



IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CIVIL MISCELLANEOUS APPEAL Nos.210 & 213 OF 2021

CMA No.210 of 2021:

Sri Mallikarjuna Industries,
Rep. by its Ambati Rajesh Kumar Reddy,
S/o. A. Shankara Reddy, Aged about 41
Years, Occu: Business, R/o. H.No.2-80A,
Kondupalli Village, Uyyalawada Mandal,
Kurnool District.

... Appellant/Petitioner/Plaintiff

Vs.

Vishwanatham Pedda Kondaiah,
S/o. Chidambaram, Aged around 70 Years,
R/o.H.No.9-13-37, Jeelaga Ramaiah Street,
Near Old Bus Stand, Allagadda, Town & Mandal,
Kurnool District, Andhra Pradesh & 3 others.

... Respondents/Respondents/Defendants

CMA No.213 of 2021:

Erigela Srinivasa Reddy, S/o. Lakshmi Reddy,
Aged about 49 Years, Occu: Cultivation and Business,
R/o. Door No.2-35, Near Kottala, S. Lingamdinne Village,
Allagadda Mandal, Kurnool District & 7 others.

... Appellants/Respondents/Defendants

Vs.

Vishwanatham Pedda Kondaiah,
S/o. Sidhambaramaiah, Aged around 69 Years,
R/o.H.No.9-13-37, Jilaga Ramaiah Street,
Allagadda Town, Kurnool District.

... Respondent/Petitioner/Plaintiff

JUDGMENT PRONOUNCED ON : 22-02-2022



THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE B.KRISHNA MOHAN

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | --- |
| 2 | Whether the copies of judgment may be marked to Law Reports/ Journals | Yes |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes |

JUSTICE C. PRAVEEN KUMAR

JUSTICE B. KRISHNA MOHAN



* THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
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! Counsel for the Appellants : Sri N. Ashwani Kumar
! Counsel for Respondents : Sri P. Nagendra Reddy

< Gist:

> Head Note:

? Cases referred:

¹ 2016 (9) SCC 268

¹ 2000 (6) SCC 394



THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE B.KRISHNA MOHAN

CIVIL MISCELLANEOUS APPEAL Nos.210 & 213 OF 2021

COMMON JUDGMENT : *(Per Hon'ble Sri Justice B.Krishna Mohan)*

CMA No.210 of 2021:

This Civil Miscellaneous Appeal is preferred against the Order in I.A.No.308 of 2021 in O.S.No.6 of 2021 on the file of V Additional District Judge, Allagadda dated 26.07.2021 dismissing the application for grant of temporary injunction in favour of the appellant/petitioner/plaintiff.

2. Heard the learned counsel for the appellant and the learned counsel for the respondents.

3. The appellant herein is the petitioner in the I.A., and the plaintiff in the suit before the Court below. The respondents herein are the respondents in the I.A., and the defendants in the suit before the Court below.

4. The appellant initiated an action in O.S.No.6 of 2021 on the file of V Additional District Judge, Kurnool at Allagadda against the respondents seeking permanent injunction and other reliefs with reference to the suit schedule property of Ac.0-70 cents situated in Door No.9/17/100, (Old No.66) in Sy.No.365/1 of Allagadda town containing godown, RCC building with upstairs and ginning



machinery with specific boundaries as mentioned in the plaint schedule.

5. It is the case of the appellant that as a lessee of the 1st respondent the suit schedule property was taken on an oral lease in the month of August, 2015 initially for a period of three years at the rent of Rs.5,000/- per month. An advance amount of Rs.10,000/- was paid to the 1st respondent by executing a lease agreement on a Rs. 100/- non-judicial stamp paper for the lease period commencing from 19.09.2015 to 19-09-2018 signed by both the appellant and the 1st respondent. The appellant was inducted into possession of the suit schedule property pursuant to the above said oral lease itself for running the ginning mill. As per the above said agreement, electrical charges are being paid by the appellant only. The appellant has further improved the said property with the construction of verandah and installation of grading machines with the consent of the 1st respondent. The Commercial Tax Department, Nandyal also gave certificate of Registration to the appellant on 13.10.2015 with effect from 01.10.2015 and the same is in force. The appellant also obtained VAT Registration certificate and GST Registration certificate dated 25.09.2017. After expiry of the above said lease period, the appellant sought for an extension of the said lease by another period of five years and the same was accepted orally by the 1st respondent with an agreed rent of Rs.10,000/- per month. Accordingly the rent has



been being paid without any default. The appellant also filed GST returns under Form GSTR 3B upto date till March, 2021. Thus, the appellant has been running the decodicator machines in the suit schedule property for ginning of groundnut, groundnut seeds and cotton by spending huge sums of money for further constructions, machinery and the office furniture. Due to the *Pandemic of Covid-19* the appellant could not run the said ginning mill in the suit schedule property since March 2020 onwards and opened it recently from January 2021 onwards. As the respondents tried to dispossess the appellant on 21.04.2021 it was constrained to institute the above said suit. Pending the same, it has also filed the above said I.A. for grant of temporary injunction against the respondents for protecting it's possession and running of the business/mill in the above said petition schedule property.

