
(2002) 10 AP CK 0054

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Petition No. 10005 of 2002

Shaik Munni

APPELLANT

Vs

Jagan Mohan Salt Industries and Others

RESPONDENT

Date of Decision : 21-10-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 7 Rule 7

Citation : (2003) 1 ALT 112

Hon'ble Judges : Gopalakrishna Tamada, J

Bench : Single Bench

Advocate : A. Sudershan Reddy and M. V. Suresh Kumar, C.V. Ramulu, S.C, for the Appellant;

Final Decision : Dismissed

Judgement

Gopalakrishna Tamada, J.—The plaintiff in O.S. No. 26 of 1998 on the file of the court of Senior Civil Judge, Srikakulam, is the petitioner in C.M.P. No. 15114 of 2002, which is filed to vacate the interim order dated 15-5-2002 passed in C.M.P.No. 10005 of 2002 in A.S.No. 932 of 2002.

2. The defendants in the said suit are the petitioners in the other petition i.e., C.M.P.No. 8596 of 2002, which is filed to suspend the operation of the judgment and decree in the suit.

3. As the subject matter of the dispute in both the matters is one and the same, both the petitions are disposed of by this common order. For the sake of convenience and easy reference, the parties herein are referred to as they are arrayed in the suit.

4. The factual matrix of the petitions and appeals are as follows: An extent of about 563 acres belonging to the Department of Salt, Government of India, was leased out to the plaintiff under a registered lease deed dated 13-4-1990 commencing from 27-2-1990 for a period of 20 years on an annual rent of Rs. 1,01,007/- as assignment fee and pursuant to the lease deed entered into

between the parties a licence was issued in favour of the plaintiff. After incurring huge expenditure for erection of platforms, reservoirs for storage of water, repairing the Brine-channel for supply of seawater into the factory area etc., the plaintiff started carrying on business. While matters stood thus, in view of the very good demand for aqua culture, according to the plaintiff, after taking permission from the Salt Department of the Government of India, i.e., one of the defendants, he started aqua-culture in an extent of 20 Hectares of land on a rent at the rate of Rs. 500/- per hectare.

5. Subsequently, as the plaintiff was engaged more in the business of aqua-culture than the salt business for which the land was actually leased out, the Government of India by its order dated 3-3-1998 cancelled the lease and directed the Salt Factory Officer to take possession within 15 days of receipt of the said order. The said order of cancellation dated 3-3-1998 was questioned by the plaintiff in this court by way of a writ petition, but the same was dismissed holding that it is a matter of enforcement of the terms of a concluded contract and, therefore, the writ petition is not maintainable and that the plaintiff can avail the other remedies that are available in law.

6. Pursuant to the same, the plaintiff instituted the suit (O.S.No. 26 of 1998) questioning the said order of dated 3-3-1998 cancelling the lease and licence, seeking the relief of declaration that the said order is arbitrary, illegal and contrary to the terms and conditions of the registered lease deed dated 13-4-1990 and for a consequential permanent injunction restraining all the defendants therein from enforcing the order dated 3-3-1998 and for other appropriate reliefs. Though a petition under Order 39 Rule 1 C.P.C. for grant of interim injunction pending the suit was filed by the plaintiff, the same was rejected by the trial court.

7. In the suit, the Deputy Salt Commissioner, who is arrayed as 3rd defendant filed a detailed written statement, which was adopted by the other defendants, narrating as to why the Government of India had taken a decision to cancel the lease deed dated 3-3-1998 and consequently the licence. The averments in brief as per the written statement are that the purpose for which the lease of an extent of 563 acres was given in favour of the plaintiff is for production of salt but the said contract was frustrated as the plaintiff started doing more aqua-culture though the permission was only for an extent of 20 hectares, ignoring the production of salt. It is further stated in the written statement that the plaintiff also sublet the lands to private parties.

8. On the basis of the pleadings in the suit, the plaintiff examined P.Ws. 1 to 4 and got marked Exs.A-1 to A-34 and the defendants examined D.Ws. 1 and 2 and marked Exs.B-1 to B-41. The court below, on a consideration of the entire evidence on record, decreed the suit in favour of the plaintiff declaring the impugned order dated 3-3-1998 cancelling the lease and licence as illegal, arbitrary and contrary to the principles of natural justice and also in violation of the terms and conditions of the registered lease deed dated 13-4-1990 and

consequently granted a permanent injunction restraining the defendants from enforcing the order dated 3-3-1998. The court below further directed the defendants to redeliver the plaint schedule property within a period of sixty days to the plaintiff.

