

HIGH COURT OF ANDHRA PRADESH
WEDNESDAY ,THE TWELFTH DAY OF JUNE
TWO THOUSAND AND NINETEEN

PRSENT

THE HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU
CIVIL MISCELLANEOUS APPEAL NO: 1269 OF 2018

Between:

1. PUVVADI SUBRAMANYAM S/o P. Munichengaiah Chetty,
aged about 46 years, Occ Business,
R/o No.741, Tirumala, Tirupati Urban Mandal,
Chittoor District.
2. Puvvadi Lakshmi W/o P. Subramanyam,
aged about 45 years, Occ Housewife,
R/o No.741, Tirumala, Tirupati Urban Mandal,
Chittoor District.

...PETITIONER(S)

AND:

1. JANGAM JAYALAKSHMI W/o.J.Veeraraghavulu,
aged about 50 years,
R/o Maddiledu Village and Post,
Srikalahasti Mandal, Chittoor District.
3. Jangam Veera Raghavulu S/o J. Chengaiah Chetty,
aged about 56 years,
R/o Maddiledu Village and Post,
Srikalahasti Mandal, Chittoor District.
4. Jangam Venkatapandu Kumar S/o J. Veeraraghavulu,
aged about 29 years, Occ Business.
R/o Maddiledu Village and Rost,
Srikalahasti Mandal, Chittoor District.
5. Jangam Balaji S/o J. Veeraraghavulu,
aged about 23 years, Occ Student,
R/o Maddiledu Village and Post,
Srikalahasti Mandal, Chittoor District.
6. Jangam Lakshmi Saraswathi D/o J. Veeraraghavulu,
aged about 20 years, Occ Student,
R/o Maddiledu Village and Post,
Srikalahasti Mandal, Chittoor District.

...RESPONDENTS

Counsel for the Petitioner(s): RAGHAVAN K THALAPAKA

Counsel for the Respondents:

The Court made the following: ORDER

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

WEDNESDAY, THE TWELFTH DAY OF JUNE
TWO THOUSAND AND NINETEEN

PRESENT

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL MISCELLANEOUS APPEAL NO: 1269 OF 2018

Appeal under Order 43 Rule 1 of C.P.C. against the Order and Decree dated: 03/10/2018 in I.A. No. 194 of 2017 in O.S. No. 68 of 2017 on the file of the Court of the IV Additional District Judge, Tirupathi, Chittoor District.

Between:

1. Puvvadi Subramanyam, S/o. P. Munichengaiah Chetty, aged about 46 years, Occ Business, R/o No.741, Tirumala, Tirupati Urban Mandal, Chittoor District.
2. Puvvadi Lakshmi, W/o. P. Subramanyam, aged about 45 years, Occ Housewife, R/o No.741, Tirumala, Tirupati Urban Mandal, Chittoor District.

...Appellants/Plaintiffs

AND

1. Jangam Jayalakshmi, W/o.J.Veeraraghavulu, aged about 50 years, R/o Maddiledu Village and Post, Srikalahasti Mandal, Chittoor District.
2. Jangam Veera Raghavulu, S/o. J. Chengaiah Chetty, aged about 56 years, R/o Maddiledu Village and Post, Srikalahasti Mandal, Chittoor District.
3. Jangam Venkatapandu Kumar, S/o. J. Veeraraghavulu, aged about 29 years, Occ Business. R/o Maddiledu Village and Post, Srikalahasti Mandal, Chittoor District.
4. Jangam Balaji, S/o. J. Veeraraghavulu, aged about 23 years, Occ Student, R/o Maddiledu Village and Post, Srikalahasti Mandal, Chittoor District.
5. Jangam Lakshmi Saraswathi, D/o. J. Veeraraghavulu, aged about 20 years, Occ Student, R/o Maddiledu Village and Post, Srikalahasti Mandal, Chittoor District.

...Respondents/Defendants

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant injunction by restraining the respondents their men agents, assignees or anybody claiming under them from in any way interfering with the peaceful possession and enjoyment of the petitioners in respect of the Plaintiff-A Schedule property is situated at Chittoor District -Sri Balaji Registration District -Sri Kalahasti Sub-District, Srikalahasti Mandal, Rachagunneri Survey Group, Maddiledu Village accounts in

| Sl.No. | Sy.No. | Wet/Dry | Extent |
|--------|--------|---------|---------------|
| 1 | 5/1 | Dry | Ac.0.11 cents |
| 2 | 5/2 | Dry | Ac.0.32 cents |
| 3 | 5/3 | Dry | Ac.0.15 cents |
| 4 | 5/4 | Dry | Ac.0.12 cents |
| 5 | 5/5 | Dry | Ac.0.11 cents |
| 6 | 5/6 | Dry | Ac.0.13 cents |
| 7 | 5/7 | Dry | Ac.0.09 cents |
| 8 | 5/9 | Dry | Ac.0.13 cents |
| 9 | 5/10 | Dry | Ac.0.91 cents |
| 10 | 5/11 | Dry | Ac.0.72 cents |
| 11 | 5/12 | Dry | Ac.0.27 cents |
| 12 | 5/13 | Dry | Ac.0.45 cents |
| 13 | 5/14 | Dry | Ac.0.25 cents |
| 14 | 6/1 | Dry | Ac.1.66 cents |
| 15 | 6/2 | Dry | Ac.0.82 cents |
| Total | | | Ac.6.24 cents |

