

THE HON'BLE SRI JUSTICE SANJAY KUMAR

SECOND APPEAL NO.671 OF 2016

J U D G M E N T

Aggrieved by the reversing judgment dated 18.12.2014 in A.S.No.298 of 2011, passed by the learned I Additional District Judge, Ranga Reddy District at L.B.Nagar, setting aside the judgment and decree dated 30.05.2011 in O.S.No.789 of 2007 on the file of the learned III Additional Junior Civil Judge, Ranga Reddy District at L.B.Nagar, the plaintiffs are in second appeal.

Parties shall be referred to as arrayed before the trial Court.

The suit, O.S.No.789 of 2007, was instituted before the learned III Additional Junior Civil Judge, Ranga Reddy District at L.B.Nagar, for a perpetual injunction restraining the defendant association and its men and agents from interfering with the peaceful possession and enjoyment of the plaintiffs over the suit schedule property. The suit schedule property was described as Plot Nos.26 and 27, admeasuring 850 square yards in toto, with a watchman shed and a compound wall, situated in Sy.No.235 of Ramakrishnapuram, known as Brundavan Colony, under Malkajgiri Municipality in Ranga Reddy District. The claim of the plaintiffs was that they were siblings and were the absolute owners of the suit plots, having purchased the same under registered sale deeds dated 29.09.1980 (Exs.A.1 and A.9). The plaintiffs stated that they constructed a compound wall with a gate and a room for a watchman and provided him with a BSNL telephone. Plaintiff No.1 stated that he also obtained a loan by mortgaging Plot No.27 for his business purposes with Punjab National Bank, Secunderabad. According to the plaintiffs, the defendant association had property on the eastern side of the suit plots and

was running a private school therein since 1995. The plaintiffs claimed that they refused to sell their plots to the defendant association despite its request time and again. Thereupon, the defendant association resorted to illegal measures on 10.03.2007 and demanded that the plaintiffs' watchman, Erram Mallaiah, should remove the temporary shed and vacate the suit plots. The watchman was stated to have informed the plaintiffs over phone of these developments and plaintiff No.1 stated that he went to the suit plots at midnight but the men of the defendant association warned him that they would occupy the suit plots. The plaintiffs claimed that they tried to lodge a complaint with Neredmet police station but the police refused to take the complaint on the ground that the case was of a civil nature. They therefore filed the suit.

The defendant association filed a written statement denying all the claims put forth by the plaintiffs but for the fact that it was running a school. According to the defendant association, the school was not started in 1995. The defendant association claimed that it had purchased the property bearing Nos.19-11/26 & 27 (old), new Nos.35-45/26 & 27, admeasuring 789 square yards in Sy.Nos.228/1, 233, 234 and 235 under registered sale deed dated 10.11.1995 from one Katikala Srinivas. It further claimed that it had constructed a compound wall on the northern and western side of the property purchased by it and was running a school therein. Claiming that there was no cause of action for the suit, the defendant association sought dismissal thereof.

The trial Court framed the following issues for resolution:

1. Whether the plaintiffs are in possession and enjoyment of the plaint schedule property?
2. Whether the plaintiffs are entitled for permanent injunction as prayed for?

3. To what relief?

P.Ws.1 and 2 were examined on behalf of the plaintiffs and Exs.A1 to A24 were marked in evidence. D.W.1 was examined on behalf of the defendant association and Exs.B1 to B6 were entered as documentary evidence.

Plaintiff No.1, speaking as P.W.1, reiterated the plaint averments and stated that the defendant association and its men were attempting to grab the suit plots so as to negotiate for a cheaper price and for illegal gain. In his cross-examination, P.W.1 stated that he was giving evidence on behalf of his elder sister, Plaintiff No.2, and that they were in possession of the suit plots. According to him, there was a small room in the suit schedule property and he was living in the said room since 1980. The measurement of this room was stated to be 15 x 20. He further stated that workers of the plaintiffs were living in the room situated in the suit schedule property and nearly 3 to 4 workers were in possession of the said room. He named Shiva as one of the workers and admitted that he could not state the names of the other workers. He asserted that Shiva was living in the room since the last 8 to 9 years. He stated that his company's name was Universal Refrigerator and Engineering Company and that the said workers were employed at his office at Maredpally as site Supervisors. He admitted that he had not filed any documentary evidence to show that his workers were living in the said room. He admitted that except for the room, there was no other structure in the suit schedule property. He also admitted that he did not remember the telephone number and upon being shown Ex.A7 telephone bill, he stated that the telephone number was 25001177. He further stated that he did not remember for how long the

telephone connection was there. He admitted that towards the south and east of the suit plots, the defendant association had its properties. He denied the suggestion that there was no compound wall between the suit property and the property of the defendant association on the eastern and southern side of the suit property. He also denied the suggestion that the compound wall towards the west and the north of the suit property was constructed by the defendant association. He volunteered that they had constructed the compound wall towards the west and north. He admitted that they had not filed a suit for declaration and possession. He also made a crucial admission, which is extracted verbatim hereunder:

‘...We have obtained the order in this suit for taking possession of the suit property. It is not true to say that there is no such order. It is not true to say that on 29-9-08 I along with my followers tried to demolish the compound wall...’