9. It must be stated here that pursuant to the cancellation of the lease granted in favour of the plaintiff on 3-3-1998, the Government of India, represented by its Secretary, issued a tender notification dated 15-2-2000 and the appellant in A.S.No. 932 of 2002 (hereinafter called, "third party") happened to be the highest bidder. Therefore, he was granted lease for a period of 20 years vide acceptance letter dated 7-4-2000. As the appellant in A.S.No. 932 of 2002 was not a party to the suit proceedings, he filed a petition along with the appeal for grant of leave to question the said judgment and decree in O.S.No. 26 of 1998 and another petition in C.M.P. No. 10005 of 2002 seeking stay of operation of the judgment and decree of the trial court.

10. It is averred by the third party in his affidavit filed in support of the petition in C.M.P. No. 10005 of 2002 that immediately after the lease was granted in his favour in the year 2000, he spent more than Rs. 50 lakhs and that if he is dispossessed from the plaint schedule lands at this juncture, he would suffer irreparable loss, which cannot be compensated. This court while granting leave to the third party, granted interim stay of the operation of the decree of the trial court pending further orders, holding that "prima facie, the relief granted by the trial court as regards redelivery of the suit schedule land to the plaintiff is beyond the scope of the suit itself".

11. Though the Government of India (defendants) filed a separate appeal i.e., A.S.No. 781 of 2002, questioning the very same judgment and decree dated 19-3-2002 and also filed a petition i.e., C.M.P. No. 8596 of 2002, they did not press for any interim orders therein, as this court already granted interim stay of the operation of the decree in the other appeal (A.S.No. 932 of 2002) which is filed by the third party.

12. The plaintiff now comes forward with a petition in C.M.P. No. 15114 of 2002 to vacate the order dated 15-5-2002 passed in C.M.P. No. 10005 of 2002 in A.S. No. 932 of 2002, stating that immediately after cancellation of the lease and licence, the plaintiff filed writ petition in this High Court and the same ended in dismissal observing that he can file a suit. Thereafter, he filed the present suit and during the pendency of the suit, the Government of India issued a tender notification inviting tenders for auction of the leasehold rights in respect of the suit schedule salt pans. In the said tender notification, it is clearly mentioned that the lease period is for 20 years from the date of lease or till the disposal of the suit i.e., O.S.No. 26 of 1998 filed by the plaintiff, whichever is earlier. It is further stated in the affidavit that after an elaborate trial and after discussing the entire oral and documentary evidence, the court below has clearly held that the termination of lease is illegal and accordingly passed a decree on 19-3-2002. Thus, by virtue of the said decree dated 19-3-2002 read with the terms of the

tender notification dt. 15-2-2000, the lease granted in favour of the appellant in A.S.No. 932 of 2002, who is a third party to the suit proceedings, shall automatically stand terminated. As a consequence thereof, the third party is bound to vacate the premises and the plaintiff is entitled to be re-inducted into possession of the suit schedule land and shall be allowed to continue till the expiry of the 20 years" lease period. According to the plaintiff, immediately after the lease was granted in his favour in the year 1990 and till the termination of the lease in the year 1998, it is the plaintiff who had actually spent huge amounts in developing the salt pans and made ready the patches which were given in lease to the third party. Therefore, it is stated that the contention that the third party had spent huge amount of Rs. 50 lakhs, is not true and is baseless.

13. In C.M.P. No. 8596 of 2002 in A.S. No. 781 of 2002, filed by the Government of India, the Deputy Commissioner, Ministry of Commerce and Industry, Government of India, while admitting the lease in favour of the plaintiff for a period of 20 years commencing from 27-2-1990, it is stated that the plaintiff had undertaken prawn culture in a portion of the premises admeasuring about 37 acres in the year 1991 and about 49 acres during the year 1992, contrary to the terms and conditions of the lease deed and without prior sanction or permission from the Government of India. It, therefore, necessitated the Government of India to cancel the lease by an order dated 3-3-1998. Along with the suit, the plaintiff filed I.A.No. 122 of 1998 seeking temporary injunction against the Government of India from implementing the order dated 3-3-1998 but the said application was rejected by the trial court on 16-6-1998. Pursuant to the termination of the contract on 3-3-1998, the third-party i.e., the appellant in A.S.No. 932 of 2002, has been inducted into possession of the suit schedule property.