And

B-Schedule-belongs to the 2nd Petitioner/Plaintiff

| Sl.No. | Sy.No. | Wet/Dry | Extent |
|--------|--------|---------|---------------|
| 1 | 6/3 | Dry | Ac.0.07 cents |
| 2 | 6/4 | Dry | Ac.0.34 cents |
| 3 | 6/5 | Dry | Ac.0.24 cents |
| 4 | 6/6 | Dry | Ac.0.15 cents |
| 5 | 6/7 | Dry | Ac.0.09 cents |
| 6 | 6/8 | Dry | Ac.0.13 cents |
| 7 | 6/9 | Dry | Ac.0.15 cents |
| 8 | 6/10 | Dry | Ac.0.07 cents |
| 9 | 6/11 | Dry | Ac.0.20 cents |
| 10 | 6/12 | Dry | Ac.0.08 cents |
| 11 | 6/13 | Dry | Ac.0.15 cents |
| 12 | 6/14 | Dry | Ac.0.33 cents |
| 13 | 6/15 | Dry | Ac.0.32 cents |

| | | | |
|-------|-------|-----|---------------|
| 14 | 7/1 | Dry | Ac.0.20 cents |
| 15 | 7/2 | Dry | Ac.0.23 cents |
| 16 | 7/4 | Dry | Ac.0.51 cents |
| 17 | 7/5 | Dry | Ac.0.07 cents |
| 18 | 7/6 | Dry | Ac.0.22 cents |
| 19 | 7/7 | Dry | Ac.0.46 cents |
| 20 | 7/8 | Dry | Ac.0.23 cents |
| 21 | 7/9 | Dry | Ac.0.25 cents |
| 22 | 7/10 | Dry | Ac.0.24 cents |
| 23 | 7/11 | Dry | Ac.0.50 cents |
| 24 | 7/14 | Dry | Ac.0.41 cents |
| 25 | 114/2 | Dry | Ac.0.07 cents |
| 26 | 114/5 | Dry | Ac.0.04 cents |
| Total | | | Ac.5.75 cents |

Total A and B Extent Ac. 11.99 cents pending disposal of the appeal and pass pending disposal of CMA 1269 of 2018, on the file of the High Court.

IA NO: 1 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant injunction by restraining the respondents and their henchmen cutting down the Teak, Mango, Guava trees and harvesting the sugarcane crop in the suit schedule property to an extent of Ac.12-83 cents in different survey numbers situated in Chittoor District, Srikalahasti Mandal, Rachagunneri Survey Group, Maddiledu Village accounts pending disposal of the above Civil Miscellaneous Appeal.

Counsel for the Appellants: SRI. RAGHAVAN K. THALAPAKA

Counsel for the Respondents: None Appeared

The Court delivered the following Judgment:

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU
CIVIL MISCELLANEOUS APPEAL No.1269 of 2018

ORDER:

This Civil Miscellaneous Appeal itself is taken up for hearing with the consent of the learned counsel for the appellants. Despite service, respondents did not appear. This Court held that there is deemed service to respondents 3, 4 and 5. Service was effected on respondents 1 and 2. The 1st and 2nd respondents did not appear.

The record was reconstructed with the permission of the Hon'ble the Acting Chief Justice.

The CMA is filed against the Order, dated 03.10.2018, passed in I.A.No.194 of 2017 in O.S.No.68 of 2017 by the IV Additional District Judge, Tirupati. The suit in O.S.No.68 of 2017 is filed by Sri Puvvadi Subramanyam and his wife Puvvadi Lakshmi against Jangam Jayalakshmi and four others for a permanent injunction restraining the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the plaint A and B schedule properties. The parties are described as arrayed in the suit in the lower Court.

The case of the appellants-plaintiffs is that the plaint A-schedule property has been purchased by the 1st plaintiff from the 1st defendant. The plaint B-schedule property was purchased by the 2nd plaintiff from the 2nd defendant. Thereafter, the plaintiffs mutated their names in the revenue

records and are enjoying the property. It is also mentioned that defendants have executed a consent letter, dated 18.11.2013, agreeing that they have no objection for conveyance of the property of defendants 1 and 2. The plaint was filed along with all these documents. Along with the plaint, I.A.No.194 of 2017 was also filed for a temporary injunction restraining the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the property.

