

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

SECOND APPEAL NO.1154 OF 2012

JUDGMENT:

This second appeal under Section 100 of the Civil Procedure Code is filed challenging the concurrent findings recorded by the I Additional Junior Civil Judge's Court, Kovvur in O.S.No.137 of 1995 and A.S.No.5 of 2012 on the file of the Additional District Court, West Godavari, Kovvur, dismissing the suit for perpetual injunction holding that the plaintiff failed to establish his lawful possession as on the date of filing the suit, producing any documentary evidence in support of their claim.

2. The ranks given to the parties before the Trial Court will be adopted throughout the judgment, for convenience sake.

3. The Plaintiff filed O.S.No.137 of 1995 on the file of the I Additional Junior Civil Judge, Kovvur, holding that the plaintiff schedule property and some other properties in O.S.No.70/85 for recovery of possession and that the same was delivered in E.P.No.50 of 1994 in O.S.No.70/85 on 02.07.1994, at the same time of delivery of possession, none of the defendants caused any obstruction and resistance to the execution of decree, but the defendants 7 to 10 are subsequent alienees for a part of items 2 and 3 of the plaintiff schedule, pending suit O.S.No.70 of 1995 and such alienations in their favour, even if true are hit by principles of

lis pendens as per the Section 52 of the Transfer of Property Act and as such the proceedings in E.P.No.50 of 1994 and the delivery of possession to the plaintiff in the said execution is binding on the defendants 7 and 10, alleged alienees. When one Tondapu Satyanarayana and some others tried to cause obstruction to peaceful possession and enjoyment of the plaint schedule property by the plaintiff therein, he filed O.S.No.50 of 1994 on the file of the Junior Civil Judge's Court, Kovvur and obtained temporary injunction as well as police aid. The defendants in O.S.No.50 of 1994 on the file of the Junior Civil Judge's Court, Kovvur having failed in their attempts to disturb the possession of the plaintiff, have been abetting and aiding the defendants to cause obstruction to the plaintiff's peaceful possession and enjoyment of the plaint schedule property. Hence, the suit.

3. The defendants 2,4 to 7 and 9 filed written statement denying the material allegations in the plaint, *interalia* contending that the plaintiff was never in possession and enjoyment of the plaint schedule property and they further contended that the third defendant is one Karlapudi Narasamma S/o Gangaraju but the description of the third defendant as Smt. Karlapudi narasamma S/o Subbarao is incorrect. Similarly, the name of the 7th defendant in the suit is Devina Satya Srinivas S/o Ramanna but his name is not Devina Srinivas S/o Narayya.

4. It was further contended that the defendants 2 and 3 are divided brothers and the 2nd defendant purchased Ac.1-78 cents out of Ac.14-42 cents in R.S.No.403/3 of Gopalapuram Village under agreement of sale dated 16.07.1986 from one Mateti Ramayamma and others and obtained possession. The 3rd defendant was the tenant of Ac.1.90 cents out of Ac.14.42 cents in R.S.No.403/3 and Ac.6.86 cents in R.S.No.407/1 of Gopalapuram Village and they purchased the same under the registered sale deed dated 16.07.1981. The defendants 4 to 6 are the divided brothers and they are the sons of one late Apparao. The defendants 4 to 6 purchased Ac.6.70 cents out of Ac.6-96 cents in R.S.No.407/1 and Ac.2-18 cents in R.S.No.407/1 of Gopalapuram Vilalge from Mateti Ramayamma under the registered sale deed dated 21.05.1980. Later, the defendants 4 to 6 sold away the said land to the 7th defendant under two registered sale deeds dated 09.09.1991 and 30.10.1991 and ever since the 7th defendant has been in possession and enjoyment of the said extent by obtaining ryothwari passbook, the land in possession of the 7th defendant is item no.2 of the plaint schedule.

5. The 9th defendant and his undivided father Ramireddi purchased Ac.3-00 out of Ac.15.28 cents in R.S.No.245 of Gopalapuram Village for sale consideration of Rs.18,900/- under the registered sale dated 16.07.1981 from the then owners Mateti Ramayamma and 43 others and obtained possession of land as

such they are in continuous possession. But the plaintiff was never in possession and enjoyment and thereby not entitled to claim perpetual injunction against the defendants.

6. The 10th defendant filed separate written statement contending that no physical delivery of possession was effected, as such the plaintiff is not at all in possession and the interference of 10th defendant with the possession and enjoyment does not arise. The husband of the 10th defendant namely Lingaswamy purchased Ac.2-00 which is part of item 3 of the plaint schedule under agreement of sale on 17.11.1980 from Mateti Ramayamma and Sriharirao. Prior to the agreement of sale the defendant and her husband were in possession of the said property as tenants. After death of her husband, she has been looking after the north of the said Ac.2-00 and thus she contends that the plaintiff was never in possession and enjoyment of the property, as contended by him and finally prayed to dismiss the suit.

7. Based on the above pleadings, the Trial Court framed the following two points for consideration:

- a. Whether the plaintiff is entitled for permanent injunction as prayed for?
- b. To what relief?

8. During Trial, on behalf of the plaintiff three witnesses were examined and exs.A-1 to A-7 were marked. On behalf of the

defendants three witnesses were examined and Exs.B-1 to B-4 were marked.

