
(1998) 10 AP CK 0040

In the Andhra Pradesh High Court

Case No : Second Appeal No. 412 of 1989

V. Vengama Naidu and Others

APPELLANT

Vs

Sree Bugga Mutt, Religious Institution

RESPONDENT

Date of Decision : 08-10-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (1999) 2 ALT 182

Hon'ble Judges : A. Hanumanthu, J

Bench : Single Bench

Advocate : P.S. Narayana, for the Appellant; K.V.N. Bhupal, for the Respondent

Final Decision : Dismissed

Judgement

A. Hanumanthu, J.—This appeal has been preferred against the judgment and decree dated 12-4-1989 passed in A.S. No. 61/80 on the file of Principal Subordinate Judge, Tirupati, reversing the judgment and decree dated 18-3-1980 passed in O.S. No. 466/73 on the file of the Additional District Munsif at Tirupati. The appellants herein are the respondents 8, 9, 10, 12 & 13 in A.S. No. 61/80. They are not the defendants in the suit O.S. No. 466/1973, but they were added as parties to the appeal A.S. No. 61/1980 as per the orders of the first appellate Court in C.M.P. No. 194/1983 dated 11-7-1986. The respondent herein is the plaintiff in the suit O.S. No. 466/1973. For the sake of convenience the parties are being referred to as they are arrayed in the suit.

2. The respondent-plaintiff filed the said suit against the first defendant Chennamchetty Venkatasubbaiah Chetty and the 2nd defendant Chennamchetty Nagarathnam Chetty who is the son of the 1st defendant. After the death of the 1st defendant his other legal heirs were added as defendants 3 to 7. The said suit was filed for declaration of plaintiff's title and for recovery of possession of the suit property and also for an order of mandatory injunction directing the defendants to remove the fencing and shed unlawfully put up in the suit property and for damages of Rs. 1,400/- and future damages at Rs. 100/- per annum

from the date of the suit till the date of possession. Plaintiff A Schedule suit property consists of 19 cents in old S. No. 261/2 and 11 cents in old S. No. 261/2 which are now in the present S. No. 314/2 within specific boundaries situated at Tirupati in Chittoor District. There are fruit bearing trees like mango, coconut, tamarind, dirasana etc., on the said land. Plaintiff B Schedule suit property is the value of the trees cut and taken away by the defendants 1 and 2.

3. The case of the plaintiff-Mutt is that it is a religious institution, that the suit property belonged to the plaintiff-mutt, that the Mahant of the plaintiff-mutt mortgaged the plaintiff schedule properties under a registered deed of usufructuary mortgage dated 25-4-1921 (Ex.A-1) in favour of Chennamcetty Nagaiah Chetty the father of the first defendant and delivered possession of the same. As per the terms of that usufructuary mortgage deed, the mortgagee was entitled to enjoy the usufruct of the hypotheca inclusive of the other properties described in the schedule in lieu of interest on the principal sum of Rs. 2,925/- and the mortgagor i.e., the plaintiff-mutt is entitled to redeem the mortgage after 30-5-1941. The mortgagee died leaving behind his only son the first defendant who succeeded to the estate of his father and also to the rights of usufructuary mortgage deed. As such the first defendant was in possession and enjoyment of the suit properties. The plaintiff-mutt filed O.S. No. 13/57 on the file of the District Munsif at Tirupati, against the first defendant herein for redemption of the said mortgage and for rendition of accounts and for possession. After contest a preliminary decree for redemption was passed on 29-9-1959 (Ex.A-2 is the printed copy of judgment and Ex.A-3 is the certified copy of the decree in O.S. No. 13/1957). The defendant in that suit preferred appeal A.S. No. 36/1960 on the file of the Sub-Court at Chittoor and the preliminary decree was confirmed on 22-7-1960 granting four months time for redemption. The plaintiff-mutt complied with the terms of the preliminary decree and thereupon final decree was passed for redemption. Ex.A-4 is the printed copy of the judgment in A.S. No. 36/1960 and Ex.A-5 is the certified copy of the suit register extract of O.S. No. 13/1957. Thereafter the plaintiff filed execution petition E.P. No. 355/1961 for delivery of possession of the mortgaged properties including the suit properties and possession was delivered by the Court and the plaintiff-mutt passed a receipt Ex.B-3 on 17-10-1961 for taking delivery of the property through Court and the delivery was recorded by the Court on 17-11-1961. Thereafter the plaintiff-mutt was in exclusive possession and enjoyment of the suit land. The usufruct of fruit bearing trees was also auctioned in the public auction and a dead mango tree in the suit schedule land was also sold in public auction on 9-3-1962. While the matters stood thus, defendants 1 and 2 colluded together and unlawfully trespassed and put up fencing all around on 1-11-1966 and they have also put up a shed in the midst of the garden. Then the Manager of the plaintiff-mutt made a complaint against the defendants for the offence u/s 447, IPC. After trial the defendants 1 and 2 were acquitted and the same was confirmed by the High Court in Criminal Appeal No. 240/1968. Ex.B-4 is the certified copy of the judgment in C.C. No. 3/1967 wherein the

