1, the 1st plaintiff, deposed that he purchased an extent of Ac.5-00 in S.No. 204/2 from one Bomma Viswanadham and an extent of Ac.2-08 guntas in S.No. 204/ 3 from Basupalli Krishna Reddy under two registered sale deeds covered by Exs.A.1 and A.2. He further deposed that all the vendors jointly executed the sale deeds in his favour with Ex.A.3 plan signed by all of them. He also deposed that the total area of S.No. 204 is Ac.13-08 guntas. The defendant purchased Ac.6-00 in the said survey number under two registered sale deeds covered by Exs.A.6 and A.7. The land of the defendant is also situated in S.No. 204 and is adjoining his land.

19. It is an undisputed fact that the total extent of S.No. 204 is Ac.13-08 guntas. It is also an undisputed fact that from out the said land the plaintiff purchased an extent of Ac.7-08 guntas and the defendant purchased the remaining Ac.6-00 guntas.

20. P.W.2 the 2nd plaintiff deposed that the 1st plaintiff purchased an extent of Ac.5-00 in S.No. 204/2 from one Bomma Viswanatham and an extent of Ac.2-08 guntas in S.No. 204/3. He further deposed that the defendant purchased an extent of Ac.6-00 in S.No. 204 through two separate sale deeds i.e., an extent of Ac.1-30 guntas through the first sale deed and an extent of Ac.4-10 guntas through the second sale deed. No boundaries were mentioned in the first sale deed of the defendant and in the second sale deed of the year 1963 the eastern boundary is mentioned as the land of Bomma Viswanatham. He further deposed that the land covered by S.No. 204 was sub-divided in the year 1968. An extent of Ac.6-00 purchased by the defendant was assigned sub-division No. 204/1. An extent of Ac.5-00 purchased by the 1st plaintiff was assigned sub-division No. 204/2 and another extent of Ac.2-08 guntas purchased by his father was assigned sub-division No. 204/3. P.W.2 also deposed that though partition was effected among their four (4) vendors in 1959, all the vendors jointly executed two sale deeds in favour of the plaintiff and two sale deeds in favour of the defendant. P.W.2 deposed that in pursuance of the sale deeds executed in favour of P.W.1 he applied for mutation in the year 1968 and in pursuance of that, the land was measured and the mutation was effected.

21. It is the story of the plaintiffs that the defendant encroached upon an extent of Ac.1-27 guntas in S.No. 204/2 in the year 1976 on the southern side of S.No. 204/1 under the guise of an injunction obtained in O.S. No. 58 of 1976 filed for perpetual injunction and decree of the suit. In order to substantiate the same, the first plaintiff as P.W.1 deposed that the defendant encroached upon an extent of Ac.1-20 guntas in S.No. 204/2. P.W.2 stated that the defendant encroached into an extent of Ac.1-27 guntas in S.No. 204/2 in 1976. P.W.2 further stated that the Advocate Commissioner during the inspection in October, 1976 found the total extent of S.No. 204 as Ac.13-08 guntas.

22. The defendant claimed that though the extent of land purchased by him is mentioned as Ac.6-00 in the sale deeds, his vendor G. Ramireddy gave possession of an extent of Ac.7-27 guntas to him. The defendant as D.W.1 stated that though the extent of land fell to the share of his vendor Ramireddy was mentioned as Ac.6-00 acres, actually he was allotted more area to his share, which was more than 7 1/2 acres. When further questioned D.W.1 conceded that in the revenue records the land purchased by him was mentioned as Ac.6-00. He did not get the land measured at the time of purchase or taking possession. The 1st plaintiff also did not get the land measured either at the time of purchase or taking possession. According to D.W.1 in the application made to the Collector for permission to construct a cinema theatre he mentioned the land in S.No. 204 as Ac.6-00. When the matter was referred by the Collector to the D.R.O., for

feasibility report, the D.R.O also gave a report covered by Ex.A-17 that the defendant got Ac.6-00 in S.No. 204 out of Ac.13-08 guntas. D.W.1 further conceded that at the time of purchase of the lands by himself and the plaintiff, they did not actually measure the lands and they purchased the lands on approximation by paying a lump sum amount for the entire extent, which is locally known as "gumpa gutta" As per the cultivation account also he paid land revenue only for Ac.6-00. It is also conceded by D.W.1 that the land was measured by the surveyor on the application made by him and in the evidence in a criminal case filed by him against the plaintiffs, covered by his deposition in Ex.A.35, he stated that he paid land revenue for Ac.6-00. He obtained mutation for Ac.6-00 basing on his two registered sale deeds.