9. Upon hearing argument of both the counsel and considering the oral and documentary evidence on record, the Trial Court dismissed the suit holding that the plaintiff miserably failed to establish his lawful possession as on the date of filing the suit, producing cogent and satisfactory evidence.

10. Aggrieved by the decree and judgment of the Trial Court, the plaintiff being unsuccessful before the Trial Court, preferred appeal in A.S.No.5 of 2012 which ended in dismissal by decree and judgment dated 04.06.2012, confirming the decree and judgment passed by the Trial Court and by the concurrent findings by both Trial Court and Appellate Court, the present appeal came to be filed challenging the decree and judgment of both the Courts on various grounds and raising several contentions and further contended that voluminous documentary evidence is produced before the Trial Court that they are in possession and enjoyment of the property.

11. Heard, learned counsel for the plaintiff Sri Ch. Dhananjaya at the stage of admission at length and during hearing, he mainly contended that the concurrent findings of the Trial Court and the Appellate Court regarding genuineness of Ex.A-1 to A-4, is suffice to conclude that he is in possession of the property after taking

delivery of the possession through process of the Court. But the Trial Court disbelieved evidence regarding possession of property as on the date of filing the suit. In the absence of any evidence to establish that the defendants are in possession and enjoyment of the same and prayed to set-aside the decree and judgment passed by both the Trial Court and affirmed by Appellate Court and pass a decree in favour of the plaintiff granting perpetual injunction restraining the respondents from interfering with the possession and enjoyment of the property.

12. Admittedly, the suit schedule property is agricultural land which is a subject matter of the suit O.S.No.70 of 1985 filed for recovery of possession and the suit was decreed in favour of the plaintiff on 15.04.1993 and later initiated an execution proceedings in E.P.No.50 of 1994 for delivery of vacant possession of the property and delivery was effected on 02.07.1994, which is evidenced by Ex.A-1 dated 16.08.2001. Exs.A-2 & A-3 are the C.C of Tom Tom receipt filed by Amin in E.P.No.50 of 1994 in O.S.No.70 of 1985. These three documents at best would establish that the plaintiff took delivery of possession of the property, though the defendant denied the actual delivery of the property. Even assuming for a moment that the acts of the officials are presumed to be true under Section 114 of the Evidence Act, the above three documents establish delivery of the possession as on 16.08.1995,

but long prior to filing of suit and the suit was filed one year after taking delivery of possession of the property under Exs.A-1,2 & 3.

13. When the plaintiff obtained possession through process of the Court and continuing in possession and cultivating the land, certainly his name would have been mutated in the revenue records, including cultivation account i.e. Adangal No.3 from the date of delivery of possession on 02.07.1994. If he was cultivating the land, his name would have been mentioned in Column Nos.12 & 13 of Adangal No.3 issued by the authorities. But, no such piece of evidence is brought on record to prove *prima facie*, that he is in possession and enjoyment of the property, but, produced Ex.A-4 C.C of pattedar passbooks of M. Gopalrao. At best, this document may establish that the plaintiff obtained pattedar passbooks which were issued in the name of M. Gopalrao, as per the provisions of The A.P. Rights in Land and Pattadar Pass Books Act, 1971. Exs.A-5 to A-7 are C.C. of land revenue receipts and they establish payment of land revenue to the revenue department. But, that would not suffice to accept the plaintiff's possession based on the oral evidence coupled with Ex.A-4 to A-7.

14. No doubt, in a suit filed for permanent injunction, the Court is not supposed to record a finding as to title. At best, the Court can record as to who is in lawful possession and enjoyment of the property, and also the alleged threat to interfere or invade or infringe the legal right of the plaintiff by the defendants, in suit for

injunction simplicitor. Therefore, in suit for injunction simplicitor lawful possession over the property has to be proved by the plaintiff as on the date of filing the suit. The Trial Court and the Appellate Court, based on appreciation of both oral and documentary evidence, concluded that the plaintiff miserably failed to establish his lawful possession as on the date of filing the suit. Therefore, the findings recorded by both the Trial Court and the Appellate Court are based on the evidence and now in the second appeal, the jurisdiction of this Court is limited to substantial question of law. But, the findings recorded by the Trial Court based on facts, cannot be disturbed in a second appeal, in view of the limited jurisdiction under Section 100 of C.P.C

15. Learned counsel for the plaintiff/appellant did not show any illegality in the judgment, except drawing attention of this Court to paragraph no.8 of the Trial Court judgment, where the Trial Court held that Exs.A-1 to A-4 are genuine, but mere genuineness is of no use, since the plaintiff failed to establish his lawful possession as on the date of filing the suit and the question of alleged threat to interfere or invade or infringe the legal right of the plaintiff by the defendants does not arise. Therefore, the findings recorded by both the Trial Court and Appellate Court are free from any illegality, does not call for interference of this Court, since they are based on fact findings. Such, findings cannot be disturbed while exercising power under Section 100 of the Code of Civil Procedure. Hence, I

find no substantial question of law to be decided by this Court in the second appeal and the appeal is dismissed at the stage of admission, confirming the decree and judgment passed by the I Additional Junior Civil Judge's Court, Kovvur in O.S.No.137 of 1995 and confirmed in A.S.No.5 of 2012 by the Additional District Court, West Godavari, Kovvur.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:17.09.2016

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