

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Miscellaneous Appeal No.93 of 2017

JUDGMENT:

This civil miscellaneous appeal, under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908, ('the Code', for short), is filed by the unsuccessful petitioner-plaintiff assailing the order, dated 02.01.2017, of the learned II Additional District Judge, Kurnool at Adoni, passed in IA.No.272 of 2013 in OS.No.14 of 2013.

2. I have heard the submissions of Sri Shyam S. Agarwal, learned counsel for the appellant, and of Sri K. Sta Ram, learned counsel for the respondents 1 to 5. I have perused the material record.

3. The appellant herein is the plaintiff. The respondents herein are the defendants.

4. The facts, which are necessary to be stated as a preface to this order, in brief, are as follows: - 'The sole plaintiff brought the suit against the defendants to declare the title of the plaintiff over the extents of Ac.4.00 cents and Ac.10.00 cents of land respectively in Survey nos.74A and 74C situate at Jangarama Hosalli village in Halaharvi Mandal of Alur Taluk of Kurnool District more fully described in schedules I & II of the plaint and for a consequential perpetual injunction restraining the defendants from interfering with the said lands. The 1st defendant filed a written statement resisting the suit. In the suit, the plaintiff filed the afore-stated IA.No.272 of 2013 under Order XXXIX Rules 1 & 2 read with Section 151 of the Code, requesting to grant a temporary injunction restraining the defendants, their men, servants and persons acting under them and through them from interfering with the plaintiff's peaceful possession and enjoyment over the afore-stated plaint schedule lands. At the time of enquiry before the trial court, no oral evidence

was adduced. However, exhibits A1 to A29 and B1 to B60 were marked. On merits and by the orders impugned in the appeal, the trial Court dismissed the application of the plaintiff and vacated the *ad interim* injunction granted, on 25.06.2013. Aggrieved thereof, the plaintiff is before this court.'

5. Before proceeding further it is necessary to refer to the respective cases of the parties.

5.1 The case of the plaintiff as stated in the plaint verbatim reads as under:

- 'The plaintiff is the lawful and full owner of the land bearing survey number 74A which is an extent of Ac.22.47 cents and another land bearing survey number 74C which is to an extent of Ac.62.64 cents situate in J. Hosalli village in Halaharvi Mandal inherited the same from his ancestors and his predecessors in title were the lawful and full owners of the land which is more specifically mentioned in the schedule hereunder. Originally it was the ancestral property of Reddy Karnam Virupakshappa son of Karri Basappa and a suit was filed before the Bellary District Court in the year 1911 in which a partition took place in between Reddy Karnam Virupakshappa son of Karri Basappa, Padadappa son of Virupakshappa, Rudrappa son of Sddappa, Rudraiah son of Pempaiah, Sdappa son of Padadappa a registered partition took place on 1912 in which the properties fell to the share of Virupakshappa son of Karri Basappa, Padappa son of Virupakshappa. The certified copy of the partition deed which is obtained from the office of the Sub-Registrar Alur is filed along with the plaint and in the said partition the property was registered. As it is ancestral property as such the four sons of Virupakshappa ie Padadappa, Gurusidappa, Sddappa and Sva Rudrappa effected oral partition about seventy years ago and in the said partition the property was fallen to the share of Sva Rudrappa and the plaintiff is the grandson of Sva Rudrappa from Sva Rudrappa the plaint schedule lands have fallen to the share of Virupakshappa son of Sva Rudrappa (father of the plaintiff). In token of oral partition, subsequently on 18.1.1928

