

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CMA No.504 and 505 of 2019

COMMON JUDGMENT:

These two Civil Miscellaneous Appeals arise out of the same suit between the same parties and so they are being disposed of by this common order.

2. The appellant in both the Civil Miscellaneous Appeals is the plaintiff in O.S. No.1143 of 2018 on the file of III Additional District Judge, Ranga Reddy District at L.B. Nagar.

3. The said suit was filed by the appellant/plaintiff for declaration of his title to the plaint schedule property and for a perpetual injunction restraining the respondents/defendants from interfering with his alleged peaceful possession and enjoyment of the plaint schedule property.

4. The plaint schedule property is an extent of Ac.13.05 gts in Sy. No.494 of Nadergul village, Balapur Mandal, Ranga Reddy District.

5. Pending suit, the plaintiff filed I.A. No.931 of 2018 under Order XXXIX Rule 1 and 2 CPC for a temporary injunction restraining the defendants from interfering with his alleged peaceful possession and enjoyment of the plaint schedule property.

6. He also filed I.A. No.29 of 2019 under Order XXXIX Rule 1 and 2 CPC for grant of temporary injunction restraining the defendants from alienating or creating any third party interest over this plaint schedule property.

7. Counter-affidavits were filed by the defendants opposing the said applications.

8. By separate orders dt.26.03.2019, the court below dismissed both applications.

9. Challenging the order in I.A. No.931 of 2018, plaintiff filed CMA No.505 of 2019 and challenging the order in I.A. No.29 of 2019, the plaintiff filed CMA No.504 of 2019.

The case of the plaintiff

10. The plaintiff's case is that his ancestor is Tharre Mallaiah; that the said Mallaiah and Sama Raji Reddy were joint tenants over the lands belonging to late Raghava Rao, S/o Papaiah in Nadergul village; they were recorded as joint tenants of late Raghava Rao in proceedings under the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973; that the Land Reforms Tribunal passed orders under Section 9 of the said Act in proceeding No.854/E/75 declaring the plaint schedule property in favour of Tharre Mallaiah and Sama Raji Reddy confirming a sale agreement; this is also evidenced in the declarations filed by Mallaiah in C.C. No.855, 857 to 860 dt.10.03.1976 and orders under Section 9(1) were passed holding that Mallaiah was not holding excess land. He contended that the legal heirs of Mallaiah were entitled to retain the lands described in the orders passed including the plaint schedule property herein as absolute owners and that plaintiff is in peaceful possession and enjoyment over the said land as owner thereof.

11. According to him, the name of Tharre Lingaiah is recorded in the revenue record, being the eldest member of the joint family after the death of T. Jangaiah; and legal heirs of Mallaiah and Sama Raji Reddy entered into a memorandum of compromise relinquishing their rights and confirming the fact that plaintiff is exclusively entitled to claim rights over the plaint schedule land apart from other lands in the vicinity. He also contended that the legal heirs of Sama Raji Reddy also signed the said compromise which was filed before the Legal Services Authority, Ranga Reddy District in PLC No.247 of 2018 and confirmed the terms of the said compromise.

12. He contended that the defendants, by virtue of certain illegal and invalid documents of sale, in collusion with revenue officials, got their names incorporated in the revenue records from 2010 and 2015 without any notice under Section 5 of the A.P. Rights in Land and Pattadar Pass Books Act, 1971 and the plaintiff came to know of the same prior to the filing of the suit. He alleged that he filed objections before the Tahsildar and Commissioner, HMDA on 24.09.2018 against the defendants which are pending.

13. Plaintiff alleged that the defendants took advantage of the recording of their name in the revenue records pending appeal and are attempting to illegally dispossess the plaintiff from the plaint schedule property with the help of antisocial elements. Hence the suit.

14. In the I.As the plaintiff marked Exs.P-1 to P-39.

The case of the defendants

15. The defendants contended that the plaintiff is not concerned with the plaint schedule property and is misrepresenting and also suppressing vital facts like purchase by himself and his brother of open plots admeasuring 2500 square yards forming part of the plaint schedule property under Exs.R-36 to R-40 registered sale deeds dt.22.05.2015 from defendants 1 and 2 accepting and admitting their ownership to an extent of Ac.6.37 gts.

16. While admitting that late Raghava Rao was the original pattedar of the plaint schedule property, the defendants denied that Tharre Mallaiah and Sama Raji Reddy were joint tenants in the said land. They contended that Tharre Lingamaiah and Tharre Anjaiah purchased Ac.6.07 gts in Sy. No.494 from the legal heirs of late Raghava Rao by name N. Amrutha Rao and others under a sale agreement-cum-GPA dt.29.01.2001 (Ex.R-5) and later sold the same under registered sale deed Ex.R-4 dt. 30.10.2002 to B. Karunakar Reddy, husband of the 3rd defendant.

