

(1971) 01 KAR CK 0009

In the Karnataka High Court

Case No : Civil Revision Petition No. 1988 of 1970

Venkat Reddy

APPELLANT

Vs

Budenna and Others

RESPONDENT

Date of Decision : 21-01-1971

Acts Referred:

Specific Relief Act, 1963 — Section 6

Citation : AIR 1971 Kar 308 : (1971) 1 MysLJ 317

Hon'ble Judges : M. Santhosh, J

Bench : Single Bench

Advocate : K.R. Karanth and K.R.D. Karanth, for the Appellant; H.B. Datar and N. Santhosh Hegde, for the Respondent

Final Decision : Dismissed

Judgement

M. Santhosh, J.—The petitioner before this Court is defendant-1 in the trial Court and the plaintiff is respondent-1 in this Court. The plaintiff instituted a suit for permanent injunction restraining the defendants from interfering with his possession of the suit schedule lands. The plaintiff applied for an order of temporary injunction in the trial Court. The trial Court did not grant its order of temporary injunction. In the appeal filed by the plaintiff, the learned Civil Judge, Raichur, granted an order of temporary injunction in favour of the plaintiff. In this revision, the petitioner (defendant-1) challenges the said order passed by the learned Civil Judge.

2. The plaintiff's case is that the suit properties are owned by Sri Raghavendraswami Mutt and that he has been a tenant of the suit schedule properties for a number of years. He continued to be in possession of the lands even after March 1970 and had raised crops on the suit schedule lands. As defendant-1 began to interfere with his possession, he filed a suit for permanent, injunction.

3. The case of defendant-1 was that his mother Gangamma was a protected

tenant of the suit schedule lands since 1950. After some years the suit lands were cultivated by Cholappa and Devendrappa for some time. Defendant-1 admitted that the plaintiff cultivated the suit lands as a lessee for the years 1968-69 and 1969-70. But the case of the first defendant was that after Ugadi in 1970, the suit lands were returned to him and the Mutt gave him the suit lands on lease for the year 1970-71. Defendant-1 paid an advance of Rupees 800/- to the Mutt and he has produced a receipt given by the Mutt. Defendant 1's case is that after March 1970, he cultivated the suit lands and raised crops thereon and thereafter, the plaintiff began interfering with his possession. According to defendant 1 after March, 1970, he is lawfully in possession of the suit schedule lands and, after March 1970 the plaintiff was never in possession of the suit lands and the plaintiff is not entitled to get an order of temporary injunction,

4. Sri K. R. Karanth, learned counsel appearing on behalf of the petitioner (defendant-1) has contended that from the material placed by defendant-1 before the Court, it is clear that the suit lands have been leased out to defendant-1 for the year 1970-71. He argues that the receipt dated 5-6-1970, shows that defendant-1 paid an advance rent of Rs. 800/- to the Mutt and took the suit lands on lease. Defendant-1 has also produced a letter dated 30-7-1970 written by the Legal Adviser of the Mutt Sri Narayanarao, which clearly shows that the Mutt had leased out the suit lands to defendant-1 for the year 1970-71. The fact that defendant-1 was in possession of the suit lands after March 1970 is proved by the various affidavits filed by the neighbouring land-owners, which defendant-1 had produced. The trial Court accepted the affidavits produced on behalf of defendant-1 and held that the plaintiff was not in possession of the suit schedule properties. It is argued that as the plaintiff was undoubtedly not in possession of the suit lands, he should have brought a suit u/s 6 of the Specific Relief Act praying that he may be granted possession of the suit schedule properties.

It is also argued that in a suit for permanent injunction it is quite unnecessary for defendant-1 to prove that he is a tenant and it is sufficient if he proves that he was in possession of the suit lands. Reliance is placed on a decision of this Court in *Thimme Gowda v. Shivananda*, reported as Item No. 174 Short Notes dated 16-4-1970 in the Mys LJ, Sri Karanth also argued that the lower appellate Court exceeded its jurisdiction in interfering with the discretionary order of the trial Court refusing to grant an order of temporary injunction prayed for by the plaintiff. The lower appellate Court approached the case as a trial Court and unless it is shown that the order of the trial Court is unreasonable or capricious, the appellate Court would have no jurisdiction to interfere with the order of the trial Court. In support of the said contention, reliance is placed on the decisions of this Court reported in (1965) 1 Mys LJ 370 : AIR 1965 Mys 310 : (1968) 1 Mys LJ 552 and (1969) 17 Law Rep 512 (Mys). As the lower appellate Court exceeded its jurisdiction in interfering with the discretionary order of the trial Court, it is argued that this is a fit case calling for interference in revision.