the grand father of plaintiff i.e. Shiva Rudrappa and his two brothers Gurusiddappa, Sanna Siddappa their sister and mother entered into a registered partition deed under document no.37/ 1928. As per the said partition deed, the land in Survey no.74 with an extent of Ac.19.53 cents (Southern side) have fallen to the share of Plaintiff's grand father Shiva Rudrappa and to an extent of Ac.19.53 cents (northern side) have fallen to the share of Guru Siddappa. Since the date of partition, the grand father of plaintiff Shivarudrappa was in possession and enjoyment of the same. The registration copy of the partition deed dated 18.1.1928 is filed herewith. After the death of Shiva Rudrappa, his four sons by name Pedadaiah Swamy, Virupakshi Gowd (father of plaintiff), Sdda Lingaiah Gowd and Dodda Basavana Gowd orally divided the family properties including the land in this survey number and the land in Sy.no.74 was fallen to the share of plaintiff's father. The genealogical tree issued by VRO, J. Hosalli village, which shows the details of ancestors of plaintiff, is filed herewith. After laying of TBP distributor canal in Sy.No.74, the Sy.no.74 is subdivided into Sy.no.74A, 74B and 74C. Certain properties in survey number 74A and 74C had been sold by the uncles and father of the plaintiff and again on different dates their predecessors in title have purchased back the same lands. Now the plaintiff is in possession and enjoyment of lands to an extent of Ac.14.00 cents i.e., in survey number 74A Ac.4.00 cents and in 74C they are the lawful and full owners and the plaintiff is enjoying to an extent of Ac.10.00 cents i.e., total extent of Ac.14.00 cents. Though the names of the plaintiffs figuring in the possession columns of the adangal in the fasli's pertaining to the periods commencing from 1411 to 1417 pertaining to survey no.74A to an extent of Ac.4.00 cents and Survey no.74C Ac.10.00 cents in which the name of the enjoyer is G.K.Rajasekhar Gowd i.e., of the plaintiff and in the pattadar column Jutla Somasekharappa. The Fasli's pertaining to the period of 1418 to 1422 pertaining to Survey no.74A to an extent of Ac.4.00 cents and the name of the pattadar is mentioned Jutla Hanumanthaiah son of Narasimhappa and the

name of the enjoyer for four acres is the plaintiff and one acre is being enjoyed by Hanumanthaiah and for Survey no.74C Ac.10.00 cents in which the name of the enjoyer is G.K.Rajasekhar Gowd and in the pattadar column Jutla Mallikharjuna son of Somasekharappa, Jutla Thimmappa son of Somasekharappa, Jutla Polaiah, son of Somasekharappa, Jutla Gadilingappa son of Yerrapa, Jutla Nagaraju son of Narasimhappa and the total extent comes to Ac.15.90 cents but the name of the enjoyer is mentioned as Rajasekhar Goud (plaintiff) ie., the total extent of land in Survey Number and the name of enjoyer to an extent of Ac.5.90 cents is Hanumanthaiah son of Narasimhappa. The fasli's pertaining to the period 1413 pertaining to survey no.74A to an extent of Ac.4.00 cents and survey no.74C Ac.10.00 cents in which the name of the enjoyer is G.K.Rajasekhar Gowd(plaintiff) and in the pattadar column Jutla Somasekharappa and the said person is no more. In all the adangals and also the other relevant revenue records the names of the plaintiff is figuring and he is the person who has inherited the plaint schedule lands but the defendants without the knowledge and consent of the plaintiff have got their names incorporated in the revenue records as pattadar for which the plaintiff is taking separate steps for getting the same deleted. The plaintiff has also paid the water tax pertaining to the survey number 74A to an extent of Ac.4.00 cents and 74C which is to extent of Ac.10.00 cents. The water tax receipt bearing No.5690748 pertaining to the fasli's 1420 to 1422 which is dated 10.06.2013 which bears the signature of the Village Revenue Officer of J. Hosalli village is filed along with this plaint and the same may be read as part and parcel of this plaint.' So pleading in the plaint, the plaintiff further contend as follows: 'He has been in uninterrupted possession and enjoyment of the plaint schedule lands for over 30 to 35 years. And, prior to him, his predecessors in title, that is, his grand father and father cultivated the plaint schedule lands. Originally, the lands are dry lands. Therefore, nobody bothered about the lands. Of late the lands have become wet lands because of the flow of water from the

distributory canal, which is abutting the suit lands of the plaintiff. There is escalation of prices of lands. Hence, the defendants developed an intention to grab the lands; and, hatched a conspiracy. In pursuance of the same, the defendants trespassed into the lands of the plaintiff, on 09.06.2013, and tried to cultivate the same. But, the high handed acts of the defendants were averted by the plaintiff and others who were all present at the lands. The defendants went away saying that they will again come with more men and take possession of the plaintiff schedule lands. By getting their names incorporated in the revenue records, the defendants created a shadow over the title of the plaintiff. Hence, the plaintiff filed the suit for declaration and for perpetual injunction and the present application for temporary injunction.'

