

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Miscellaneous Appeal No.1039 of 2014

JUDGMENT:

The unsuccessful plaintiffs had preferred this appeal under Order XLIII Rule 1 of the Code of Civil Procedure, 1908 ('the Code', for brevity) assailing the decree and decretal order dated 21.07.2014 of the learned Senior Civil Judge, Narayanpet of Mahabubnagar District passed in I.A.No.477 of 2013 in O.S.No.78 of 2013 filed under Order XXXIX Rules 1 and 2 read with Section 151 of the Code to restrain the defendants from interfering with the possession of the plaintiffs over Ac.13.21 guntas of land in Sy.No.125 of Tekulapalli village of Makthal Mandal, more fully described in the schedule annexed to the plaint and the petition.

2. I have heard the submissions of Sri N. Ashok Kumar, the learned counsel for the appellants/plaintiffs ('the plaintiffs', for brevity) and Sri K.G.Krishna Murthy, the learned senior counsel appearing for the contesting respondents/defendants ('the defendants', for brevity).

3. The facts leading to the filing of the present appeal by the plaintiff may be stated, in brief, as follows: "The plaintiffs had brought the suit against the defendants for declaration of title and injunction in respect of the suit schedule property. Along with the suit, the plaintiffs had also filed the interlocutory application in IA.No.477 of 2013 for grant of a temporary injunction. The respondents/defendants 1 to 3, 5, 6 and 9 to 11 had remained *ex parte*. The respondents/defendants 4, 7 and 8 having appeared before the trial Court had not filed their counter; hence, they were also set *ex parte*. During the course of hearing, exhibits P1 to P55 were marked on the side of the plaintiffs. On merits, the trial Court had dismissed the application of the plaintiffs. Therefore, the plaintiffs are before this court."

4. The 7th defendant/7th respondent had died during the pendency of the

appeal and his legal representatives were brought on record as respondents 12 to 17 in this appeal.

5. The learned counsel for the plaintiffs would contend as follows:

None of the defendants had contested the matter and the averments in the plaint and the affidavit filed in support of the petition had remained untraversed. The plaintiffs had produced 55 documents and exhibited the same. All the said documents sufficiently established the case of the plaintiffs that they are in peaceful possession and enjoyment of the suit schedule land and that they are also paying land revenue and are obtaining receipts. The trial court did not take into consideration the copies of the pahanies under exhibits P33 to 54, exhibit P55, the valuation certificate, the contents of exhibit P16-the order dated 07.12.2013 and also the exhibits P17 to P31-the revenue tax receipts, which cumulatively established the lawful and peaceful possession of the plaintiffs over the suit schedule property, which is not denied by the defendants by contesting the matter. The trial court ought to have seen that the defendants have no interest either in the property or in opposing the claim of the plaintiffs. The trial Court had ignored exhibits P1 to P55 for erroneous and no valid reasons. The approach of the trial court is mechanical and against the settled principles of law. When the defendants did not resist the application for temporary injunction, the trial court ought not to have dismissed the application filed by the plaintiffs and ought to have allowed the said application and granted temporary injunction as prayed for by accepting the case of the plaintiffs that they are the lawful possessors in peaceful possession and enjoyment of the plaint schedule property.

6. On the other hand, the learned senior counsel for the contesting respondents/defendants had contended as follows:

‘Not contradicting the case of the plaintiffs by filing a counter pleading does not amount to admission of the case pleaded by the plaintiffs. Even though none of the defendants had contested the application for temporary injunction, it is for the plaintiffs to establish lawful possession as on the date of the suit and at all relevant times and also the cardinal principles of law, namely, *prima facie* case, the balance of convenience and irreparable injury

that would ensue to the plaintiffs if no injunction is granted. The plaintiffs admittedly were unsuccessful in the previous rounds of litigations wherein findings were recorded that the plaintiffs were not in possession. Therefore, while dismissing the earlier proceedings initiated by the plaintiffs, categorical observations were made that it is open to the plaintiffs to file a suit for declaration of title and seek consequential relief. In the civil proceedings and also in the proceedings before the revenue authorities, the plaintiffs were unsuccessful. The trial court had considered all the documents filed by the plaintiffs and had come to a conclusion that in view of the findings in the earlier proceedings, the plaintiffs are not entitled to the equitable relief of temporary injunction. The trial Court had further held that the plaintiffs had only filed land revenue receipts and pahanies upto the year 1996-97 and exhibit P53 pahani for the year 2008-2009 and that the plaintiffs had failed to file any documents to show the possession of the plaintiffs over the suit land as on the date of the filing of the suit in the year 2013 or at any time just before the filing of the suit. Therefore, the trial Court had rightly held that the plaintiffs could not establish lawful possession and also a *prima facie* case, which is a *sine qua non* for granting a temporary injunction. Hence, the order of the court below is valid and sustainable both under facts and in law.

