

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

-
C.R.P.No.4670 of 2014
-

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.07.11.2014 in CMA.No.2 of 2014 of the Judge, Family Court-cum-VI Additional District Judge, Kadapa confirming the order dt.18.07.2013 in IA.No.2445 of 2011 in OS.No.478 of 2011 of the Senior Civil Judge, Kadapa.

2. The parties will be referred to as per their array in the suit.
3. The petitioners herein are defendants in the above suit.
4. The respondent/plaintiff filed the above suit for a perpetual injunction restraining petitioners/defendants from interfering in any manner with the peaceful possession and enjoyment of the plaintiff over the plaint schedule properties and for costs.
5. Along with the suit, the plaintiff filed IA.No.2445 of 2011 under Order 39 Rule 1 CPC for grant of interim injunction restraining the defendants from interfering with it's peaceful possession and enjoyment of the plaint schedule properties.
6. The plaint 'A' schedule property consists of an extent of Acs.25.00 in Sy.No.282 and an extent of Acs.75.00 acres in Sy.No.283 of Hill Poramboke in Gondipalli Village; and plaint 'B' schedule property is a grinding mill situated in Mugguralla Krishnappa compound near Railway Station, Kadapa.

7. The case of plaintiff is that it is a registered Firm and plaint 'A' and 'B' schedule properties originally belong to M/s Krishnappa Asbestos and Barytes Private Limited (for short 'M/s.K.A.B. Pvt. Ltd.), Kadapa wherein families of Late A. Venkata Narasappa (for short, 'AVN family') and the family of late A. Ranganatham (for short, 'AR family') were shareholders; that AVN and AR are blood brothers; there were family disputes between the two families; mediation was held and they entered into an agreement dt.16.09.1987; under that agreement, according to plaintiff, the family of AVN agreed to give plaint 'A' schedule property and to transfer plaint 'A' schedule property in the name of plaintiff firm and the AVN family also agreed to give away the grinding mill situated in plaint 'B' schedule property to plaintiff; that before this agreement, a sketch was prepared demarcating the plaint 'A' schedule property on 08.12.1986 with the assistance of a Surveyor on which the 1st defendant and the present Managing Partner of plaintiff signed; that plaint 'A' schedule property was demarcated from Sy.No.275 as per the agreement and a resolution was passed by M/s. K.A.B. Pvt. Ltd. on 29.04.1988; that the Revenue Department after going through the family agreement and the resolution of M/s.K.A.B. Pvt. Ltd. suitably amended the Revenue Records showing that plaint 'A' schedule property belongs to plaintiff; that the plaintiff then made an application for grant of lease for mining of barytes in plaint 'A' schedule property to the Additional Director of Mines and Geology, Yerraguntla; that the Revenue Department also recommended for granting of mining lease in the name of plaintiff after issuance 'No Objection Certificate' and on obtaining 'No Objection Certificate' from the Panchayat of Gondipalli; and that

the grinding mill was also handed over to plaintiff in 1988 by the then Managing Director of M/s.K.A.B. Pvt. Ltd., Kadapa. The plaintiff contended that it is in possession and enjoyment of both 'A' and 'B' schedule properties from 1988; that respondents, who are brothers and sons of AR, were causing problems to plaintiff and were trying to change the permanent physical features and boundaries and also ridges of plaintiff schedule properties with a malafide intention to occupy the same and to dispossess the plaintiff ; they were also trying to break open the locks of the mill located in 'B' schedule property; and therefore, they should be restrained from interfering with the peaceful possession and enjoyment of plaintiff of the plaintiff schedule properties.

8. The 1st defendant filed a counter-affidavit in the I.A denying the plaintiff allegations that plaintiff 'A' and 'B' schedule properties belong to plaintiff; that although the existence of family disputes between families of AVN and AR in relation to entering into agreements between them is admitted to some extent, it is alleged that the said agreements have nothing to do with the properties of M/s.K.A.B. Pvt. Ltd.; that the agreements have no legal sanctity and the resolution dt.29.04.1988 is a self-serving document got up by defendants in collusion for the purpose of the case; that although 1st defendant is a Director, his name is not mentioned in the resolution and no prior notice was sent to 1st defendant before the meeting of the Board of Directors, thereby violating Section 286 of the Companies Act. They alleged that that property of a Company cannot be alienated to anybody without prior permission of the Company Law Board under Section 17 of Companies Act, 1956; and therefore, the Board of Directors had no right to alienate or dispose of the

