

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

A.S.No.2073 of 2003 and C.C.No.1153 of 2003

JUDGMENT:

This appeal is filed by the unsuccessful plaintiff against the judgment and decree dated 07.07.2003 in O.S.No.37 of 1999 passed by the Additional Senior Civil Judge at Eluru, West Godavari District.

2. For the sake of convenience, the parties are referred to as plaintiff and defendants only.

3. The suit is filed by the plaintiff against the defendants 1 to 7 for a permanent injunction restraining the defendants, their men and agents from interfering with the plaintiff's possession and enjoyment of the plaint schedule property.

4. The plaint schedule property consists of two bits of land viz., Ac.8.60 cents and Ac.4.29 cents measuring in all Ac.12.89 cents out of Ac.17.19 cents. It is the case of the plaintiff that she has acquired these properties from her husband-Jagathi Thimmaraju. The said Thimmaraju acquired Ac.12.89 cents out of Ac.17.19 cents from the three branches of Gantasala family through agreements of sale. He filed three suits for specific performance of agreements of sale. The said suits were decreed and an injunction was also granted. The plaintiff claims that her husband who in possession of the suit schedule property executed a sale deed in her favour on 31.10.1992 and that she is in possession and enjoyment of

the suit schedule property. Thereafter, on 01.04.1999 there was a threat of dispossession and hence the plaintiff filed the present suit for an injunction.

5. The defendants 1, 2, 5, 6 & 7 filed a written statement denying the entire case set up by the plaintiff. They stated that the plaintiff's husband did not have right to execute the sale deed and that the plaintiff is not in possession. The defendants 3 & 4 filed a separate written statement stating that they are in absolute possession and enjoyment of their share of the property and that the plaintiff has no right to file the suit.

6. Based on the said pleadings, the following two issues were framed:

- i) Whether the plaintiff is entitled for permanent injunction as prayed for?
- ii) To what relief?

7. For the plaintiff, five witnesses were examined as PWs.1 to 5 and Exs.A.1 to A.14 were marked. For the defendants, nine witnesses were examined as DWs.1 to 9 and Exs.B.1 to B.21 were marked.

8. After considering the oral and documentary evidence, the lower Court dismissed the plaintiff's suit resulting in the present appeal.

9. This Court has heard Sri M.V. Suresh Kumar, learned senior counsel for the appellant/plaintiff and Sri P. Sri Raghu Ram, learned senior counsel for the respondents/defendants.

10. It is the case of the learned senior counsel for the appellant/plaintiff that the suits for specific performance of agreements of sale in O.S.Nos.828 of 1982, 830 of 1982 and 832 of 1982 were decreed in favour of the plaintiff's husband and a decree of injunction against the defendants was also granted from causing any interference of his possession. Exs.A.2 to A.7 are copies of judgments and decrees in the three suits. The plaintiff therein however did not get a sale deed executed through court or through the defendant. It is his contention that even if the decree for specific performance of agreements of sale did not result in a sale deed, the relief of injunction was granted and that an *ex parte* decree is also a decree of the Court. The defendants are bound to follow the same. The learned senior counsel relying upon **Saroja v. Chinnusamy (dead) by LRs**¹ contends that any *ex parte* decree is a decree that is binding on the parties or those claiming through them. The second decision he relied upon is a decision of the Hon'ble Supreme Court reported in **Tayabhai M. Bagasarwalla v. Hind Rubber Industries Pvt. Ltd.**². The learned senior counsel would argue basing on this decision that once an order of injunction is passed, the parties are bound to follow the same. They cannot say that the order is not binding upon them or decided not to follow the same. As long as the order exists, the learned senior counsel contends that the parties are bound to follow the same. He relied upon

¹ AIR 2007 SC 3067

² (1997) 3 SCC 443

para-23 of the said judgment for this proposition, which is as under:

“In ***Hadkinson v. Hadkinson*** [(1952) 2 All ER 567, CA], the Court of Appeal held:

It is the plain and unqualified obligation of every person against, or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. Lord Cottenham, L.C., said in ***Chuck v. Cremer*** [(1846) 1 Coop temp Cott 247: 47 ER 820] (at p.342):

‘A party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it.... It would be most dangerous to hold that the suitors or their solitiors, could themselves judge whether an order was null or valid.’.....”

