

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

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THURSDAY, THE SEVENTH DAY OF APRIL
TWO THOUSAND AND SIXTEEN

-
PRESENT

-
THE HON'BLE SMT. JUSTICE ANIS

-
SECOND APPEAL No. 493 OF 2014

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Between :

1. Pothineni Venkateswarlu
2. Pothineni Chandraiah
(died)

... APPELLANTS

A N D

Pothineni Krishnaiah

...
RESPONDENT

This Court made the following:

THE HON'BLE SMT. JUSTICE ANIS

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SECOND APPEAL No. 493 OF 2014

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JUDGMENT:

This Second Appeal, under Section 100 of the Code of Civil Procedure, 1908 (for short, 'CPC'), is directed against the judgment and decree, dated 11.04.2014, passed in A.S.No.43 of 1991 on the file of the Senior Civil Judge, Kandukur, whereunder and whereby, the judgment and decree, dated 03.05.1991 passed in O.S.No.8 of 1985 on the file of the Principal Junior Civil Judge, Kandukur, were confirmed.

2. The appellant No.1 is the defendant No.1 (case against 2nd appellant/2nd defendant was abated as died during pendency of A.S.No.43 of 1991) and the respondent is the plaintiff before the trial Court. For better appreciation of facts, the parties are hereinafter will be referred to, as they are arrayed before the trial court.

3. The plaintiff filed the suit for grant of permanent injunction restraining the defendants, their men and legal representatives from interfering with the peaceful possession and enjoyment of the plaint schedule property admeasuring Ac.3.95 cents in Survey No.149 of Ilavara Village, Prakasam District.

4. It is stated in the plaint that one Ch.Peda Chandraiah – the maternal grandfather of the plaintiff and the defendants, was the original owner of the plaint schedule property. The said Peda Chandraiah died intestate on 06.12.1948, leaving behind his widow Rosamma and his only daughter Mangamma. By then, his

daughter was married to one P.V.Subbaiah – father of the plaintiff and the defendants. As the said Peda Chandraiah had no male issues, his estate was managed by his wife Rosamma and his daughter Mangamma with the help of the father of the plaintiff and the defendants. After giving birth to the plaintiff, their mother Mangamma also died after ten years subsequent to the death of her father. Since then, the estate of late Peda Chandraiah was managed by his widow Rosamma with the help of his son-in-law along with the plaintiff and the defendants. Thereafter, Rosamma – wife of late Peda Chandraiah also died in the year 1984.

It is further stated that the estate of late Peda Chandraiah was jointly enjoyed by the plaintiff and the defendants along with their grandmother Rosamma and while so, the plaintiff and the defendants decided to enter into partition amicably into three equal shares around 9 years ago prior to filing of the suit i.e. O.S.No.8 of 1985 and they included the plaint schedule property also in their joint family property with the consent of their maternal grandmother Rosamma and got divided accordingly. During the joint family partition, the plaint schedule property got fell into the share of the plaintiff. Ever since the date of said oral partition, the plaintiff took possession of the plaint schedule property and he has been enjoying the same and paying cist to the Government in his own right. The plaintiff raised pilli pesara and jonna mixed crop in the schedule property during the present fasali also, but because of some misunderstandings among the family members, both the defendants colluded and hatched up a plan to evict the plaintiff and thereby threatened the plaintiff with dire consequences, and if the threats of the defendants are allowed to be materialized, it would cause great injustice and irreparable loss to the plaintiff. Hence, the plaintiff filed the suit for grant of permanent injunction.

5. The defendants filed Written Statement admitting that

Ch. Peda Chandraiah, who is their maternal grandfather, was only the absolute owner of the plaint schedule property and he married China Rosamma and begot only daughter by name Mangamma. The said Peda Chandraiah owned and possessed considerable immovable properties at Kamepalli village and other villages. As there were no male issues to him, he brought his nephew Pothineni Venkata Subbaiah to his house from Koppolu village and got him married to his only daughter Mangamma. Ever since, the said Pothineni Venkata Subbaiah was living with the family of Peda Chandraiah and attending the cultivation of family lands.