property of the Company without conducting a general body meeting. He alleged that the Revenue Department officials were hand-in-glove with plaintiff and without prior notice to 1st defendant, who is also a Director of Works to M/s.K.A.B. Pvt. Ltd., they have colluded with plaintiff; that 1st respondent filed an appeal before Revenue Divisional Officer, Jammalamadugu questioning demarcation of the sub-division of land belonging to M/s.K.A.B. Pvt. Ltd. and the said appeal is pending enquiry before the Revenue Divisional Officer, Jammalamadugu; the Department of Mines and Geology had refused to grant mining lease to plaintiff; that fact is stated in a counter-affidavit in WP.No.29344 of 2011, which was filed by 1st defendant against plaintiff and others pending before this court; and that plaintiff had not come to the court with clean hands and is not entitled to seek any relief.

9. In the said IA., the plaintiff marked Exs.P.1 to P.12 and the 1st defendant marked Exs.R.1 to R.7.
10. By order dt.18.07.2013, the court below allowed IA.No.2445 of 2011. It held that Ex.P.2 is an unregistered agreement dt.16.09.1987 entered between families of AVN and AR to transfer 100 acres of land demarcated in Sy.No.275 of Gundipalli mining lease area in barytes division in favour of plaintiff and that the said agreement was signed by Members of both families; that Ex.P.3, proceedings of the Board of Directors of M/s K.A.B. Pvt Ltd shows that pursuant to the agreement dt.16.09.1987, on 29.04.1988, a resolution was passed for allotment of 100 acres of mining land to AR family in the lease-hold area in Sy.No.275; that Ex.P.1 sketch dt.08.12.1986, shows that in Sy.No.275, 100

acres of land was earmarked for transfer to plaintiff; Ex.R.3 shows that on application dt.23.11.2009 made by plaintiff, the Tahsildar Vemula, within whose jurisdiction the said 100 acres of land is situated, proposed to separate the said extent from out of Sy.No.275 and the Assistant Director, District Survey and Land Records issued proceedings for formation of a new Survey Numbers, viz., 282 and 283 out of Sy.No.275; and it also shows 25 acres of land in Sy.No.275 was separated and a new Sy.No.282 was given to it, while 75 acres of land from Sy.No.275 was separated which was given new Sy.No.283. It also noted that Ex.R.3 shows that a notice under Section 6(1) of the Madras Survey and Boundaries Act was issued calling for objections for sub-division of the land; Ex.P.5 Adangal extract for A schedule property shows that in the Village Account No.3 also an extent of 25 acres of land in Sy.No.282 and 75 acres of land in Sy.No.283 were shown to be in possession of the plaintiff; and that M/s.K.A.B. Pvt. Ltd. by a resolution dt.29.04.1988 had transferred 100 acres of land in Sy.No.275 to plaintiff pursuant to the agreement dt.16.09.1987. It held that the contention of defendants about the violation of provisions of the Company Law are to be considered after evidence is let in; that even though the application for mining lease made by plaintiff was recommended for rejection by the authorities of the Mining department, it would not lead to any conclusion that plaintiff is not in possession of the said land in view of Ex.P.5, which showed that the extent of 100 acres of land is in possession of the plaintiff. It therefore held that since plaintiff is in possession of the land as per Ex.P.5, it is entitled to an interim injunction.

11. Questioning the same, the defendants/petitioners herein filed

CMA.No.2 of 2014 before the Judge, Family Court-cum- VI Additional District Judge, Kadapa.

