

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

SECOND APPEAL No.1023 OF 1999

JUDGMENT:

The plaintiff in O.S.No.566 of 1990 on the file of the District Munsiff at Nalgonda and the appellant in A.S.No.52 of 1997 on the file of the II Additional District Judge at Nalgonda, preferred this Second Appeal under Section 100 C.P.C., challenging the decree and judgment dated 31.08.1999 passed in A.S.No.52 of 1997, whereby the suit filed by the plaintiff for bare injunction was dismissed.

2. For convenience of reference, the parties herein will be referred to as they were arrayed before the trial Court in O.S.No.566 of 1990.

3. The plaintiff filed the suit for injunction simplicitor to restrain the defendants and their men from interfering with his possession and enjoyment over an extent of Acs.7.29 guntas of land in Survey No.207 of Anisetty Duppalapally Village, Thipparthi Mandal, Nalgonda District, contending that he is the absolute owner and possessor of the suit schedule property and his name was mutated in the revenue records as owner and possessor. The plaintiff's name was also mutated in Fisal patti for the year 1986-87. But the defendants, without any manner of right or title to the property, are trying to dispossess the plaintiff from the schedule property. During pendency of the suit, 5th defendant died and the counsel for the defendants filed a memo informing that there are no legal heirs except defendants 1 to 4, who are already on record.

4. Defendants 1 to 4 filed written statement denying the material allegations *inter alia* contending that their

father, Sri Dontham Narsi Reddy @ Narsimha Reddy, was the protected tenant of the schedule property, whereas late Ahmad Abudl Khader was the land holder. Father of the defendants, Sri Dontham Narsi Reddy died about nine years ago leaving behind defendants 1 to 4, Ramanujamma, wife and Sugunamma, married daughter, to succeed his estate. Thus, the suit is not maintainable for non-joinder of proper and necessary parties.

5. Late Sri Dontham Narsi Reddy cultivated the suit land during his lifetime and after his death, defendants 1 to 4 are cultivating the same continuously being statutory tenants. As per Section 40 of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short, 'the Act'), the defendants are paying land revenue to the Government regularly and their names are recorded in the revenue records as cultivators. The plaintiff is the stranger to the village and he does not know the adjacent cultivators and location of suit land and disclosed the fictitious names as tenants of adjacent land of the suit schedule property.

6. It is further contended that since the defendants are protected tenants of the suit schedule land, civil Court has no jurisdiction to decide the rights of the protected tenants and the revenue authority alone is competent to deal with such tenancy cases and therefore, the plaintiff was not entitled to claim any relief, much less a permanent injunction restraining the defendants and their men from interfering with their possession and enjoyment over the suit schedule property.

7. Basing on the above pleadings, the trial Court framed the following issues:

1. Whether the plaintiff is entitled for permanent injunction against the defendants as prayed for?

2. Whether the defendants are protected tenants over the suit land?

3. To what relief?

8. During the course of trial, on behalf of the plaintiff, PWs.1 to 4 were examined and Exs.A1 to A15 were marked, on behalf of the defendants, DWs.1 to 4 were examined and Exs.B1 to B21 were marked.

9. Upon hearing argument of both the learned counsel and considering oral and documentary evidence available on record, the trial Court dismissed the suit holding that the defendants are the protected tenants under the Act and that the civil Court has no jurisdiction to decide the rights of protected tenants.

10. Aggrieved by the decree and judgment dated 29.10.1996 passed in O.S.No.566 of 1990 by the trial Court, the plaintiff, being unsuccessful, preferred A.S.No.52 of 1997 and the learned II Additional District Judge, Nalgonda, dismissed the same by judgment dated 31.08.1999.

11. Affirming the findings recorded by the trial Court, the appellate Court recorded a concurrent finding with regard to jurisdiction and declined to grant permanent injunction in favour of the plaintiff.

12. The present Second Appeal is filed raising several contentions with regard to appreciation of evidence and the jurisdiction of civil Court by placing reliance on the judgments of this Court in **Commissioner of Survey, Settlements and Land Records, Govt., of A.P., and others v. G. Padmavathi and others**^[1], and **Panineeya Law College, represented by its President D.N. Sastry, Hyderabad**

and other v. the Secretary to Govt.,^[2] wherein a learned Single Judge of this Court has held that the civil Court has got jurisdiction.