The defendants denied that the said Peda Chandraiah died intestate and specifically stated that the said Peda Chandraiah executed an unregistered Will dated 01.12.1948 bequeathing some of his properties to his wife Rosamma and some other to his daughter Mangamma. The said Will was scribed by one Sreeramagiri Venkata Narasaiah and attested by one Chaganti Rosaiah Naidu, Paladugu Chenchiah, Chaganti Konda Ramaiah, Kareti Lakshmi Narasimham and Gadamsetty Venkateswarlu. Subsequent to the execution of the said Will, the said Peda Chandraiah passed away. Therefore, China Rosamma continued to live in joint and Pothineni Venkata Subbaiah was managing the family cultivation. Unfortunately, after the birth of plaintiff, the said Mangamma died intestate leaving behind the plaintiff, the defendants and her husband as her legal heirs.

According to the defendants, the suit schedule property belonged to China Rosamma and she got full and absolute rights. The defendants admitted that there was an amicable and oral partition between the plaintiff and the defendants in respect of their joint family properties into three equal shares and at the time of partition, an extent of Ac.0.78 cents on its North was taken as the joint family property and the said property was given to the plaintiff. After excluding the said

Ac.0.78 cents, the remaining extent of Ac.3.12 cents was divided into three equal shares tentatively i.e. Ac.1.04 cents each to the plaintiff and the defendants. As the said China Rosamma was alive by the date of oral partition, the plaintiff and the defendants agreed to allow China Rosamma to enjoy the entire property during her lifetime for her maintenance and further agreed to take possession of their respective plots after her demise. It was also agreed that the said suit land should be cultivated by the person with whom she lives during the period. Thereafter, China Rosamma stayed with the plaintiff only till her demise on 22.04.1984. Therefore, as per the original arrangement, the plaintiff and the defendants took their respective plots and the defendants raised crops like pilli pesara and pyrujonna in their lands. While so, the plaintiff taking advantage of their grandmother staying with him till her death, he took away her gold ornaments weighing 9 sovereigns and therefore some disputes cropped up among the plaintiff and the defendants. When the defendants questioned the plaintiff about the gold ornaments, he filed the present suit for permanent injunction as if the entire plaint schedule property fell to his share. According to the defendants, the payment of cist by the plaintiff is not true and correct because he might have paid the same on behalf of China Rosamma as he was cultivating the land on her behalf. Further, the entries in the adangals also show that the plaintiff cultivated the land on behalf of China Rosamma only.

According to the defendants, by mistake, they have mentioned that the entire property was partitioned and also contended that China Rosamma executed a registered Will dated 20.10.1983 in a sound and disposing state of mind. Further, it is stated that in the said Will, China Rosamma categorically stated that the properties of her husband were equally shared among her grandsons and being enjoyed by them. According to the defendants, the plaintiff has no cause of action to file the present suit and the suit is not maintainable

for bare injunction without the relief of declaration, and finally prayed the Court to dismiss the suit.

6. Basing on the above pleadings, the following issues have been settled by the lower Court for trial:

1. Whether the partition among three brothers viz., plaintiff and the defendants is true and if so, whether the plaint schedule land fell to the share of plaintiff in their partition?
2. Whether the plaintiff was in possession of the suit land on the date of suit?
3. Whether the threats of obstruction on the plaintiff by the defendants prior to the suit are true as alleged in the plaint?
4. To what relief?

7. To substantiate the case of the plaintiff, PWs 1 to 3 were examined and Exs.A.1 to A.9 were got marked. On behalf of the defendants, DWs 1 to 3 were examined and Ex.B.1 was got marked. The trial Court also marked Exs.C.1 to C.3.

8. The trial Court, after considering the oral and documentary evidence, decreed the suit by granting permanent injunction in favour of the plaintiff restraining the defendants, agents and their men from interfering with the peaceful possession and enjoyment of the suit schedule property. On appeal, the said findings were confirmed. Challenging the same, the present Second Appeal is preferred.

9. The learned counsel for the appellant raised the following substantial questions of law:

- a) Whether the suit for bare injunction without seeking the relief of declaration of title to the plaint schedule property is maintainable?
- b) Whether the Courts below are not in error in decreeing the

suit for permanent injunction even though the plaintiff has failed to prove that the property has fallen to his share in the oral partition?

- c) Whether the Courts below are not in error in decreeing the suit for injunction against the co-owner of the property?

