

(1998) 11 KAR CK 0014
In the Karnataka High Court
Case No : M.F.A. No's. 4085 of 1998

Sathyam @ Ramaiah

APPELLANT

Vs

Karnataka Milk Federation Co-operative Ltd.

RESPONDENT

Date of Decision : 03-11-1998

Acts Referred:

Citation : (1998) 11 KAR CK 0014

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : B.V. Acharya and Mr. B.S. Manjunath, for the Appellant; G.V. Shantharaju, for the Respondent

Final Decision : Allowed

Judgement

Hari Nath Tilhari, J.—These appeals under Order XLIII Rule 1(r) of the CPC arise from the judgment and order dated 5th August, 1998 delivered by the II Addl. Civil Judge, Bangalore, on applications filed under Order XXXIX Rule 1 of the CPC in the suits i.e. O.S.Nos.8129/97, 8257/97, 8259/97, 8295 to 8298/97, 8303 to 8305/97, 8311/97, 8312/97, 8314/97, 8339/97, 8340/97, 8346 to 8349/97, 8351/97, 8353/97 to 8358/97, 8381/97, 8437/97, 8438/97, 8461/97, 8520/97, 8619/97, 8653/ 97, 8689/97, 8847/97, 8894/97, 8913/97, 8924/97, 8947/97, 8987/97,8997/97,9030/97,9031/ 97, 9076/97, 9081/97, 9082/97, 9084/97, 9107/97, 9143/97, 9332/97, 9338/97, 9333/97, 9339/ 97, 9349/97, 9350/97, 9459/97, 47/98, 48/98, 340/98, 575/98, 306/98, 807/98, 812/98, 2115/98, 2116/98, 2117/98, 2118/98, 2128/98, 2129/98 and 5121/98, the Trial Court considered all the applications together and disposed them of by a common judgment dismissing the applications filed under Order XXXIX Rule 1 of the Code of Civil Procedure, moved before the Court by the plaintiffs in these cases.

2. Feeling aggrieved from the judgment and order of the Trial Court dated 5th August, 1998 the plaintiffs (appellants) have filed these appeals.

3. I have heard Sri B.Vasudeva Acharya, learned Senior Advocate, assisted by Sri

B.S.Manjunath and Ms.Bhagya and Sri Devikiran for and on behalf of the appellants and Sri G.V.Shantharaju, assisted by Sri Shanmukhappa appearing for the respondents.

4. The brief facts of the case are that the plaintiffs-appellants filed suits before the Court below for decree of permanent injunction restraining the defendant-respondents in all cases in these appeals, including their men, from interfering with and disturbing the plaintiffs peaceful possession and enjoyment of the suit schedule properties as described in the respective suits. As per the plant allegations, the plaintiffs claimed to have purchased the suit schedule properties under registered sale deeds executed in their favour by the vendor in the year W95 and 1996 respectively as mentioned in their plaints. The plaintiffs claimed to be in possession of the suit schedule properties and they have also asserted that after purchase, they have got possession of the lands and put constructions on the suit schedule properties, after obtaining necessary licence and they have also got filled or installed the amenities from the Electricity Board, Bangalore Water Supply and Sewerage Board and the Bangalore City Corporation. They stated themselves to be in peaceful possession and enjoyment of the properties since the date of their alleged purchase under the respective sale deeds. Alongwith the plaints, the plaintiffs have filed applications under Order XXXIX Rules 1 and 2 of the CPC for grant of temporary injunction. There is no dispute that so far no written statements have been filed by the defendants-respondents, the respondent filed objections controverting the allegations made in the applications. The parties had also filed certain documents. The learned Trial Judge, after consideration of the entire matter on record found that the plaintiffs have failed to make out the prima facie case in their favour, even though they are in possession of the schedule properties but it is not a possession in the eye of law which needs an equitable order of injunction. Temporary injunction cannot be granted keeping in view of the principles with regard to the question of balance of convenience as plaintiffs have failed to show or establish that balance of convenience is in their favour.

5. Findings hereinabove or hereinafter, recorded are only for the purpose of disposal of these cases or these appeals and that may not be binding on the Court below and also those findings cannot be binding on the parties as regards the trial or decision of suit on merits at the stage of final disposal of the suit. The parties are at liberty to file their respective written statements. The finding recorded herein will not bind the parties and they are only for the purpose of disposal of these appeals.

