
(2012) 10 AP CK 0069

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 644 of 2012

T. Satyanarayana

APPELLANT

Vs

Y. Lakshma Reddy @ Lachi Reddy and 6 others

RESPONDENT

Date of Decision : 05-10-2012

Acts Referred:

Citation : AIR 2013 AP 47 : (2013) 1 ALT 64

Hon'ble Judges : B.N. Rao Nalla, J

Bench : Single Bench

Advocate : K. Mallikarjuna Rao 481, for the Appellant; Resu Mahender Reddy (910), Counsel for Respondent Nos. 1 to 4 and Sri K. Rathaganagapani Reddy (C-4414), Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Sri Justice B.N. Rao Nalla

1. This Civil Miscellaneous Appeal is preferred against the dismissal of I.A. No. 559 of 2012, a petition for grant of temporary injunction for the schedule of property, in O.S. No. 163 of 2012 vide order dated 07-06-2012 by the learned II Additional District Judge, Ranga Reddy District, Hyderabad. The original suit is filed seeking permanent injunction. The appellant herein is the petitioner-plaintiff and the respondents are respondents-defendants in the impugned application before the trial Court.

2. For the sake of convenience, the parties are referred to as they arrayed in the suit.

3. The case of the plaintiff is that he is tenant, oral tenancy, of defendant Nos. 6 and 7 in the schedule of property wherein he is carrying on bamboo business for the past several years periodically and paying rents to defendant Nos. 6 and 7 regularly. However, defendant Nos. 1 to 5 are trying to interfere with his peaceful possession and enjoyment in the schedule property, for which he gave report to the police, but of no avail. Defendant Nos. 6 and 7 are the original owners, as

such, defendant Nos. 1 to 5 are not entitled to interfere with his possession over the schedule property. Hence, he filed the suit for permanent injunction and the impugned application for temporary injunction against defendant Nos. 1 to 5 only though defendant Nos. 6 and 7 are shown as parties to the petition.

4. Defendant No. 5 filed counter on behalf of himself and also on behalf of defendant Nos. 1 to 4 denying the case of the plaintiff. Their case is that Y. Narsa Reddy, who is grandfather of defendant Nos. 1 to 4, was original owner and possessor of the schedule property i.e. the land admeasuring Acs. 3-31 guntas in Survey Nos. 741, 742, 743 and after his demise Y. Gandhi Reddy, father of defendant Nos. 1 to 4, succeeded to the property and during his life time he converted the land into house plots and after his demise on 13-05-1996, defendant Nos. 1 to 4 succeeded to the schedule property. In 2011, defendant No. 5 purchased Northern part of plot No. 9 and plot Nos. 10, 11 and 14 of a total extent of 990 square yards in Survey Nos. 741, 742 and 743 under the registered sale deed dated 26-11-2011. Thus, defendant Nos. 1 to 5 are in possession and enjoyment of their respective extents, but when defendant Nos. 6 and 7 tried to encroach the plots of defendants Nos. 1 to 5, defendant No. 5 lodged a complaint against defendant Nos. 6 and 7 in Malkajgiri Police Station and the same was registered as Crime No. 369 of 2009 and on enquiry by the Malkajgiri Mandal Tahsildar on request of the police concerned, it is revealed that Plot No. 14 of 266 square yards in Survey Nos. 741, 742 and 743 of Malkajgiri Mandal was encroached by the plaintiff. Questioning the same, defendant Nos. 6 and 7 filed a writ petition, in which the plaintiff herein filed an affidavit as third party supporting the case of defendant Nos. 6 and 7, however the said writ petition was dismissed on merits.

5. Based on the rival pleadings, the following point was framed by the trial Court for determination of the impugned application:

Whether the petitioners/plaintiffs have made out prima facie case, balance of convenience and irreparable loss in their favour?

6. In support of his case, plaintiff got marked Exs. A-1 to A-21 and on behalf of defendant Nos. 1 to 5, they got marked Exs. B-1 to B-8.

7. The trial court after an elaborate consideration of each and every document coupled with the pleadings and the material on record, dismissed the petition with costs holding that the plaintiff failed to prove his tenancy over the schedule property and his pleadings are of camouflage nature and that he was projected by defendant Nos. 6 and 7. Assailing the same, plaintiff preferred this appeal.

8. Heard the learned counsel on either side and perused the material available on record.

9. Now the contention of the learned counsel for the plaintiff is that the trial Court failed to see that since defendant Nos. 6 and 7 are owners and the plaintiff being their tenant over the schedule property by doing bamboo sticks business

approached the Court seeking to protect his legal possession over the same as tenant and that though there is sufficient evidence in respect of his possession as tenant on the schedule property, the trial Court refused to grant temporary injunction erroneously holding that defendant Nos. 6 and 7 projected him to file the suit seeking injunction against defendant Nos. 1 to 5.

