

HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU

C.M.A.NO.177 of 2020

JUDGMENT:

This is a Civil Miscellaneous Appeal filed by appellants, who are respondents in I.A.No.441 of 2019 and defendants in O.S.No.174 of 2019 on the file of Family Court, VIII Addl. District Judge, Mahaboob Nagar, this appeal is filed against the order of the Court below in the above referred Interlocutory Application by which the learned District Judge ordered Ad-interim Injunction in favour of the respondents/petitioners/plaintiffs.

2. Before going to the grounds on which present appeal is filed, it would be better to see what was the case of parties in the Interlocutory Application filed before the trial Court.

3. Respondents No.1 to 3 herein have filed a suit in O.S.No.174 of 2019 before the Court below for perpetual injunction in respect of Ac.17.25 gts of land in four different survey numbers situated at Yerupumalla Village against the appellants herein. They have filed I.A.No.441 of 2019 under Order 39 Rules 1 & 2 r/w Section 151 C.P.C. and sought for ad-interim injunction in respect of same property during the pendency of the suit.

4. As per the material averments made in the said Interlocutory Application, it seems the respondents/plaintiffs have

pleaded that they are absolute owners and possessors of the above said land which herein after will be referred as schedule property. Originally it was owned by one Gurukunta Anthamma who is great grand mother of respondents herein. She has succeeded the property from her ancestors. The name of Anthamma was shown in the Akarband Register. She had four daughters but three (3) of them died during their childhood. A daughter by name Venkamma survived and she was married to one Hanmanth Reddy. They were blessed with a son by name Bichi Reddy. The said Bichi Reddy has got two sons and Bichi Reddy sold the land to an extent of Ac.23-05 gts to schedule tribe people and he has donated Ac.03-27 gts for the purpose of laying the cart track at the request of villagers. Therefore, there remained an extent of Ac.17-25 gts to which the sons of Bichi Reddy by name Subhan Reddy and Suresh Reddy became owners.

5. The respondents herein are the sons of said Subhan thereby, they have claimed they got title and possession over the said property. They have also claimed that the appellants herein, who are shown as defendants are no way concerned with the above said property but taking advantage of the absence of respondents from the village with the help of anti-social elements, they bent upon grabbing the schedule property. They tried to

interfere with the possession of the respondents. They continued the efforts to disturb the possession of the respondents. Thereby, they sought for a temporary injunction.

6. The appellants herein appeared before the trial Court, filed counter affidavit denying all the material allegations including title and possession etc., on the schedule property. During enquiry, the parties have marked their respective documents in support of their claim. Exs.P1 to P46 were marked for the respondents/plaintiffs. Exs.R1 to R55 were marked on behalf of the appellants/defendants. The learned trial Judge having heard both parties, considering the arguments and documents marked by both parties, came to a conclusion that the respondents/plaintiffs were able to make out prima facie case, balance of convenience is in their favour, if the injunction is denied they would suffer irreparable loss, thereby, granted injunction restraining the appellants herein from interfering with the possession of the plaintiffs.

7. The present appeal is filed being aggrieved by the said order and in the grounds, the appellant have claimed that the learned District Judge failed to appreciate that the appellant herein are owners and in possession of the property which they succeeded from their ancestors thereby, no injunction can be

granted against the true owner. They have also claimed that the appellants herein filed Exs.R1 to R15 i.e., certified copies of pahanies for the land in Sy.No.173 which goes to show the possession and enjoyment of the appellant but the trial Court without giving any reasons discarded the documents. The appellant have filed documents to show that they dug bore well in the schedule property, obtained electricity connection which is evident from Exs.R17 and R18. They could file pattedar pass-books obtained from Revenue Authority and without proper appreciation, the learned District Judge granted an injunction in favour of the respondents/plaintiffs.