defendants were acquitted. Ex.B-5 is the certified copy of the order in Criminal Appeal No. 240/1968. A registered notice dated 4-11-1996 was issued on behalf of the plaintiff calling upon the defendants to remove the fencing and the shed, but the defendants did not comply with the demand and they also unlawfully cut away the trees detailed in the plaintiff B schedule, hence the plaintiff-mutt filed the suit for the relief as stated supra.

4. The second defendant resisting the claim of the plaintiff filed a written statement contending that the suit has been filed with incorrect facts and disputed all the allegations made in the plaint. It is the positive case of the second defendant that one Raghunatha Dossji who was the then Mahant of the plaintiff-mutt gave a portion of the plaintiff schedule land on "Saswatha Kowl" to one K. Venkataswamy Naidu with effect from 9-10-1913 and put him in possession of the property and the said K. Venkataswamy Naidu executed a registered document Ex.B-1 in favour of the plaintiff-mutt. Likewise the said Mahant also gave some more portion of the suit land to Thayamma, the wife of K. Venkataswamy Naidu on "saswatha kowl" and she also executed a document dated 2-6-1960 in favour of the plaintiff-mutt and she was put in possession of the same and they have been paying annual rents, that the said Mahant gave some other lands on permanent lease to some other persons and they have been in possession of the lands given to them. The right of the Mahant was only to collect the annual rents payable by several persons to whom the permanent rights of occupancy have been given. The plaintiff-mutt was never in possession of the suit lands. The said Mahant mortgaged the right to collect annual rent from several ryots to the Mahant as per the usufructuary mortgage deed dated 25-4-1921 and under the said mortgage deed the mortgagee had to collect annual rents payable by several persons who are in actual possession with permanent right of occupancy. It is also the case of the 2nd defendant that K. Venkataswamy Naidu and his wife Thayamma sold the properties to the 1st defendant for a sum of Rs. 100/- under a sale deed dated 5-5-1937 (Ex.B-17) and put him in possession and the 1st defendant was in possession of the property till he sold the same to one Thota Subbaiah under registered sale deed dated 20-10-1945 (Ex.B-18) for a sum of Rs. 100/- and Thota Subbaiah had been in possession and enjoyment of the property till he sold the same to the 2nd defendant under a registered sale deed dated 6-11-1952, the original of Ex.B-26. Thus the 2nd defendant has been in continuous possession and enjoyment of the suit property and the plaintiff-mutt has no right or title except only the right to collect annual rent payable under the permanent tenancy and the plaintiff-mutt is not entitled to evict the defendants from the suit lands under the alleged redemption decree. It is also the case of the 2nd defendant that there was no actual delivery of the possession under the execution proceedings and it is a delivery on paper. The 2nd defendant after purchasing the suit land from Thota Subbaiah in the year 1952 erected a shed and fixed electric motor pumpset to the well and has improved the garden land and effected fencing. The defendants gave reply to notice on 6-11-1966 denying the plaintiff's claim

stating that the plaintiff's suit is not maintainable. On behalf of the 1st defendant a memo has been filed adopting the written statement of the 2nd defendant. The defendants 3 to 7 who are the legal representatives of the deceased 1st defendant remained ex parte.