10. On the other hand, learned counsel for defendant Nos. 1 to 5 supporting the impugned order contended that the trial Court rightly dismissed the impugned application holding that the plaintiff failed to prove his tenancy and possession over the schedule property and is projected by defendant Nos. 6 and 7, as such, the impugned order does not require interference of this Court.

11. Now the point that arises for consideration is whether there are any grounds for allowing this appeal?

POINT:

12. As seen from the impugned order, the schedule of property for which the plaintiff seeks temporary injunction is covered by Plot Nos. 9, 10, 11, 12, 13, 14 and 16 in Survey Nos. 741, 742 and 743 of Malkajgiri covered by common boundaries. Now, the main issue that requires to be determined for granting interim injunction is as to who is in lawful possession of the schedule property and whether there is prima facie case and balance of convenience in favour of the plaintiff and suffering irreparable loss. The case of the plaintiff is that he is in lawful possession of the schedule property as tenant by obtaining the same on oral lease from its original owners i.e. defendant Nos. 6 and 7, but defendant Nos. 1 to 5 are trying to interfere with his peaceful possession and enjoyment over the same. However, it is apparent from the material on record that there is a dispute with regard to ownership over the schedule property between defendant Nos. 1 to 5 on one hand and defendant Nos. 6 and 7 on the other. In view of the same, as seen from the material on record, as rightly pointed out by the trial court, the plaintiff intentionally avoided to say specifically as to on which date he was inducted as tenant in the schedule property by respondent Nos. 6 and 7 and since how long he is in possession of the same as it may not correlate with the alleged ownership of defendant Nos. 6 and 7. It is also not mentioned as to whether defendant Nos. 6 and 7 are owners of the schedule property jointly or for different extents and in case for different extents, for what extent and for which part they are owners. He also failed to file number of rent receipts except Exs. A-1 and A-2 for the month of January 2012, which is just before filing of this suit to show his alleged tenancy, and if he was really in possession of the entire or part of the schedule property from a long period, definitely he must have filed sufficient number of rent receipts to show his possession and tenancy over the schedule property.

13. Further, plaintiff filed Ex. A-3 property tax receipt for H. No. 13-1, Yadav Nagar for the year 2009-10 stating that he paid the same for the schedule property. But, it is not his case that a house is existing in the schedule property

and the schedule of property also does not disclose the same. Hence, it can be said that Ex. A-3 does not relate to the schedule property and the same shows that the plaintiff approached the Court with unclean hands. Therefore, the trial Court rightly ignored Ex. A-3 property tax receipt as there does not exist any house in the schedule property even according to the plaintiff himself. Likewise Exs. A-7 to A-11 are also not helpful to the plaintiff as they are between defendant Nos. 1 to 5 and defendant Nos. 6 and 7 with regard to ownership of the schedule property and as rightly held by the trial Court there appears to be dispute of title about schedule property and there is no need to go into that question in the present proceedings for temporary injunction and even if the ownership of the schedule property is determined, the same is not helpful to the plaintiff since the evidence produced by him does not establish his tenancy either on the part or whole of the schedule property and the relationship of tenant and landlord between himself and defendant Nos. 6 and 7.

14. Exs. A-12 and A-13 are complaint and private complaint respectively filed by defendant No. 6 against defendant Nos. 1 and 2 stating that they are interfering and trespassing into the schedule property. Thus, these documents reveals that defendant No. 6 is claiming ownership over the schedule property and in that event defendant No. 6 is expected to file a suit against defendant Nos. 1 and 2 etc. to protect his right, title and interest over the schedule property but not the plaintiff after a period of about six months on the pretext of alleged tenancy.

15. On the other hand, Exs. B-1 and B-2 show the right, title and interest of defendant Nos. 1 to 5 over the schedule property. Further, Ex. B-4, the report dated 17-12-2011 of the Tahsildar, Malkgiri Mandal, after conducting inspection over the schedule property on the request of the Station House Officer, Malkajgiri Police Station on Ex. -3 complaint lodged by defendant No. 5, shows that the plaintiff is a trespasser on plot No. 14 of the schedule property. As per Ex. B-6 proceedings issued by the Special Deputy Collector, Hyderabad, defendant Nos. 1 to 4 are having pattadar passbooks for the schedule property. Ex. B-7 issued by the Deputy Commissioner of Greater Hyderabad Municipal Corporation, Malkajgiri also shows that there is no house in the schedule property much less with door No. 13-1 as found hereinabove. Ex. A-20 bunch of photographs show that the schedule property is a vacant site and the same is evident from Ex. B-8 photographs as well as Ex. A-19 lay out plan, which shows that there are house plots. In view of the above, Exs. A-4 and A-5 trade licence and payment receipt are also not helpful to the case of the plaintiff as the same can be obtained easily.

