

**HON'BLE SRI JUSTICE M. SATYANARAYANAMURTHY**

**SECOND APPEAL No.1450 of 2010**

**JUDGMENT:**

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This Second Appeal is filed under Section 100 of Code of Civil Procedure (for short 'CPC') by the appellant/plaintiff aggrieved by the Decree and Judgment dt. 06.09.2010 in A.S.No.77 of 2007 on the file of VII Additional District Judge at Warangal, whereby the appellate Court reversed the decree and judgment passed in O.S.No.431 of 2001, dt. 01.03.2007 by the II Additional Junior Civil Judge at Warangal.

2. For convenience of reference, the parties to the appeals will hereinafter be referred as arrayed in O.S.No.431 of 2001 by II Additional Junior Civil Judge at Warangal., through out the judgment.

3. The plaintiff/appellant filed the above suit for declaration of title and for permanent injunction against the defendant/respondent alleging that the plaintiff purchased 333 sq.yards in Plot No.4 out of Sy.Nos. 297, 562 and 345 of Waddepally village through General Power of Attorney holder, N. Gopala Kishan, for his vendor for sale consideration of Rs.20,000/- and got obtained sale deed on a plain paper on 25.10.1998 as the plaintiff could not get the registered sale deed due to lack of funds and since then the plaintiff is in possession and enjoyment of the property and she constructed a house with compound wall after obtaining

necessary permission from the concerned authorities and Door No.2/468/9/4-5 was assigned to the said house.

4. In the month of May, 1990, the plaintiff could not mobilize the required funds, she obtained a simple unregistered sale deed on 4.5.1990 confirming the earlier transaction dt. 25.10.1988 and arranged an iron gate to the compound wall and got dug a well in the open site and thus, she is in exclusive possession and enjoyment of the property, as purchaser, under un-registered Sale Deed. While the matter stood thus, the defendant started creating problems and filed a criminal complaint before the police and the police called her to the police station but nothing was settled. The defendant also tried to dismantle part of the compound wall on 18.03.2001, thereupon, the plaintiff gave a complaint to Subedari Police Station and even before the police, the defendant set up a false claim against the schedule property. Thus, the defendant made an attempt to interfere with the peaceful possession and enjoyment of the plaintiff over the suit schedule property.

5. The defendant filed Written Statement denying the title, ownership and possession of the plaintiff over the suit schedule property including purchase of 333 sq. yards in Sy.Nos.297,562 and 345 through General Power of Attorney, for a sale consideration of Rs.20,000/- vide Sale Deed dt. 25.10.1988 and thereafter obtaining unregistered sale deed dt. 04.05.1990 confirming the earlier transaction dt. 25.10.1988. It is specifically contended that the sale deed produced by the

plaintiff is not admissible in evidence as it is fabricated in collusion with one Gopala Krishan. He also denied the construction of compound wall around the site by the plaintiff and prescription of title to the property by adverse possession and the alleged threat to interfere with the possession and enjoyment of the plaintiff over the suit schedule property.

6. The defendant specifically contended that the plaintiff did not approach the Court with clean hands. The defendant purchased 168.33 sq. yards under Sy.No.297, 596/B, 562/B, 562/C, 562/D, 345/E and 562/A ( New) of Waddepally Municipal Corporation, under registered Sale Deed vide document No.1090/02 on 28.02.2002 for valuable consideration and therefore, he is in exclusive possession and enjoyment of the schedule property.

7 . After obtaining the permission from the Municipal Corporation, he constructed a joint compound wall on 31.03.2001 along with Sudhakar Reddy, who got plot towards north, which was dismantled by the plaintiff and her husband and caused injuries to the defendant on 6.4.2001 and thereby the defendant lodged a complaint against the plaintiff and her husband for the offences under Sections 447, 427, 323, 405 r/w 34 IPC and thereafter, charge sheet was filed, which was pending before IV Additional Judicial First Class Magistrate, Warangal. It is also specifically contended that he is in possession and enjoyment of the property by paying property tax to the municipal corporation and therefore, the plaintiff is not entitled to claim any injunction and finally prayed for

dismissal of the suit.