7. I have gone through the pleadings and I have given earnest consideration to the submissions.

7.1 The case of the plaintiffs is this:

The plaintiffs are the owners of the plaint schedule land having got the same by inheritance from their father Kolla Arya Narsappa S/o Chinnaiah. The defendants have nothing to do with the said property. Taking advantage of the weakness of the plaintiffs and their illiteracy, the defendants are trying to interfere with the properties of the plaintiffs without any manner of right, title and interest over the same. The predecessors of the plaintiffs as well as the defendants 1 to 7 were members of a undivided Hindu Joint Family. The plaintiffs and the defendants 4 to 7 belong to one branch of Kolla Chinnaiah

S/o Pedda Narsanna. Defendants 1 to 3 belong to one branch of Kolla Peddanna S/o Thammanna. The defendants 8 to 12 are total strangers and have nothing to do with the property and the family. During the life time of Kolla Chinnaiah S/o Pedda Narsanna and Kolla Peddanna S/o Thammanna, they had continued in possession over the lands in Sy. nos.123, 124 & 125 of Tekulapally village. One Bheemsen Rao was the pattedar of the said lands. Due to the sudden demise of Kolla Chinnaiah, who is the grand father of the plaintiffs, Kolla Peddanna, who is the grand father of the 1st defendant had become the kartha of the family. When the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Land Act, 1950 came into force, the father of the plaintiffs and the grand father of 1st defendant were in peaceful possession over the said lands. Hence, their names were recorded as PT holders (protected tenancy holders) over the lands in the said survey number. The father of the plaintiffs and the grand father of the 1st defendant had submitted application for issuance of occupancy rights certificate (ORC) under Section 38E of the said Act. Pursuant to the said application, proceedings were initiated and an enquiry was made. While the matter stood thus, Kolla Peddanna, who is the grand father of the 1st defendant, had passed away intestate leaving his only son Buddanna, who is the father of the 1st defendant. The same was informed to the officer conducting the enquiry. On that the name of Buddanna was recorded as the legal representative of PT holder along with the name of the father of the plaintiffs and accordingly, a report was submitted, vide Proceedings No.E/2267/75 during the pendency of the proceedings for issuance of occupancy right certificate on the name of the father of the plaintiffs and on the name of Buddanna. At that time, a dispute had arisen between them with regard to cultivation of lands. As such, an oral partition was affected and in the said partition, the lands in Sy.No.125 of Tekulapally village had fallen to the share of the father of the plaintiffs and the lands in Sy.No.123 and 124 had fallen to the share of the father of the 1st defendant; and, since then the parties had continued in peaceful possession of their respective shares and had further made attempts to obtain protected tenancy

certificates for their respective properties. While so, the pattadar of the lands, Bhimsen Rao, had offered to alienate the land in Sy.no.125 to the father of the plaintiffs as he was in possession. The father of the plaintiffs had agreed for the said proposal, and had purchased the same by paying the sale consideration; and, an application was made for regularization. On that application an enquiry was initiated. In that proceeding the pattadar had filed an affidavit and had stated no objection for according mutation of the property in the name of the purchaser. Even during the pendency of such mutation proceedings, one Linganna, who was no way concerned with the land had colluded with the revenue authorities and got his name inserted in the revenue records in respect of the land of the father of the plaintiffs. Therefore, an application was made by the father of the plaintiffs for rectification of the wrong entries in respect of the land in Sy.No.125. Pursuant thereto, proceedings were initiated and it was directed that the name of the father of the plaintiffs be recorded; and, accordingly, the name of the father of the plaintiffs was recorded as owner and possessor of the land in Sy.No.125, which is the suit schedule land and accordingly, mutation proceedings dated 15.01.1993 in proceedings No.ROR/43/92 were issued. Once again, K.Narsimhulu who is having no concern in respect of the said lands filed a suit for perpetual injunction. However, the application for temporary injunction filed in that suit was dismissed on 14.10.1993. His appeal in C.M.A.No.52 of 1994 was also dismissed on 15.03.1995; afterwards, the suit was dismissed confirming the possession of the father of the plaintiffs. After purchase of the suit schedule land by the father of the plaintiffs, the said pattadar of land in sy.no.123 & 124 offered to alienate the same to the father of the 1st defendant Buddanna. There was an oral compromise and understanding, wherein, the pattadar has agreed to relinquish his PT rights in Sy.No.124. After the above understanding, the pattadar Bhimsen Rao had also alienated his land in Sy.No.123 to some third parties. Thus, no land remained in possession and ownership of the father of the 1st defendant Buddanna. However, he had colluded with the revenue authorities and got obtained a protected tenancy certificate in his name by ignoring the summary enquiry report submitted by the enquiry officer and

