
(2001) 09 AP CK 0146
In the Andhra Pradesh High Court
Case No : C.R.P. No. 1127 of 2000

T. Chandrasekhar Reddy

APPELLANT

Vs

Balakrishna Moorthy and Others

RESPONDENT

Date of Decision : 17-09-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2(3)

Citation : (2002) 1 ALT 408

Hon'ble Judges : B.S.A. Swamy, J

Bench : Single Bench

Advocate : P.V. Vidyasagar, for the Appellant; J. Ugra Narasimha, for the Respondent

Final Decision : Allowed

Judgement

B.S.A. Swamy, J.—Questioning the correctness of the order of the Principal Junior Civil Judge, Tirupathi, Chittoor District, in I.A.No. 1553 of 1998 in O.S.No. 725 of 1996, dated 07-02-2000, dismissing the application filed by the petitioner/plaintiff, seeking amendment of the pleadings and permit him to seek the relief of title apart from the other reliefs sought for in the suit, the present Revision Petition is filed.

2. The case of the petitioner is that he purchased the suit schedule land under an agreement of sale, dated 15-07-1984, from one T. Balakrishna Moorthy and was put in possession of the property in part performance of the agreement of sale. When the said T. Balakrishna Moorthy has not executed the regular sale deed and when Respondent Nos. 2 to 6 are trying to interfere with his peaceful possession, he filed O.S.No. 725 of 1996 on the file of the Principal Junior Civil Judge, Tirupathi; Chittoor District, seeking specific performance of the agreement, dated 15-07-1984, and also sought for a permanent injunction. It is also not in dispute that he obtained a temporary injunction restraining the respondents therein from interfering with his possession. While the said T. Balakrishna Moorthy did not file any written statement, even after receipt of the

notice, the other respondents filed written statements contending that the land belongs to one Sri Hathiramji Mutt and they occupied the same long back and brought the same to cultivation by reclaiming it and the said T. Balakrishna Moorthy has no title to the property to be conveyed to the petitioner herein. After the written statements were filed, the petitioner filed the present I.A.No. 1553 of 1998, seeking amendment of the pleadings and also seeking additional relief of declaration of title apart from the other reliefs sought for. But, unfortunately, the Principal Junior Civil Judge, Tirupathi, Chittoor District, without understanding the case from its proper perspective, dismissed the same by making the following observation:

"But I am unable to accept this contention, as law of adverse possession says that a person should be in possession of the property for more than statutory period and that possession should be invariably adverse to the real owner. As such mere continuous, uninterrupted possession of present petitioner under an agreement of sale that too a portion of the part performance is to be done by the petitioner does not create any title to the petitioner and it is not an adverse possession to the defendants. As such there are no merits in this petition and this petition is dismissed."

3. I have no hesitation to observe that the Principal Junior Civil Judge, Tirupathi, Chittoor, completely misdirected himself to the facts of the present case. From the above factual narration, it is seen that the petitioner filed the present suit seeking specific performance of an agreement of sale against one T. Balakrishna Moorthy, who did not choose to file any written statement. When the respondent Nos. 2 to 6 are trying to interfere with his possession contending that the land in question originally belongs to one Sri Hathiramji Mutt and they occupied the same long back and brought the same to cultivation by reclaiming it and that the said T. Balakrishna Moorthy has no title to the property in question to be conveyed to the petitioner herein, he sought for mandatory injunction against them.

4. From the above pleadings, who is actually in possession of the property in question has to be decided by the Court below only after the trial over. Now, the petitioner filed this application seeking title to property on the ground that he is in possession of the property and he perfected the title by adverse possession. In other words, if the petitioner can prove in the Court below that the respondent Nos. 2 to 6 are not in possession of the property and he is in possession of the property in question; on the safer side only he is seeking declaration of title on the basis of adverse possession, even if the said T. Balakrishna Moorthy is not having title to the property to be conveyed to him under an agreement of sale. Hence, the petitioner is justified in filing the present application and by entertaining such an application, the Court will be preventing illegal proceedings in the Courts. Secondly, when a suit is filed under Order 2 Rule 2(3) of the Code of Civil Procedure, if any of the reliefs sought by the plaintiff against the defendants were not claimed he is prevented from filing a fresh suit for other

reliefs to avoid multiplicity of proceedings. On the other hand, even if he has forgotten to claim the relief initially, he can always seek amendment of the pleadings with the permission of the Court and all the issues arisen within the same cause action have to be adjudicated by the Courts below. Admittedly, in this case, the respondents 2 to 6 were impleaded as party respondents when they tried to interfere with the possession of the plaintiff and in fact the respondents 2 to 6 themselves have admitted in the written statements that they occupied the land belonging to Sri Hathiramji Mutt and they are in possession of the property. However, all these facts have to be gone into in the trial.

5. Hence, the order of the Court below in dismissing the application seeking amendment of the pleadings is highly erroneous and it is a case of non-application of mind to the facts of the case by the officer concerned. The officer also tried to find fault with the petitioner for not filing the application immediately after the written statement is filed. Even according to him written statement was filed on 12-08-1997 and this application is filed on 11-08-1998, i.e., within one year from the date of filing of the written statement, wherein the respondents 2 to 6 denied the title of T. Balakrishna Moorthy and therefore it cannot be said that the said application was filed belatedly. As the application filed by the petitioner is well within the time, the Court below cannot find fault for filing the same after one year from the date of filing of the written statement.

6. For all these reasons, the order of the Court below is set aside and the application to amend the pleadings is allowed. As the suit is of the year 1996, the Principal Junior Civil Judge, Tirupathi, Chittoor District, shall dispose of the same within three months from the date of receipt of a copy of the order.