16. Further, the record shows that defendant No. 6 filed W.P. No. 25021 of 2011 to protect his possession over the schedule property seeking a direction to the Station House Officer, Malkajgiri for preventing the criminal activities of defendant Nos. 1 and 2 herein over the schedule of property stating that they trespassed in to plot Nos., 10, 11 and 12 admeasuring 1042 square yards in Survey Nos. 741, 742 and 743. But, surprisingly, he did not claim ownership over plot Nos. 13, 14 and 16 which are also part of the schedule of property. However,

in the present proceedings, plaintiff seeks interim injunction for the schedule of property which includes plot Nos. 9, 10, 11, 12, 13, 14 and 16 in the same Survey Nos. 741, 742 and 743, but Ex. B-4 report of the Tahsildar, Malkajgiri Mandal, Ranga Reddy District shows that the schedule of property is vacant site consisting of plots and the plaintiff is encroacher on plot No. 14. Therefore, it is crystal clear that the plaintiff is not the tenant of defendant Nos. 6 and 7 and as rightly held by the trial Court the plaintiff is projected by defendant Nos. 6 and 7 against defendant Nos. 1 to 5 in view of the dispute between them with regard to title over the schedule of property.

17. Apart from the above, as seen from the plaint, the case of the plaintiff is that in August, 2011 itself defendant Nos. 1 and 2 trespassed into the land in question and set up stone-cum-wire fencing and placed a board in the land by threatening him with dire consequences in spite of his protest and questioning the same defendant Nos. 6 and 7 filed criminal complaint against defendant Nos. 1 and 2 for criminal trespass and mischief and that thereafter also periodically defendant Nos. 1 and 2 have been sending groups of people to the shop and threatening him to close his shop. It is also his case that when defendant Nos. 1 and 2 came to the schedule of property and threatened him on 05-02-2012 at 9-00 am, he approached Malkajgiri Police Station and tendered complaint on 06-02-2012, but the Station House Officer refused to receive the same, as such, he was in the process of approaching the Criminal Court for taking cognizance of the complaint. However, on 06-02-2012 also as defendant Nos. 3, 4 and 5 came to the schedule property and threatened him, he initiated the present proceedings. Thus, when the case of the plaintiff himself is that in August, 2011 itself, defendant Nos. 1 and 2 trespassed into the land in question and set up stone-cum-wire fencing, thereafter the question of again their (defendant Nos. 1 and 2) sending groups of people to the plaintiff and threatening him to close his business does not arise. Further, if the plaintiff's case is taken to be true also, the question is why he did not approach the Court at that time itself and he failed to explain as to what prevented him from approaching the Court at that time and that he has not given the dates on which defendant Nos. 1 and 2 send the groups of people to him. Further, plaintiff's case is that on 05-02-2012 at 9-00 am, defendant Nos. 1 and 2 came to the schedule property and threatened him to go out of the land in question, for which he went to Malkajgiri Police Station on 06-02-2012 to tender the complaint against them which was of no use. Here also, it is not stated as to why there was a delay of one day in giving police complaint, if the same is true, and why he did not produce the complaint copy, which the police refused to receive, to show the alleged acts of defendant Nos. 1 and 2, which reveals that the same is false and baseless and concocted for the purpose of the present suit. Apart from that it is also not stated as to at what time on 06-02-2012, defendant Nos. 3, 4 and 5 came to the schedule of property and threatened him. There is also nothing on record to know whether he initiated any criminal proceedings against defendant Nos. 1 and 2 etc., as stated by him in paragraph No. 7 of the plaint, and if not why. These

circumstances also create any amount of doubt as to tenancy of the plaintiff over the schedule property and strengthen the case of defendant Nos. 1 to 5 that he is set up by defendant Nos. 6 and 7.

18. In the circumstances, viewed from any angle, as found hereinabove, it is apparent that there is a dispute with regard to ownership over the schedule of property between defendant Nos. 1 to 5 on one hand and defendant Nos. 6 and 7 on the other and the same cannot be decided in the present proceedings and even determination of the same also not helpful to the plaintiff since he failed to prove his tenancy over the schedule property and that as per Ex. B-4 letter of the Tahsildar, Malkajgiri Mandal, Ranga Reddy District to the Station House Officer, Malkajgiri Police Station dated 17-12-2011, he is a trespasser over plot No. 14 of schedule property and patta for the schedule property is in the name of the predecessor of defendant Nos. 1 to 4. Thus, there is no prima facie case or balance of convenience in favour of the plaintiff for granting temporary injunction and if the same is not granted no loss much less irreparable loss would be caused to the plaintiff.

19. For the aforesaid reasons, this Court is of the view that the trial Court rightly dismissed the impugned application refusing to grant temporary injunction in favour of the plaintiff for the schedule of property and the same does not warrant interference of this Court. The point is accordingly answered. Therefore, the Civil Miscellaneous Appeal is dismissed confirming the order dated 07-06-2012 in I.A. No. 559 of 2012 in O.S. No. 163 of 2012 passed by the learned II Additional District Judge, Ranga Reddy District, Hyderabad. The miscellaneous applications, if any, pending are closed. It is needless to mention here that the trial Court shall dispose of the main suit uninfluenced by the observations, if any, made in this judgment. No order as to costs.