started litigations. The mutation proceedings issued in the name of the father of the plaintiffs were revised in collusion; and, having come to know of the illegal activities, the father of the plaintiffs had filed an appeal. That appeal in A/3786/93 was allowed on 03.04.1994. Then, one Linganna filed a revision and had succeeded in his revision on 21.06.1997 in B8/37/94 and then his name was inserted in the records without following the procedure established by law. He had later filed a suit for injunction and had obtained interim orders. The appeal filed by the father of the plaintiffs in C.M.A.No.18 of 1999 was allowed on 30.01.2000. Subsequently, the father of the plaintiffs had passed away; and, the property devolved upon the plaintiffs. Since that suit was decreed, the plaintiffs had filed an appeal against the decree and judgment dated 30.01.2002 in O.S.No.57 of 97. But the said appeal in A.S.No.5 of 2002 was dismissed on 20.12.2002. However, the plaintiffs' second appeal was also dismissed advising them to file a suit for declaration of title and consequential reliefs. After dismissal of the second appeal of the plaintiffs, records were revised and the name of the defendants 8 and 9 were incorporated in the records without any basis. Challenging the revenue entries, an appeal was filed and that appeal was dismissed. Thereupon, the plaintiffs had filed a revision; and, finally, the revision was dismissed by the Joint Collector on 07.12.2013 vide Proceedings No.F1/IA-01/2009 with an advise to approach the civil court for declaration of title and other reliefs. Taking advantage of the orders, the defendants had started to interfere with the peaceful possession and enjoyment of the plaintiffs over the suit schedule lands and indulged in acts of interference by visiting the spot. However, the plaintiffs could resist the illegal acts of the defendant. Therefore, the plaintiffs are constrained to file the suit and the present application for temporary injunction.

8. Be it noted that the suit is filed for declaration of title and a consequential perpetual injunction. As already noticed, the present suit is filed as a consequence to the direction in the second appeal in which the plaintiffs were unsuccessful. Originally, O.S.57 of 1997 was filed by one Linganna for perpetual injunction and that suit was decreed in favour of the

said Linganna, as is evident from exhibit P12, the certified copy of the judgment and decree in OS.No.57 of 1997. The first appeal in A.S.No.5 of 2002 on the file of the Senior Civil Judge, Narayanpet filed by the father of the plaintiffs by name K.Arya Narsappa and others was dismissed, as is evident from exhibit P13, the copy of the judgment in the said appeal suit. Subsequently, the second appeal in S.A.No.542 of 2013 on the file of this court was also dismissed with an observation that if the appellants feel it necessary, it shall be open to them to file a suit for declaration of title and consequential reliefs. Exhibit P14 is the judgment of this court in the second appeal. Exhibit P1 is the summary enquiry report by the Deputy Tahsildar (I.R) about the pattadars who are having more than two family holdings. In this enquiry report it was observed that Kollu Peddanna was the tenant and after his death his brother's son Narsappa S/o Chinnaiah had come into possession of the property as a tenant. Exhibit P2 is the proceeding of the R.D.O., Narayanpet in case no.B/5507/90, dt. 25.02.1991. The said proceedings were initiated on the application of A.Narsappa S/o Chinnaiah against Narsappa S/o late P.Narsappa. In this proceeding, it was ultimately held that Pedda Narsappa, Chinna Narsappa and Lingaiah are legally entitled to 1/3rd share each of land but, since Pedda Narsappa has expired, his son Narsappa has applied for survey but, no application is received from Linganna, as such Narsappa S/o C.P.Narsappa and Chinna Narsappa (Arya) are equally entitled to occupancy rights certificate for 1/3rd share each. Later, exhibit P3-order was passed by the Joint Collector in case no.B2/13/92/B2/15/91 in the appeal filed by the father of the plaintiffs under Section 24(1) of the A.P (T.A) Abolition of Inams Act, 1955. That appeal was preferred aggrieved by the orders of the RDO concerned in File No.A/4393/89,B/507/89. In the said proceedings, the Joint Collector had observed that the suit land is a patta land, but not an inam land; having so observed the Joint Collector had quashed the order dated 25.02.1991. Exhibit P4 is the order dismissing the injunction application filed by K.Narsimulu. Exhibit P5 is the certified copy of the order in C.M.A confirming the order in I.A.No.160 of 1991 filed by K.Narsimulu. Exhibit P6 is the