12. By order dt.07.11.2014, the said appeal was dismissed. The appellate court held that Ex.P.2 agreement dt.16.09.1987 between both families mentioned about transfer of 100 acres demarcated in Sy.No.275 in favour of plaintiff; this indicated that demarcation of 100 acres is accepted by both parties under Ex.P.2; thereafter the AR family relinquished their share in M/s.K.A.B. Pvt. Ltd. in favour of AVN family; that as per resolution Ex.P3 dt.29.04.1988 passed by M/s.K.A.B. Pvt. Ltd. transfer of 100 acres was made in favour of the AR family; Ex.P.1 sketch was prepared for sub-division of the property to which 1st defendant is also a party; these proceedings took place between 1986 and 1988 and they were not challenged by defendants at that time and were only challenged in 2011 and they are pending before the Revenue Divisional Office, Jammalamadugu; Ex.P.5 shows possession of 100 acres of land by plaintiff; and Ex.P.6 was issued by the Tahsildar, Vemula after inspecting the land and observing that portion of the land was granted and allotted for mining lease in favour of plaintiff and there were mining pits in the land dug by plaintiff. It also noticed that Tahsildar, Vemula had issued a notice demanding dues from M/s.K.A.B. Pvt. Ltd. for an extent of 605.43 acres and the District Collector had issued 'No Objection Certificate' in favour of plaintiff with regard to this extent for a period of twenty years; that even if the Assistant Director, Mines and Geology, Yerraguntla had recommended rejection of mining lease to plaintiff, the said recommendation is pending with the Director, Mines and Geology, Hyderabad and the steps he had taken subsequently

were not placed before the court. It therefore held that the documents produced by the plaintiff clearly established *prima facie* case and balance of convenience in it's favour and since the plaintiff could prove it's exclusive possession of 100 acres, the plaintiff is entitled for an injunction.

13. Challenging the same, the Revision is filed.
14. Heard Sri S.S. Bhatt, counsel for petitioners and Sri P.Veera Reddy, Senior Counsel for respondent.
15. The counsel for petitioners herein/defendants contended that orders passed by the Courts below are erroneous; that the entire basis of the case of plaintiff/respondent is the demarcation of land of 25 acres and 75 acres from Sy.No.275 and the formation of a new Sy.No.282 of extent 25 acres and a new Sy.No.283 of an extent of 75 acres out of the total extent of 705 acres in Sy.No.275; that this demarcation itself is invalid; that the Revenue Divisional Officer, Jammalamadugu had addressed proceedings Ref.A/4509/2014, dt.28.10.2014 to the Joint Collector, Y.S.R. District, Kadapa wherein it was stated that there is no permanent incorporation of the demarcation in the permanent records maintained in the Office of the Tahsildar, Vemula in regard to Sy.No.275 and formation of new Survey Nos.282 and 283; and recently, proceedings in Ref.A/4509/2014, dt.05-12-2014 were issued by the Revenue Divisional Officer, Jammalamadugu, declaring that the sub division carried out from Sy. No.275 of extent Ac.705.23 is not in force and has no validity. He therefore contended that the Revision be allowed by setting aside the orders of Courts below.

Alternatively he contended that the matter ought to be remitted to the trial court to consider the effect of the proceedings in Ref.A/4509/2014 dt.05-12-2014 of the Revenue Divisional Officer, Jammalamadugu , which was passed pending revision.

16. The learned counsel for the respondents on the other hand contended that both the Courts below, after appreciating evidence on record, have concurrently held that the respondents/plaintiffs are in possession of the plaint schedule properties on the date of filing of the suit; that the possession of the plaintiffs over the subject land is established by Ex.P-5 adangal extract; that by executing Ex.P-2 agreement, the family of AVN had agreed to give up the plaint A and B schedule property and to transfer it in the name of the plaintiff ; this agreement was signed by the father of defendants as well; Ex.P-1 plan showing the A schedule property in the name of the plaintiff firm was signed by 1st defendant and the present managing partner of the plaintiff firm on 08-12-1986 after the said area was demarcated with the assistance of the surveyors; similar sketch Ex.P-11 was prepared for the plaint B schedule property also; resolution Ex.P-3 was passed by the plaintiff firm on 29-04-1988 for allotment of Ac.100.00 cts of mining land to AR and family; in spite of all this material evidence, the defendants, in collusion with the officials of the revenue department, are harassing the plaintiff and are trying to dispossess them from the plaint schedule properties. He further contended that the proceedings Ref.A/4509/2014 dt.05-12-2014 of the Revenue Divisional Officer, Jammalamadugu canceling the demarcation of Ac.100.00 cts of land from old Sy. No.275 is contrary to law, and in any event the entries in Ex.P-5 adangal

show the possession of the plaintiff-firm in respect of the plaintiff A schedule properties on the date of filing of the suit and this Order does not alter the said fact. He therefore prayed that the Revision Petition may be dismissed.