6. The respondents filed the written statement and as well as the counter for the above said I.A. opposing the said relief on the ground that the above said lease agreement was a forged one and not admissible in evidence as it is an unregistered document. In the course of enquiry of the above said I.A. before the trial Court Exs.A1 to A8 were marked for the appellant and Exs.B1 to B9 were marked for the respondents. Upon hearing the matter on merits, the Court below dismissed the above said I.A. on the grounds that the above said lease deed dated 19.09.2015 marked as Ex.A1 is an unregistered one cannot be received in evidence in view of Section



35 of the Indian Stamp Act r/w Section 17 (1)(d) of Registration Act, 1908 and Registration (Andhra Pradesh Amendment) Act, 1999, the said Ex.A1 is in the name of one Mr. Ambati Rajesh Kumar Reddy the proprietor of the appellant but not in favour of the appellant, the boundaries of the subject land was not mentioned in the said lease deed and the Exs.A2 to A6 are only based upon Ex.A1 and as such the possession of the appellant was not found to be established.

7. The learned counsel for the appellant submitted that the Court below grossly erred in appreciating the possession of the appellant over the petition schedule property by way of disbelieving the Ex.A1 as it is an unregistered document and declared that there is no *prima facie* case, balance of convenience and irreparable loss in favour of the appellant. The Court below ought to have seen that though the Ex.A1 - lease deed is an unregistered document it would not *ipso facto* disclaim the establishment of possession of the appellant over the petition schedule property and even independently also establishes the possession of the appellant showing running of the said mill in the said property.

8. The learned counsel for the respondents per contra contended that the appellant never inducted into possession of the petition schedule property, the Ex.A1 sought to be relied upon by the appellant is an unregistered document which cannot be looked



into for any purpose and the other Exs.A2 to A6 cannot be considered as they were issued consequentially relying upon Ex.A1 only and as such the Court below is justified in rejecting the above said application.

9. Having regard to the above said facts and circumstances, it is to be seen that the suit is for injunction simpliciter with respect to the above said suit schedule property instituted by the appellant and the above said I.A. was also filed by it for grant of temporary injunction to protect it's possession for running of the ginning mill over the said petition schedule property. Hence the appellant has to prove it's *prima facie case*, balance of convenience and irreparable loss if not granted temporary injunction by establishing continuous physical possession as on the date of institution of the suit itself. For which the appellant initially pleaded an oral lease followed by the unregistered lease deed (Ex.A1) and on expiry of the same continued with the possession on the basis of further oral lease in order to establish it's possession and running of the ginning mill over the petition schedule property. The appellant fairly relied upon the Exs.A1 to A6 primarily to prove the case for grant of temporary injunction. Though, the Ex.A1 is disputed by the respondents with regard to it's admissibility in evidence as it is an unregistered document, can it be ignored at this juncture for grant of temporary injunction is a question that would fall for consideration before the Court. It can't be lost sight of the fact



that one can be inducted into a lawful possession of the property on an oral lease and may be allowed to continue in the similar circumstances of this case with an unregistered instrument of lease for a particular period and thereafter with an oral lease subject to proof. As the objections raised by the respondents with regard to the Ex.A1 - lease deed can be gone into in the main suit itself and as the Exs.A1 to A6 together *prima facie* establishes the continuous physical possession of the appellant over the said property, the Court below ought not have dismissed the above said I.A. ignoring the parameters of the interlocutory application.

*In M/s Park Street Properties Pvt. Ltd. V. Dipak Kumar Singh & Another*¹ - The Hon'ble Apex Court in para 19 observed as follows:

“It is also a well settled position of law that in the absence of a registered instrument, the courts are not precluded from determining the factum of tenancy from the other evidence on record as well as the conduct of the parties.”

*Similarly in Anthony v. KC Ittoop & Sons & Others*² - The Hon'ble SC in para 12, 13 & 16 observed as under:

“12. ...A lease of immovable property is defined in Section 105 of the TP Act. A transfer of a right to enjoy a property in consideration of a price paid or promised to

¹ 2016 (9) SCC 268

² 2000 (6) SCC 394



be rendered periodically or on specified occasions is the basic fabric for a valid lease. The provision says that such a transfer can be made expressly or by implication. Once there is such a transfer of right to enjoy the property a lease stands created. What is mentioned in the three paragraphs of the first part of Section 107 of the TP Act are only the different modes of how leases are created. The first paragraph has been extracted above and it deals with the mode of creating the particular kinds of leases mentioned therein. The third paragraph can be read along with the above as it contains a condition to be complied with if the parties choose to create a lease as per a registered instrument mentioned therein. All other leases, if created, necessarily fall within the ambit of the second paragraph. Thus, dehors the instrument parties can create a lease as envisaged in the second paragraph of Section 107 which reads thus....