5. Sri H. B. Datar, learned counsel appearing on behalf of Respondent-1 (plaintiff) has supported the order of the lower appellate Court. Sri Datar argues that the trial Court erred in relying on a copy of letter dated 30-7-1970 said to have been written by Sri V. L. Narayana Rao. Legal Adviser of the Mutt addressed to the plaintiff. He argues that no affidavit by Sri Narayana Rao has been produced to vouch for the truth of the contents of the said letter. There is no material before the court to show that this letter was ever received by the plaintiff as no certificate of posting or acknowledgment of the plaintiff for having received the same has been produced in Court. It is stressed that this letter does not indicate that the plaintiff had handed over possession of the suit schedule properties to the Mutt. It is also contended that the receipt dated 6-6-1970 produced by defendant-1 does not indicate that the said amount of Rupees 800/- was paid towards the suit lands. It is stressed by Sri Datar that the Trial Court completely failed to consider the important question whether the plaintiff had been dispossessed from the suit lands. Defendant-1 himself had admitted that the plaintiff was cultivating the suit lands as a tenant for the years 1968-69 and 1969-70; but no material has been produced by defendant-1 to show that the plaintiff was either dispossessed or that the plaintiff handed over possession of the suit lands voluntarily. The mere fact that the lease had been given to another person does not amount to dispossession of the plaintiff. A tenant can be evicted only by due process of law. It is argued that even a trespasser can be evicted only by due process of law. Strong reliance is placed on a Bench decision of this Court rendered in W. P. No. 740 of 1966 (Mys).

It is further argued that it is open to the appellate Court to interfere with an order of temporary injunction if the trial Court failed to consider important and relevant material before it. Shri Datar has relied on a decision of this Court rendered in C. R. P. No. 1034 of 1970 reported as Item 202 in 1969 Mysore Law Journal Short Notes. It is also contended by Sri Datar that the affidavits produced on behalf of defendant-1 to show that he was in possession of the suit lands are of interested persons; they are all stereotyped affidavits stating that the plaintiff at the relevant time was staying in Ajanta Hotel at Raichur, though the persons who had sworn to the affidavits are all residents of Timmapur village and they have not stated that they had been to Raichur. It is argued that because of this, the lower appellate Court has rightly chosen not to act on the affidavits produced by defendant-1. There is no defect in the order of the lower appellate Court and the learned Judge was, for the reasons mentioned above, entitled to interfere with the order of the trial Court and this is not a fit case calling for interference by this Court.

6. The law as to when the Court is justified in granting an order of temporary injunction is well settled. Similarly, when an appellate Court is justified in interfering with the discretionary order of the trial Court, is also well settled by a number of decisions of this Court and also of the Supreme Court As has been pointed out by this Court in *Lakshminarasimhiah v. Yalakki Gowda* (1965) 1 Mys LJ 370 : AIR 1965 Mys 310, the appellate Court Is called upon to see whether

the trial Judge has exercised properly the discretion which he undoubtedly possesses. The appellate Court is not to approach the case as if it were the trial Judge. The question which the appellate Court has to consider is whether or not the trial Judge has properly exercised his judicial discretion. Again, in *Sakharam Nana Saheb Patil v. Vithal Siddappa Chalawadi* reported in (1969) 17 L R. 512 (Mys), this Court has Pointed out that granting or refusing a temporary injunction is within the discretion of the trial Court and that it is a matter of judicial discretion; if the trial Court had rightly appreciated the facts and applied to those facts the well-known principles laid down for granting injunction, the appellate Court is not competent to interfere with the discretion of the trial Court. The mere fact that the appellate Court inclined to take a different view on the materials placed before the Court, is not a ground to interfere with the discretionary order of the trial Court. In the above said decision, this Court has quoted the observations made by the Supreme Court in *The Printers (Mysore) Private Ltd. Vs. Pothan Joseph*, . Their Lordships of the Supreme Court in the said decision have observed as follows:--

"As is often said, it is ordinarily not open to the appellate Court to substitute its own exercise of discretion for that of the trial Judge; but if it appears to the appellate Court that in exercising its discretion the trial Court has acted unreasonably or capriciously or has ignored relevant facts and has adopted an unjudicial approach then it would certainly be open to the appellate Court and in many cases it may be its duty to interfere with the trial Court's exercise of discretion. In cases falling under this class the exercise of discretion by the trial Court is in law wrongful and improper and that would certainly justify and call for interference from the appellate Court. These principles are well established....."