8. Based on the above pleadings, the trial Court framed as many as six issues. During trial, Pws. 1 to 3 were examined and Exs. A.1 to A.15 marked. On behalf of defendant, Dw.1 was examined and Exs. B.1 to 6 were marked.

9. Upon hearing the arguments of both the counsel, the trial Court while granting injective relief declined to grant declaratory relief.

10. Aggrieved by the decree and judgment of the trial Court, the defendant filed the appeal in A.S.No.77 of 2007, which was allowed dismissing the suit even for the relief of injunction on 6.10.2016.

11. The plaintiff being unsuccessful before the appellate court preferred the second appeal rising several contentions and raised five substantial questions of law; one, among the five substantial questions of law, is the 3<sup>rd</sup> question that the finding of the appellate Court that the plaintiff is entitled to claim relief only on the registered document and the observation that title follows possession are the questions of substantial questions to be decided by this Court.

12. According to plaintiff, she purchased the property from her vendor's general power of attorney—Gopal Krishna, which is marked as Exs. A.13, and she also produced various miscellaneous receipts marked as Exs.A.3 to A.7 and Tax Receipts evidencing payment of Tax to the municipality for the house bearing Door No.2/468/9/4-5, but the defendant denied

the purchase of the property by the plaintiff and the alleged threat to interfere, specifically in the written statement, the defendant contended that he purchased the property under registered sale deed and obtained permission from the municipal corporation under Ex.B.6 for construction of compound wall. Thus, he is claiming to be in possession and enjoyment of the property of an extent of 168.33 square yards. The suit schedule property is bearing Door No.2-10-903 at Wadepally Village of Hanumkonda Mandal, Warangal District within the following boundaries:

East-Road;

West-Plot of Rajeshwar,

North-Plot of Sudhakar Reddy, and

South-house of Satyanayana in Sy.No.297 562 and 345 of Wadepaly village.

13. Whereas the defendant claiming that he purchased the property to an extent 168.33 square yards in S.No.297/596/B, 562/B, 562/C, 562/D, 345/E and 562/A (New) of Wadepally within municipal corporation limits. But, the defendant did not specify the boundaries of the land purchased by him. The survey number of the property are not tallying except S.No.297. However, the possession of the property is not in dispute. The trial Court concluded that the plaintiff is in possession and enjoyment of the property and accepted the alleged threat of interference by the defendant and granted permanent injunction while exercising the discretionary power under Section 38 of Specific Relief Act, but the appellate Court

reversed the judgment on the ground that the plaintiff is not entitled to claim the relief of injunction based on unregistered Sale Deed while making an observation that title follows possession.

14. For grant of permanent injunction, the plaintiff, who approached the Court, has to prove that she is in lawful possession on the date of filing of the suit, besides the proof of alleged threat to infringe or invade the legal right of the plaintiff to continue in possession. It is the case of the plaintiff that she purchased the property under simple registered sale deed through her vendor's General Power of Attorney holder by name G. Kishanan and constructed a house after obtaining permission from the municipal authorities and paying property tax to the house, which is supported by documentary evidence besides oral evidence of PW.1 and PW.3, who is the neighbor of the plaintiff.

15. The plaintiff claimed injunction against 3<sup>rd</sup> party, but not against the vendor of the property on the basis of alleged threat to interfere with her possession and enjoyment of the property on a specified date. Section 41 of Specific Relief Act deals with the situation where injunction cannot be granted. Section 41(h) of Specific Relief Act debars a person from claiming perpetual injunction or permanent injunction when equally efficacious alternative remedy can be obtained in usual mode by such person. In the present case, the plaintiff is only an agreement holder from General Power of Attorney of her vendor G.Kishan—PW.2, who testified about the execution

of agreement of sale and she at best the plaintiff can enforce the agreement of sale against her vendor for specific performance but not against the defendant. As she is entitled to claim specific relief, the bar under Section 41(h) of Specific Relief Act will not come in the way of plaintiff to claim permanent injunction against the defendant, who is neighbouring owner of the property.