10. The learned counsel for the appellant argued that the plaintiff claimed the title by oral partition and the burden of proof lies on the plaintiff that the suit schedule property was fallen to his share and he is in exclusive possession of the said property, and unless the burden is discharged, the plaintiff is not entitled for grant of injunction. It is also argued that the plaintiff failed to prove that he is in exclusive possession of the suit schedule property and further the defendants are the co-owners of the suit schedule property, the trial Court erroneously issued injunction against them. It is further argued that the documentary evidence i.e. cist paid by the plaintiff to the government is on behalf of his grandmother Rosamma, likewise the adangal also shows the same fact, and therefore, the documentary evidence is no way helpful to the plaintiff to prove his ownership and possession as on the date of filing of the suit, and relied upon the case-law reported in *Anathula Sudhakar Vs. P.Buchi Reddy (dead) by LRs. and others*^[1], wherein the Hon'ble Supreme Court held at Para 21 as follows:

“To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

- (a) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an

injunction simpliciter.

- (b) 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 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.
- (c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in *Annaimuthu Thevar Vs. Alagamma* [(2005) 6 SCC 202]). Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.
- (d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”

The learned counsel further argued that where a cloud is raised

over the plaintiff's title and he does not have possession over the suit schedule property, a suit for declaration and possession, with or without a consequential injunction, is the remedy. In this case, the plaintiff is failed to prove his exclusive possession over the suit schedule property. Therefore, suit for bare injunction is not maintainable.

It is also argued that the admissions made by the defendants in an interlocutory application is considered but not the contentions raised in the written statement by the trial Court as well as the appellate Court. It is further argued that that the suit filed by the plaintiff without seeking the relief of title is not sustainable and the plaintiff is not entitled for injunction as the defendants are the co-owners of the suit schedule property, and finally prayed the Court to set aside the judgment of the trial Court as well as the appellate Court.

11. On the other hand, the learned counsel for the respondent/plaintiff argued that the plaintiff is in possession of the suit schedule property nine years prior to the filing of the suit and he is cultivating the said land and raising crops, and the plaintiff is also paying cist to the government. It is also argued that the plaintiff is residing with his grandmother and his grandmother Rosamma died in the year 1984, and that as per Ex.A.7 registered mortgage deed, the plaintiff mortgaged the suit schedule property to the Co-operative Society as a lawful owner and at the time of mortgage, none were opposed including the defendants. It is further argued that the defendants in the written statement admitted about the earlier partition and the trial Court as well as the first appellate Court after considering the oral and documentary evidence produced by both the parties, granted permanent injunction in favour of the plaintiff restraining the defendants from interfering with the peaceful possession over the suit schedule property. It is also argued that during the pendency of the case, the second defendant died and no steps have been taken to

bring the L.Rs. on record, as such the suit against defendant No.2 was abated. It is further argued that there is no substantial question of law involved in this case and prayed the Court to dismiss the appeal.

12. Now, the point that would arise for my consideration in this appeal is whether there is any substantial question of law involved in this appeal.

13. **POINT:**

A perusal of the record shows that the appellants are the defendants and the respondent is the plaintiff in O.S.No.8 of 1985. The plaintiff, who filed the suit for grant of permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit schedule property admeasuring Ac.3.95 cents in Survey No.149 situated in Ilavara Village, Kandukur Taluq, Prakasam District, contending that the maternal grandfather of the plaintiff and the defendants is one Ch. Peda Chandraiah of Kamepalli village and he married to one Rosamma, and they had one daughter by name Mangamma, who is the mother of the plaintiff and the defendants. Originally, Peda Chandraiah was the owner of the lands admeasuring Ac.14.70 cents and he died intestate on 06.12.1948 leaving behind his widow Smt. Rosamma and the only daughter Mangamma. After his death, his wife Rosamma with the assistance of her son-in-law P.V.Subbaiah, who is father of the plaintiff and the defendants, was managing the properties of Peda Chandraiah. The wife of Peda Chandraiah by name Rosamma also died in the year 1984 and the mother of the plaintiff and the defendants – Mangamma also pre-deceased her mother Rosamma.