5. The trial Court settled as many as eight issues for trial. During the course of the trial, on behalf of the plaintiff-mutt P.Ws. 1 and 2 were examined and Exs.A-1 to A-23 were marked. The 2nd defendant got himself examined as D.W.I and marked Exs.B-1 to B-26. On a consideration of the oral and documentary evidence placed before it the trial Court gave the following findings:

- (1) The right to collect rents from the permanent lessees alone was mortgaged under mortgage deed (Ex.A-1);
- (2) The plaintiff-mutt has got no right to collect rents over the suit property from the 2nd defendant who purchased the permanent tenancy occupancy rights over the suit property and he is in possession of the same;
- (3) The plaintiff-mutt was not put into possession of the suit property in pursuance of the decree passed in O.S. No. 13/1957;
- (4) The 2nd defendant has been in possession of the suit land by virtue of permanent occupancy right;
- (5) The plaintiff is not entitled to recover the possession of the suit lands from the 2nd defendant who has acquired permanent occupancy rights; and
- (6) The plaintiff is not entitled to the value of the trees cut and that he is also not entitled to mandatory injunction as prayed for.

Consequently, the trial Court dismissed the suit with costs. Aggrieved by the judgment and decree of the trial Court the plaintiff-mutt preferred A.S. No. 61/1980. The learned first appellate Judge on a reappraisal of the oral and documentary evidence on record reversed the findings of the trial Court by holding that the permanent lessees have impliedly surrendered their possession in favour of the mortgagee, that is, the father of the 1st defendant and the suit properties were delivered to the plaintiff-mutt in pursuance of the execution proceedings in E.P. No. 355/1961 and that the plaintiff-mutt was in possession and enjoyment of the suit properties and that the defendants trespassed into the suit lands and that the plaintiff-mutt has established its title to the suit properties and it is entitled for recovery of possession of the suit properties. Consequently, the lower appellate Court allowed the appeal with costs and decreed the suit for declaring the title of the plaintiff to the suit properties and for recovery of possession and for past and future damages as prayed for.

6. As earlier stated, the respondents 8 to 13 were added during the pendency of the appeal A.S. No. 61/1980. Aggrieved by the judgment and decree of the lower appellate Court the respondents 8, 9,10,12 and 13 in A.S. No. 61/1980 have come up with this second appeal. It is significant to note that the 2nd defendant

who was the 2nd respondent in appeal A.S. No. 61/1980 did not choose to prefer any appeal separately or joined the appellants in this appeal.

7. Heard learned Counsel on either side. Learned Counsel for the appellants took me through the impugned judgment and also that of the trial Court and the evidence on record. Learned Counsel for the appellants raised the following contentions;

(1) That the 1st defendant was not in possession of the suit properties as a mortgagee under mortgage deed (Ex.A-1) and under that deed what has been transferred to the mortgagee, i.e., the father of the 1st defendant, was only the right to collect the rents from the permanent lessees on behalf of the plaintiff-mutt and the lands continued to be in possession and enjoyment of the permanent lessees;

(2) That the delivery of the suit lands in the execution proceedings to the plaintiff-mutt was only symbolic and that no actual and physical delivery of the suit lands was effected to the plaintiff-mutt;

(3) That the 2nd defendant, by virtue of sale deed dated 6-11-1952 (Ex.B-26) has been in continuous possession and enjoyment of the suit properties and he was not dispossessed from the suit lands under the execution proceedings.

(4) That though the plaintiff-mutt is having title to the suit properties it is not entitled to recover possession of the suit lands unless the permanent tenancy is terminated under due process of law;

(5) That the civil Court has no jurisdiction to entertain the suit and the plaintiff's suit is barred by time.