17. According to them, there are prospective purchasers from defendants 1 and 2 who are also in physical possession and enjoyment of their respective plots in the plaint schedule property and so the suit is liable to be dismissed for non-joinder of necessary and proper parties.

18. They alleged that revenue authorities issued endorsement dt.12.07.2016 in file Nos.C/404/2016 contending that there is no entry in the Protected Tenancy register in respect of Sy. No.494 of Nadergul village, and that the Land Reforms Tribunal had also passed orders dt.15.01.1977 in

file No.1724/E/75 wherein the land in Sy.No.494 was retained with Raghava Rao and his family members. They allege that mere filing of declarations before Land Ceiling Authorities will not confer any title on the plaintiff's predecessors, and he did not file any document showing that they were given ownership certificate from revenue authorities in respect of the plaint schedule property.

19. They alleged that the name of Lingaiah and Sathi Reddy were continued in the revenue records by order dated 13.06.2003 vide proceeding No.B/4787/2003 even after they alienated land in favour of B.Karunakar Reddy; that the defendants then approached the Special Grade Deputy Collector who passed orders on 30.04.2016 vide proceeding No.B/738/2016 by correcting entries in the revenue records; and thereafter the defendants' names were entered and continued in the revenue records. According to them, they are bonafide purchasers of the plaint schedule property and they are in physical possession and enjoyment of the same.

20. They denied the allegation that they attempted to dispossess the plaintiff from the plaint schedule property. They alleged that defendant Nos.1 and 2 are absolute owners and possessors of the land admeasuring Ac.6.37 gts and had alienated part of it by converting into residential plots in favour of third parties including the plaintiff herein and his brother and the remaining extent of land is admeasuring Ac.4.30 gts. They further contend that the land admeasuring Ac.6.07 gts belongs to defendant No.3 and these two bits together measure Ac.10.37 gts and is being developed into

residential plots by obtaining Layout/Permission from the Hyderabad Metropolitan Development Authority.

The order of the III Additional District Judge, Ranga Reddy District in I.A.No.931 of 2018 and in I.A.No.29 of 2019

21. By separate orders dt.26-03-2019, the III Additional District Judge, Ranga Reddy District dismissed I.A.No.931 of 2018 and I.A.No.29 of 2019.

22. The said court held that based on Ex.R-5 sale deed dt.29-01-2001, the legal heirs of late Raghava Rao sold away Ac.6.07 gts in Sy.No.494/P in favour of B.Karunakar Reddy, husband of 3rd defendant through Ex.R-4 sale deed dt.30-10-2002; and thereafter legal heirs of late Raghava Rao by name Hanumantha Rao, Amrutha Rao, Vasudeva Rao and Srinivasa Rao sold away the balance extent of Ac.6.37 gts in Sy.No.494 to defendant Nos.1 and 2 through Ex.R-3 sale deed dt.31-01-2001. It held that if so, plaintiff cannot claim to be in possession of the plaint schedule property.

23. Adverting to the claim of the plaintiff that he and his family members succeeded to the plaint schedule property from their ancestors, it observed that plaintiff's ancestors Tarre Lingaiah and Tarre Anjaiah sold Ac.6.07 gts in favour of husband of 3rd defendant by executing Ex.R-3 document and the remaining land of Ac.0.37 gts was sold away to defendant Nos.1 and 2 by the legal heirs of late Raghava Rao. It therefore concluded that no land is left in Sy.No.494 for the plaintiff to be in possession and his claim for possession is unbelievable and imaginary.

24. It held that plaintiff suppressed all material facts of alienations made by their ancestors and is claiming to be in possession only on the basis of some revenue records and land reforms proceedings and consequently has no prima facie case in his favour.

25. It observed that vide proceedings Ex.R-6 dt.20-07-2010, the Dy.Collector-cum-Tahsildar, Saroornagar Mandal recorded the names of defendant Nos.2 and 1 as pattedar and possessor in respect of Ac.6.37 gts in Sy.No.494; and Ex.R-7, proceedings of the Tahsildar shows that the V.R.O., Nadergul was ordered to implement the above orders.

26. It also took note of Ex.R-8 and R-9 title deeds issued to the husband of 3rd defendant in respect of Ac.6.07 gts in Sy.No.494 and the proceedings Ex.R-10 dt.18-08-2008 of the Dy.Collector recording 3rd defendant's name as pattedar and possessor. It also took note of Exs.R-11 and R-12 passbooks of defendant Nos.1 and 2 and Ex.R-13 passbook of 3rd defendant. It thus concluded that plaintiff is not in possession of the plaint schedule properties after 2001 and also on the date of the filing of the I.As.

