

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT JUSTICE ANIS**

CIVIL MISCELLANEOUS APPEAL Nos.735 and 762 OF 2016

C O M M O N J U D G M E N T

(Per Hon'ble Sri Justice Sanjay Kumar)

These civil miscellaneous appeals under Order 43 Rule 1 CPC arise out of the common order dated 03.08.2016 passed by the learned IX Additional District Judge, West Godavari at Kovvur, in I.A.Nos.501 and 721 of 2016 in O.S.No.29 of 2016. C.M.A.No.735 of 2016 relates to I.A.No.721 of 2016 in the suit while C.M.A.No.762 of 2016 pertains to I.A.No.501 of 2016 filed therein.

Maddipoti Subba Rao and Katnam Suresh Kumar, the appellants, are the plaintiffs in O.S.No.29 of 2016 which was filed for declaration of title of the second appellant/second plaintiff over an extent of Ac.14.00 guntas in R.S.No.2 of Yernagudem Village, Devarapally Mandal, West Godavari District, and for a permanent injunction restraining Jeypore Sugars Company Limited, represented by its Managing Director and its Chief Executive Officer, the respondents/defendants from interfering with the appellants/plaintiffs' possession and enjoyment of the suit schedule property. The appellants/plaintiffs filed I.A.No.501 of 2016 in O.S.No.29 of 2016 under Order 39 Rule 1 C.P.C. seeking a temporary injunction against the respondents/defendants. While so, the respondents/defendants filed I.A.No.721 of 2016 in the suit raising a counterclaim and, in turn, seeking a temporary injunction against the appellants/plaintiffs. The two I.A.s were heard together and by the common order under appeal, the trial Court dismissed I.A.No.501 of 2016 filed by the appellants/plaintiffs and allowed I.A.No.721 of 2016 filed by the respondents/defendants, thereby granting them a

temporary injunction restraining the appellants/plaintiffs and their men from interfering with their peaceful possession and enjoyment of the suit schedule property till disposal of the suit/counterclaim. Aggrieved by the injunction granted against them and the denial of a injunction to them, the appellants/plaintiffs are in appeal.

Heard Sri D.Sudershan Reddy, learned senior counsel representing Sri Polisetty Radha Krishna, learned counsel for the appellants/plaintiffs, and Sri Narasimha Rao Davuluri, learned counsel on caveat for the respondents/defendants.

The case of the appellants/plaintiffs before the trial Court was as under: Katnam Subba Rao, the great-grandfather of the second appellant/second plaintiff, was the owner of the suit schedule property and he executed a Will on 12.11.1968 bequeathing the said property to his grandson, Venkateswara Rao, the father of the second appellant/second plaintiff. After the death of Katnam Subba Rao, Venkateswara Rao succeeded to the suit schedule property and enjoyed the same by raising crops. He executed registered settlement deed dated 20.07.2010, whereby the suit schedule property was settled in the name of his son, the second appellant/second plaintiff, and he delivered possession of the property to him. The second appellant/second plaintiff claimed to be in possession pursuant to the said settlement. The revenue authorities effected mutation in his favour in the revenue records. While so, the respondents/defendants proclaimed that they would enter into and occupy the suit schedule property, constraining the appellants/plaintiffs to file the suit and seek interlocutory protection by way of a temporary injunction.

Per contra, the case of the respondents/defendants was that the suit schedule property was sold to Jeypore Sugars Company Limited by Katnam Subba Rao and fifteen others under registered

sale deed dated 14.11.1966 and possession thereof was also delivered to it. Thereafter, Katnam Padmanabham, the son of Katnam Subba Rao, along with his son, Katnam Venkateswara Rao, the father of the second appellant/second plaintiff, and three others filed ATC No.26 of 1993 before the Tenancy Tribunal-cum-Court of the Principal Junior Civil Judge, Kovvur, against Jeypore Sugars Company Limited claiming tenancy rights over the suit schedule property. In turn, Jeypore Sugars Company Limited filed ATC No.49 of 1993 before the said Tenancy Tribunal seeking eviction of the petitioners in ATC No.26 of 1993. The Tenancy Tribunal dismissed ATC No.26 of 1993 and allowed ATC No.49 of 1993 *vide* order dated 01.03.1999. Aggrieved by the dismissal of ATC No.26 of 1993, Katnam Padmanabham, Katnam Venkateswara Rao and another filed ATA No.77 of 1999 before the Tenancy Appellate Tribunal-cum-Court of the District Judge, West Godavari, Eluru. The said appeal was dismissed by judgment dated 09.03.2005. Similarly, ATA No.73 of 1999 filed by Katnam Padmanabham, Katnam Venkateswara Rao and others against the order in ATC No.49 of 1993 was also dismissed by the Tenancy Appellate Tribunal. Dismissal of these appeals was confirmed by this Court in CRP Nos.2559, 2561 and 2562 of 2005. Pursuant thereto, Jeypore Sugars Company Limited obtained delivery of the suit schedule property in E.P.No.387 of 2005 on 28.08.2007. From the said date, Jeypore Sugars Company Limited remained in possession and enjoyment of the said property to the exclusion of the Katnam family. The respondents/defendants further pointed out that the Will and the settlement deed relied upon by the appellants/plaintiffs were after the date of the sale of the suit schedule property by Katnam Subba Rao and others in favour of Jeypore Sugars Company Limited and alleged that the said

documents were got up to grab the property. The respondents/defendants further stated that the suit schedule property had been mortgaged by the company with Andhra Pradesh State Financial Corporation and various banks, demonstrating that the appellants/plaintiffs had no right, title or interest. The respondents/defendants asserted that the appellants/plaintiffs were not entitled to a temporary injunction and on the other hand, as they were threatening to interfere with their possession over the suit schedule property, a temporary injunction should be granted in their favour.