8. Learned Counsel for the respondent-plaintiff on the other hand submits that though originally permanent lease was granted in favour of K. Venkataswamy Naidu and his wife Thayamma under Exs.B-1 and B-2, the said legal rights were purchased by D-1 under Exs.B-17 and B-23 with regard to the suit lands and D-1 sold the rights of the suit lands to Thota Subbaiah under Ex.B-18 dated 20-10-1945 and the said rights were once again purchased by the 2nd defendant who is no other than the son of the 1st defendant under sale deed dated 6-11-1952 (Ex.B-26) and thus by the date of the institution of the suit O.S. No. 13/1957 the 1st defendant had been in actual possession and enjoyment of the suit property as mortgagee and he was not collecting any rents from the other permanent lessees and he was also not paying rents to the plaintiff-mutt as he was entitled to adjust the rent towards the interest under the mortgage deed Ex.A-1. Learned Counsel for the respondent further, submits that the 1st defendant who contested the suit O.S. No. 13/1957 had categorically admitted both in his written statement as well as in his evidence in the Court that he was in possession of the suit property and he also claimed compensation for effecting repairs to the suit lands and the Court also directed the plaintiff-mutt to pay compensation to the 1st defendant for spending amount towards repairs to the

suit property. Thus there is a finding in the earlier suit O.S. No. 13/1957 that the 1st defendant alone was in possession and enjoyment of the suit property and there was no question of involvement of any permanent lease in the matter, that the actual and physical possession of the suit lands was delivered to the manager of the plaintiff-mutt in the execution proceedings and the plaintiff-mutt also auctioned the usufruct from the trees under Ex.A-10 to A-14 and it was the defendants 1 and 2 who trespassed into the suit land in the year 1966.

9. Having gone through the impugned judgment of the appellate Court and also that of the trial Court and the evidence on record, I am satisfied that there is much force in the contention raised by learned Counsel for the respondent-plaintiff. It is no doubt true that the then Mahant of the plaintiff-mutt had created permanent tenancy in favour of K. Venkataswamy Naidu and his wife Thayamma under Exs.B-1 and B-2 and also in respect of other lands. It is not disputed that the suit property relates to the permanent tenancy created under Ex.B-1 and B-2 in favour of K. Venkataswamy Naidu and his wife Thayamma. In Exs.B-1 and B-2 there is a clause empowering the permanent lessees to transfer their tenancy rights in favour of third parties but such transfers do not affect the rights of the plaintiff-mutt. It is also not disputed that the then Mahant of the plaintiff-mutt also executed a usufructuary mortgage deed dated 25-4-1921 in favour of the father or the 1st defendant. As seen from this document the mortgagee is entitled to receive the rent from permanent tenants of the plaintiff-mutt. It is significant to note that the permanent lessees with respect to the suit land had transferred their rights in favour of the 1st defendant under Exs.B-16, B-17 and A-23. Under the original of Ex.B-16 dated 1-12-1928 the sons of the original permanent lessee K. Venkataswamy Naidu and other permanent lessee Thayamma created a mortgage in favour of the 1st defendant and the possession of the land was also delivered to D-1 who was a minor represented by his guardian mother. Later on the said lessee sold the same under a deed dated 5-5-1937 (Ex.B-17) in favour of D-1. But D-1 has not obtained a registered sale deed. Under Ex.B-18 dated 20-10-1945 the 1st defendant alienated the suit property in favour of Subbaiah Chetty for a consideration of Rs. 100/- and under Ex.B-26 dated 6-11-1952 the said Subbaiah Chetty sold the same in favour of the 2nd defendant for a sum of Rs. 100/-. Therefore the leasehold rights created in favour of Thayamma and her husband under Exs.B-1 and B-2 were transferred to the 1st defendant under the original of Ex. A-23 dated 12-1-1955 and other sale deeds stated supra. Admittedly the father of the 1st defendant is the mortgagee under the mortgage deed Ex.A-1 and D-1 being the only son succeeded to his rights under Ex.A-1 and he became the mortgagee in succession to his father. Having come into possession of the suit properties by virtue of the sale in his favour the relationship between the plaintiff-mutt and that of D-1 because (sic. became) that of a mortgagor and mortgagee under Ex.B-1 and the relationship of landlord and tenant did not survive. Hence there is no substance in the contention of the learned Counsel for the appellants that the civil Court has no jurisdiction to entertain the suit. Further as observed by the

