

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

SECOND APPEAL No.81 of 2015

JUDGMENT:-

This Second Appeal, under Section 100 of the Code of Civil Procedure, 1908, by the unsuccessful sole defendant, is directed against the judgment and decree dated 07.10.2014 of the learned Senior Civil Judge, Srikalahasti, passed in A.S.No.2 of 2010, whereby, the learned Senior Civil Judge dismissed the appeal by confirming decree dated 28.01.2010 of the learned Principal Junior Civil Judge, Srikalahasti, passed in O.S.No.81 of 2006, filed by sole plaintiff seeking permanent injunction against the defendant restraining him, his men and agents and servants from interfering with the peaceful possession and enjoyment of the plaint schedule property.

2. I have heard the submissions of Sri C.S.K.V.Ramana Murthy, learned counsel for the appellant/sole defendant and Sri V.Sudhakar Reddy, learned counsel for the respondent/sole plaintiff at the stage of admission. I have perused the material on record.

3. For convenience of reference, the ranks given to the parties before the trial Court will be adopted throughout this judgment.

4. The sole plaintiff filed the suit for permanent injunction restraining the sole defendant from interfering with the peaceful possession and enjoyment of the plaint schedule property alleging that one Mannasamudram Muni Reddy was the original owner of the plaint schedule property; Said Muni Reddy borrowed some

amount from the father of the plaintiff and subsequently failed to discharge the debt due to his father; On that, his father filed suit in O.S.No.46 of 1997 before the trial Court, obtained decree and filed E.P.No.17 of 2002 for realization of the decree debt, brought the plaint schedule property to sale; Plaintiff participated in the auction and became the highest bidder in the auction and purchased the plaint schedule property on 20.12.2004 for a consideration of Rs.31,000/-; sale was confirmed on 04.03.2005 and the Sale Certificate was issued in favour of the plaintiff; Later, the plaintiff filed E.A.No.256 of 2005 in E.P.No.17 of 2002 in O.S.No.46 of 1997 for delivery of possession and the said petition was allowed by the Additional Junior Civil Judge, Srikalahasti and possession was delivered to the plaintiff on 25.09.2005; Thereafter, defendant filed E.A.No.25 of 2003 during the pendency of E.P.No.17 of 2002 to raise the attachment over the plaint schedule property; after due enquiry, the Additional Junior Civil Judge, Srikalahasti, dismissed the said E.A. on 08.11.2004.

5. Aggrieved by the same, the defendant preferred appeal in C.M.A.No.4 of 2005, which was also dismissed on merits by order dated 21.10.2005; Since the date of delivery of possession, plaintiff is in peaceful possession and enjoyment of the plaint schedule property. The plaintiff raised 'Budda Oddulu' crop in the plaint schedule property and when the crop is ripe for harvest, the defendant and his henchmen tried their level best to spoil the paddy crop in the plaint schedule property on 20.02.2006 and also tried to occupy the plaint schedule property by dispossessing the plaintiff from it. But the plaintiff, with the assistance of the village elders, could able to resist the high handed attempt of the

defendant and his followers. Since the defendant and his followers openly proclaimed in the village that they would dispossess the plaintiff from the plaint schedule property and destroy the crop at any point of time in future, hence, the plaintiff is constrained to file the suit for aforesaid reliefs.

6. The defendant resisted the claim of the plaintiff contending that the property he purchased under the registered sale deed and the property purchased by the plaintiff in Court auction is one and the same; The plaintiff is unable to identify his land on ground and tried to encroach into the land of the defendant in an extent of Acs.0.53 cents in order to knock away the same. Thereupon, the defendant filed O.S.No.479 of 2005 before the trial Court for grant of permanent injunction, against the plaintiff and his father and obtained interim injunction which was in force till the disposal of the suit. The said suit ended in dismissal against which, an appeal in C.M.A.No.7 of 2014 is pending before the lower appellate Court and, therefore, the defendant alone is in possession and enjoyment of the plaint schedule property and hence, the question of making any attempt to interfere with the plaintiff's possession and enjoyment of the property does not arise; and, prayed for dismissal of the suit.

7. Based on the above pleadings, the trial Court framed the following issues for trial:-

- (1) Whether the plaint schedule property is true?
- (2) Whether the plaintiff is in actual physical possession of the suit land?
- (3) Whether the suit schedule property and property in O.S.No.479 of 2005 is one and the same?

- (4) Whether the plaintiff is entitled for permanent injunction as prayed for?
- (5) To what relief?