11. The learned senior counsel also relied upon the judgment of a learned single Judge of this Court reported in ***Nagasamudrala Vasaraiah v. Dasam Kondaiah***³. In this case also, the learned single Judge held that once a Court of competent jurisdiction states that a party is in possession of the property and grants him an injunction, a defendant in the suit cannot be later stage that he is in actual possession. Based on these decisions, it is the contention of the learned senior counsel that the injunction granted in three suits viz., O.S.Nos.828 of 1982, 830 of 1982 and 832 of 1982 in April, 1983 would continue and the benefit thereof would also an ensure to the present plaintiff, who has acquired the property from him. Therefore, it is the contention of the learned senior

³ 2012 (3) ALD 58

counsel that the plaintiff is entitled to a decree as prayed for in the present suit.

12. In reply thereof, Sri P. Raghu Ram, learned senior counsel appearing for the respondents/defendants argues that in a suit for injunction, the plaintiff must prove a) that he was in lawful possession of the suit schedule property on the date of filing of the suit; and b) that there is a threat from the defendants as pleaded in the plaint warranting grant of injunction. As a corollary to this, the learned senior counsel also submits that the existence of the suit schedule property should also be carefully seen. Unless and until the Court is satisfied that the plaintiff is in possession of the suit schedule property and there is a threat, he argued that no injunction can be granted.

13. In the light of the submissions of both the learned senior counsel, the point that arises for consideration is i) whether the suit schedule property as described in the plaint exists on the ground; ii) whether the plaintiff is in possession and enjoyment of the same; and iii) whether there is a threat to the dispossession of the plaintiff and the earlier injunction still binds the present defendants?

14. The case of the plaintiff is that her husband got decrees against six defendants in O.S.No.830 of 1982, against seven defendants in O.S.No.832 of 1982 and seven defendants in O.S.No.828 of 1982. Along with the decree for specific performance, a decree for permanent injunction was

granted restraining the defendants in those three suits from interfering with the plaintiff's possession.

15. A reading of the three judgments and decrees, which are marked as Exs.A.2 to 7 shows that boundaries and extent of the property mentioned in each of the three suits is as follows:

"Schedule filed on behalf of the plaintiff:

West Godavari District, Eluru Taluk, Pydichintapadu Village

R.S.No.65/1	Ac.3.21
65/2	Ac.0.76
65/3	Ac.3.65
66/1	Ac.8.09
66/2	Ac.1.48

Total ..	Ac.17.19 cents

Bounded by:

East : Pusapati Subbaraju and panta kalava
 South : Mudindi Marraju
 West : do and plaintiff's land
 North : Panta bode and puntha."

16. Therefore, the learned senior counsel for the respondents argued that although the claim was made for $\frac{1}{4}$ share out of Ac.17.19 cents in each of the 3 suits, the boundaries are exactly same in all three suits. He also argued that the undivided $\frac{3}{4}$ th share is not the same as the plaintiff schedule in the present suit. The plaintiff schedule property as mentioned in the present case is Ac.8.60 cents in one bit and Ac.4.29 cents in another bit. The boundaries also do not tally at all. Therefore, the learned senior counsel for the respondents argued that the very identity of the suit schedule property is doubtful and in the absence of identity between the property covered by Exs.A.2 to A.7 and the present suit

schedule property, it cannot be argued that the judgments and decrees in those three suits passed in April, 1983 are effective against the current defendants.

17. The learned senior counsel also pointed out that the judgments in these three suits i.e., O.S.No.828 of 1982, 830 of 1982 and 832 of 1982 are against the specific individuals and the same cannot be held to be binding on the current set of defendants. However, this Court noticed on a perusal of the memo filed on 31.01.2018 by the appellant that some of the current defendants are defendants in the earlier suits also. This Court, however, concurs with the submission of the learned senior counsel for the respondents that there is no identity of property. The property described in the schedules of Exs.A.2 to A.7 does not tally with the property described in the present suit. The existence of the property as described in the present plaint schedule with the boundaries mentioned therein should have been established before the lower Court, but this was not done.