In the light of the rival claims put forth by the parties, the trial Court framed the following points for consideration:

- ‘1. Whether the petitioners in I.A.501 of 2016 are in possession and enjoyment of suit schedule property as on the date of filing of suit and thereby entitled for temporary injunction as prayed for?
2. Whether the petitioners in I.A.721 of 2016 are in possession and enjoyment of suit schedule property as on the date of filing of suit and thereby entitled for temporary injunction as prayed for?”
3. To what relief?”

No oral evidence was let in by either side. Documentary evidence was however adduced in I.A.No.501 of 2016. Exs.P1 to P21 were marked by the appellants/plaintiffs while the respondents/defendants marked Exs.R1 to R21.

Having considered the documentary evidence placed on record, the trial Court opined that insofar as the question of title was concerned, which could be gone into incidentally while considering grant of a temporary injunction, the respondents/defendants had demonstrated better title while the second appellant/second plaintiff could not prove his claim owing to the documentary evidence to the effect that the suit schedule property had been sold by the original

owner, Katnam Subba Rao, along with others to Jeypore Sugars Company Limited. The trial Court further opined that mere entries in the revenue records would not be sufficient to hold in favour of the appellants/plaintiffs in the light of the weighty evidence adduced by the respondents/defendants to show that they were in possession. As regards the differences in the boundaries of the suit schedule property as per the plaint schedule and the sale deed (Ex.R1) executed in favour of Jeypore Sugars Company Limited by Katnam Subba Rao and others, the trial Court opined that it was not the case of the appellants/plaintiffs that Katnam Subba Rao had any other property in R.S.No.2 of Yernagudem Village, Devarapally Mandal, West Godavari District, whereby there could be a possibility of the land sold by him to the Jeypore Sugars Company Limited being separate and distinct from the suit schedule property. This issue, *per* the trial Court, could only be decided after full trial. Holding so, the trial Court concluded that the appellants/plaintiffs had not made out a case for grant of an injunction while the respondents/defendants had done so. The trial Court accordingly granted a temporary injunction in their favour and dismissed the appellants/plaintiffs' application for an injunction.

Sri D.Sudershan Reddy, learned senior counsel, would contend that the trial Court committed a grave error in denying interlocutory relief to the appellants/plaintiffs pending the suit and holding in favour of the respondents/defendants in this regard. Learned senior counsel would assert that in the light of the mutation carried out by the revenue authorities in favour of the second appellant/second plaintiff, the trial Court ought not to have brushed aside the same as such entries were *prima facie* evidence of his possession.

Per contra, Sri Narasimha Rao Davuluri, learned counsel, would rely upon the documentary evidence placed on record which demonstrated that the title and ownership of the suit schedule property was conveyed by Katnam Subba Rao, his children, his brothers and his brothers' children, in favour of Jeypore Sugars Company Limited and the subsequent tenancy proceedings clearly demonstrated that possession was delivered to Jeypore Sugars Company Limited in the year 2007. Learned counsel would point out that the father of the second appellant/second plaintiff, Venkateshwara Rao, and his father, Padmanabham, were parties to ATC No.26 of 1993, wherein they asserted that after the sale and delivery of possession of the suit schedule property to Jeypore Sugars Company Limited on 14.11.1966, they had obtained the suit property on lease and asserted tendency rights in respect thereof. On the other hand, ATC No.49 of 1993 was filed by the company seeking their eviction and the litigation ultimately culminated in delivery proceedings (Ex.R5) dated 24.08.2007 in E.P.No.387 of 2005 in ATC No.49 of 1993, whereby the company again came into possession.

Perusal of the suit plaint reflects that the appellants/plaintiffs did not even disclose execution of the sale deed by Katnam Subba Rao and others in favour of Jeypore Sugars Company Limited in the year 1966. They also suppressed all details in relation to the filing of the tenancy cases by the father and grandfather of the second appellant/second plaintiff along with others, on the one hand, and by Jeypore Sugars Company Limited, on the other. This suppression of relevant facts, as rightly pointed out by the trial Court, has to weigh against them. That apart, the appellants/plaintiffs necessarily had to make out a *prima facie* case, demonstrate that the balance of convenience tilted in their favour and also establish that they would

suffer irreparable injustice in the event temporary injunctive relief was not granted to them.

In the present case, as rightly pointed out by the trial Court, the appellants/plaintiffs failed to cross the first hurdle of establishing a *prima facie* case. The documentary evidence placed on record by the respondents/defendants annihilated their claim of possession over the suit schedule property. The entries in the revenue records, inconclusive in themselves, paled into insignificance in the light of the tenancy proceedings and the consequential recorded delivery of possession to the company. There is no explanation forthcoming as to how the second appellant/second plaintiff or his predecessors regained possession. Further, the evidence clearly established that all three necessary elements were made out by the respondents/defendants, who independently sought temporary injunctive relief against the appellants/plaintiffs.

On the above analysis, this Court finds no illegality in the grant of a temporary injunction by the trial Court to the respondents/defendants and denial of such relief to the appellants/plaintiffs. The order under appeal therefore warrants no interference.

The Civil Miscellaneous Appeals are devoid of merit and are accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

ANIS, J

9th NOVEMBER, 2016
PGS