

Andhra High Court

1. Ankem Madhava Rao And Another vs 1.Simhadri Rama Rao And Another on 5 October, 2015

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

C.M.A.No.416 of 2015

05-10-2015

1. Ankem Madhava Rao and another. Appellants

1.Simhadri Rama Rao and another. Respondents

Counsel for the Appellants: Sri V.S.R. Anjaneyulu

Counsel for Respondents: Sri K. Adinarayana Sarma

<Gist :

>Head Note:

? Cases referred:

1. 1998 (1) ALT 182
2. 1998 (1) ALD 770

THE HONBLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Miscellaneous Appeal No.416 of 2015

JUDGMENT:

This is an appeal by the unsuccessful petitioners/plaintiffs under Order XLIII Rule (1) of the Code of Civil Procedure, 1908 (the Code, for short) assailing the orders dated 27.10.2014 of the learned XII Additional District Judge, Vijayawada of Krishna District passed in IA.No.426 of 2014 in OS.No.353 of 2014 filed under Order XXXIX Rules 1 and 2 read with Section 151 of the Code to grant a temporary injunction restraining the respondents/defendants, their men and agents from interfering with the plaintiffs peaceful possession and enjoyment of the item nos.1 and 2 of the plaint schedule property.

2. I have heard the submissions of the learned counsel for the appellants/petitioners/plaintiffs (the plaintiffs, for brevity) and the learned counsel for the respondents/defendants (the defendants, for brevity). I have perused the material record.

3. The pleadings of the parties that are necessary for consideration in this appeal, in brief, are as follows:

3.1 The case of the plaintiffs is as follows: - The 1st plaintiff is the maternal grandfather of the 2nd plaintiff. The 1st plaintiff had purchased number of properties in the name of the mother of the 2nd plaintiff by name Sujatha for the purpose of welfare of his grand daughters. In the year 1991, the 1st plaintiff had performed the marriage of his daughter Sujatha with the father of the 2nd plaintiff, who was an employee of APSRTC. Subsequently, the 2nd plaintiffs father had developed bad vices and had resigned his job. The 1st plaintiff had purchased item nos.1 and 2 of the plaint schedule property in the name of the 2nd plaintiff under two sale deeds dated 23.05.2012 and 17.09.2012. By virtue of the said sale deeds, the 2nd plaintiff became the absolute owner of the said items nos.1 and 2 of the plaint schedule properties and is enjoying the same by being in peaceful possession. The original documents were kept in the custody of the father of the 2nd plaintiff. The 2nd plaintiff is a 4th year Engineering student in Satyabhama Engineering College, Chennai. On 10.08.2014, the plaintiffs 1 and 2 went to the village and inspected the item nos.1 and 2 of the plaint schedule properties. At that moment, they had received information from the villagers that the original documents of the items nos.1 and 2 of the plaint schedule properties are with the defendants. As such, the plaintiffs had approached the defendants for return of the original documents. The defendants had refused to deliver the original documents stating that the father of the 2nd plaintiff gave the documents towards security purpose. The defendants had openly declared that they had occupied the plaint schedule property. The father of the 2nd plaintiff is no way concerned with the plaint schedule property. Taking advantage of the absence of the 2nd plaintiff in the village and also the fact that the 1st plaintiff is residing at G. Konduru village, which is a place far away from the plaint schedule property, the defendants may occupy the plaint schedule property and create false documents. The defendants have no right, interest and title over the plaint schedule property. The documents, if any, executed by the father of the 2nd plaintiff are not valid under law. The father of the 2nd plaintiff has no right, title and authority to deliver the original documents to the defendants for security purpose. As the plaintiffs have no option except to file the suit, they are constrained to file the suit for a declaration that the 2nd plaintiff is the absolute owner of the item nos.1 and 2 of the plaint schedule property and the consequential relief of perpetual injunction and also the present application for temporary injunction.

3.2 The averments in the counter of the 1st defendant are as follows: The 1st plaintiff has nothing to do with the proceedings as the natural parents of the 2nd plaintiff are alive. The 2nd plaintiff, with the help of her parents, had leased out item no.1 of the plaint schedule property to this defendant. During the subsistence of the said lease, she had sold item no.1 of the plaint schedule property for a consideration of Rs.25,00,000/-. The father of the 2nd plaintiff was addicted to vices and had resigned his job and is not taking care of the welfare of the daughter. He was indebted to a number of persons in the village. To meet the immediate needs and to discharge his debts, the 2nd plaintiff had sold item no.1 of the plaint schedule property and delivered the original document of title and also the possession of the said item of property to this defendant and this defendant is in possession of the property and not the 2nd plaintiff. After the separation of the erstwhile Andhra Pradesh state, the petitioners had visited the schedule properties. As the values of the properties had increased multi fold, they had developed a fraudulent intention and had instituted this false suit. At the time of purchase of the property, this defendant had intended to obtain a registered agreement from the 2nd plaintiff and therefore, he along with the 2nd plaintiff and her parents went to the Registrars office. However, the registering authority had asked for pattedar pass book and title deed book; as

the said documents were not available the registration could not be done. The plaintiffs are not in possession and enjoyment of the plaint schedule properties. Hence, the suit may be dismissed.

