

HON'BLE SRI JUSTICE P.NAVEEN RAO
CIVIL REVISION PETITION NO.2385 OF 2019

Date: 28.02.2020

Between:

The State of Telangana, rep.by the
District Collector, Warangal.

.... Petitioner

And

Ravula Manohar Reddy,
s/o. late Puna Reddy,
Aged 43 years, Occu:Employee,
R/o.1583, Jubli Market,
Kazipet.

.... Respondents



This Court made the following:

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ORDER:

The claim of Respondent Nos.1 and 2 is that they are in possession of agricultural dry land admeasuring Ac.1.20 guntas in Sy.No.1101/B of Dharmasagar village and Mandal of Warangal District and perfected title by adverse possession. The original pattadar of the land was late T.Haigreeva Chary. The father of the respondents is said to be in possession since 1976, his name being recorded in the possessory column of pahanies and after his demise, the respondents 1 and 2 continued to be in possession and constructed four rooms in 1983 by obtaining permission from Gram Panchayat.

2. Alleging that respondent Nos.3 and 4 came to the schedule land claiming to be contractors entrusted with the work to construct the College under the instructions of petitioner, the Respondent Nos.1 and 2 apprehended that they would be dispossessed forcibly and filed O.S.No.517 of 2002 in the Court of Principal Junior Civil Judge, Warangal, praying to grant decree of perpetual injunction.

3. The petitioner disputed the claim of adverse possession. According to the petitioner, the daughter of the original pattadar, by name, Miss Indrani succeeded to land to an extent of Acs.6.00 guntas in Sy.No.1101/B. She has executed relinquishment deed in favour of the State to construct a Junior College. Accordingly, the property vested in the State. The Government intended to construct a Junior College in the said survey number.

4. The suit of the respondents was decreed restraining the petitioner from interfering in the suit schedule land. The trial Court held that the entries made in pahanies revealed possession of schedule property for a long time. Appeal was filed contending that there is no evidence on passing of title or how the father of respondent No.1 came into possession of schedule property, and the lower Court failed to appreciate the relinquishment deed i.e., exhibit B3 executed in favour of the Government by the daughter of original pattedar and that the lower court failed to discard Ex.A44 which is the permission for construction of the house signed by the clerk and not by the competent authority.

5. Petitioner filed I.A.No.104/2019 under Order XLI Rule 27 read with Section 151 CPC to permit the petitioner to file additional evidence. The I.A., was dismissed by order dated 26.08.2019 holding that the petitioner failed to establish the ingredients of Order XLI Rule 27 CPC to grant the leave. This revision is filed assailing said orders.

6. Learned Government Pleader for petitioner contended that as the suit was for simple injunction, the burden was on the plaintiff to satisfy the ingredients to grant permanent injunction, but plaintiff cannot depend on the weakness in the defense of defendants. The trial Court erroneously held that the petitioners failed to prove that they took possession of the suit land as a consequence to relinquishment deed. He would submit that the documents sought to be presented are public documents, i.e., original undated panchnamas, original proceedings of Mandal Revenue Officer bearing No.B1/698/2000 and copies of pahanies

for years 1954-55, 1961-62 to 2017-18, which only reflect entries in the revenue records and these documents would show that Government took possession of the land long ago. There can be no impediment to file these documents at the appellate stage also. He would submit that in the process of adjudication, Court requires to consider all aspects and if filing additional documents enables appellate Court to appreciate the issues in right perspective, the receiving of documents cannot be refused on specious ground that at a belated stage they are sought to be presented. He would further submit when State is the appellant, the Court should view the delay liberally.

7. In support of his contentions, he placed reliance on **Union of India vs K.V.Laxman & Others**¹.

8. *Per contra*, according to learned counsel for the respondents, the then Tahsildar was examined before trial Court and through him Exs.B1 and B2 were marked, which are certified copies of pahanies from 1977-78 to 2001-02 and adangal for 1982-83 to 2001-02 respectively; without verifying the same, the appellant sought to bring additional evidence. He would submit that other documents are not admissible in evidence.

9. Order XLI Rule 27 CPC enables a party to the appellate suit to file additional evidence at the appellate stage. It vests wide discretion. The appellate Court may permit if the Court is of the opinion that such additional evidence is relevant for decision in the appellate suit.

¹ (2016) 13 SCC 124

10. In **K.V.Laxman**, Union of India instituted suit in the year 1976 for declaration that they are the owners of the suit schedule land and that the defendants have no right, title and interest in the suit schedule land. Trial Court dismissed the suit vide judgment/decree dated 11.12.2001. Trial Court observed that plaintiff failed to prove his title over the suit land for want of adequate evidence. Aggrieved thereby, plaintiff preferred appeal to the High Court. In the appeal, plaintiff filed I.A. under Order XLI Rule 27 of CPC and sought permission to adduce additional evidence. The additional evidence *inter alia* consisted of documents issued by the State Land Revenue Department in relation to the suit land. The first appellate Court rejected the said application and dismissed the appeal suit on the ground of insufficiency of evidence. Aggrieved thereby, Union of India filed Civil Appeal No.920 of 2008.

10.1. It was contended that additional evidence sought to be adduced was relevant for deciding the issue of ownership of the parties.

10.2. Hon'ble Supreme Court held as under:

"32. This takes us to the next question in relation to the application filed under Order 41 Rule 27 of the Code. In our considered view, the High Court committed another error when it rejected the application filed by the appellant under Order 41 Rule 27 of the Code. This application, in our opinion, should have been allowed for more than one reason.