He further stated that the defendant association tried to demolish the compound wall on 15.08.2008 and they gave a complaint at 6:00 PM on the same day. He admitted that he had not filed a copy of the said complaint. He further admitted that the defendant association gave a complaint against them on 15.08.2008 at 6:30 PM, whereupon he was arrested and released on bail. He denied the suggestion that the alleged mortgage was created by him with the collusion of the bank people and that Ex.A2 letter dated 21.06.2006 was obtained from Punjab National Bank stating to the factum of the mortgage only for the purpose of the suit. He admitted that he did not file the link documents in relation to the suit property but asserted that he had the link documents. In his further cross-examination, P.W.1 stated that Ex.A12 was the office copy of the complaint dated 15.08.2008

lodged by him with Neredmet Police Station and admitted that he had stated therein that he had leased out the property to Shiva. He stated that the lease agreement was with him and was executed in favour of Shiva about ten years ago. He admitted that he had not paid municipal tax for the schedule property so far. He stated that Plaintiff No.2, his sister, had authorized him to depose on her behalf and that he had filed a letter of authorization. He denied the suggestion that he had not filed such a letter of authorization but admitted that his property and the property of Plaintiff No.2 were different from each other with separate boundaries.

Katikala Srinivas (P.W.2) appeared before the Court pursuant to the summons issued to him and stated that he did not sell any property to the defendant association. He denied his signatures in Ex.B1 sale deed filed by the defendant association.

Perusal of the judgment passed by the trial Court reflects that there is no discussion whatsoever on the discrepancies in P.W.1's deposition with regard to who was in actual possession of the suit plots on behalf of the plaintiffs. The trial Court merely observed that Exs.A1 and A9 sale deeds established the title of the plaintiffs over the suit plots and possession would follow title. Further, holding that the plaintiffs had established a *prima facie* case and balance of convenience in their favour, the trial Court decreed the suit.

In appeal by the defendant association, the first appellate Court took note of the fact that the trial Court had laid much emphasis upon the issue of title and observed that as the suit was filed for a simple injunction, the question before the Court was not whether the defendant association had title under Ex.B1 and as to its genuineness. The first appellate Court further pointed out that

it was for the plaintiffs to succeed on the strength of their own case and not to rely upon the weaknesses, if any, in the case of the defendant association. The first appellate Court found that in so far as the aspect of possession is concerned, the plaintiffs had not filed their link documents to show that their vendors had title and further, they had no record in proof of their having permission to construct a compound wall or a room in the suit plots. No documents were filed in proof of any electricity connection in the name of the plaintiffs though it was asserted that the room in the suit site was occupied for a long time. Concluding that the plaintiffs had failed to prove their title and that they were in possession of the suit schedule property as on the date of filing of the suit, the first appellate Court reversed the judgment and decree of the trial Court and dismissed the suit.

Heard Sri S.Subba Reddy, learned counsel for the appellants/plaintiffs and Sri J.Sreenivasa Rao, learned counsel on caveat for the respondent/defendant association.

It is a settled position of law that a plaintiff who approaches the Court for relief has to prove his own case and cannot rely on the weaknesses, if any, in the case of the defendant, to establish his suit claim. Further, it is also well settled that in a suit for injunction simplicitor what is of essence is the factum of possession and it is only incidentally, that the Court would look into the question of title, if necessary. In the case of a vacant land, the ordinary rule is that possession would follow title. However, in the present case, the plaintiffs claimed that they constructed a shed in the suit plots and that the same has been in occupation for a long time. The case on hand is therefore not a case relating to vacant land as claimed by Sri S.Subba Reddy, learned counsel.

In this regard, the changing stance of P.W.1 as to who stayed in the shed gives rise to a reasonable doubt as to the veracity of the suit claim. On the one hand, P.W.1 stated that he himself resided in the shed for ten years which, on the face of it, appears to be highly far-fetched as he claims to be a man of means with his own business. His contradictory claim thereafter, to the effect that his workers were staying there for several years, is also open to doubt as he was not in a position to name the workers except for one Shiva. At another stage of his cross-examination, P.W.1 said that he executed a lease in favour of the said Shiva and the said lease dated back to eight or nine years. In the plaint, however, the stand was that one Erram Mallaiah was the watchman of the plaintiffs and he was there in the shed at the point of time when the defendant association tried to interfere with the alleged possession of the plaintiffs. Significantly, neither Erram Mallaiah nor Shiva was examined by the plaintiffs. No other workers of P.W.1 were examined in connection with their alleged possession over the shed on behalf of the plaintiffs. Even more crucial is the admission by P.W.1 that a temporary injunction was obtained in the suit for the 'purpose of taking possession' of the suit property. Further, there was no proof of any electricity connection having been obtained for the subject shed in the suit plots or payment of electricity bills. In the light of the alleged occupation of this shed for several years prior to the institution of the suit, this failure gains significance. P.W.1 also admitted that he had not even paid property tax in relation to the suit plots so far. When the plaintiffs claimed that their purchase of the suit plots dated back to the year 1980, it is difficult to accept that there would be no document in proof of their possession if they constructed a shed therein and

had people living there. Though a telephone was stated to have been installed, Ex.A7 telephone bill is also open to doubt as P.W.1 did not even know the telephone number till he was shown the said bill.

In **POTTE RAMANNA V/s. MUKKA RAJANNA¹**, a learned Judge of this Court pointed out that in a suit for permanent injunction simplicitor, the most relevant issue is whether the plaintiff is in possession on the date of filing of the suit and even if it is found to be so, the Court has to apply the principles of *prima facie* case, balance of convenience and hardship as this trinity would be equally applicable for grant of a permanent injunction. Applying the aforestated principles to the case on hand, this Court finds that the plaintiffs utterly failed to cross the first hurdle of establishing their possession over the suit plots. The plaintiffs had to succeed on the strength of their own case and their endeavour to poke holes in the case of the defendant association was legally of no avail to them. This Court therefore finds no irregularity in the judgment of the first appellate Court warranting interference in exercise of second appellate jurisdiction. No question of law, much less a substantial question of law, arises for consideration.

The second appeal is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

17th SEPTEMBER, 2016

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¹ (2006) (1) ALD 162