6. The trial Court observed that the acquisition proceedings had taken place and attained finality and lands had vested in the State and the erstwhile owners themselves have handed over possession of the properties acquired, to the Land Acquisition Officer and they have accepted the compensation and the Tahsildar has intimated the Land Acquisition Officer that the lands have been handed over to the Karnataka Diary Development Corporation (hereinafter referred to as "the

KDDC"). The learned Civil Judge further observed that from the material available, it can safely be said at this juncture that acquisition proceedings have attained finality and the lands have vested in the acquiring body and thereafter the same were handed over to KDDC subsequently stood transferred however in favour of the Karnataka Milk Federation by virtue of the proceedings of the Government of Karnataka on 4.11.1982.

7. It will be appropriate at this juncture to quote some of the observations of the Court below in extenso:

"....In fact on 12.12.1989 the Managing Director of Karnataka Milk Federation had written a letter to the Commissioner, B.D.A to drop the proposed acquisition of these lands noted above as they have already been acquired for the benefit of Karnataka Dairy Development Corporation which in turn have been transferred in favour of K.M.F. But the proposed acquisition by B.D.A. was dropped after the lapse of about six years. All these lands were dropped from acquisition as acquisition proceedings were withdrawn u/s 48 of L.A. Act. The denotification of these lands is published in the official Gazette of the Karnataka dated 15.1.1995. It is during this period, that the erstwhile owners have tried to somehow manage to sell the land in favour of these plaintiffs by misrepresenting them. It is during this period that the defendant (KMF) was not diligent enough to safeguard its right and possession. It is true that there is, to a little extent laxity on the part of the defendant Federation in allowing the plaintiffs to take possession of the properties so purchased and the laxity has gone to such an extent that some of the plaintiffs have put up massive structures by spending huge amounts running into several lakhs. The fact that some of the plaintiffs have put up constructions is forthcoming from the photographs furnished on 27.6.1998. Several mansions have virtually come up with ground floor, first floor and second floor. There is no doubt that several lakhs of rupees spent by plaintiffs like Smt.Shanthamma, K.V.Seetharam Naidu, Hemadri Naidu, Seshadri Raju, Venkatarama Raju, Shekar Raju, Smt.Ambiga, Smt.Gayatri Mandanna, M.Sathyanarayana, R.Anusuya, Venugopala Reddy and Sri C.V.Narassa Reddy, who are plaintiffs in O.S.No.8129/97. Similarly, S.Leelavathi. plaintiff in O.S.NO.8259/97 and H.M.Shivarudra Gowda, plaintiff in O.S.No.807/98 and M.P.Shankar, plaintiff in O.S.NO.8461/97 and Kaja Prabhakar Rao. plaintiff in O.S.NO.8281/97 have put up constructions in the suit schedule properties.

It is also true that khathas have been transferred in favour of the plaintiffs and that certain roads have already been laid out and for the constructions put up by few plaintiffs, electricity has also been provided. Of course, these acts do make out overt acts to make out that the plaintiffs are in possession of the properties on the strength of either the sale deeds or the G.P.A."

8. The trial Court after having recorded the finding to the effect that the plaintiffs are in actual possession and they have invested lakhs of rupees in putting up structures after the purchases made by them, rejected the application on the ground that their possession could not be aid to be lawful in view of the finality

attained by the acquisition proceedings. The trial court further observed that the plaintiffs possession as such cannot be aid to be settled possession and as such it opined that the plaintiffs have failed to make out a prima facie case in their favour. The Trial Court made certain observations in regard to the title, which is not very necessary to make here at this juncture. At page 80 of the Trial Court's order, it is observed that "the plaintiffs have failed to make out a prima facie case, even though the plaintiffs are in possession of the properties, it is not a possession in the eye of law which needs as equitable order of injunction. The chances of plaintiffs succeeding ultimately in the suit are remote. The injunction will be granted in aid of the main relief and if the chances of plaintiffs succeeding ultimately are remote then the temporary injunction will not be issue,d keeping in view the principles with regard to the question of balance of convenience." The trial Court, in the operative portion of the order observed that "the applications filed under Order XXXIX Rules 1 and 2 of CPC by the plaintiffs in the above suits are dismissed. The order of status quo passed in all these cases will continue for a period of one month only from today" (i.e. 5.8.1998)