33. First, there was no one to oppose the application. In other words, the respondents were neither served with the notice of appeal and nor served with the application and hence they did not oppose the application. Second, the appellant averred in the application as to why they could not file the additional evidence earlier in civil suit and why there was delay on their part in filing such evidence at the appellate stage. Third, the averments in the application were supported with an affidavit, which remained un rebutted. Fourth, the application also contained necessary averment as to why the additional evidence was necessary to decide the real controversy involved in appeal. **Fifth, the additional evidence being in the nature of public documents and pertained to suit land, the same should have been taken**

on record and lastly, the appellant being the Union of India was entitled to legitimately claim more indulgence in such procedural matters due to their peculiar set up and way of working.

34. It was for all these reasons, we are of the view that the application filed by the appellant under Order 41 Rule 27 of the Code deserved to be allowed and is accordingly allowed by permitting the appellant to file additional evidence.

35. The learned counsel for the respondents, however, contended that the additional evidence is not relevant for deciding the appeal/suit. He also urged that the appellant has not pleaded any cause as required under Order 41 Rule 27 to file such evidence at the appellate stage. We are not impressed by this submission in the light of the reasons given supra. This submission is accordingly rejected.

36. Order 41 Rule 27 of the Code is a provision which enables the party to file additional evidence at the first and second appellate stage. ***If the party to appeal is able to satisfy the appellate court that there is justifiable reason for not filing such evidence at the trial stage and that the additional evidence is relevant and material for deciding the rights of the parties which are the subject-matter of the lis, the court should allow the party to file such additional evidence. After all, the court has to do substantial justice to the parties.*** Merely because the court allowed one party to file additional evidence in appeal would not by itself mean that the court has also decided the entire case in its favour and accepted such evidence. Indeed once the additional evidence is allowed to be taken on record, the appellate court is under obligation to give opportunity to the other side to file additional evidence by way of rebuttal”.

(emphasis supplied)

11. Juxtaposing with the facts in **K.V.Laxman**, in the instant case, the suit was instituted by respondents 1 and 2 praying to grant decree of injunction against interference by the petitioner. Title to the property was claimed based on adverse possession. Decree was granted holding that plaintiffs were in possession. In a suit for injunction against interference burden is on plaintiff to prove that on the date of institution of the suit, he was in legal possession of the suit property and a *prima facie* title exists in his favour and unless injunction is granted irreparable hardship would be caused to him. Claim of long possession is the basis for the trial Court to grant injunction. The plaintiff based his claim on certified copies of pahanies for the years 1982-83 to 2000-01

marked as exhibits A10 to A23; house tax receipts issued by Gram Panchayat marked as exhibits A24 to A34 and land revenue receipts marked as exhibits A35 to A43. Holding that defendant did not prove taking possession, the decree was granted.

12. Though trial Court holds that exhibit B3 – relinquishment deed is valid, but holds that there were no recitals on delivery of possession and observed that Government ought to have taken steps to take possession. The trial Court placed heavy reliance on letter of Mandal Revenue Officer dated 30.11.2000 addressed to the District Collector, marked as exhibit A7, notices issued to plaintiffs, their response and representation to the Hon'ble Chief Minister, marked as exhibits A1 to A6. However, trial Court erred in not considering the exhibit B2 – pahani of year 2001-02. It is seen from this pahani, 1st plaintiff's name does not appear in the possession column. In a suit for injunction plaintiffs have to establish legal possession on the date of institution and cannot depend on the weakness of defense.

13. By bringing additional evidence, defendant seeks to establish that plaintiffs were not in possession and to show that entries in pahanies reflect the possession of property by the college. Though panchanama taking possession does not contain date, the proceedings of Mandal Revenue Officer bearing No.B1/698/2000, dated 25.07.2000 requesting the Village Revenue Officer to effect changes in the revenue records, point out that possession was already taken by them. In support of their further claim on taking possession the defendant sought to present the adangal/pahani copies for various years. It cannot be said that reasons assigned

by the appellant in support of the application are not valid or justified to through out the application. It cannot be said that the additional evidence is not required to enable the first appellate Court to decide the issue in a more satisfactory manner and to render substantial justice to the parties.

14. The suit was decreed in the year 2006, the appeal was numbered in the year 2008 and the petition was filed on 02.07.2019 after almost 11 years. By then suit was ripe for arguments. On the ground of delay in filing application to seek to present additional evidence, the lower Appellate Court rejected the I.A. While rejecting the application, the lower Appellate Court has not considered the opinion expressed by Hon'ble Supreme Court in **K.V.Laxman** on both aspects, 1) scope of granting leave to present additional evidence at the appellate stage, and 2) on delay in filing application to present additional evidence by the State. In identical fact situation, Apex Court observed that appellant being Union of India legitimately can claim more indulgence in such procedural matters. In the instant case, defendant/appellant is the State. Plaintiffs' claim to suit property is based only on long possession. Thus, crucial issue is who was in possession when suit was instituted. In a suit for injunction, it cannot be said that additional evidence do not come to the aid of the 1st appellate Court to render substantial justice. In view thereof, and as appellant is the State the application to bring additional evidence ought not to have been rejected only on the ground that such application was moved at the fag end of the appellate suit proceedings.

15. The Civil Revision Petition is allowed. The petitioner/appellant is permitted to file additional evidence. However, it is made clear that the additional evidence shall be subject to proof and relevancy. It is also made clear that there is no expression of opinion on merits and the discussion herein above is only for the purpose of considering the instant Civil Revision Petition. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

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