27. It referred to Exs.R-36 to R-39 sale deeds showing that plaintiff purchased plot No.80, 78, 79 and 81 of extent 2000 sq. yds from defendant Nos.2 and 1 and also noted that plaintiff sold plot No.81 to K.Anjaiah through Ex.R-41 sale deed on 23-05-2016. It held that having done so, he is estopped from taking a plea that he is in possession of Ac.13.05 gts on the date of filing of the suit. It held that plaintiff suppressed facts and

approached the Court with unclean hands and is not entitled to relief in I.A.No.931 of 2018.

28. Coming to I.A.No.29 of 2019, it held that Exs.R-36 to R-39 and Ex.R-41 show that plaintiff is not in possession and enjoyment of the property. It observed that the pahanis from 2005 onwards filed by the defendants show the possession of defendant Nos.1 to 3, and without agitating before the Revenue authorities with regard to rectification of entries, cancellation of pattedar passbooks and title deeds issued to defendant Nos.1 to 3, plaintiff cannot seek injunction restraining the defendants from alienating the plaint schedule property.

Contentions of the parties in the C.M.As.

29. Sri Vedula Venkata Ramana, learned Senior Counsel appearing for Sri K.Rama Krishna, counsel for appellant/plaintiff contended that in the declaration Ex.P-1 filed under A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 by Tarre Lakshamma, w/o.Tarre Mallaiah, an extent of Ac.6.56 cents in Sy.No.494 was shown to be belonging to late Raghava Rao, but possession was shown to be with the sons of the declarant; that in Ex.P-2 order in C.C.No.860/E/75 etc. dt.10-03-1976 of the Land Reforms Tribunal, Hyderabad East Division, Tarre Jangaiah, Tarre Lingaiah, Tarre Komaraiah, Tarre Anjaiah and Tarre Narasimha, sons of Mallaiah are shown to have possession of the land in Sy.No.494 of extent Ac.6.56 gts jointly; in contrast, in the order dt.15-01-1979 (Ex.P-30) of the Land Reforms Tribunal, Hyderabad East Division in C.C.No.1724/E/75 relating to N.Raghava Rao, only the ownership of Raghava Rao was discussed and not his possession of

the land in Sy.No.494 and there is a reference to Ac.13.13 cents in Sy.No.494 as belonging to him along with other lands. He also pointed out that in the order dt.19-01-1977 (Ex.P-32) relating to N.Hanumantha Rao, s/o.late N. Raghava Rao, it is mentioned that the land in Sy.No.494 was sold to different persons; and this shows that the family of N. Ragahva Rao never had possession of the plaint schedule property in Sy.No.494 at all and it was the ancestors of the plaintiff who had possession of the plaint schedule property. He also contended that the said state of affairs is presumed to continue in view of the presumption under Section 114 of the Evidence Act, 1872 and unless the defendants show that they obtained possession of the plaint schedule properties from the plaintiff's ancestors, they cannot claim to be in possession of the said land.

30. Sri D.Prakash Reddy, learned Senior Counsel appearing for Sri G.Purushotham Reddy, counsel for respondents, contended that the findings of the trial Court are based on appreciation of evidence adduced by the parties and the reasoning of the trial Court is unexceptionable and does not warrant any interference in appeal by this Court.

Consideration by the Court

31. The suit having been filed by the plaintiff for declaration of title and recovery of possession in September, 2018, the plaintiff must show his possession of the plaint schedule property on the date of filing of the suit if he seeks injunction restraining the defendants from interfering with his possession of the plaint schedule property or restraining them from alienating the same.

32. He has only filed Pahanis from 1995-96 (Ex.P-5) to 2014-15 (Ex.P-17). No doubt in some of these Pahanis, in Column No.13, names of Tarre Lingaiah and Sama Sattireddy appear as being in possession of Ac.13.05 gts in Sy.No.494. But in Ex.P-14 (Pahani of 2009-10) and P-17 (Pahani of 2014-15), the possession of the 3rd defendant is reflected in Column No.13 dealing with possession for Ac.6.07 gts in Sy.No.494 as well. In Ex.P-11 (Pahani of 2005-06) also, the name of B.Karunakar Reddy, the husband of 3rd defendant is reflected in Col.No.13 as regards Ac.6.07 gts in Sy.No.494.

33. In Ex.R-23 to R-25, which are Pahanis for 2017 the names of defendant Nos.1 to 3 are shown in Col.No.12 relating to pattedar and also in Col.No.13 relating to occupation for 3 bits of Ac.3.19 gts, Ac.3.19 gts and Ac.6.07 gts. respectively in Sy.No.494.