18. The other important issue urged by the learned counsel for the respondents is the sale deed Ex.A.1 filed by the plaintiff. A fact which is not in dispute and which is relied on by the respondents is that the plaintiff's husband (PW.2) filed three suits for specific performance of agreements of sale (Exs.A.2 to A.7), which were decreed as prayed for in his favour. PW.2 however did not execute the decrees and did not get a sale deed/deeds in his favour. The period of

limitation for execution has also expired since the suit was decreed on 22.04.1983. Therefore, in the absence of the sale deed, the plaintiff's husband could not convey anything to the plaintiff by virtue of Ex.A.1 sale deed. The learned senior counsel argued that as per Section 54 of the Transfer of Property Act, an agreement of sale does not create any rights in the properties. He argued that the plaintiff's husband cannot convey what he does not possess. It is therefore his contention that Ex.A.1 sale deed does not convey any title whatsoever to the plaintiff. He also pointed out various parts of the sale deed to contend that it is created for the purpose of the suit and is not a genuine transaction. This Court concurs with the contentions of the learned senior counsel for the respondents on this aspect. PW.2, the husband of the plaintiff did not possess 'title' to the property to convey the same to PW.1/plaintiff.

19. The next question that arises for consideration is whether the plaintiff was in possession of the plaint schedule property on the date of the filing of the suit. It is a well settled principle of law that in a suit for an injunction, the plaintiff must be in lawful possession of the property on the date of filing of the suit and there should be a threat to the same.

20. The suit was filed in the lower Court on 15.04.1999. The plaintiff will thus have to prove lawful possession on this date. A reading of the documents, Exs.A.1

to A.14 clearly show that none of them relate to the period of April 1999. Ex.A.1 is the sale deed executed by PW.2 in favour of PW.1. Exs.A.2 to A.7 are the judgments and decrees in three suits of the year 1983. Ex.A.8 is a copy of an order dated 22.03.2002. Exs.A.9 to A.12 are tax receipts of November 1999. Ex.A.13 is the sale deed dated 30.03.1995 and Ex.A.14 is a certificate of Village Assistant issued on 15.03.1988. None of the documents pertain to the month of April, 1999 or the contemporaneous period to prove the possession of the plaintiff for the plaint schedule property. The four tax receipts marked as Exs.A.9 to A.12, are all documents after the suit. *Ante litem motem* documents have to be scrutinized with the greater care, because as per the judgments in ***Murugan @ Settu v. State of Tamil Nadu***⁴ and ***State of Bihar v. Radha Krishna Singh***⁵ they could be prepared with the idea of the suit in mind. This Court also finds that these four documents, Exs.A.9 to A.12 are also not very clear. They do not contain the survey number or a description of the property. Even the cross-examination of PW.1 is to the effect that she does not have any knowledge of the suit schedule property or of the proceedings. She does not know the boundaries of the suit schedule property. She clearly admitted that her husband looks after all the affairs including the financial transactions. Therefore, her oral evidence does not support the contents of the documents that

⁴ (2011) 6 SCC 111

⁵ (1983) (3) SCC 118

are marked through her. She merely marked the documents without being aware of the same.

21. In the cross examination of PW.1 on 12.12.2002 a suggestion was put to her that taxes were paid only after filing of the suit and that no tax is paid prior to the filing of the suit. Again in the cross-examination of DWs.3 and 4, the attention of the witnesses was drawn to the contents of Exs.A.9 to A.12 and PW.1 deposes as follows:

“I cannot say whether details of property is not mentioned in Exs.A.9 to A.12-tax receipts.”

After PW.1 was examined, her husband-PW.2 was examined. Even then he did not file any documents to show that the plaintiff is in possession and enjoyment of the property as on the date of filing of the suit.

22. The plaintiffs have also contended both in their pleadings and evidence that they have leased the land to third parties. The said third parties were also examined as PWs.3, 4 & 5. PWs.3 & 4 were the persons who gave third party affidavit in favour of the plaintiff in I.A.No.934 of 1999. None of them could produce any document to show that they are actually cultivating the land. They were cross-examined after PWs.1 & 2 were cross-examined. Both in the cross examination of PW.1 and in the cross examination of PW.2, questions were posed about the lease of property to these parties. Despite the cross-examination on the issue of possession of the property on the date of filing of the suit,

including the so called leasees, the plaintiffs as per respondents could not adduce any evidence to show that they were in possession more so on the date of filing of the suit through PWs.1 to 5.

23. The learned senior counsel for the respondents drew the attention of this Court to the fact that the defendants had attempted to create a paper trial. It is his contention that Ex.A.1 sale deed is not valid under law and it is not supported by consideration. He also argued that the plaintiff has created Ex.B.1 sale deed in favour of one Mungara Venkateswara Rao during pendency of the suit. The learned senior counsel argued that this sale deed (Ex.B.1) was suppressed and was not brought to the attention of this Court. According to the learned senior counsel, Ex.B.1 is executed on 27.06.2002 and despite PWs.1 & 2 being examined thereafter as witnesses, the fact that this sale deed was executed was not brought to the notice of the Hon'ble Court. In the submission of the learned counsel for the respondents the idea is to create paper trial.

