

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CMA.No.369 of 2015

ORDER:

This appeal under Order LXIII Rule 1 of the Code of Civil Procedure, 1908, ('the Code', for short) by the unsuccessful petitioner-plaintiff is directed against the order dated 28.05.2015 of the learned Vacation Civil Judge, Ranga Reddy District at L.B.Nagar, passed in IA.No.123 of 2015 in OS.no.81 of 2015 (old numbers in vacation Court) [presently re-numbered as IA.No.278 of 2015 in OS.No.505 of 2015 on the file of the Court of the learned XVI Additional District Judge, Ranga Reddy at Malkajgiri] filed under Order XXXIX Rules 1 and 2 read with Section 151 of the Code for granting a temporary injunction restraining the respondents-defendants, their agents, henchmen or any other persons claiming through them from interfering with the plaintiff's peaceful possession and enjoyment of the agricultural land in an extent of Ac.2.00 guntas in S.No.635 situate at Dabeerpura village of Medchal Mandal, morefully described in the 'B' schedule annexed to the petition.

2. I have heard the submissions of Sri Y. Chandrasekhar, learned counsel representing Sri P. Raghavender Rao, learned counsel for the appellant-plaintiff and of Sri Muddu Vijay, learned counsel for the 1st respondent-1st defendant. I have perused the material record.

3. The case of the plaintiff in support of the request for grant of temporary injunction and the submissions made on behalf of the plaintiff for grant of temporary injunction, in brief, is as follows: "He brought the suit

against the defendants for perpetual injunction in respect of 'A' schedule property. 'B' schedule property is a part of 'A' schedule property. The subject application is filed for grant of temporary injunction in respect of 'B' schedule property afore-stated. The 2nd defendant is the original owner of 'A' schedule property. The land in S.No.635 is not a Government land. 'B' schedule land is situated in the said survey no.635. The 2nd defendant who is admittedly the owner of 'A' schedule property having received consideration of Rs.7,47,000/- from the plaintiff executed a sale deed dated 01.10.2004 in respect of 'A' schedule property, that is Ac.6.10 guntas in S.No.634 and Ac.2.00 guntas in S.No.635, which is 'B' schedule property. Though the sale deed was presented, on 01.10.2004, for registration before the Sub-Registrar, Medchal, and the 2nd defendant had admitted execution as well as receipt of consideration, the Sub-Registrar had kept the document pending, without registering the document, as he was under the impression that the entire land covered by the said two survey numbers is a Government land. Therefore, the plaintiff approached this Court and filed a writ petition in WP.no.23276 of 2006 to direct the said Sub-Registrar concerned to consider the matter afresh and take appropriate action in accordance with law. The writ petition was allowed on 28.10.2010. Later sale deed dated 01.10.2004 executed by the 2nd defendant in respect of suit 'A' schedule property comprising 'B' schedule property was registered on 13.01.2011. While the matter stood thus, the 1st defendant had brought a suit against the 2nd defendant for recovery of money and had obtained attachment of 'B' schedule property herein. Later, by virtue of settlement before the Lok Adalat and pursuant to Lok Adalat Award, the 2nd defendant had executed a

registered sale deed in favour of the 1st defendant on 13.08.2007 in respect of 'B' schedule property. Immediately after the purchase by the plaintiff, the plaintiff got enclosed the entire site with barbed wire fencing. The plaintiff is in possession of the property. The plaintiff's sale deed in respect of 'B' schedule property, which is the subject matter, is valid and binding on the defendants as the said land in S.No.635 is admittedly not a Government land. Though the sale deed of the plaintiff was executed on 01.10.2004 it was registered on 13.01.2011; the registration therefore relates back to the date of execution by virtue of Section 47 of the Registration Act, 1908. Thus, when the 2nd defendant executed a sale deed in favour of the plaintiff in respect of 'B' schedule property, which is in S.No.635 and which is admittedly not a Government land, the plaintiff's title cannot be disputed by any one of the defendants. The 2nd defendant, who had already conveyed the title in respect of the entire property to the plaintiff under Exhibit A1-registered sale deed, has no right, title and interest in the property to convey the same or any part of it again in the year 2007 to the 1st defendant. Though the property is described as an agricultural land, it is not being cultivated and it is a vacant land. In the circumstances stated the plaintiff is constrained to seek temporary injunction. The trial Court erroneously dismissed the petition of the plaintiff without appreciating the facts properly and the legal position in the correct perspective. The order impugned in the appeal is liable to be set aside and the petition of the plaintiff is to be allowed as prayed for."