16. The main reason for setting aside the decree and judgment by the appellate Court is that the plaintiff is only an agreement holder under original of Ex.A.13 and the plaintiff is able to prove that she is in possession and enjoyment of the property. She is entitled to protect her possession from the threat of interference by 3<sup>rd</sup> parties and she is not required to obtain a registered sale deed to claim permanent injunction against a third party if there is any threat to infringe or invade the legal right of the plaintiff by 3<sup>rd</sup> parties. Therefore, the conclusion of the appellate Court that the plaintiff is not entitled to claim injunction except establishing her title to the property by obtaining a regular sale deed is erroneous since the person in settled possession cannot be dispossessed, by a 3<sup>rd</sup> party, except by following due process of law. However, there is an exception to this rule, i.e., a person, who is in settled possession, is not entitled to claim permanent injunction against the true owner. Therefore, registered sale deed is not required to claim permanent injunction against the defendant, who is a 3<sup>rd</sup> party to the agreement of sale. Hence, the findings of the trial Court that

unless the plaintiff proves her right and possession by obtaining registered sale deed to the schedule property is hereby set aside holding that the plaintiff, who is in settled possession having purchased the property from PW.2, a registered GPA Holder of the original vendor, and continuing in possession, is entitled to claim permanent injunction against 3<sup>rd</sup> parties.

17. The trial Court came to the conclusion that the plaintiff is in possession and enjoyment of the property in view of the voluminous evidence on record, more particularly, the evidence of neighbor-PW.3 and vendor of plaintiff—PW.2. The appellate Court did not reverse the finding of the trial court relating to possession, but held that the petitioner is not entitled to claim permanent injunction unless she obtains a registered sale deed. As discussed above, this finding is erroneous.

18. When the plaintiff establishes her lawful possession over the property as on the date of filing the suit, the only requirement to obtain a permanent injunction is to prove the threat of interference by a 3<sup>rd</sup> party, who is the defendant herein. As seen from the material on record, there is voluminous evidence on record to show that both parties gave complaints against one another for demolition and encroachment etc., that itself suffice to conclude that the defendant threatened the plaintiff to interfere with the possession and enjoyment and claimed right over the schedule property. Similarly, the defendant also made an

allegation against the plaintiff that she demolished the compound wall constructed by him and interfered with his possession. But in a suit for injunction filed by the plaintiff against the defendant, the contention of the defendant that the plaintiff made an attempt to interfere with the possession and enjoyment of the defendant over the schedule property cannot be decided. However, the evidence on record established that the defendant threatened the plaintiff to interfere with the possession and enjoyment of the property. Therefore, the conclusion arrived by the first appellate Court that title follows possession is erroneous and the possession is nine points in law, as the general principal is possession follows title and there is no much controversy about the possession. Hence, the judgment of the appellate Court is erroneous on the face of the record and it is liable to be set aside.

19. It is also a settled position of law that a person, who is in possession of the land, though an encroacher, cannot be dispossessed except by due process of law. (See: **East India Hotels Limited v. Syndicate Bank**<sup>[1]</sup>, **Meghmala and others v. G. Narasimha Reddy and others**<sup>[2]</sup> and **Maria Margarida Sequeria Fernandes and others v. Erasmo Jack DE Sequeria (dead) through L.Rs**<sup>[3]</sup>).

20. In view of the foregoing discussion, I find that the trial Court rightly granted permanent injunction in favour of plaintiff restraining the defendant from ever interfering with the possession and enjoyment of the property of the plaintiff, but the first appellate court erroneously reversed the findings and

dismissed the suit setting aside the decree granted by trial Court for permanent injunction and the same is liable to be set aside.

21. In the result, this Second Appeal is allowed at the stage of admission while restoring the decree and judgment dt.01.03.2007 in OS.No. 431 of 2001 passed by the II Additional Junior Civil Judge, Warangal, granting permanent injunction against the defendant from ever interfering the possession and enjoyment of the plaintiff in an extent of 168.33 sq. yards but without costs. It is made clear that this judgment and decree will not come in the way of defendant to seek appropriate remedy, if his property is occupied by the plaintiff, before appropriate court subject to permissibility under law.

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**M. SATYANARAYANA MURTHY, J**

Date: 20-07-2016.

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**HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

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**SA.No. 1450 of 2010**

Dt. 20-07-2016

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[\[1\]](#) 1992 supp (2) SCC 29

[\[2\]](#) 2011 (2) ALT 8 (SC)

[\[3\]](#) AIR 2012 SC 1727