3.3 The case of the 2nd defendant in the counter filed resisting the application for temporary injunction is as follows: The material averments in the plaint and affidavit are false. The 1st plaintiff has nothing to do with the proceedings. When the natural guardians of the 2nd plaintiff are alive, the affidavit given by the 1st plaintiff on behalf of the 2nd plaintiff is not valid and acceptable. The 2nd plaintiff, with the help of her parents, had leased out item no.2 of the plaint schedule property to the 2nd defendant for cultivation. During the existence of the cultivating tenancy of the 2nd defendant, the 2nd plaintiff had sold away the item no.2 of the plaint schedule property to the 2nd defendant and had received sale consideration and had executed a possessory agreement of sale in favour of the 2nd defendant. The father of the 2nd plaintiff had developed bad vices and had resigned his job and was not taking care of the welfare of his daughter and wife. He was heavily indebted and was liable to pay huge amounts to various persons of their village and other villages. To meet the immediate needs of the family and to release the pressure of the debts, the 2nd plaintiff had sold away the item no.2 of the plaint schedule property to the 2nd defendant. The fact that 2nd plaintiff is studying 4th year Engineering in Chennai is also one of the causes for selling the item no.2 of the plaint schedule property. The original title deed of that item of the property, which was delivered to the 2nd defendant, is with him as he is the owner of the said item of the plaint schedule property. Due to the abnormal increase in the land value after the separation of the erstwhile Andhra Pradesh into two States, a fraudulent intention germinated in the mind of the 1st plaintiff to defeat the lawful rights of the 2nd defendant over the said item no.2 of the plaint schedule property and as such the 1st plaintiff had created the story in paragraph 4 of the affidavit. The 2nd defendant was willing and ready for registration of the possessory sale agreement. But, due to the lack of the pattadar pass books of the vendor, the registration was not done. Subsequently, the plaintiffs had filed the suit. The 2nd plaintiff is studying in Chennai and the 1st plaintiff is residing at G.Konduru village. As such the averments that the plaintiffs are cultivating the item no.2 and are in peaceful possession and enjoyment of the same and that the defendants may occupy the property are not true and correct. Item no.2 was purchased by the 2nd plaintiff with the means of her pitrarjitam. The 2nd defendant is cultivating the item no.2 and he is also possessor, enjoyer and rightful owner. The original document is in the custody of the 2nd defendant. The plaintiffs are not in possession and enjoyment of the item no.2 of the plaint schedule property as on the date of the institution of the suit. To prove the said fact, affidavits of adjacent ryots were filed along with the counter.

3.4 During the course of enquiry before the trial Court, no oral and documentary evidence was adduced on either side.

3.5 On merits, the trial Court had dismissed the petition. Therefore, the aggrieved plaintiffs are before this Court.

4. At the time of hearing, the learned counsel for the plaintiffs while making submissions in line with the pleadings had further contended as follows:

The Court below ought to have marked and considered the documents filed on behalf of the plaintiffs and ought to have decided the matter in accordance with law. The court below before arriving at a conclusion on the aspect as to whether or not the plaintiffs are not entitled for the relief of temporary injunction as prayed for, ought to have examined the documents of both the sides. The Court below ought to have seen that the documents filed on behalf of the plaintiffs would make it clear that they have a prima facie case and also that the balance of convenience is in their favour for grant of injunction and that the plaintiffs would suffer serious prejudice and irreparable loss if no injunction is granted in their favour. The Court below ought to have seen that the documents filed on behalf of the plaintiffs prove the specific case of the plaintiffs that they are in possession and enjoyment of the plaint schedule property and cultivating the same. The case of the plaintiffs could be culled out from their documents filed into court. The non-marking of the documents as exhibits and the failure to consider the existence of a prima facie case in favour of the plaintiffs resulted in injustice to the plaintiffs. The order impugned is liable to be set aside on the sole ground of non-application of judicious mind.