4. The 2nd defendant had remained *ex parte*.

5. The case of the 1st defendant and the submissions made on his behalf, in brief, are as follows:

The sale deed of the plaintiff in respect of land in Survey no.634 is invalid as the land in the said survey number is a Government land. For that reason, the sale deed is not released to the plaintiff. The land comprised in 'B' schedule is in S.No.635. The same was purchased by the 1st defendant from the 2nd defendant under the registered sale deed dated 13.8.2007. There is a clear recital in the sale deed of the 1st defendant that possession of the property was handed over to the 1st defendant. The plaintiff is a resident of Coimbatore. The 1st defendant is in actual physical possession (khas possession) of the plaint 'B' schedule property. Hence, the application filed by the plaintiff is liable for dismissal. The trial Court after appreciating the facts properly and the legal position in the correct perspective dismissed the petition of the plaintiff. The trial Court is justified in passing the order impugned.

6. The contentions and submissions are together stated supra, in detail. There is no need to further dilate on the facts.

7. I have given detailed and thoughtful consideration to the facts and submissions. Admittedly, the 2nd defendant is the owner of the subject property, that is, the plaint 'B' schedule property. The said property is not a Government land is not in dispute. He had executed a sale deed in respect of that property also on 01.10.2004 in favour of the plaintiff after receiving the sale consideration. At the time when the said document was presented for registration before the Sub-Registrar concerned, the 2nd defendant admitted

receipt of consideration and also the execution of the sale deed in favour of the plaintiff. However, the sale deed was kept pending without being registered as the Sub-Registrar was of the view that the land covered by the said sale deed was a Government land. The 'B' schedule property is in S.No.635 and the said land is not a Government land is now not in dispute before this Court. When the Sub-Registrar thus refused to register the sale deed, the plaintiff filed WP.No.23276 of 2006 before this Court and this Court disposed of the said Writ Petition on 28.10.2010 directing to consider the matter afresh and take appropriate action in accordance with law. Later, the sale deed was registered on 13.01.2011. While so, the 2nd defendant had executed the sale deed in favour of the 1st defendant on 13.08.2007. In view of the fact that the sale deed of the plaintiff was executed on 01.10.2004 and was registered on 13.01.2011, that is, after the execution of the sale deed on 13.08.2007 by the 2nd defendant in favour of the 1st defendant, the question is whether the plaintiff's sale deed registered on 13.01.2011 would have precedence and prevail over the sale deed dated 13.08.2007 of the 1st defendant.

8. In this regard, it is necessary to refer to Section 47 of the Registration Act, 1908, which reads as under: -

‘Time from which registered document operates.- A registered document shall operate from the time which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration’.

In view of the said provision it is manifest that the registered sale deed of the plaintiff operates from the time it would have commenced to operate

if no registration thereof had been required or made and not from the time of its registration. Therefore, under facts and in law, the sale deed of the plaintiff operates from 01.10.2004, that is, the date of its execution though it was registered on 13.01.2011. Therefore, it follows that as on 13.08.2007 the 2nd defendant, having conveyed right, title and interest in plaint 'B' schedule property situate in S.No.635 to the plaintiff had no subsisting right, title and interest in the said property as his title is divested and vested in the plaintiff. Therefore, the contention that the 2nd defendant had validly conveyed the very same property under a registered sale deed dated 13.08.2007 to the 1st defendant cannot be countenanced *prima facie* as such a contention *ex facie* is untenable in the facts and circumstances of the case and the legal position obtaining.