Again, the observations made by the Supreme Court in *Uttar Pradesh Co-operative Federation Ltd. Vs. Sunder Brothers of Delhi*, are emoted by this Court. They are as follows :--

"If the discretion has been exercised by the trial Court reasonably and in a judicial manner the fact that the appellate Court would have taken a different view may not justify interference with the trial Court's exercise of discretion. As is often said, it is ordinarily not open to the appellate Court to substitute its own exercise of discretion for that of the trial Judge; but if it appears to the appellate Court that in exercising its discretion the trial Court has acted unreasonably or capriciously or has ignored relevant facts, then it would certainly be open to the appellate Court to interfere with the trial Court's exercise of discretion. This principle is well established."

It is clear from the observations of their Lordships of the Supreme Court quoted above that if the trial Court has ignored relevant facts, then it would be open to the appellate Court to interfere with the trial Court's exercise of discretion. The question for consideration in this case is whether the trial Court has ignored relevant facts in arriving at its conclusion.

7. In the instant case, as has already been pointed out, it has been admitted by defendant-1 that the plaintiff was in possession and cultivation of the suit lands as lessee for the years 1968-69 and 1969-70. The important question for consideration in a case like this is, whether the plaintiff has been dispossessed from the suit lands wherein he continued as a lessee from the years 1968 to 1970.

8. As has been pointed out by Sri Datar, the rent receipt dated 6-6-1970 produced by defendant-1 does not indicate that the advance rent was paid by him towards the suit schedule lands. The copy of the letter dated 30-7-1970 said to have been written by Sri Narayana Rao, Legal Adviser of the Mutt, does not indicate that the plaintiff had either been dispossessed or had handed over possession of the suit schedule lands. On the other hand, this letter indicates that the plaintiff was not prepared to hand over possession of the suit schedule lands. This letter states as follows :--

"I understand that there is going to be a scuffle in regard to the possession of the land and its cultivation for 1970-71..."

This observation prima facie shows that the plaintiff was not willing to hand over possession of the suit schedule properties. It is admitted that the plaintiff was in possession of the suit schedule lands and was cultivating them as tenant for the years 1968 to 1970. Unless there is some material to show that the plaintiff has been dispossessed or that he voluntarily surrendered possession, the necessary inference is that the plaintiff continued to be in possession of the suit lands. Once the plaintiff was a tenant, he could not be evicted from the suit lands unless it be by due process of law. A Bench of this Court in W. P. No. 740/ 1966, has laid down that even a tenant whose term of lease has expired could be evicted only by having recourse to the machinery of law. In a batch of 79 writ petitions filed by tenants of inam lands belonging to religious institutions managed by the State Government, their Lordships Govinda Bhat and Sadananda Swamy, JJ. at page 29, observed as follows :--

"It was lastly urged that the petitioners cannot be evicted except in accordance with law and that respondent-3 cannot evict them by issue of notices forbidding the petitioners from entering on their lands. The learned Advocate General appearing for the State submitted that the State will evict the petitioners if they failed to surrender pursuant to the notices already issued by having recourse to and in accordance with law. Even a trespasser on land cannot be evicted except in accordance with law. The petitioners who were tenants and whose term has expired according to the respondents could be evicted only by having recourse to the machinery of law. By merely issuing notices that the petitioners shall not enter in the lands they cannot be evicted. Until the petitioners are evicted in accordance with law, their possession of the lands cannot be disturbed....."

9. From what has been stated above, it is clear that the plaintiff in the instant case could be evicted from the suit schedule lands, even though the term of the

lease had expired, only in accordance with law. This relevant and important aspect of the case, the trial Court has totally failed to consider. The lower appellate Court in considering the question, in paragraph 8 of its order, has observed as follows :--

"Admittedly the plaintiff was a tenant, validly or otherwise, for the years 1968 to 1970. The letter dated 30-7-1970 and the pahanies show not only his possession but that he had been admitted to be a tenant in possession . It is significant that the first defendant claims possession shortly after the year 1969-70. He has not produced any material to show, if the tenancy of the plaintiff had terminated and possession had been taken from him either by consent or by due process of law. No affidavit of the landlord is filed which would have thrown light on the nature of the tenancy of the plaintiff, and that possession had been taken from him and fresh lease, if permissible created in favour of the first defendant. The first defendant who claims to get into possession when the plaintiff was already a tenant on land has to show it to maintain that he lawfully got into possession of it. The creation of lease in favour of the first defendant appears to be a unilateral act of both the landlord and the first defendant to which the plaintiff was not a party....."

As the trial Court has in my opinion ignored relevant facts which are important and materially affect the decision in the case, the lower appellate Court was justified in interfering with the order passed by the trial Court.

10. Nothing stated herein will preclude the parties from leading evidence in support of their contentions or the trial Court from coming to its own conclusion on the matters referred to above, uninfluenced by what has been said by this Court.

11. In the result, for the reasons mentioned above, this is not a fit case calling for interference with the order of the lower appellate Court. The revision petition is dismissed. In the circumstances of the case, there will be no order as to costs.