4.1 The learned counsel for the respondents/defendants while supporting the orders of the court below had contended that even though the documents are not exhibited, the order that was passed after considering accurately the facts is a well-reasoned order and is sustainable under facts and in law and that the court below had also considered the third party affidavits filed along with the counter showing the lawful possession of the defendants and that therefore, there is no error calling for interference with the orders of the court below, which are supported by cogent and valid reasons.

5. The point for consideration is Whether the plaintiffs had made out valid and sufficient grounds and satisfied the cardinal principles for granting temporary injunction as prayed for? And, if so, whether the order impugned is liable to be set aside?

6. POINT:

6.1 I have noted the submissions. No doubt, the trial Court did not mark the documents of both the sides as exhibits. Further, Rule 60 of the Civil Rules of Practice says that the enquiry into an interlocutory application shall be conducted by receiving affidavits, but if the Judge directs that the evidence be given orally, then it shall be recorded and the exhibits be marked in the same manner as in the case of suits. This Court in a decision in A.P. Minerals Development Corporation Limited Hyderabad v. M/s.Trimex Minerals Pvt.Ltd., and another decision in Bhoopal Reddy and another v. K.Lakshmi Bhai and another held that the practice of marking the documents in the interlocutory application only shall be continued. It is thus obvious that the documents filed by either of the parties shall have to be marked, unless the parties specifically opt for not marking either on the ground of inadmissibility or for some other reasons of their own. Now, the question is as to whether on the sole ground of non-marking of the documents as exhibits, the order impugned is liable to be set aside even though it is otherwise sustainable. To answer this question, it is necessary to examine as to whether or not the impugned order is sustainable in law and under facts peculiar to this case even in the absence of marking of the documents of both the sides as exhibits. 6.2 In the affidavit of the 1st plaintiff filed in support of the petition, it is stated that the 1st plaintiff had purchased item no.1 of the plaint schedule property under sale deed dated 23.05.2012 in the name of the 2nd

plaintiff and that he had again purchased item no.2 of the plaint schedule property on 17.09.2012 under registered sale deed in the name of the 2nd plaintiff and that by virtue of the said sale deeds, she is the absolute owner of both the items of the plaint schedule property and that since the 2nd plaintiff is a 4th year Engineering student pursuing her studies at Chennai, the original documents were kept in the custody of the father of the 2nd plaintiff. It is not explained as to why the 1st plaintiff, who is the maternal grandfather joined the 2nd plaintiff in filing the suit when she is a major and when her natural parents are alive. Be that as it may, the plaintiffs brought the suit for declaration of title and for consequential relief of perpetual injunction in respect of the two items of the plaint schedule property alleging inter alia as follows: The 2nd plaintiff is a student of 4th year Engineering and is pursuing her studies at Satyabhama Engineering College at Chennai. The original title deeds in respect of the plaint schedule property were kept in the custody of the father of the 2nd plaintiff. On 10.08.2014, the 2nd plaintiff had inspected the plaint schedule properties along with the 1st plaintiff, who is her maternal grandfather, and that at that time, she had received information from the villagers that her original title deeds related to plaint schedule property are with the defendants 1 and 2. The defendants had refused to comply with her demand for return of the same and had openly proclaimed that the father of the 2nd plaintiff had delivered the title deeds of the plaint schedule property to them for security purpose and that they had occupied the plaint schedule properties. Having apprehensions that the defendants may occupy the plaint schedule property at any time taking advantage of the facts that the 2nd plaintiff is an absentee landlady and that the 1st plaintiff is residing away from the property at Kondur village and as the defendants had created false documents in respect of the plaint schedule property, the suit was filed. The plaint schedule properties are in the possession and enjoyment and under the own cultivation of the plaintiffs. The defendants have no right and title over the properties and the documents, if any, executed by the father of the 2nd plaintiff are not valid. The father of the 2nd plaintiff has no right and title or authority to deliver the original documents to the defendants even for security purpose. 6.3 The defence of the defendants 1 and 2 is already stated supra. The crux of the defence is this:

The 2nd plaintiff, with the help of her parents, had leased out items nos.1 and 2 of the plaint schedule property respectively to the defendants 1 and 2. During the subsistence of the said leases, she had sold the item no.1 of the plaint schedule property to the 1st defendant for a consideration of Rs.25,00,000/-; she had also sold the item no.2 of the plaint schedule property to the 2nd defendant and had received sale consideration from him and had executed a possessory agreement of sale in favour of the 2nd defendant. The father of the 2nd plaintiff was indebted to a number of persons in the village and others. Hence to meet the immediate needs and to discharge his debts, the 2nd plaintiff had sold the items nos.1 and 2 of the plaint schedule property and delivered the original documents of title and also the possession of the said items of property to the defendants and the defendants are in possession of the respective items of the property and not the 2nd plaintiff. At the time of purchase of the property, the 1st defendant had intended to obtain a registered agreement from the 2nd plaintiff and therefore, he along with the 2nd plaintiff and her parents went to the Registrars office. However, the registering authority had asked for pattadar pass book and title deed book; as the said documents were not available the registration could not be done. The 2nd defendant was willing and ready for registration of the possessory sale agreement. But, due to the lack of the pattadar pass books of the vendor, the registration was not done. Subsequently, the plaintiffs had filed the suit.