9. From the material on record, it appears that the property is a vacant property. Though the plaintiff contends that he is in physical possession of the property and that the 1st defendant also contends that he is in physical possession of the property, the 1st defendant did not produce any documents to show his possession over the property except B1, his sale deed; B2, Award passed by the Lok Adlat; and B3, Encumbrance Certificate. Per contra, the plaintiff produced exhibit A1, his sale deed; Exhibit A2, certificate issued by the Tahasildar; Medchal, exhibit A3, mutation proceedings; exhibit A4, pattadar pass book; exhibit A5, title deed book; and, exhibit A6, copy of the police complaint. Therefore, there is sufficient evidence *prima facie* on the side of the plaintiff to accept the case of the plaintiff that he is in physical possession of the property. Even otherwise, since the property is a vacant property, which is incapable of being

physically possessed all the time, then the principle to be applied is ‘possession follows title’. Since the plaintiff is able to establish title *prima facie* and incidentally, it shall be construed that the plaintiff is in lawful possession, as against the 1st defendant, who is not able to establish *prima facie* title at this interlocutory stage. This view of the Court finds support from the decision of the Apex Court in **Anathula Sudhakar v. P. Buchi Reddy**¹ wherein the Supreme Court held as follows:

“As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.”

But what if the property is a vacant site, which is not physically possessed, used or enjoyed? In such cases the principle is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession, as against the person who is not able to establish title. This means that even though a suit relating to a vacant site is for a mere injunction and the issue is one of possession, it will be necessary to examine and determine the title as a prelude for deciding the de jure possession. In such a situation, where the title is clear and simple, the court may venture a decision on the issue of title, so as to decide the question of de jure possession even though the suit is for a mere injunction.

10. Having regard to the facts and the legal position obtaining, this Court finds that a *prima facie* case has been made out by the plaintiff and that the balance of convenience is in his favour. Despite the fact that the said

¹ (2008) 4 SCC 594

property was conveyed long time back by the 2nd defendant to the plaintiff, the 1st defendant still claims that he had purchased the very same property from the 2nd defendant though as on the date of the sale by the 2nd defendant in favour of the 1st defendant, the 2nd defendant was not having right, title and interest in the property having already sold the property to the plaintiff. The law is well settled that no one can convey a better title than what he has. The very contentions and assertions of the 1st defendant therefore reflect that the plaintiff is entitled to seek temporary injunction pending disposal of the suit to prevent any interference of his peaceful possession and enjoyment over the plaint 'B' schedule property.

11. On the above analysis, this Court finds that the trial Court failed to appreciate the facts correctly and the legal position in the proper perspective and came to an incorrect conclusion that the plaintiff failed to establish his possession much less lawful possession over the plaint schedule property though in fact the documents in exhibit 'A' series sufficiently establish a *prima facie* case in favour of the plaintiff when the said documents are considered in juxtaposition with the three documents in 'B' series referred to supra.

12. Viewed thus, this court finds that there is considerable merit in the appeal and that the appeal deserves to be allowed after setting aside the order and decretal order of the Court below.

13. In the result, the Civil Miscellaneous Appeal is allowed and the order impugned is set aside. As a sequel, IA.No.278 of 2015 in OS.No.505 of 2015 is allowed without costs granting a temporary injunction restraining the

defendants, their agents, henchmen or any persons claiming through them from interfering with the plaintiff's peaceful possession and enjoyment over the plaint 'B' schedule property, pending final disposal of the suit.

Pending miscellaneous petitions, if any, in this appeal shall stand closed.

There shall be no order as to costs.

M.SEETHARAMA MURTI, J

8th December, 2016

Vjl