13. Learned counsel for the appellant formulated five substantial questions of law in the Second Appeal. Out of them, only questions A, B and D are, in fact, the substantial questions of law and the other two are not the substantial questions of law. Therefore, I would like to confine my decision only to questions A, B and D, which are as under:

- A. Whether the civil suit is not maintainable for mere injunction when the right of defendants as protected tenants is disputed by the plaintiff/appellant?
- B. Whether the latest entries like Ex.A6 to A8 can be ignored on the basis of old entries in Ex.B2 to B.15?
- D. Whether the defendants can plead to be protected tenants without the declaration from the Tenancy Tribunal as required by the provisions of A.P. (T.A.) Tenancy and Agricultural Lands Act?

14. **In Re Q.Nos.1 to 3:-** The first and foremost contention of the defendants before both the Courts below and this Court is that their father was a protected tenant and cultivated the land during his lifetime and thereafter, they succeeded the tenancy right under the Act and the civil Court has no jurisdiction to grant any order against the protected tenants under the Act.

15. On the other hand, Sri K. Suresh, advocate for the appellant, contended that the civil Court is competent to grant an injunction even in case of protected tenants and placed reliance on a judgment of this Court reported in **Lachamma and another v. Butchamma**^[3]. On the strength of the said judgment, the appellant

requested this Court to consider the issue of jurisdiction of civil Court.

16. The trial Court and the appellate Court recorded a concurrent finding that the defendants are the protected tenants and it is a pure question of fact and this Court, while exercising power under Section 100 C.P.C., cannot interfere with such finding. But, whereas the plaintiff's contention is that he is in possession and enjoyment of the property and he relied on Exs.A6

to A8 to establish that he is in possession and enjoyment of the property. When the defendants are protected tenants under the Act, unless they surrender the tenancy or they are evicted through process of the authorities concerned under Section 98 of the Act, they are deemed to be in possession of the property. On the other hand, the defendants produced certain documents before the trial Court to establish that they are in possession. Since it is a question of fact, I need not disturb the fact finding of the trial Court as affirmed by the appellate Court regarding the right of the defendants in the schedule property as protected tenants.

17. Section 98 of the Act, 1950 reads as under:

“98. Summary eviction:-

Any person unauthorisedly occupying or wrongfully in possession of any land-

- (a) the transfer of which either by the act of parties or by the operation of laws is invalid under the provisions of this Act, or
- (b) the management of which has been assumed under the said provisions, or
- (c) to the use and occupation of which he is not entitled under the said provisions,

may, if the said provisions do not provide for the eviction of such persons, be summarily evicted by the Collector.”

Thus, even to evict a person in unauthorized occupation, the District Collector alone is competent and the civil Court has no jurisdiction.

18. Section 99 of the Act created an interdict on the jurisdiction of the civil Court.

“99. Bar of Jurisdiction:-

- (1) No civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or deal with by the Tahsildar, Tribunal or Collector or by the Board of Revenue or Government.
- (2) No order of the Tahsildar, Tribunal or Collector or of the Board of Revenue or Government made under this Act, shall be questioned in any Civil or Criminal Court.”

19. In the present case, the plaintiff sought for a permanent injunction restraining the defendants, who are protected tenants, under the Act. An injunction can be granted against a protected tenant, if he is not in possession and in support of his contention, learned counsel for the appellant relied on **Lachamma**'s case (1 supra), where a Single Judge of this Court held that when the relationship of the landlord and the tenant is not a matter of decision in the suit, the question of valid termination of tenancy and surrender of possession by protected tenant does not arise for decision in injunction suit.

20. As seen from the findings recorded by the trial Court, the defendants alone are in possession and enjoyment of the property as on the date of filing the suit being protected tenants under the provisions of the Act. Even if the principle laid down in the above judgment is applied to the present case on hand, the plaintiff is not entitled to claim permanent injunction restraining the defendants and their men from interfering with his possession and enjoyment over the suit schedule property, since he is out of possession as per the concurrent fact findings recorded by the trial Court.