13. When lease is a transfer of a right to enjoy the property and such transfer can be made expressly or by implication, the mere fact that an unregistered instrument came into existence would not stand in the way of the court to determine whether there was in fact a lease otherwise than through such deed.

16. Taking a different view would be contrary to the reality when parties clearly



intended to create a lease though the document which they executed had not gone into the processes of registration. That lacuna had affected the validity of the document, but what had happened between the parties in respect of the property became a reality. Non registration of the document had caused only two consequences. One is that no lease exceeding one year was created. Second is that the instrument became useless so far as creation of the lease is concerned. Nonetheless the presumption that a lease not exceeding one year stood created by conduct of parties remains unrebutted.”

(emphasis supplied)

Thus, in the absence of registration of a document, what is deemed to be created is a month to month tenancy, the termination of which is governed by Section 106 of the Act.

10. The Ex.A2 - Certificate of Registration issued by the Government of Andhra Pradesh, Commercial Tax Department, dated 13.10.2015 in favour of the appellant, the Ex.A3 - Registration Certificate Form GST REG-06, dated 25.09.2017 issued by the Government of India in favour of the appellant, the Ex.A4 - Form GSTR-3B in the name of Proprietor of the appellant for the year 2020-2021, the Ex.A5 - Original Market Value Certificate, dated 22.04.2021 issued by the Sub-Registrar, Allagadda and the Ex.A6 - Receipts issued by the Southern Power Distribution



Company of A.P. Limited are also independently *prima facie* establishing the possession of the appellant in running the Ginning Mill of the petition schedule property. Whereas the Ex.B1 - Certified Copy of Mortgage Deed, dated 02.04.2004 in favour of one Mr. Erigela Sreenivasa Reddy, the Ex.B2 the Copy of Written Statement in O.S.No.55/2016 on the file of Senior Civil Judge's Court, Allagadda, the Ex.B3 - Deposition of PW1 in O.S.No.55 of 2016 of the said Court, the Ex.B4 - Copy of the Judgment in the said suit, dated 26.02.2021, the Ex.B5 - Decree in the said suit dated 26.02.2021, the Ex.B6 - Copy of the Plaint in the connected suit in O.S.No.7 of 2021 on the file of V Additional District Judge's Court, Allagadda, the Ex.B7 - Copy of Registered Sale Deed, dated 12.03.2021 in favour of the 1st respondent herein, the Ex.B8 - the Copy of Registered Sale deed, dated 22.04.1993 issued by Sub-Registrar, Allagadda and the Ex.B9 - Copy of Registered Sale Deed, dated 02.03.1994 issued by the Sub-Registrar, Allagadda do not falsify or rebut the Exs.A1 to A6 in any manner to disprove the possession of the appellant. The exhibit B-series would only indicate the other litigation pursued by the other parties against the respondent No.1 herein with regard to the part of petition schedule property in this case by seeking a different relief in the said other suit. But the stand of the Respondent no.1 is one and the same in the two suits pending before the court below, wherein the above said interlocutories were decided against which the



present appeals arise. Further the exhibits A1 to A6 can't be fitted against the exhibits of B-series as there is no dispute with regard to the landlord status of the respondent no.1 with respect to the petition schedule property. Hence the Exs.A1 to A6 shall stand on their own strength to prove the case of the appellant herein and they stood for the test as discussed above for grant of an interlocutory relief. Following the above said decisions, though the Ex.A1 is an unregistered document; we are not precluded from determining the factum of lease from the other evidence on record as well as the conduct of the parties by appreciating what had happened between the parties in respect of the property became a reality.

11. For the foregoing reasons, this Court is of the *prima facie* view that the appellant is in possession of the petition schedule property as a lessee by running the ginning mill over the said property as on the date of the institution of the suit.

12. In the result, the order under challenge dated 26.07.2021 is set aside. However both parties are directed to maintain *status quo* as on today with regard to the petition schedule property. The Court below shall dispose of the suit as expeditiously as possible strictly in accordance with law.

13. Accordingly, the Civil Miscellaneous Appeal is disposed of. There shall be no order as to costs.

**CMA No.213 of 2021:**

14. Since the petition schedule property is one and the same and the 1st respondent in the CMA No.210 of 2021 is the sole respondent in the CMA No.213 of 2021 and the proprietor of the appellant in CMA No.210 of 2021 is the 8th appellant in CMA No.213 of 2021 no separate orders are necessary in the connected Civil Miscellaneous Appeal No.213 of 2021.

Accordingly, this Civil Miscellaneous Appeal is disposed of by setting aside the order passed in I.A.No.311 of 2021 in O.S.No.7 of 2021 on the file of the V Additional District Judge, Allagadda dated 26.07.2021 with a direction to dispose of the suit as expeditiously as possible strictly in accordance with law. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stands closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE B. KRISHNA MOHAN

22nd February, 2022

Note: L.R. Copy to be marked

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