8. The appellants have further claimed that the learned District Judge relied on Ex.P28 which is shown as Akarband prepared in 1978, but after passing of ROR Act, no such registers are in existence. Even if Ex.P28 is believed to be true, there are no details like survey number, village name etc., Therefore, it is nothing but a proforma form pressed into notice in support of their claim. Therefore, according to the appellant, the findings of the Court below are incorrect and respondents are not entitled to an injunction. Thereby, sought for setting aside the interim injunction granted in favour of the respondents/plaintiffs. Even though notices were ordered to the respondents none appeared.

9. I have heard the learned counsel for the appellants.

10. The learned counsel for the appellants has submitted that the respondents/petitioners/plaintiffs were not able to prove their title, possession on the suit schedule property as on the date of their filing the suit before the trial Court. They have filed 45 documents but none of the documents could prove the possession of the respondents/plaintiffs on the suit land. They have filed pahanies up to 2016 but there is no document to support the possession of respondents as on the date of the suit. The respondents/plaintiffs are not able to prove prima facie case, balance of convenience is not in their favour but in favour of the appellants herein, in those circumstances, if injunction is granted to the respondents/plaintiffs, it would cause irreparable loss to the appellants herein. The learned counsel has further argued that the Court below granted interim injunction on the basis of police complaint lodged by the respondents/plaintiffs. The learned counsel has submitted that the respondents having borrowed the surname 'Gurukunta' filed a false suit and petition for injunction. Therefore, he sought for dismissal of the injunction petition.

11. Now the point for consideration is :

Whether the respondents/plaintiffs are not entitled to temporary injunction? If so, whether the injunction granted by the trial Court is liable to be vacated?

12. It is a fact that in order to obtain interim injunction, the parties have to establish prima facie case and balance of convenience in their favour. They must establish the denial of injunction will cause irreparable loss. In the present case, both parties are claiming that they got title and possession on the suit schedule property. The appellants have claimed that they have got title and ownership on the suit schedule property. The respondents/plaintiffs are trying to interfere with their possession and that the trial Court failed to appreciate the material placed before the Court and granted temporary injunction to the respondents thereby, they sought for setting aside the temporary injunction. Whereas, the respondents/plaintiffs have claimed that they have got title over the suit property, appellants herein are trying to disturb their possession.

13. The appellants herein have claimed that suit schedule property was part of Sy.No.111 to the extent of Ac.60.05 gts and one Anthamma W/o. Ramanna was the original owner of entire land in Sy.No.111. The land in Sy.No.111 was divided into 4 survey numbers i.e., 173 admeasuring Ac.22.12 gts apart from Sy.Nos.173, 178 and 179. The above referred Bichi Reddy cultivated a part of the land belonged to appellants herein. Taking advantage of said cultivation as lessee, subsequently, the said

Bichi Reddy got his name mutated in the Revenue Records. They have also claimed that the father of the respondents/plaintiffs worked as Tahasildar thereby, he managed to incorporate the name of his son in the revenue records by tampering the records. They have also claimed that Anthamma, wife of Ramanna is their common ancestor but not the great grand mother of respondents/plaintiffs as claimed in their petition. The said Anthamma was owner of land in Sy.Nos.173, 174, 178 and 179. They have got an extent of Ac.22.12 gts, they dug bore wells, obtained electricity connection and enjoying property. Therefore, according to these appellants, they succeeded the land and in possession of the property.

14. As per the pleadings of both parties, it is specifically alleged that one Gurukunta Anthamma was the original owner of the land in Sy.No.111, subsequently, it is renumbered as Sy.Nos.173, 174, 178 and 179. The appellants have claimed that the grand father of respondents/plaintiffs by name Bicchi Reddy and his mother Venkamma migrated from Gurukunta to Yerupumalla Village, thereby he was known as Gurukunta Bichi Reddy. The appellants did not mention the surname of Anthamma in their counter but claimed that the said Anthamma is their common ancestor and owner of the suit property and other lands.

15. The respondents/plaintiffs have claimed that Gurukunta Anthamma was their ancestor, she was owner of Ac.62.19 gts in Sy.No.111. Her name is found in Akarband Register, their grand father used to pay land revenue for the above land.