14. Further, during the lifetime of grandmother of parties i.e. Rosamma, the entire properties of late Ch. Peda Chandraiah were partitioned and the plaintiff and the defendants were in possession and

enjoyment of the respective shares allotted to them. According to the plaintiff, during the partition of the properties, the suit schedule property was fallen to the share of plaintiff and the plaintiff has been in possession and enjoyment of the suit schedule property till date. After the death of maternal grandmother of the plaintiff and the defendants, the disputes arose and the defendants tried to interfere with the peaceful possession and enjoyment of the suit schedule property. Hence, the plaintiff filed the suit for grant of permanent injunction.

15. In the Written Statement, the defendants admitted that nine years prior to the filing of the suit, there was an oral partition between the parties and the entire properties were partitioned into three equal shares and enjoying the same. The defendants also contended that out of Ac.3.95 cents, Ac.0.78 cents were given to the plaintiff and after excluding Ac.0.78 cents, the other extent was partitioned equally by the plaintiff and the defendants, as such the relief of permanent injunction cannot be granted against co-owners.

16. When the defendants demanded for partition and tried to interfere with the peaceful possession of the plaintiff, O.S.No.8 of 1985 was filed by the plaintiff seeking permanent injunction. On 03.05.1991, the trial Court granted permanent injunction in favour of the plaintiff as he established his possession and enjoyment over the suit schedule property on the date of filing of the suit, whereas the defendants failed to establish that they were in possession of the suit schedule property. Aggrieved by the judgment of the trial Court, the defendants filed the appeal. During the pendency of appeal, the second defendant died, but no steps were taken to bring the L.Rs. on record. Though the appellants have not advanced any arguments, the first appellate Court treated the appeal as heard and allowed the appeal on 25.01.2002. Aggrieved by the judgment of the first appellate Court, the plaintiff filed

S.A.No.164 of 2002 before this Court and this Court remanded the matter once again to the lower appellate Court for fresh disposal. After remand, the first appellate Court considered the evidence and held that as per the oral and documentary evidence produced by the plaintiff, it is proved that the plaintiff has been in possession and enjoyment of the suit schedule property and a specific finding was given that as per Ex.A.7 registered Mortgage deed dated 29.07.1979, the plaintiff mortgaged the suit schedule property in favour of Co-Operative Society and obtained an agricultural loan. Exs.A.2 to A.6 also clearly shows that the plaintiff is in exclusive possession and enjoyment of the suit schedule property. If really, the defendants were having share in the suit schedule property, they ought not to have kept quiet when the plaintiff mortgaged the suit schedule property to the Co-operative Society and obtained the agricultural loan. Therefore, Exs.A.1 to A.9 filed by the plaintiff clearly establish that as on the date of filing of the suit, the plaintiff is in exclusive possession and enjoyment of the suit schedule property and the trial Court as well as the appellate Court rightly considered the oral and documentary evidence produced by the plaintiff and allowed the suit and dismissed the appeal respectively.

17. The contention of the learned counsel for the appellant is that no injunction can be granted against the co-owner, cannot be accepted as the appellant/defendant failed to prove their joint ownership and joint possession and enjoyment over the suit schedule property. Per contra, the documentary evidence produced by the plaintiff established that he has been in possession and enjoyment of the suit schedule property. Therefore, considering all the aforesaid aspects, the trial Court as well as the appellate Court gave a finding that the plaintiff is entitled for grant of permanent injunction. Moreover, though the legal propositions settled in the judgment of the Hon'ble Supreme Court (1st supra) are undisputed, since the defendants failed to prove their possession and

enjoyment over the suit schedule property, it is no way helpful in support of their case.

18. The findings of both the Courts below are completely based on the evidence on record and they rightly appreciated the evidence on record and came to a conclusion that the plaintiff is in possession of the suit schedule property and granted injunction. Therefore, I do not find any wrong appreciation of evidence or incorrect finding in the judgments of both the Courts below.

19. For these reasons, the substantial question of law urged on behalf of the appellants/defendants are not tenable and in fact, there is no substantial question of law and all the submissions are based on the factual aspects. Hence, the Second Appeal is devoid of merit and is liable to be dismissed, as no substantial question of law involved in the case.

20. Accordingly, the Second Appeal is dismissed. No costs. Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

ANIS, J

APRIL 7, 2016.

Anr

THE HON'BLE SMT.JUSTICE ANIS

SECOND APPEAL No. 493 OF 2014

07.04.2016

Anr

[\[1\]](#) (2008) 4 S.C.C. 594