23. D.W.2, the patwari of the suit village also stated that the defendant purchased an extent of Ac.6-00 in S.No. 204 under two sale deeds from one Ramireddy. At the time of delivery of possession to the defendant, there were no boundary stones and the land was not measured. He collected land revenue for an extent of Ac.6-00 only. S.No. 204 from the defendant. The defendant also told him that he was given possession of Ac.6-00 of land as per the sale deeds in S.No. 204.

24. D.W.3, the son of the defendant's vendor also stated that his father Ramireddy was allotted 6 acres of land during the partition among the co-sharers and his father sold the said extent of land to the defendant. He further deposed that at the time of partition, the lands were measured with a rope and his father told him at the time of execution of the sale deeds in favour of the defendant that the land was sold as "gumpa gutta". In the land ceiling proceedings also there was a mention that the defendant was the owner of an extent of 6 acres in S.No. 204.

25. Though the defendant repeatedly asserted during the course of his evidence that he is in possession and enjoyment of Ac.7-27 guntas, he could not establish either through oral or documentary evidence that he is in possession of the said land in S.No. 204. When the title deeds, revenue records and other documents reflect only an extent of 6 acres in favour of the defendant in S.No. 204 and when the evidence of the plaintiffs' witnesses is consistent to the effect that the defendant encroached an extent of Ac.1-27 guntas, the burden heavily rests on the defendant to establish under what authority he came into possession of the said extent of Ac. 1-27 guntas, since what time he is in possession and enjoyment and what right he acquired over the said property by the date of filing the suit.

26. The 1st plaintiff asserted that out of the land of an extent of Ac. 7-08 guntas purchased by him, the defendant is in occupation of Ac. 1-27 guntas by encroaching the same in the year 1976 after obtaining temporary injunction in O.S.No. 58 of 1976. The defendant was also not sure as to what was the physical extent of land in his possession. But, when there was a dispute between the parties on the ground that the defendant occupied some land of the plaintiffs, the

defendant himself made an application to the concerned authorities to measure and to sub-divide the land situated in S.No. 204, as per the sale deeds of the respective parties. It was only after measuring of the land the defendant came to know that he was in possession of Ac.1-27 guntas in excess of the land he purchased from his vendor. When the plaintiffs asserted that the defendant is not entitled to occupy any portion of their land, the defendant approached the Civil Court and filed O.S. No. 58 of 1976 contending that the 1st plaintiff herein disturbed the boundary stone along with the line AB shown in the plaint plan and the defendant herein got the eastern boundary line AB restored back to its normal position on 14-8-1976. He also pleaded in the said suit that he perfected his title for the said land by virtue of his being in continuous possession and enjoyment of it to exclusion of all others for a period of over 13 years from 11-11-1962. The contents of Ex.B.6-judgment of the District Munsif in O.S. No. 58 of 1976 indicates that the defendant herein filed the above suit with the aid of a rough sketch without, giving the extents or the measurements of the respective lands. Though the defendant took a plea that he perfected his title over the suit land by adverse possession, during the course of arguments, the learned Counsel for the respondent-defendant conceded that he is not pressing the plea of adverse possession. It is the specific version of the plaintiffs that the defendant trespassed into the suit land under the guise of injunction obtained in O.S. No. 58 of 1976. There is no evidence on defendant's side as to when the defendant entered into possession of the suit land. The correct extent of the land of the respective parties could be known only at the time of measuring the land by the Surveyor in 1976 and the scramble for possession started. Till then, there was no scope for either of the parties to assert any kind of title over the land in excess of the extents covered by the respective sale deeds. In the absence of any material to prove that the defendant is the owner of an extent of Ac.1-27 guntas in addition to an extent of 6 acres purchased by him, his plea that he is the owner of the land up to the line AB and that he is entitled to continue in possession of the property cannot be accepted and it can be safely concluded that the plaintiffs are entitled for a declaration to the suit land and the consequential relief of possession. These points are accordingly held in favour of the appellants-plaintiffs and against the respondent-defendant.

27. In the result, the appeal is allowed with costs by setting aside the judgment and decree dated 29-6-2001 of the Senior Civil Judge, Sangareddy in O.S. No. 31 of 1982. It is declared that the plaintiffs have title over the suit land and they are entitled for recovery of possession from the defendant. If the defendant fails to deliver possession of the same, the plaintiffs are at liberty to take appropriate steps according to law. Decree be drawn accordingly.