5.2 The case of the defendants, in brief, is this: 'The material allegations in the plaint are false. The said allegations are specifically denied. Originally the plaintiff schedule lands belonged to the ancestors of Jutla Pedda Yerrappa, Jutla Somasekharappa and Jutla Narasimhappa, who are brothers. They alone got title to the properties by virtue of possession since times immemorial. Thus, the ancestors of the above persons acquired not only suit properties, but also several other properties situate in J. Hosalli village. Jutla Pedda Yerrappa died leaving behind Jutla Pedda Gadilingappa and Jutla Buddappa. On 12.10.1995, Jutla Somashekarappa, Jutla Narasimhappa and legal heir of Jutla Pedda Yerrappa i.e., Jutla Pedda Gadilingappa got affected partition in respect of their family properties under registered partition deed. Since Jutla Buddappa is a minor his name was not included in the partition deed. In the said deed, 'A' schedule properties were allotted to Gadilingappa son of Pedda Yerrappa; 'B' schedule properties were allotted to Somshekarappa; and, 'C' schedule properties were allotted to Narasimhappa. After the partition, the parties concerned continued in possession and enjoyment of their respective shares. Subsequently Jutla Somashekarappa and Narasimhappa died. The legal heirs of Jutla Pedda Yerrappa, i.e., defendant no.5 and his brother Buddappa and the

legal heirs of Jutla Somashekarappa i.e., defendant no.2, one Thimmappa, defendant no.4, defendant no.3, Jutla Mallikharjuna, and Jutla Narasimhappa's legal heirs i.e., respondent no.6, one Chinna Gadilingappa, one Sivappa, one Hanumanthaiah and Pothaiah made an application to the revenue authorities for issuance of Pattadar pass book and revenue title deed in their favour and also made an application for mutation of their names in the revenue records in view of the oral partition among themselves. After due enquiry the revenue authorities mutated the name of the above mentioned persons in the revenue records and further issued pattadar pass books and revenue title deeds in favour of the respondents and also the legal heirs who are not impleaded in this suit. Therefore, the petition is bad for non joinder of necessary parties. Till fasali 1411, the name of the 5th defendant was mentioned insofar as the land in survey number 74C as pattadar, kathadar and possessor. So far as the land in Sy.no.74C is concerned, though the defendants 1 to 6 are shown as kathadars and pattadars, the plaintiff is shown as enjoyer, but, nature of enjoyment is not at all shown. In fact in column no.15 of the adangals, the nature of possession is shown just as enjoyment. Thus, burden lies on the plaintiff to prove how he got enjoyment over the patta lands of defendants 1 to 6. The defendants were issued pattadar pass book as well as revenue title deeds by the then Tahasildar in the year 2007 itself. All the revenue title deeds have been attested by the RDO, Adoni. Defendants 2 to 5 mortgaged the property to Chintakunta Large Scale Co-operative Society and borrowed an amount of Rs.35,000/- each. They have not only mortgaged the plaint schedule properties but also other properties owned by them as per the pattadar pass book and revenue title deeds. The plaintiff is falsely alleging that he is in possession and enjoyment of the plaint schedule properties by virtue of the partition and is alleging that his predecessors in title are also in possession and enjoyment since 1912. The plaintiff produced neither a pattadar pass book prior to 1985 nor of a subsequent period. It is for the

plaintiff to show as to how he got possession of the plaint schedule lands. The adangal copies are fabricated documents. The plaintiff nowhere in the plaint mentioned as to how he got possession over the plaint schedule lands. He did not state as to whether his possession is by way of sale or relinquishment; and, mode of acquisition of possession is also not stated in the plaint. All the adangals only show that he is enjoyer of the properties; but, not his right of succession. No genealogical tree is filed to connect the plaintiff with his predecessor in title. On this ground the suit is liable to be dismissed and the petition for temporary injunction is also liable to be dismissed. The revenue authorities mutated the properties in the names of the defendants; pursuant to 1(B) register only pattadar pass book and revenue title deeds were issued in favour of the defendants. A separate procedure is contemplated under Section 5 of A.P. Rights in Land and Pattadar Pass book Act for entering the name of a party in the revenue records in respect of a property. Any mutation effected without following the procedure contemplated under the said Act is void *ab initio*. The mutation in the name of the plaintiff is not in accordance with law. The defendants are paying water cess and land revenue in respect of the suit schedule lands. The available receipts are filed into Court. Hence, the petition may be dismissed.'