9. It has been contended on behalf of the appellant by Sri B.V.Acharya, learned Senior Advocate that question of title etc. has to be decide in the suits at a later stage after recording the evidence and producing documents etc. He further contended that the Trial court should have granted or maintained the temporary injunction order or order of maintenance of status quo position pending final decision of the suits, as the finding of the Court below is that some of the plaintiffs have taken possession and they have raised structures and they were provided with amenities after investing lakhs of rupees and actually they are in possession of the suit properties, and if that is so, the Court below should have maintained temporary injunction pending final disposal of the suits, as its vacation is likely to cause great hardship to plaintiffs-appellants. Sri Acharya submitted that even, if, but without conceding the sale deeds of the plaintiffs are illegal according to trial Court even then, when the possession of the plaintiffs is settled, even the true owner is not entitled to take the law in his hands and throw away the plaintiffs out of possession, otherwise than in accordance with the machinery or instrumentality of the law as provided by law. He submitted that when the plaintiffs are in possession, injunction should have been granted, or at least status quo order ought to have been maintained and pending consideration of pleas in suit on merits, the respondent should have been restrained from interfering with the peaceful possession and enjoyment of the properties by the plaintiffs. He raised many other contentions during the course of argument, including as to the title to the suit properties asserted by the plaintiffs. Any decision or observation by this Court in respect of the title of the plaintiffs may have tendency to affect the trial proceedings of the suits pending before the Court below. So it need not be gone into the main contention of the learned Counsel that the respondents should not be allowed to interfere with the peaceful possession and enjoyment of the suit properties, pending decision of the subject-matter before the Court below, otherwise than provided by the

instrumentality or procedure established by law.

10. The contentions raised on behalf of the appellants have been hotly contested by Sri Shantharaju, learned Counsel appearing for the respondents.

11. Sri Shantaraju contended that the plaintiffs are in wrongful possession and the alleged sale deeds in their favour are illegal as the original owners of the lands have already lost their title and the right of alienation in suit lands because of the acquisition and vesting the properties in question with the government or KMF. He submitted that the plaintiffs-appellants being trespassers, they are not entitled for any equitable relief or for the granting of temporary injunction in their favour. He submitted that they cannot claim protective possession, as owners, because the respective original owners themselves had lost the right of possession of and title in lands involved in the suit in view of the acquisition proceedings. He further submitted that his client never intends to take the law into his own hands and to dispossess the plaintiffs otherwise than in accordance with law and process of law so no injunction is need be and should be granted by the Court either temporary or permanent, depriving or denying the lawful owner of his rights or remedies under law. According to him, the plaintiffs are trespassers and the respondent swill initiate necessary proceedings against them for their eviction under the process known to law. No doubt, very fairly Sri Shantaraju submitted that here was some laxity on the part of the respondent. He submitted that the plaintiffs are not bona fide purchasers.

12. The suit is for a decree of permanent injunction to the effect that the defendant be directed not to dispossess them or interfere with their peaceful possession and enjoyment of the suit property. If the plaintiffs are in possession without valid title, no doubt, their possession as well said is no doubt the prima facie title, except against the true owner. One, who is a true owner of a property, is entitled to get possession from and sue the person in possession of the property without any legal title. There is no dispute as far as this proposition of law is concerned. Rule of law is the spinal cord of democracy. It is the foundation of a democratic society. It is the basic feature of our Constitution which prevailed in the Constitutional Scheme and is to be maintained giving an upper hand. No person is authorised to take law into his own hands even true owner of property.

13. In this case for grant of temporary injunction, the plaintiffs have alleged and claimed title and possession on the basis of sale deeds set up in the respective plaints, they have to establish their settled possession. Once unauthorised person who claims to be settled possession has to be prove that it is prima facie found and shown established, then true owner cannot be allowed to take law in his hand to evict such a person, and owner's remedy is to file a suit for possession as well to avail the remedy as provided for under the law or any other law applicable to the facts of the case. No person is authorised to take the law in his hands. No doubt, if the act of trespass begins and it is in the process of being fructified in settled possession, the owner may throw out the person who is trying to interfere with the property or with his possession and enjoyment hereof.