learned appellate Judge the 1st defendant has categorically admitted both in his written statement as well as in his evidence in O.S. No. 13/1957 that the suit lands were in his possession and enjoyment. Ex.A-2 is the printed copy of the judgment in O.S. No. 13/1957. Para 13 in that judgment relates to the averments in the written statement of the defendant in that suit. As seen from this the defendant states that the properties were in possession of perpetual lessees. But he has not given the names of those persons. Contrary to that he had also pleaded that he spent an amount of Rs. 2,000/- for improving the suit lands and that he also paid land revenue and those amounts have to be added to the principal amount before the preliminary decree is passed in favour of the plaintiff-mutt. Issue No. 7 in that suit relates to improvement said to have been made by the defendant in that suit. That issue was discussed in Para 14 of the judgment and ultimately it was held that the plaintiff-mutt was liable to pay the defendant a sum of Rs. 400/- towards costs for digging of the well and a sum of Rs. 309/- towards the land tax paid by the defendants and a sum of Rs. 265/- towards repairs effected to the bund. As seen from Ex.A-4 the printed copy of the judgment in A.S. No. 36/1960 on the file of the Sub-Court at Chittoor, the appellate Court also directed the plaintiff-mutt to pay a sum of Rs. 971/- towards charges to the defendant in that suit. Therefore, there is a categorical finding in the earlier suit that it was the 1st defendant that was in possession and enjoyment of the suit properties as the usufructuary mortgagee and the plaintiff-mutt was permitted to redeem the mortgage deed. Accordingly the mortgage debt was discharged and final decree was passed.

10. The next aspect to be considered is whether possession of the suit lands was taken by the plaintiff-mutt of the suit properties under Ex.B-1 in E.P. No. 355/1961 in O.S. No. 13/1957 and whether the plaintiff-mutt continued to be in possession and enjoyment of the same subsequently. As seen from the impugned judgment in A.S. No. 61/80 the learned appellate Judge on a consideration of the documents and records held that there was actual physical possession of the suit lands by the plaintiff-mutt under Ex.B-3 and that the plaintiff had been exercising rights of ownership by leasing out usufruct of fruit bearing trees in public auction under Exs.A-10 to A-14. The learned appellate Judge also held that the land which was in possession of the first defendant was taken by the plaintiff-mutt in pursuance of the final decree passed in O.S. No. 13/57. The learned appellate Judge on a reappraisal of the evidence on record gave such a finding of fact that the actual physical possession was delivered to the manager of the plaintiff-mutt under Ex.B-3. It is not open for this Court to interfere with the said finding of fact while exercising jurisdiction u/s 100, C.P.C. On a consideration of the evidence on record, I am also satisfied that the said finding of the lower appellate Court is based on the evidence on record.

11. Further, there is no question of limitation involved in this case. Admittedly, the mortgage deed was redeemed as per the final decree in O.S. No. 13/57 and the possession of property was taken by the plaintiff-mutt under Ex.B-3 in execution proceedings E.P. No. 355/1961. According to the plaintiff-mutt it was in

the year 1966 the defendants 1 and 2 colluded together and trespassed into the suit land and on the complaint made by the manager of the plaintiff-mutt criminal case in C.C. No. 3/1967 was filed. It is true that the said case ended in acquittal as benefit of doubt was given to the accused and consequently the said acquittal was confirmed by the High Court in Criminal Appeal No. 240/1968 as seen from the Exs.B-4 and B-5. The plaintiff-mutt filed the present suit on 27-4-1973 for declaration of title and for recovery of possession. Therefore, the plaintiff's suit for recovery of possession is not barred by time. As earlier stated, the second defendant did not choose to prefer an appeal against the impugned judgment of the lower appellate Court. There are no substantial questions of law involved in this appeal warranting interference by this Court. The judgment and decree of the lower appellate Court are not vitiated by any error or procedure or of law. The findings of the lower appellate Court cannot be said to be based on no evidence or that they are perverse. There are no justifiable grounds warranting interference by this Court u/s 100, C.P.C. Hence, the appeal is liable to be dismissed.

12. In the result, the appeal is dismissed with costs. The judgment and decree in A.S. No. 61/1980 are confirmed.