6. I have carefully gone through the pleadings and the copies of documents. I have also gone through the written arguments filed by both the parties.

7. In the written arguments both the parties referred to their respective contentions and the contents of the documents. While the plaintiff reiterated that the trial court was in error in dismissing his petition and in not granting a temporary injunction, the defendants supported the orders of the trial court.

8. Before proceeding further, it is to be noted that an ex parte ad interim injunction was granted, on 25.06.2013, in favour of the plaintiff and after the defendants filed counter in the IA, the trial Court, without disposing of the said

application on merits, closed the said application by order, dated 09.06.2015, observing that the application will be reopened if required. Challenging the said closure order, the plaintiff filed a revision before this court and has withdrawn the same. Later the application was reopened and by the order impugned, the said application was dismissed. In this appeal preferred by the plaintiff, this court granted interim suspension of the order of the court below, on 21.02.2017, and the suspension orders are extended, on 21.03.2017, till 28.03.2017. Later, the said orders are not extended. Be that as it may.

9. Both the parties claim the property by inheritance and contend that their ancestors were in possession for quite a long time and the ancestors partitioned the property. On one hand, the plaintiff claims as follows: - 'The plaintiff schedule properties and other properties belonged to his ancestors. The same were partitioned by virtue of registered partition deed bearing document no.1830/ 1912, the copy of which is marked as exhibit A1. Subsequently another partition was affected by virtue of document no.37/ 1928. As per the said deed of partition, the land in Survey no.74 admeasuring Ac.19.53 cents each was allotted to Sri Guru Sddappa and Sri Shiva Rudra Swamy. Shiva Rudra Swamy was blessed with 4 sons and the name of his second son, Virupaksha Goud, was entered in revenue records subsequently. Virupaksha Goud is survived by three sons, the plaintiff, Sri Parameshwar Goud and Sri Karibasava Goud. The suit property was inherited by the plaintiff from his ancestors and he has been cultivating the same since a long time. His name is also reflected in the revenue records. Subsequent to the laying of distributory canal through the lands in Sy.no.74, the land in Sy.no.74 was divided and was given sub survey numbers 74A, 74B & 74C. The name of the plaintiff is figuring in possessor column with the name of Sri Somasekharappa as pattadar in the adangals for the fasalies 1411 to 1417. Subsequently from 1418 to 1422 fasalies, the name was changed to Hanumantaiah, defendant no.6, for the survey no.74A and the names of the defendants 1 to 5 for survey no.74C.

However, the name of the plaintiff appears as possessor in the possessor column. The names of the defendants were incorporated as pattadars in the revenue records without notice to the plaintiff and without the basis of any legally valid proceedings. The plaintiff initiated separate proceedings before the revenue authorities.' Thus, the plaintiff claims uninterrupted possession and enjoyment of the plaint schedule lands for over 30 to 35 years by him and for over a long period by his ancestors. His contention is that he is constrained to bring the suit when there is an attempt of trespass by the defendants. The main thrust of the plaintiff is this: 'Though the name of the 6th defendant is reflected in respect of item no.1 of the plaint schedule land, that is, land in Sy.no.74A admeasuring Ac.4.00 cents, the 6th defendant having remained *ex parte* is not contesting the suit. Though notice is served upon him, he did not choose to enter appearance in this proceeding before this court. Apart from other facts, the said fact also supports the contention of the plaintiff that he is in possession of the said land in the said survey number.' So far as item no.2 of the plaint schedule property, i.e., in respect of land of an extent of Ac.10.00 cents in sy.no.74C is concerned, the defendants claim that they inherited the property from their ancestors viz., Pedda Yerrappa, Jutla Somasekharappa and Jutla Narasimhappa and that Yerrappa died leaving behind Gadilingappa, defendant no.5, as legal heir and that, on 12.10.1995, Somasekharappa, Narasimhappa and legal heir of Yerrappa got affected partition under unregistered deed of partition. According to the defence of the defendants, after the deaths of Somasekharappa and Narasimhappa, their surviving legal heirs made applications for mutation and that after due enquiry their names were mutated in the revenue records and they were issued pattadar pass books and title deed books. However, the proceedings by which the names were entered and pattadar pass books were issued are not stated in the pleadings of the defendants. Exhibits A7 to A24 are adangals maintained manually and they show the plaintiff as the enjoyer of the plaint schedule lands. The defendants