21. Even otherwise, the scope of trial of suit for injunction

under Section 38 of the Specific Relief Act, 1963 is limited and at best the Courts can record the finding as to who is in lawful possession as on the date of filing the suit and also record a finding that whether the defendants threatened to interfere with such lawful possession of the plaintiff. Therefore, in view of the limited scope of the suit filed for injunction simplicitor, the Court cannot record any finding with regard to title. In **Alla Seshukumar and another v. Alla Radha Krishna**^[4], **P. Anil Kumar and others v. the Joint Collector, Ranga Reddy District at Hyderabad and others**^[5] and **Surampudi Sudarsana Rao v. Nanduri Venkata Seetha Ramanjaneyulu and others**^[6] this Court consistently held that in a suit for injunction simplicitor, complicated questions of title cannot be gone into. A person not having title but being in possession of the property can claim injunction even against true owner. Basically, finding as to the possession must be recorded in a suit for injunction and the verification of title is only for limited purpose of recording a finding that the possession is lawful or not. Therefore, no finding shall be recorded by the Courts regarding title and rights of the parties in immovable property in a suit for bare injunction.

22. In the present case, the documentary evidence produced by the defendants i.e., Ex.B1 – certified copy of protected tenancy register and Exs.B2 to B15 – certified copies of pahanies for the years, 1973-74 to 1986-87, establish that they are in possession and enjoyment of the property by cultivating the same in their own right. However, the plaintiff also produced fisal patti for the year 1986-87 and pahanies for the years 1987-88 and 1988-89. On the strength of these three documents, it is contended that the plaintiff alone is in possession and enjoyment of the property. The suit was filed in the year 1990, but no document is produced to prove that the plaintiff is in

possession during the agricultural year 1989-90 and the defendants are not required to produce any document when the plaintiff approached the Court seeking a discretionary relief under Section 38 of the Specific Relief Act, 1963, he must succeed in the suit for bear injunction based on his own evidence and he cannot be permitted to take advantage of weakness is the defendants case. Moreover, Ex.B1 is suffice to conclude that the defendants are the protected tenants and till they are evicted as per the procedure, they are deemed to be in possession and enjoyment of the property. Thus, the defendants alone are in possession and enjoyment of the property as on the date of filing of the suit in the year 1990.

23. Besides proof of lawful possession as on the date of filing the suit, it is the duty of the plaintiff to establish the alleged highhanded acts of the defendants to claim a permanent injunction. As seen from the pleadings on record, except making an allegation that the defendants made an attempt to dispossess the plaintiff from the property, no evidence is brought on record to substantiate the said contention. In the absence of proof of infringement or invasion of legal right, which is a *sin qua non* under Section 38 of the Specific Relief Act, no permanent injunction or perpetual injunction can be granted.

24. On overall consideration of the findings recorded by both the trial Court and the appellate Court with regard to lawful possession and threat to interfere with the possession and enjoyment of the property, I find no error warranting interference of this Court. So far as jurisdiction of the civil Court is concerned, if the suit is filed not for settling the rights of land holder and protected tenant, the civil Court has got jurisdiction, as such on the ground of lack of jurisdiction, the suit cannot be dismissed. In the facts and circumstances of the case and in any view of the matter, the plaintiff has miserably failed to establish his lawful possession over the schedule property as on the

date of filing the suit and the defendants are the protected tenants in view of Ex.B1 – certified copy of protected tenancy register and there is absolutely no evidence to establish that they surrendered the tenancy or they were evicted under Section 98 of the Act. Therefore, I find no ground to reverse the concurrent findings recorded by both the trial Court and the appellate Court and consequently, the Second Appeal deserves to be dismissed.

25. In the result, the Second Appeal is dismissed but without costs.

Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

M.SATYANARAYANA MURTHY, J

Date:03.08.2016
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- [\[1\]](#) 1999 (4) ALD 61 (D.B.)
 - [\[2\]](#) 1992 (3) ALT 389
 - [\[3\]](#) 1992 (3) ALT 385
 - [\[4\]](#) 2008 (6) ALT 676
 - [\[5\]](#) ALT (2) 1988 583 (D.B.)
 - [\[6\]](#) 2008 (6) ALT 676