The defendants-respondents entered appearance and filed their counters. Counters were essentially filed by defendants 2 and 3 (respondents 2 and 3 herein), which were adopted by the other defendants-respondents. On merits the matter was heard. Exs.P.1 to P.19 were marked by the plaintiffs and Exs.R.1 to R.6 were marked for the defendants. Two witnesses P.Ws.1 and 2 were summoned by the Court and examined. Ultimately the application came to be dismissed. Questioning the same, the present C.M.A. is filed.

This Court has heard Sri Ragahavan K. Thalapaka, learned counsel for the appellants, who submits that the overwhelming documentary evidence was totally overlooked by the Court below. He submits that the registered sale deed and the link sale deeds for the property were filed by plaintiffs 1 and 2. The revenue records, which are in favor of the plaintiffs, were also overlooked as per the learned counsel. He submits that the registered sale deeds carry a certain presumption of correctness and that the Court below completely overlooked the

fact that the sale deed and the link sale deed which in the name of defendants 1 and 2 clearly go against the current case that is set up by them. He also points out that the oral evidence of the witnesses summoned was also not correctly considered by the Court below. According to the learned counsel the lower Court also committed an error in holding that a bare suit for injunction does not lie. It is his contention that when the plaintiffs are basing their case on a duly executed sale deeds, every denial does not warrant the filing of a suit for a declaration. He also relies upon **Ramji Rai and Another v Jagdish Mallah (Dead) through LRs., and Another**¹ and **Mandali Ranganna and Ors., v T. Ramachandra and Ors.**,² to support his contention that the lower Court committed a fundamental error in negating the prayer for injunction. Learned counsel submits that the intrinsic worth of Ex.A.1-A.18 *vis-à-vis* Ex.R.1 to R.6 was totally overlooked by the Court below. He, therefore, prays that the CMA should be allowed and that the injunction should be granted as prayed for.

This Court after hearing the learned counsel and perusing the record notices that the essential ingredients for grant of an injunction namely, *prima facie* case, balance of convenience and irreparable loss were discussed by the Court below. The lower Court also looked into some of the important cases for grant of an injunction, including the judgments of the

¹ (2007) 14 SCC 200

² AIR 2008 Supreme Court 2291

Hon'ble Supreme Court of India. However, when it came to the application of the law to the facts of the case, this Court feels that the Lower Court totally lost track and gave an erroneous finding. In view of this, this Court is proposing to discuss the evidence that has been filed by the parties and also the oral evidence.

- (1) For the A-schedule property, the plaintiffs relied upon Ex.P.1 to P.6. Of this Ex.P.2 is the sale deed of November, 2013 in the name of the 1st plaintiff and the vendor is the 1st defendant. Link document of this is the sale deed, Ex.P.1 i.e., 23.07.2001, in the name of the 1st defendant. The other documents filed are Pattadar Passbooks, Record of Rights Books etc.,
- (2) For B-Schedule property, the plaintiff No.2 has filed the original sale deed of November, 2013 (Ex.P.8) and its link document (ExP.7, July, 2001). In addition, Pattadar Passbook and Record of Rights Books are filed.
- (3) Apart from all these, plaintiffs have also put on record Ex.P.15, which is the letter dated 18.11.2013 by which the 1st and 2nd defendants reiterated the sale transaction in favour of the plaintiffs. Thus, this document is signed by defendant No.1, defendant No.2, their two children and attested by a number of witnesses.

(4) In response to this, the defendants have filed Ex.R.1 and R.2 which are number 3 adangals for the years 1425 to 1427 fasili corresponding to the years 2015 to 2017. Apart from this they have filed sugarcane supply agreements between the 2nd defendant and the company. Ex.R.5 and R.6 are the fertilizer purchase bills and the electricity payment bills.

Coming to the oral evidence, C.W.1 is the current Tahasildar of the area, who has been summoned by the Court to give evidence. He clearly states that Ex.P.5 and Ex.P.6 (Pattadar passbook and ROR books), Ex.P.11 and P.12 (Pattadar Passbook and ROR books) are countersigned by his predecessor and also by the Revenue Divisional Officer.

Next witness examined is C.W.2, who also states that the entire records are in the name of witnesses; that Exs.P.3 to P.6 are issued by the Tahasildar; that they are countersigned by his predecessor / VRO. He, however, states that when he visited the site he found the defendants in possession.

An advocate Commissioner was also appointed and he visited the suit schedule property. The identity of the suit schedule property is not in doubt and the same is clearly identified. The Advocate Commissioner notices that there is sugarcane plantation in 2 ½ acres out of Ac.6.24 acres of A-schedule and that there is 1 ½ acres of sugarcane in B-Schedule, which totally measures Ac.5.75 cents.