In support of their contentions, the defendants had also filed 3rd party affidavits of the ryots of the neighbouring lands.

6.4 Though the 2nd plaintiff is the owner of the items nos. 1 and 2 of the plaint schedule property, the original title deeds of the said property are admittedly with the defendants. In the plaint no relief is claimed for return of the original title deeds to the 2nd plaintiff. When her father is addicted to vices, why the title deeds, which are valuable documents relating to immovable property, were allegedly kept with such a person could not be explained by the plaintiffs. Her plea is that when she went along with the 1st plaintiff to inspect the lands, the villagers had informed her that her original title deeds are with the defendants. The names of the said villagers are not even disclosed in the affidavit. It could not be explained as to what was the sudden need to inspect the suit lands when her case was that she was cultivating the lands on her own being in possession and enjoyment. Further, when she was a student pursuing studies at Chennai and the 1st plaintiff was admittedly residing at a place away from the village where the schedule lands are situated, it could not be explained as to how and through whom the lands are being cultivated personally. The names of the farm servants, if any, employed are not disclosed; and, no affidavits of any dependable third parties like neighbouring ryots or village elders are filed. The plaintiffs had also averred that the father of the 2nd plaintiff had no manner of right and title to deliver the title deeds to the defendants for security purpose and that the documents, if any, executed by the father of the 2nd plaintiff are not valid and that the defendants may at any time occupy the suit lands as the 2nd plaintiff is a student pursuing education at a college at Chennai and the 1st plaintiff is residing at a place away from the suit lands. It was also averred that the defendants had also created false documents, but, what is the nature of the said documents is not disclosed. No specific motive much less a strong motive for the defendants to falsely claim rights and interest in the land of the 2nd plaintiff is pleaded. Conversely, the defendants would contend that the 2nd plaintiff with the help of her parents had respectively leased out the items numbers 1 and 2 of the plaint schedule to the defendants 1 and 2 and that the father of the 2nd plaintiff was indebted to a number of persons in the village and hence, to meet the immediate needs and to discharge his debts, the 2nd plaintiff had sold the items nos.1 and 2 of the plaint schedule property respectively to the defendants 1 and 2 and delivered the original documents of title and also the possession of the said items of property to them and that the defendants are in possession of the respective items of the property and that the registrations of the respective documents could not be done due to the non availability of the pattadar pass books and title deed books in respect of the schedule property. The defence of the defendants is two fold. They had claimed that the property was originally leased out to them and that they are the cultivating tenants of items nos. 1 and 2 of the schedule property respectively and that later, they had purchased the respective items for valuable considerations in the circumstances stated by them. As noted by the trial court, the defendants are claiming possession under possessory agreements for sale. Further, the defendants had also filed affidavits of third parties, i.e., the ryots having lands in the neighbourhood to substantiate their contentions and to show that they are in possession of the plaint schedule lands. All these circumstances cumulatively coupled with the inherent strengths and weaknesses of the cases pleaded by the parties lay bare that the plaintiffs have neither a prima facie case nor the balance of convenience in their favour. In the facts and the circumstances, having regard to the reasons this Court finds that the plaintiffs, who could not establish a prima facie case, which is a sine qua non, are not entitled to the equitable relief of temporary injunction and that, therefore, the

Court below was justified in dismissing the plaintiffs application seeking temporary injunction. As a sequel it must be held that on the sole ground of non-marking of the documents as exhibits, the order impugned is not liable to be set aside since it is otherwise sustainable in law and under the facts peculiar to this case. Having given earnest consideration to the facts and submissions, this Court is satisfied that the order of the trial Court, which is impugned in this appeal, is sustainable in the facts and circumstances of the case and there are no reasons calling for interference with the said well-considered order of the trial court. The point is accordingly answered against the plaintiffs and in favour of the defendants.

7. In the result, the Civil Miscellaneous Appeal is dismissed confirming the order and the decretal order of the trial Court. There shall be no order as to costs.

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

\_\_\_\_\_ M. SEETHARAMA MURTI, J 05th October, 2015