16. Therefore, from the contentions of both parties, it is very clear that suit schedule property was in Sy.No.111 of Yerupumalla Village and Anthamma was owner of Sy.No.111. In support of their respective contentions, both parties have filed documents. Appellants have produced Exs.R1 to R55 and respondents/plaintiffs have marked Exs.P1 to P46. Since the Interlocutory Application was filed by respondents/plaintiffs, it shall be examined whether the respondents are able to establish prima facie case and balance of convenience in their favour. In order to prove their case, the respondents marked documents from 1954-55. The name of grand father of respondents was shown as owner of Ac.51.03 gts in which the suit schedule property is a part, which is marked as Ex.P30. There is no dispute even by the appellants herein about the sub-division in Khasra pahani of Sy.No.111 into 4 survey numbers as 173, 174, 178 and 179. As could be seen from Exs.P28 and P30, it is clear that the land in Sy.No.111 was recorded in the name of Gurukunta

Anthamma. The appellants have claimed that she was their common ancestor. While claiming said Bicchi Reddy was not a resident of Yerupumalla village and he along with his mother migrated from Gurukunta, these appellants tried to explain that since he came from Gurukunta, people used to call him as Gurukunta Bichi Reddy. But they did not state what was the real surname of Bichi Reddy. Even though, they claims that Gurukunta Anthamma was their common ancestor, none of the appellants had the surname of Gurukunta but the record shows their surname as of "Boini" and "Gonela".

17. The respondents have relied on Exs.B28, B30 and other documents to show the original ownership of Anthamma on Sy.No.111. Ex.B31 is pahani for 1952. As per these documents, Anthamma is shown as pattedar and Bichi Reddy is shown as possessor of the said land. The appellant did not dispute the relationship between respondents/plaintiffs and said Bichi Reddy. Therefore, these documents would show the relation between respondents/plaintiffs and Anthamma. The appellants could not show any document or record to establish that they are successors of Anthamma. They did not try to explain as to why their surname is Gonela, if Gurukunta Anthamma is their common ancestor and how Bichi Reddy was shown as possessor for the land

which stood in the name of Gurukunta Anthamma. Therefore, appellants failed to establish that they are successors of Anthamma and succeeded her lands.

18. It is true, the appellants have filed pahanies in support of their claim from 1978-79. There is no record as to how the names of these appellants recorded from 1978 while the Khasra and other record from 1954-55 show the property in the name of Anthamma and how these appellants succeeded the land.

19. As per the observations made by the Court below which is not disputed before this Court, the name of grand father of plaintiff is shown in Ex.R51 Khasra Ex.R52 Seasla pahani and Ex.53 pahani for 1972-73. As per the endorsement made by Tahasildar dated 10-01-2020 vide Ex.R54 filed by the appellants herein, it shows that respondents/plaintiffs No.1 to 3 are pattedars of Sy.No.173. As rightly observed by the Court below, these appellants could not explain as to from whom they succeeded the property. There is no basis for their claim whereas, documents filed by respondents/plaintiff and the documents filed by the appellants itself would show that Anthamma was pattedar of the suit property, grand father of the respondents/plaintiffs was enjoying the possession of the suit land.

20. Therefore, prima facie case is in favour of the respondents but not in favour of the appellants herein. The balance of convenience is also in favour of the respondents/plaintiffs. The documents and photographs produced by the respondents shows that somebody set fire to haystack in the suit schedule property and a complaint was lodged before the police. The documents relied on both parties coupled with these photographs would show that the respondents/plaintiffs were enjoying the suit schedule property. They have got prima facie case, balance of convenience in their favour. If the injunction is denied allowing the appellants herein to interfere with the property definitely it would cause irreparable loss to the respondents/plaintiffs thereby, the trial Court rightly granted temporary injunction to the respondents/plaintiffs. Therefore, there are no merits in the appeal which is liable to be dismissed.

21. In the result, C.M.A. is dismissed.

Consequently, Miscellaneous applications if any, are closed.
There shall be no order as to costs.

JUSTICE SAMBASIVA RAO NAIDU

Date: 13.09.2022
PLV