14. Mr. A. Sudershan Reddy, learned counsel appearing for the third party i.e., appellant in A.S. No. 932 of 2002, while reiterating the averments made in the affidavit filed in support of the petition in C.M.P. No. 10005 of 2002, vehemently contended that the relief granted by the court below while decreeing the main suit is beyond the scope of the prayer sought for in the suit. According to the learned counsel, the suit is one for declaration that the order of cancellation of lease and licence dated 3-3-1998 is arbitrary, illegal and contrary to the terms and conditions of the registered lease deed dated 13-4-1990 and for a consequential injunction restraining all the defendants from enforcing the order dated 3-3-1998 whereas the court below transgressed its jurisdiction in granting the relief of redelivery of plaint schedule property within a period of sixty days to the plaintiff and in further directing the defendants therein (i.e., Government of India) to consider enhancement of the lease period thereby enabling the plaintiff to enjoy the full term of 20 years" lease period.

15. The second submission of the learned counsel for the third party is that the appeal is a continuation of the suit proceedings and as no temporary injunction

was granted in favour of the plaintiff pending the suit, the interim order passed by this court in favour of the third party staying the judgment and decree of the court below, need not be vacated now and the third party shall be allowed to continue in possession of the suit schedule properties during the pendency of the appeal. Learned counsel has also drawn my attention to the judgments of the Supreme Court in Garikapatti Veeraya Vs. N. Subbiah Choudhury, and Rachakonda Narayana Vs. Ponthala Parvathamma and Another, .

16. The learned Standing Counsel for the Government of India, during the course of arguments, submitted that although they filed the appeal (A.S.No. 781 of 2002) along with a petition to suspend the operation of the judgment and decree of the trial court within the prescribed period of limitation, they did not press for any interim orders therein in view of the fact that this court by an order dated 15-5-2002 made in C.M.P. No. 10005 of 2002 in A.S.No. 932 of 2002, had already suspended the operation of the decree and judgment in the suit. It is further submitted by the learned Standing Counsel that as per the original lease deed entered into with the plaintiff, the tender rate is fixed at Rs. 11.61 per tonne whereas the tender rate fixed with the third party is Rs. 54.36 per tonne. As the rate fixed with the third party is higher, it would be beneficial to the Government if the third party is allowed to continue.

17. The learned counsel appearing for the plaintiff Mr. M.V.S. Suresh Kumar strongly opposed the said submissions stating that the appellant in A.S.No. 972 of 2002 is totally a stranger to the suit proceedings and as such the appeal at his instance is not maintainable. According to him, the tender notification as well as the acceptance letter issued in favour of the third party are very clear that the lease granted by the Government of India in favour of the third party is for a period of 20 years or till the disposal of the suit filed by the plaintiff i.e., O.S. No. 26 of 1998 and that the moment the decree is passed in the suit, the third party is liable to vacate the premises and hand over vacant possession of the plaint schedule property, enabling the plaintiff to enforce his rights as per the contract entered into by him in the year 1990.

18. Learned counsel further submitted that the direction given by the court below in its judgment and decree ordering re-delivery of the plaint schedule lands in favour of the plaintiff and the further direction to the Government of India to enhance the lease period enabling the plaintiff to enjoy the full term of 20 years as provided in the lease deed dated 13-4-1990, is only a consequential relief and as such it cannot be contended that the relief granted in the decree is beyond the scope of the prayer sought for in the plaint.

19. It is further contended by the learned counsel that the third party came into possession of the plaint schedule property only in the year 2000 and in fact during the period of lease from the year 1990 to 1998, it is the plaintiff who incurred huge expenditure and made the salt pans viable and in the said salt pans which are made ready, the third party carried on the business. Therefore, it is highly hypothetical to contend that in a span of less than two years, the third

party had incurred expenditure to a tune of Rs. 50 lakhs.