34. Except stating that these pahanis are obtained by the defendants by managing the Revenue authorities, there is no other explanation from the plaintiff. He also has no explanation as to how in Exs.P-11, P-14 and P-17, 3rd defendant or her husband are shown to be in occupation of Ac.6.07 gts in Sy.No.494.

35. The plaintiff admitted that the plaint schedule property belonged to N.Raghava Rao. His case is that Tarre Mallaiah and Sama Rajireddy were joint tenants of the said land. No evidence of such tenancy such as a Protected Tenancy Certificate or even a lease deed is adduced by the plaintiff. Ex.R1/ the endorsement dt.12.07.2016 in file Nos.C/404/2016 of

the Dy.Tahsildar, Saroornagar shows that there is no entry in the Protected Tenancy register in respect of Sy. No.494 of Nadergul village.

36. He has also not adduced any evidence of transfer of title by legal heirs of N.Raghava Rao to his ancestors. Though in the plaint there is a reference to a sale agreement being confirmed by the Land Reforms Tribunal, Hyderabad East Division, Hyderabad in proceeding No.854/E/75 dt.15-03-1976 (Ex.P-1) of Tarre Lakshamma, w/o.Mallaiah, the said order contains no such recital.

37. Also, in the said order, to which is annexed the statement under Section 8 of the said Declarant, only an extent of Ac.6.56 cents in Sy.No.494 is shown to be in possession of her sons. How the plaintiff is claiming Ac.13.05 gts in Sy.No.494, in the light of the said statement of his grand mother, is not explained by him.

38. Admittedly Ac.13.05 gts in Sy.No.494 was not excluded from the holding of N.Raghava Rao as per Ex.P-30 dt.15-01-1979, the order passed in C.C.No.1724/E/75 of the Land Reforms Tribunal, Hyderabad East Division, Hyderabad. If there was any transfer of title in favor of plaintiff's ancestors, there would be such an exclusion of the said land from the holding of N.Raghava Rao's family members. Therefore, prima-facie plaintiff cannot place much reliance on Exs.P-1 and P-2 and claim that he was in possession of the plaint schedule property at the time of filing of the suit.

39. Ex.R-5 is a sale agreement-cum-G.P.A. dt.29-01-2001 executed by four sons of Raghava Rao in favour of Tarre Lingamaiah and Tarre Anjaiah,

the sons of Tarre Mallaiah with regard to Ac.6.07 gts in Sy.No.494. The said document does not refer to the purchasers as tenants of the vendors. This also prima facie disproves the case of the plaintiff that Tarre Mallaiah and his legal heirs were tenants of late Raghava Rao.

40. Acting on the basis of Ex.R-5, Tarre Lingamaiah and Tarre Anjaiah sold Ac.6.07 gts to B.Karunakar Reddy, husband of 3rd defendant under Ex.R-4 registered sale deed dt.30-10-2002.

41. Plaintiff, who is claiming through Tarre Lingamaiah and Tarre Anjaiah, cannot therefore claim prima facie any right in Ac.6.07 gts in Sy.No.494 sold to 3rd defendant's husband. In fact, these transactions were suppressed by the plaintiff.

42. Under Ex.R-3 dt.31-01-2001, sons of Raghava Rao sold Ac.6.37 gts out of Ac.13.05 gts in Sy.No.494 to defendant Nos.1 and 2 and also delivered possession to them. The plaintiff purchased from defendant Nos.1 and 2 under Exs.R-36 to R-39, four bits of 500 sq. yds, each in all, 2000 sq. yds from defendant Nos.1 and 2 and these plots fall within the land purchased by defendant Nos.1 and 2 from the sons of Raghava Rao under Ex.R-3. These transactions have also been suppressed by the plaintiff.

43. The transactions Exs.R-4, R-5 and those under Ex.R-3, R-36 to R-39 show that the possession prima facie of the plaint schedule property was not with the plaintiff's ancestors and was in fact with the sons of Raghava Rao and later with defendant Nos.1 to 3.

44. In this view of the matter, I hold that the Court below did not commit any error of law or fact in refusing to grant relief to the plaintiff in I.A.Nos.931 of 2018 and 29 of 2019; and its finding that the plaintiff was prima facie not in possession of the plaint schedule property on the date of filing of the suit does not warrant any interference by this Court.

45. Consequently, these C.M.As. fail and are dismissed. No costs.

46. However the Court below shall decide the suit uninfluenced by the findings given by it in the impugned order or in this order passed in the CMAs.

47. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 01-08-2019

Mrkr/Vsv