24. The learned senior counsel pointed out that PW.2 in his evidence clearly admitted that he has not filed any document to show their possession from 26.01.1970 till the date of Ex.A.1 and from Ex.A.1 till the date of filing of the suit. He also pointed out that PW.2 admitted that he has not filed any documents like 10 (1) adangal to show his possession and enjoyment of the suit schedule property. In

addition to this, the learned senior counsel also pointed out the following cross-examination:

“I have not filed any E.P. application in pursuance of ex parte decrees in the above said 3 suits, for specific performance or to get a registered sale deed through Court as per the terms of the said decrees. It is true that in the said above suits, the decrees are barred by limitation as I have not taken any steps for execution of those decrees. It is true that in all the 3 decrees in the above suits. I have claimed only 1/4th undivided share out of Ac.17.00. The said Ac.17.00 shown in the schedule belongs to four brothers.

I have not purchased a share of one brother. I am not filed any suit for partition seeking partition of separate possession of 3/4th share as per the decree. I have not surveyed the suit schedule property to determine my 3/4th share.

I have not got issued any notice to defendants or their predecessors in title informing that I have obtained ex parte decrees in the above said suits. It is true that the advocate in O.S. 828, 830 and 832/1982 and the advocate in the present suit is one and the same.”

25. Therefore, it is the contention of the learned senior counsel in conclusion that there is absolutely no proof filed to show the possession of suit schedule property as on the date of filing of the suit either in the form of tax receipts or lease agreements in favour of tenant. The learned counsel submits that in view of the fact that the plaintiff and her husband did not get the sale deed in their favour, it is clear that they are only interested in creating a litigation without having any rights. The learned counsel argued that injunction is equitable relief and that a person who seeks equity must

come in equity. Therefore, it is his contention that none of the essential ground to grant an injunction is made out.

26. This Court agrees with these submissions as the tax receipts filed by the plaintiff are subsequent to the filing of the suit. The contention of the plaintiff that she and her husband have been in possession and enjoyment of the property from the date of the alleged agreement of sale, which resulted in three suits O.S.No.828 of 1982, 830 of 1982 and 832 of 1982 is not proved and the so called leases issued to third parties are not proved. No documentary proof is filed to show possession from April 1983 till the date of the present suit. The title of the plaintiff to the suit schedule property is not at all clear. Her husband-PW.2 did not have any right or interest in the property to convey the same to the plaintiff through Ex.A.1. The three judgments and decrees did not culminate in a sale deed or sale deeds. Thus, the plaintiff has neither proved her title nor more importantly for this suit; her possession of the plaint schedule property.

27. This Court concurs with the finding of the lower Court on issue No.1, more so in paras 23 and 24 of the lower Court judgment. The defendants have proved their possession and enjoyment of the suit schedule property. The defendants by filing Exs.B.7 to B.19 proved their possession of the property. DWs.3 & 4 have filed their documents of title, Ex.B.6 & 20 and proved their possession by filing Exs.B.14 to 19 and Ex.B.21.

28. Therefore, for all the above reasons, this Court holds that the plaintiff has failed to prove that she is in lawful possession and enjoyment of the suit schedule property. She has failed to prove that she was in possession of the suit schedule property on the date of filing of the suit. She has failed to establish that there is a threat to their possession also. The plaintiff is thus not entitled to any relief.

29. The appeal is accordingly dismissed and the judgment and decree dated 07.07.2003 in O.S.No.37 of 1999 passed by the Additional Senior Civil Judge at Eluru, West Godavari District are confirmed. In the circumstances of the case, there shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

30. The main appeal was reopened and reposted and the attention of both the learned counsel was drawn to the pending Contempt Case No.1153 of 2003.

31. Sri M.V.S. Suresh Kumar, learned senior counsel for the petitioner in the contempt case stated that he left the decision to this Court.

32. In view of the passage of time and the final orders being passed in the appeal, it is felt that no useful purpose will be served by conducting an enquiry at this stage in the contempt case. Therefore, in view of the orders passed in the main appeal, Contempt Case No.2073 of 2003 is closed.

D.V.S.S. SOMAYAJULU, J

Date: 23.03.2018, Isn