17. I have noted the submissions of both sides.
18. According to the plaintiff, there was an agreement Ex.P-2 dt.16-09-1987 between the families of AVN and AR who were both shareholders in M/s.KAB Private Limited, Kadapa to whom the plaintiff A & B schedule properties belong, that the family of AVN would give up both A & B schedule properties to the plaintiff firm. This agreement was admittedly signed by members of the defendants' family. The existence of this agreement is not disputed by the defendants although they contend that this agreement related to certain personal disputes among the family members and was in no way connected with the properties of the said firm. In my opinion, prima-facie, this agreement binds the defendants.
19. According to plaintiff, on the advice of elders, Ex.P-1 sketch was prepared showing A schedule property in the name of the plaintiff firm on 08-12-1986 which was also signed by the 1st defendant. They alleged that out of Ac.705.43 cts in Sy. No.275, an extent of Ac.100.00 cts were demarcated with the assistance of the surveyors and a Board resolution Ex.P-3 dt.29-04-1988 was also passed. According to the plaintiff, the Revenue department made entries in revenue records showing that A schedule property belongs to the plaintiff firm and is in its possession. Ex.P-5 adangal is filed by the plaintiff in support of this fact.

20. That apart Exs.P-1 and P-11 sketches filed by the plaintiff showing the demarcation of the A and B schedule property is signed by 1st defendant. Therefore demarcation of the A and B schedule property cannot be prima facie disputed by the defendants. Ex.P-6 are the inspection notes of the Tahsildar, Vemula which also record that he observed that some land was granted and allotted in favour of the plaintiff for a mining lease and mining pits in the land were dug by the plaintiff. Ex.P-8 was a demand notice for payment of cist issued by the Tahsildar, Vemula to plaintiff. If the plaintiff was not in possession of these properties, such a notice would not have been issued to him. That apart Ex.P-9 are a No Objection Certificate issued by the District Collector and the Additional Director of Mines and Geology, Yerragunta with regard to grant of mining lease of varieties in favour of plaintiff for 20 years in plaint A schedule property. All these documents prima-facie show possession of plaintiff over A and B schedule properties.

21. No doubt in the counter filed by the defendants the validity of the resolution passed by the firm M/s.KAB Private Limited is disputed. This issue has to be decided after trial in the suit.

22. According to defendants, the demarcation of the A schedule property allegedly made in 1986 has been recently set aside by proceedings Ref.A/4509/2014 dt.05-12-2014 of the Revenue Divisional Officer, Jammalamadugu. This is an event after filing of the suit. This order appears to have been passed under the provisions of the AP Survey and Boundaries Act, 1925. However, Ex.P-5 adangal proved the possession of the plaintiff of A schedule property on the date of filing of the suit. There is

no order under the provisions of the AP Records of Rights in Land and Pattedar Passbooks Act, 1971 correcting Ex.P-5 and removing the name of the plaintiff from the possession column in respect of the A schedule property as on date. The said entry in Ex.P-5 therefore continues showing the possession of the plaintiff over the A schedule property. So as on the date of filing of the suit, the plaintiff is in possession of the said property.

23. In my opinion, *prima facie*, the plaintiff was thus able to establish it's possession over the plaint A and B schedule properties by this material and such possession appears to be prior to the date of filing of the suit.
24. Merely because the Assistant Director of Mines and Geology, Yerragunta in Ex.R-7 recommended for rejection of mining lease to the plaintiff, it cannot be said that the plaintiff is not in possession of the plaint schedule properties on the date of filing of the suit.
25. I am therefore of the opinion that both the Courts below have correctly appreciated the evidence on record and held in favour of respondent/plaintiff. The concurrent findings of fact of the Courts below cannot be said to be perverse or vitiated by error in the exercise of jurisdiction vested in the Courts below, warranting interference by this Court under Article 227 of the Constitution of India.
26. Therefore, I do not find any merit in the Revision Petition. It is accordingly dismissed. No costs.
27. It is made clear that observations made herein are only for the purpose of deciding this Revision, are only *prima facie* and the

Court below is directed to decide the suit uninfluenced by this order or the orders of the Courts below.

28. Miscellaneous applications, pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 07-04-2015

Ndr/*