certified copy of judgment in O.S.No.38 of 1991, whereby, the suit filed by Narsimulu was dismissed for default. Exhibit P7 is the proceeding of the Special Revenue Inspector, Makthal dated 15.01.1993, wherein it was ordered that the name of Narsappa, S/o.Chinnaih has to be implemented for the land in Sy.no.125. Exhibit P8 is the order of the RDO in file No.A/3786/1993 dated 02.04.1994. That order dated 30.09.1993 was passed in an appeal preferred against the order of the M.R.O., Makthal. Exhibit P9 is the order dated 02.06.1997 of the Joint Collector in case no.BB/37/94 filed by K.Linganna under Section 9 of the A.P.R.O.R Act, 1971. By virtue of this order, the RDO concerned had allowed the revision petition and had set aside the orders dated 30.09.1993 of the MRO, Makthal. Exhibit P10 is the certified copy of the order dated 21.06.1997 in C.M.A.No.18 of 1999. That appeal was preferred against the judgment in O.S.No.57 of 1997. Exhibit P14 is the proceedings of the order of the Joint Collector in case No.Fa/IA-01/2009. Exhibit P15 is the order in the Tenancy Appeal filed by K.Narayana S/o late Arya Narsappa before the Joint Collector, Mahabubnagar in appeals nos.Fa/IA-01/2009 and FA/9812/2008. In this judgment also, the Joint Collector had observed as follows: 'The appellants have failed to establish their successor rights as well as possession over the subject land. Ultimate remedy to the appellants is only to file a suit for declaration of succession and title over the suit land before the competent court. Late Kolla Buddanna during his life and subsequently the respondent nos. 4 to 6 have been in possession and enjoyment of the subject land.' Thus, in these proceedings, the order of the Joint Collector clearly shows that the plaintiffs could not establish their possession and that Kolla Buddanna, who is the father of the 1st defendant and subsequently, the respondents 4 to 6 have been in possession and enjoyment of the said land. Though exhibits P6 to P52, land revenue receipts and pahanies show possession of the plaintiffs, they are only up to the period 1996-97. Exhibit P53 is the pahani for the year 2008-09 wherein the land in Sy.no. 125/aa1/a2 was shown to be in possession of Arya Narayana Satya Narayana, Arya Narsimhulu and others. But, the suit is filed in the year 2013 and no document is filed to show the possession as on the date of the filing of the suit. The plaintiffs have thus filed some record to

show their possession long prior to the suit. The contention that they are entitled to a presumption forward and that it must be held that they had continued in possession even subsequent thereafter and till the date of the suit cannot be accepted for the reason that in this case, this court in the second appeal had held that the plaintiffs could not establish their possession over the suit land and the Joint Collector had also recorded a similar finding in regard to possession of the plaintiffs over the land in dispute. Therefore, no inference can be drawn that the plaintiffs are in possession of the plaint schedule property, more particularly, in the light of the directions of this court in the second appeal while dismissing the suit for perpetual injunction to the effect that is open to the plaintiffs to file a suit for declaration of title and consequential reliefs. At this stage, where this Court is considering a *prima facie* case, a finding contrary to the findings in the earlier litigation cannot be recorded in favour of the plaintiffs, more particularly in the absence of any material on record. When the plaintiffs could not establish a *prima facie* case in regard to their possession, which is a *sine qua non*, no injunction can be granted as prayed for in their favour. Before parting with the case, it is necessary to mention that the exhibit numbers in the appendix of evidence and in the content of the order of the Court below are not correlatable. However, this Court maintained the same exhibit numbers, which are referred to in the orders of the Court below, as both the parties did not dispute the exhibit numbers as mentioned in the orders of the Court below.

9. Viewed thus, this Court finds that the order impugned does not call for any interference.

10. In the result, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M.SEETHARAMA MURTI, J

14th September, 2015
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