8. During trial, on behalf of the plaintiff, P.Ws.1 and 2 were examined and Exs.A.1 to A.6 were marked. On behalf of the defendant, D.Ws.1 to 4 were examined and Exs.B.1 to B.6 were marked.

9. Upon hearing the arguments of both counsel and considering the oral and documentary evidence, the trial Court decreed the suit holding that the property purchased by the plaintiff in the Court auction is entirely different from the property purchased by the defendant from his vendor and, therefore, to prevent illegal interference and unlawful dispossession by the defendant, granted permanent injunction.

10. Aggrieved by the same, the defendant preferred appeal in A.S.No.2 of 2010 before the lower appellate Court which ended in dismissal by confirming the decree of the trial Court.

11. Aggrieved by the concurrent findings recorded of both the Courts below, the defendant preferred this Second Appeal raising several contentions; mainly contending that the lower appellate Court failed to formulate a specific point for determination as required under Order XLI Rule 31 of C.P.C. and misread the evidence on record; arrived at wrong conclusions and that the order in C.M.A.No.4 of 2005 would not come in the way of the plaintiff claiming right in the property, as the property purchased by the defendant from his vendor under registered sale deed and the property purchased by the plaintiff in Court auction are one

the same, but both the Courts below did not arrive at a just conclusion based on the material on record and committed an error.

12. During hearing, the learned counsel for the appellant/defendant, while reiterating the contentions raised in the memorandum of grounds of appeal, drawn attention of this Court to certain observations regarding operation of earlier judgment in C.M.A.No.4 of 2005 as *res judicata* and that it would come in the way of deciding the suit filed by the defendant in O.S.No.479 of 2005 pending before the trial Court, now in appellate Court in CMA No.7 of 2004 and that the observations made by the trial Court, which are upheld by the lower appellate Court, may have its own impact on the judgment to be pronounced in O.S.No.479 of 2005, now in appellate Court in CMA No.7 of 2004, and prayed to allow the appeal by dismissing the suit.

13. On the other hand, learned counsel for the respondent/plaintiff supported the judgments of both the Courts below in all respects and prayed for dismissal of the appeal, as there are no substantial questions of law involved in this appeal to be adjudicated by this Court.

14. Admittedly, this appeal is filed challenging the decree and judgment passed by the lower appellate Court which confirmed the judgment and decree of the trial Court granting permanent injunction in favour of the plaintiff restraining the defendant and his men from interfering with the plaintiff's peaceful possession and enjoyment of the plaint schedule property. But, the trial Court and the lower appellate Court went on deciding the title with

reference to the sale certificate obtained by the plaintiff and the sale deed obtained by the defendant from his vendor and recorded a specific finding as regards the title to the property.

15. In a suit for bare injunction, the scope of trial is limited and the Court, at best, is expected to record a finding as to who is in lawful possession and enjoyment of the property as on the date of filing of the suit and no finding can be recorded as to the title, attaching finality. It is the elementary principle of law that in a suit for injunction simplicitor, the question of title can be gone into incidentally, for a limited purpose of finding out as to who is in lawful possession of the property.

16. In **Alla Seshukumar and another Vs. Alla Radha Krishna**¹ this Court held as follows:-

“In a suit for injunction simplicitor, complicated questions of title not to be given into. The person not having title but being in settled possession of property on the date of suit is entitled to injunction even against true owner.”

17. In **Kaneez Fathima and another Vs. Samru Sultana and others**² this Court held as follows:-

“The court was under impression that, unless a plaintiff in a suit for perpetual injunction proves his title, possession even if established, cannot be recognized. This is totally opposed to the settled principles of law. Basically, the finding as to the possession, must be recorded, in a suit of this nature, and the verification of title, on the limited sense, must be undertaken, if necessity arises.”

¹ 2008 (1) 430

² 2008 (3) ALT 538

18. Similar view was expressed by this Court in **Surampudi Sudarsana Rao Vs. Nanduri Venkata Seetha Ramanjanaeyulu**³, wherein, it was held as follows:-

“For grant of perpetual injunction, the finding has to be recorded as to possession and upheld injunction granted by the first appellate court”.

19. In view of the above settled legal position, the finding recorded by the trial Court and affirmed by the lower appellate Court with regard to the title is unwarranted and it is beyond the scope of trial in a suit for bare injunction. Therefore, the findings of both the Courts below in regard to title to the property attaching finality are hereby set aside.