20. It is further contended by the learned counsel that the lease which is granted in favour of the plaintiff fixing the rate at Rs. 11.61 per tonne was as early as in the year 1990. Therefore, the rate of Rs. 54.36 per tonne which is fixed subsequently i.e., in the year 2000 while granting lease in favour of the third party, cannot be taken into consideration at all, howsoever beneficial it may be to the Government of India. Summing up his arguments, the learned counsel submitted that for no fault of the plaintiff, he is made to suffer during all these four years i.e., from 1998 to 2002 and hence prayed for vacation of the interim orders granted by this court on 15-5-2002.

21. From the above pleadings and the contentions raised by the counsel on either side, the points that arise for consideration are: (1) Whether the appeal at the instance of the third party to the suit proceeding is maintainable; and if so, (2) Whether the stay granted by this court in favour of the third party should be continued during the pendency of these appeals?

22. As this court is presently deciding the interlocutory applications, I am of the opinion that it may not be proper at this stage to go into the aspect of maintainability of the appeal by the third party. Therefore, I am inclined to keep it open to be agitated by the parties during the course of final hearing of the appeal.

23. The next point is - whether the stay granted in favour of the third party should be continued during the pendency of the appeals. There cannot be any dispute that the appeal is a continuation of the suit proceedings and the moment an appeal is filed, the finality of the judgment and decree of the court below is automatically put in a flux and the appeal must be taken as part and parcel of the continuing trial. In essence, where an appeal has been preferred, the suit is disposed of truly and finally by the appellate decree and not by the original one. In the event of an appeal, the decree of the trial court merges with that of the appellate court. The doctrine of merger is too well known to call for further elaboration. Indeed, the moment the appellate decree comes into being, the original decree loses its independent entity. Perhaps, one can go to the length of saying that on an appellate decree being passed, the original decree by virtue of merger loses its very existence. In the concept of merger, therefore, it is the appellate decree which subsists. After it is rendered, the decree which is enforceable is only that of the appellate court and not that of the original court. But, it does not mean that as and when an appeal is preferred, the operation of the decree and judgment of the original court should automatically be stayed or suspended by the appellate court.

24. The chronology of events, as can be culled out from the pleadings, are that the defendants granted lease in favour of the plaintiff on 13-4-1990 for a period of 20 years and the same was cancelled on 3-3-1998. Immediately thereafter, the plaintiff filed O.S.No. 26 of 1998. Subsequently, during the pendency of the

suit, the defendants issued fresh tender notification on 15-2-2000 and fresh lease was granted in favour of the third party vide acceptance letter dated 7-4-2000. In the tender notification dated 15-2-2000, it is clearly mentioned that the lease period is 20 years from the 8th day of acceptance of highest tender or till the disposal of the suit i.e., O.S.No. 26 of 1998 filed by the plaintiff before the Court of Vacation Civil Judge, Srikakulam, against the Government, whichever is earlier. After full-fledged trial, the suit was decreed by the court below on 19-3-2002, giving 60 days" time to the defendants to redeliver vacant possession of the plaint schedule property to the plaintiff. As against the said decree and judgment dt. 19-3-2002, the defendants in the suit as well as the third party preferred these two appeals i.e., A.S. Nos. 781 and 932 of 2002. This court, by order dated 15-5-2002 made in C.M.P. No. 10005 of 2002 in A.S.No. 932 of 2002, granted interim stay of operation of the decree of the trial court pending further orders. From a reading of the condition mentioned in the notification dt. 15-2-2000, it is amply clear that the lease granted in favour of the highest bidder is a conditional lease and the said lease granted in favour of the highest bidder would be for a period of 20 years from the 8th day of acceptance of highest tender or till the disposal of the suit i.e., O.S.No. 26/1998 filed by the plaintiff, whichever is earlier. Thus, having subjected himself to the conditional lease, the third party i.e., the petitioner in C.M.P. No. 10005 of 2002 in A.S.No. 932 of 2002, cannot now turn round and say that he is entitled to continue in possession of the plaint schedule property even after the disposal of the suit and during pendency of these appeals. Therefore, although an appeal is a continuation of the proceedings of the suit, having regard to the terms of the lease, it cannot be said that the third party should be continued to be in possession of the plaint schedule property during the pendency of this appeal. For the foregoing discussion, I am of the view that the stay granted in favour of the third party is liable to be vacated.