But once the possession of trespasser is settled, then it cannot be disturbed and he cannot be thrown out except in accordance with process established by law and by availing of remedies available under law. In the present case, the plaintiffs after having purchased the properties from the respective previous owner, admittedly entered into possession and many of them have constructed even multi storeyed buildings with all amenities after spending lakhs of rupees as has been found by the Court below. Roads have also been made. All these acts have been done with the knowledge of the defendant and some of the plaintiffs after construction of houses were living therein. In such circumstances and in view of these prima facie established facts no other conclusion can be prima facie arrived at than that plaintiffs-appellants are in settled possession of suit properties and are entitled to seek shelter of the Court to protect their possession against all, even against the true owner, if the true owner attempts to deprive or deprives them thereof their settled possession, otherwise than by the process established by law. This flows from even the provisions of Laws such as Section 6/9 of Specific Relief Act. When I so observe, I find support of my view from the decision of this Court in the case of D.Mahabalraju and others V.Jagat, C.R.P.No.1425/94, D/31.8.1994 and the decision of the Supreme Court in Puran Singh and Others Vs. The State of Punjab, No doubt, in the above case the Supreme Court was dealing with a criminal Appeal, but it had laid down a very important principle of law that may be applicable to even civil cases with regard to the possession. In para-11, their Lordships observed thus:

".....This Court clearly pointed out that where a trespasser was in settled possession of the land he is not entitled to be evicted except in due course of law and he is further entitled to resist or defend his possession even against the rightful owner who tries to dispossess him. The only condition laid down by this Court was that the possession of the trespasser must be settled possession. The court explained that the settled possession suit be extended over a sufficiently long period and acquiesced in by the true owner. This particular expression has persuaded the High Court to hold that since the possession of the appellants party in this case was only a month old, it cannot be deemed to be a settled possession. We, however, think that this is not what this Court meant in defining the nature of the settled possession. It is indeed difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into a settled possession. But what this Court really meant was that the possession of a trespasser must be effective, undisputed and to the knowledge of the owner or without any attempt at concealment. For instance a stray or a casual act of possession would not amount to settled possession. There is no special charm or magic in the words "settled possession" nor is it a ritualistic formula which can be confined in a strait-jacket but it has been sued to mean such clear and effective possession of a person, even if he is a trespasser, who gets the right under the criminal law to defend his property against attack even by the true owner. Similarly an occupation of the property by a person as an agent or a servant at the instance of the owner will net amount to actual physical

possession. Thus in our opinion the nature of possession in such cases which may entitle a trespasser to exercise the right of private defence of property and person could contain the following attributes:

(i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;

(ii) that the possession must be to the knowledge either express or implied of the owner or without any attempt at concealment and which contains an element of animus possidendi. The nature of possession of the trespasser would however be a matter to be decided on facts and circumstances of each case.

(iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced in by the true owner; and

(iv) that one of the usual tests in determining the quality of settled possession, in the case of cultivable land would be whether or not the trespasser after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and the trespasser will have a right of private defence and the true owner will have no right of private defence. These principles logically flow from a long catena of cases decided by this Court as well as other High Courts some of which have been referred to in the judgment of this Court in *Munshi Ram's case* (A.I.R. 1968 SC 702)."

The test that has been considered in *Puran Singh and Others Vs. The State of Punjab*, , was to determine the quality of settled possession, in the case of cultivable land, would be whether or not the trespasser, after having taken possession, had grown any crop and if any such crop ha been grown by the trespasser then, even the true owner has no right to destroy the crops grown by the trespasser and to take forcible possession illegally, either it may be for a longer period or for some period. In the case in hand it is seen that some of the purchasers have already constructed houses and they are residing there. When that being the position, it cannot be said that they are not in settled possession at this juncture, whether they may be in settled possession, or whether they have claimed possession, on the basis of the alleges sale deeds in their favour from the vendor, which defendant alleges to be in illegal and even if so. they cannot be thrown away or ousted from possession of suit properties by the true owner, except in accordance with the procedure established by law. I do not express any opinion, nor I should be taken to by expressing any opinion on the question of validity or legality of the sale deeds or sale transaction, nor on any question in issue between the parties for trial or decision in the suit. If that is so, even observations are or have been made are tentative and permitted extent and are only for the purpose of dealing with the matter of temporary injunction and appeal arising from that interlocutory matter. The observations made herein during the course of this order should not come in the way of the trial court while it is trying or deciding the cases and issues arising, in the suit on its own merits.