contend that they being not certified copies are not public documents. Exhibits A17 to A24 show the defendants as pattadars, however, the plaintiff is shown as enjoyer. Though the plaintiff also pleads that he is the pattedar, his name appears only as enjoyer in the possessor's column. Exhibits B7 to B16 are the tax receipts filed by the defendants; and, by virtue of the same they claim that they are in possession of the plaint schedule lands. Exhibits B38 to 42 are the adangal extracts for the faslies 1420 to 1424 which show that the defendants are not only pattadars but also enjoyers. Exhibits A27 to A29 are the cist receipts. Though they pertain to the period subsequent to the suit they are in the name of the plaintiff. Exhibit A26 is a proceeding of the Tahasildar. The said report of the Tahasildar submitted to the District Collector vide RCB.No.180/2015, dated 24.12.2015, reflects the following aspects: "Land in survey no.74A full extent is 22.47 paiki Ac.5.00 cents and the land in survey no.74C full extent is Ac.62.64 cents paiki 15.90 cents. Thus, total extent is Ac.20.90 cents. E. Govindayya gave a report, dated 14.12.2015, to the Joint Collector, Kurnool, for mutation of the said properties in his name. There was a direction to the Tahasildar, Halharvi, to measure the land and take action. Enquiries revealed that Govindayya has nothing to do with the lands and that he is resident of Ramadurgam village of Chippagiri Mandal of Kurnool and that Jutla Mallikarjuna, Jutla Pothaiah, Jutla Thimmappa, Jutla Nagaraju who are his brothers-in-law are residents of Bellary District of Karnataka State and therefore on their behalf he gave the application to the Joint Collector. Through enquiries made with the above said four persons, the following facts came to light: 'The said four persons stated that Ac.5.00 cents in Sy.No.74A and AC.15.90 cents in Sy.No.74C total Ac.20.90 cents were mutated without any basis as follows: 74A Ac.1.00 cents Jutla Somasekharappa; Ac.4.00 cents G.K.Rajasekhar Gowd; 74C Ac.5.90 cents Jutla Somasekharappa; Ac.10.00 cents G.K.Sekhar Gowd; and that the present suit is pending between the parties and that they only sought for mutation of the land of an extent of Ac.6.90 cents

that is Ac.1.00 cents in survey no.74A and Ac.5.90 cents in sy.no.74C in their names in their application to the District Collector.’ When enquiries were also made with the plaintiff, the plaintiff stated that survey no.74A Ac.4.00 cents dry; survey no.74C Ac.10.00 cents dry total Ac.14.00 cents is in the name of the plaintiff for the fasali 1411. When further enquiries were made as per the directions of the Joint Collector, Kurnool, with regard to Sy.no.74A Ac.1.00 cents and Sy.no.74C Ac.5.90 cents total Ac.6.90 cents it was revealed that Ac.5.00 cents of land in Sy.no.74A and Ac.15.90 cents in Sy.no.74C were in the respective occupations of the following persons by raising respective crops: 74A paiki Ac.1.00 cent (Corriander) – G. Hanumanthayya; Ac.4.00 cents (red jowar) - G.K Rajasekhar Gowd; 74C paiki Ac.4.90 cents (Groundnut) – G. Hanumanthayya; Ac.1.00 cent (Onion) – G. Hanumanthayya and Ac.10.00 cents (red jowar) - G.K. Rajasekhar Gowd; and that lands in Sy.no.74A full extent Ac.22.47 cents and Ac.62.64 cents in Sy.no.74C were not in possession of the applicants, that is, Jutla Mallikharjuna, Jutla Pothayya, Jutla Timmappa and Jutla Nagaraju.” In the said report, finally the Tahasildar stated to the Collector that it is not possible to mutate the property in the revenue records as requested by Govindayya in his application. Thus, in this interlocutory application where this court is considering *prima facie* case of possession, the undisputed fact is that the name of the plaintiff is appearing as enjoyer. The Tahasildar report also confirms the same. The learned counsel for the defendants forcefully contended that the report of the Tahasildar cannot be considered as a piece of evidence for the reason that the said document came into existence after filing of the suit and that the said report cannot be relied upon until the suit is finally adjudicated after adduction of evidence on both the sides and that the said document also does not disclose that the defendants were heard before that report was submitted to the Collector by the Tahasildar. Be that as it may. Admittedly, the plaintiff’s name appears as possessor of the suit schedule lands in all the documents. The defendants as