20. Undisputedly, the plaint schedule property was purchased by the plaintiff in the Court auction in E.P.No.17 of 2002 and the possession of the property was delivered to the plaintiff under the original of Ex.A.2 in pursuance of the delivery order marked as Ex.A.3 and there is nothing on record to establish that the plaintiff was dispossessed from the suit schedule property after recording delivery by the trial Court under the original of Ex.A.2 – Delivery Certificate. It is an equally admitted fact that the defendant filed a claim petition in E.A.No.25 of 2003 under Order XXI Rule 58 of C.P.C. requesting the Executing Court to raise the attachment claiming that he is the owner of the property and when the said petition was dismissed by the Executing Court, the defendant moved the appellate Court by filing C.M.A.No.4 of 2005, but the appellate Court dismissed the CMA confirming the order passed by

³ 2008 (6) ALT, 676

the Executing Court holding that the property claimed by the defendant is entirely different from the property purchased by the plaintiff in Court auction. The order in C.M.A.No.4 of 2005 attained finality. Thus, the possession of plaintiff is supported by the documentary evidence, so also the oral evidence of P.W.1.

21. Apart from that, Ex.A.5 – certified copy of 10 (1) Account; and Ex.A.6 – certified copy of No (2) Adangal, i.e., cultivation account of village would show that the plaintiff paid land revenue to the Government and cultivated the land. The defendant also produced certified copy of 10 (1) Account marked as Ex.B.4 to establish that he paid the land revenue to the Government and cultivated the land. But, the survey number mentioned in both the 10 (1) Accounts marked as Exs.A.5 and Ex.B.4, is one and the same, since the property claimed by both the plaintiff and the defendant is in same survey number. But those documents would not serve any purpose to establish the possession, as those documents would not contain the boundaries of the property. But, No.2 account, cultivation account marked as Ex.A.6 are sufficient to hold that the plaintiff is cultivating the property as on the date of filing suit. Therefore, in the absence of any evidence of dispossession of plaintiff from the suit schedule property after recording delivery by the executing Court under the original of Ex.A.4, the plaintiff is deemed to be in possession and enjoyment of the plaint schedule property, cultivating the same in his own right. Though the defendant claimed that he is in possession and enjoyment of the property, he did not produce any satisfactory evidence to establish that he is in possession and enjoyment of the property as on the date of filing of the suit. On the other hand, the

Executing Court in E.A.No.25 of 2003 and the appellate Court in C.M.A.No.4 of 2005, have concluded that the property purchased by the defendant is entirely different from the property purchased by the plaintiff in the public auction conducted by the Court after obtaining permission to participate in the auction under Order XXI Rule 72 of C.P.C. Therefore, on a scrutiny of the material on record, more particularly Ex.B.6 – certified copy of judgment in C.M.A.No.4 of 2005, it can be safely held that the property purchased by the defendant is unconcerned with the property auctioned by the Court for realization of the decree debt. The trial Court and the lower appellate Court, based on the oral and documentary evidence, concluded that the plaintiff is in lawful possession and enjoyment of the property as on the date of filing of the suit, more particularly based on the sale certificate, delivery warrant, delivery certificate etc.

22. In a suit for injunction, the plaintiff is not only required to prove lawful possession as on the date of filing of the suit, but also prove the threat to invade or infringe the legal right of the plaintiff by the defendant, as required under Section 38 of the Specific Relief Act, 1963. In the instant case, the plaintiff categorically stated in his plaint that the defendant and his men made an attempt to interfere with the possession and enjoyment of the property, but their high-handed act was resisted with the help of the village elders and while leaving the suit schedule property, the defendant and his men have openly declared that they would dispossess the plaintiff from the plaint schedule property and destroy the crop at any point of time. This categorical statement by the plaintiff in the plaint on proof itself is sufficient to grant

permanent injunction under Section 38 of the Specific Relief Act, 1963, for the reason that if the alleged threat is transformed into action, that would invade and infringe the legal right of the plaintiff over the pliant schedule property.

23. For the foregoing discussion, this Court finds that the trial Court rightly granted permanent injunction to the plaintiff restraining the defendant, his men, agents and servants from interfering with the peaceful possession and enjoyment of the plaint schedule property, which was rightly confirmed by the lower appellate Court. Hence, I find no substantial questions of law involved in this appeal to be decided by this Court.

24. In the result, subject to the observations made *supra*, the Second Appeal is dismissed at the stage of admission. However, the findings recorded hereinabove shall not have any bearing on the appeal pending before lower appellate Court in A.S.No.7 of 2014 and the lower appellate Court is directed to decide the appeal in accordance with law, uninfluenced by any of the observations made *supra*, except relating title of property. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal, shall stand dismissed as consequence.

M. SATYANARAYANA MURTHY, J

20th September, 2016
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