The finding of the Court below that the plaintiffs-appellants have purchased the suit properties, they are in actual possession and they have invested lakhs of rupees for putting up structures after the purchases made by them and they have also formed roads and obtained electricity connections and other amenities from various Corporation etc., clearly means that the act of possession was not in concealment. The Court below also found that there is and had been laxity on the part of the officials. So, in my view, this is not a case in which it could be said that no temporary injunction can be granted as appellants are "trespassers". This question as well is yet to be decided finally in the course of trial of suit on the basis of the pleas raised by the parties. The person who purchased the property may be entitled and allowed to continue in possession, if they prove that they purchased the suit properties from the lawful owner, or establish any other right, title or interest therein these questions are yet to be tried and decided. In these cases because of the laxity on the part of the concerned officials, necessary entries were even not got made in the relevant records by the defendant-respondent. The plaintiffs have entered possession and constructed buildings and obtained necessary permission for the same from the concerned authorities. The findings given by the Court below are that the plaintiffs-appellants are really in actual possession, and in my opinion, it may amount to be settled possession. When one the Court below arrived at a conclusion that the plaintiffs, either all or some or many are in possession and have constructed structures, three storeyed buildings the Court should have considered, whether temporary injunction should be granted or not, keeping in view of the question of balance of convenience. If temporary injunction is not granted in such a situation, the whole purpose of the suit will be frustrated. The final decision of the Court may be either in favour of the plaintiffs or defendants. That is not the question here. If prima facie the plaintiffs are in possession, it would have been proper for the Court below to issue an order of temporary injunction and to direct the parties to maintain status quo as existed on the date of the suit, as it has been originally ordered, namely, that pending disposal of the suit, the defendants will not interfere with the peaceful possession and enjoyment of the property and the plaintiffs will not change the nature of the property. The order of injunction would have been only for a limited period, i.e. pending final decision of the suit. The contention of the learned Counsel for the respondent is that the plaintiffs are not in legal possession, but the contention of the plaintiffs-appellants is that they are in legal possession and they are in settled possession and they are not trespassers. The contention of the learned counsel for the respondent, no doubt as pointed out and stated is that the respondent shall not dispossess the appellants, except in accordance with law and procedure established by law. No doubt, if the plaintiffs are found to be in possession without any title, and even if they have raised constructions as mentioned earlier, the defendant had got adequate remedy under law to take back possession from them. What relief has to be granted to the plaintiffs is for the trial Court to decide after giving full opportunity to both the parties to adduce evidence and considering all other material documents and circumstances. The

learned counsel for the parties suggested that the Court below may be directed to expedite the decision of the suit finally and the parties may be directed to maintain status quo as on the date of the suit, i.e., neither the plaintiffs nor the defendants will change the nature or character of the suit property and also to direct their neither of the parties shall make any transfer or alienation in favour of any person, pending the decision of the suit.

14. Thus considering, the order of the Court below dismissing the applications on 5.8.1998 has to be set aside and modified. The appeals have to be allowed and accordingly all the appeals are hereby allowed. It is ordered that the parties shall maintain status quo as on the date of the suits and it is further ordered that neither the plaintiffs (i.e. appellants) nor the defendant (respondent) shall alter or change the nature or character of the suit properties in dispute, nor to make any alienation thereof pending decision of the suits. It is further ordered that pending decision of the suits, neither the defendant-respondent, nor their agents nor servants will interfere with the peaceful possession and enjoyment of the plaintiffs of suit properties involved, except in accordance with law and the procedure established by law.

15. Accordingly all these appeals are allowed and in all these cases this order referred to above will operate.

16. Let the defendant file the Written Statement within one month from today. After filing the written statement, the defendant will serve copy of the same on the counsel for the plaintiffs. The plaintiffs may file replication if they so desire or are required within one month from today. After filing the written statement, the defendant will service copy of the same on the counsel for the plaintiffs. The plaintiffs may file replication if they so desire or are required within one month from the date of service of copy of the written statement on their counsel. (Written Statement to be filed on or before 18th December, 1998). The Trial Court thereafter frame the necessary issues and it is expected that the parties will render active co-operation for the final disposal of the suits. It is expected that the Court below will make its best efforts to dispose of the cases within one year from the date of framing of necessary issues arising from the pleadings (including under Order X of CPC).

Accordingly all the appeals are allowed as mentioned above. As regards costs, both parties in each appeal shall bear their own costs respectively.