25. Learned counsel for the third party put forth a contention that the trial court transgressed its jurisdiction by granting the relief which is not sought for in the plaint. But, I am of the firm view that the court below was perfectly justified in granting the reliefs in the suit and it did not go beyond its scope. As seen from the record, the prayer which is sought for in the suit is for a declaration that the impugned order of cancellation dated 3-3-1998 passed by the Deputy Salt Commissioner, Chennai, is contrary to law and contrary to the terms and conditions of the lease deed dated 13-4-1990 and for a consequential permanent injunction restraining the defendants from enforcing the order dated 3-3-1998. Order VII Rule 7 of the C.P.C. states that the prayer should be specific in the plaint. No doubt, the first limb of Order VII Rule 7 of the Code mandates that prayer should be specifically stated in the plaint, but the second limb of the said provision amply makes it clear that it shall not be necessary for the plaintiff to ask for general or other relief which may always be given as the court may think just to the same extent as if it had been asked for. In view of the second limb. I am of the view that it is always open for the Court to take notice of the events

that have taken place after the institution of the suit and it may suitably mould and grant the relief according to the changed circumstances. Therefore, for granting relief by the Court, it is not the form of the plaintiff's prayer which matters and it is the substance thereof which should be looked into. Even if a plea is not specifically made and yet it is covered by an issue by implication and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. After all, the primary concern of the Court is to implement the justice of the legislation. When it is made necessary to take a decision of the court on the altered circumstances, in order to shorten the litigation or to do complete justice between the parties, it is incumbent upon a court of justice to take notice of events that have happened since the institution of the suit and to mould its decree according to the circumstances as they stand at the time when the decree is made.

26. Thus, having regard to the above discussion and especially keeping in mind the subsequent developments viz., that by the time the suit was instituted the plaint schedule property was vacant, but, as has been admitted by D.W.1 (mentioned at paragraph 26 of the judgment), an auction notice was thereafter issued by the Government in the year 2000 and auction was conducted subject to the pendency of the suit; and that pursuant to the said auction the third party was inducted into possession of the plaint schedule property subsequently, the court below thought it fit to direct the defendants to re-deliver the schedule land to the plaintiff within a period of 60 days. In view of the aforementioned subsequent development, I have no hesitation to hold that the court below has not transgressed its jurisdiction while ordering re-delivery of the possession in favour of the plaintiff. Accordingly, the contention put forth by the learned counsel for the third party is rejected.

27. In view of the finding recorded hereinabove that the stay granted by this court in favour of the third party on 15-5-2002 in C.M.P. No. 10005 of 2002 is liable to be vacated, the lease in favour of the third party would come to an end and by virtue of the present order, the plaint schedule land will have to be redelivered to the plaintiff. But, having due regard to the fact that the plaintiff was paying lesser rate (i.e., Rs.11.61 per tonne) than the third party and with a view to safeguard the larger interests of the Government, I feel that ends of justice would be met if the rate fixed by the Government in favour of the plaintiff is revised now pending disposal of the appeal. Therefore, when this court put a question, the learned counsel for the plaintiff in consultation with his client submitted that the plaintiff is prepared to pay @ Rs. 25/-per tonne. But, in view of the huge difference between the rate fixed in the lease entered into with the third party (Rs. 54.36 per tonne of salt produced) and the rate which is now offered by the plaintiff, this court feels it expedient to direct the plaintiff to pay @ Rs. 30/- per tonne of salt produced during the pendency of this appeal and upon execution of the lease deed to the above effect by the plaintiff, the defendants

shall redeliver vacant possession of the plaint schedule land to the plaintiff on or before 31-12-2002.

28. Accordingly, C.M.P. No. 15114 of 2002 is allowed and the stay granted by this Court on 15-5-2002 in favour of the third party (appellant in A.S.No. 932 of 2002) in C.M.P. No. 10005 of 2002 is hereby vacated. The plaintiff is hereby directed to pay @ Rs.30/- per tonne of salt produced during the pendency of these appeals and upon execution of a lease deed to the above effect by the plaintiff, the defendants are hereby directed redeliver vacant possession of the plaint schedule land to the plaintiff on or before 31-12-2002.

29. In view of the orders passed in C.M.P.No., 15114 of 2002 in C.M.P. No. 10005 of 2002 in A.S.No. 932 of 2002, C.M.P. No. 8596 of 2002 in A.S. No. 781 of 2002 is dismissed.