noted in the cause title and as stated in the report of the Tahasildar are residents of Sndhuvalam village, Bellary District of Karnataka State whereas the plaint schedule lands are situate in J.Hosalli village. Further, the Tahasildar's report also reveals that the plaintiff who is in possession of the suit schedule lands raised red jowar in Ac.4.00 cents in Sy.no.74A and Ac.10.00 cents in Sy.no.74C being in possession of the said lands. In the considered view of this court, the voluminous documentary evidence filed by both the sides, when examined in juxtaposition *prima facie* shows possession of the plaintiff over the suit schedule lands. The plaintiff is a resident of the same village where the lands are situate whereas the defendants are residents of Sndhuvalam village of Bellary Taluk of Karnataka State.

10. Viewed thus, this court finds that the court below was in error in not considering the documents, which *prima facie* show possession, as well as the Tahasildar's report which actually reflects the crops raised by the plaintiff in the two items of the plaint schedule lands. Before proceeding further, it is necessary to note that the defendants relied upon exhibit B42, adangal for fasali 1424, dated 18.01.2014. Therefore, one of the contentions of the plaintiff is that the said adangal document is fabricated even before the completion of the fasali 1424 to support the false case of the defendants and that the trial court ignored the said fact that the defendants relied upon fabricated documents and that, therefore, they are not entitled to oppose for granting an equitable relief in favour of the plaintiff. The consistency in the entries showing the possession of the plaintiff over the plaint schedule lands lays bare that the plaintiff has a *prima facie* case. The additional fact that the Tahasildar's report, which was sent to the Collector after making enquiries with all concerned, shows that the plaintiff raised red jowar crop in both the extents of land and was and is in possession of the properties adds strength *ex facie* to the case of the plaintiff. The defendants are residents of Bellary Taluk of Karnataka State while the plaintiff is a resident of the village where the suit

lands are situate also lends support *prima facie* to the claim of the plaintiff that the defendants are not in possession of the plaint schedule lands and also gives strength to the entries in the revenue records showing the name of the plaintiff as possessor in the possessor column of the adangals.

11. Viewed thus, this court finds that the plaintiff established a *prima facie* case and was able to show that the balance of convenience is also in his favour. On weighing competing possibilities or probabilities of likelihood of injury, i.e., the amount of substantial mischief or injury, which is likely to be caused to the plaintiff if injunction is refused, and comparing it with that which is likely to be caused to the defendants, if the injunction is granted, this Court is satisfied that the balance of convenience is only in favour of the plaintiff. The rival claim of the defendants, which is not established, *prima facie* would indicate that if no injunction is granted there will be interference and scramble for possession and that the plaintiff is likely to suffer serious loss.

12. On the above analysis, and for the reasons afore-sated, this Court is of the considered view that sufficient cause is shown and a case as required under facts and in law is made out by the plaintiff for granting a temporary injunction and, hence, the order impugned is unsustainable and is liable to be set aside.

13. Accordingly, the Civil Miscellaneous Appeal is allowed and the order, dated 02.01.2017, of the learned II Additional District Judge, Kurnool at Adoni, passed in IA.No.272 of 2013 in OS.No.14 of 2013 is set aside. As a sequel, IA.No.272 of 2013 is allowed granting a temporary injunction restraining the defendants, their men, servants and persons acting under them and through them from interfering with the plaintiff's peaceful possession and enjoyment over the plaint schedule lands pending final disposal of the suit. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

06.10.2017
Vjl

M. SEETHARAMA MURTI, J