The question that falls for consideration now is – In the light of the oral and documentary evidence, which is briefly discussed above, whether the lower Court was right in refusing the injunction as prayed for?

The three principles for grant of injunction are well settled and do not require repetition. As per the settled case law on the subject, the plaintiff must prove –

(a) *Prima facie* case viz., that there is a seriously arguable point meaning a question to be tried and a case for a trial with a fair chance of success.

(b) Balance of convenience: who amongst / between the plaintiffs or defendants needs protection and whose rights are likely to be infringed or who is likely to sustain greater harm if the injunction is not granted.

(c) Irreparable loss: a loss to the plaintiff which cannot be adequately compensated in terms of money.

The sale deeds in favour of the plaintiffs are (a) Ex.P.2 (Dt.05.11.2003) with its link Ex.P.1 (Dt.23.07.2001) for the A-schedule property and (b) Ex.P.8 dated 05.11.2013 with its link document dated 23.07.2001 for the B-schedule property. These are all registered documents, duly executed by the 1st and 2nd defendants in favor of the plaintiffs. As per the settled law on the subject **Prem Singh and others v Birbal and**

Others³ a registered document carries a presumption in its favor. This was overlooked by the lower Court.

Pattadar Passbook and ROR Books were issued by the revenue authorities. As per Section 6 of the Andhra Pradesh Pattadar Passbooks and Records of Rights Act the entries in these books carry a presumption of correctness. The Court witnesses who were examined state that these books were issued by the appropriate authorities.

In addition, there is an agreement called as "Oppudala Patram" signed by the 1st and 2nd defendants and others. They state that the property was sold and that they have no objection. This document is also signed by seven witnesses. The contention of the defendants is that this document is forged and that they are co-owners of the property and that therefore defendants 1 and 2 could not have alienated the property.

In the opinion of this Court, the lower Court has failed to consider the documents that are filed. As mentioned earlier registered sale deeds carry a certain presumption of their correctness which has not been repelled. The entries in the Pattadar Passbook carry their own presumption as mentioned earlier. The same has not been repelled. When the Court is called upon to weigh the evidence, the fact remains that defendants 1 and 2 have purchased the property under two

³(2006) 5 SCC 353

sale deeds Exs.P.1 and P.7 dt.23.07.2001 and in turn they have alienated the property under Ex.P.2 and Ex.P.8 on 05.11.2013. Therefore, the contents of the sale deeds would *prima facie* go against the contention of the present respondents-defendants that they are the owners. In addition, the consent letter, dated 18.11.2013, by which defendants 1 and 2 reiterated the sale of the property is merely denied as forgery. The implications of this letter is also not discussed by the lower Court.

Last but not the least the evidence of the witness was not considered in its entirety by the lower Court. If the evidence of C.W.1 and 2 is discussed in its entirety it does raise a presumption that the documents were validly issued by the competent authorities. The mere fact that C.W.2 said that he found the respondents in possession should not have weighed so heavily with the lower Court. The sale deeds and the revenue records filed by the plaintiffs definitely outweigh the contents of documents filed by the defendants. The adangals filed by the defendants related to the years 2015 to 2017 only. On the other hand pattadar passbooks and ROR books backed by the title deeds, show that the plaintiffs have a better case to argue and that there is a serious triable issue in the matter. Therefore, this Court is of the opinion that the plaintiffs have made out a case for injunction. A person claiming to be the owner and in possession of the land by virtue of the registered title deeds, by mutation of names in the revenue records etc., has been denied an injunction.

The lower Court, in the opinion of this Court, failed to discuss the evidentiary value of all the documents that are filed. Time and again it has been stated that the highest courts in India that the granting of an injunction itself is a matter of great legal importance. The Court should be very careful in granting an injunction, particularly on merits. A duty is cast upon the court to consider and discuss all the documents that are filed. The conduct of the parties is another important fact that should be kept in mind while granting or refusing an injunction. Section 41 of the Specific Relief Act clearly states that an injunction can be refused basing on the conduct of the parties. Applying the same principle to the case on hand it is seen that defendants 1 and 2 have executed sale deeds in 2013 and are now stating that the property is their self-acquired property. This conduct disentitles them from opposing the injunction or from claiming any equity. In 2018, when the suit is filed they have done an about turn and are sailing with the other defendants-respondents. The "Oppudala patram" or the letter dated 18.11.2013 is also the document of importance which was overlooked. Whether it is forged or not is to be seen in the trial. In the opinion of this Court the lower Court went wrong in relying upon a case in **Amuthulla Sudhakar v P. Butchi Reddy (died) by LRs and others**⁴. Every assertion of title does not require the filing of a suit for declaration. When

⁴ AIR 2008 SC 2033=2008 (5) SCJ 359

a serious dispute is raised as to title, then a declaratory suit is needed to be filed.

But for now, this Court holds that the lower Court committed a serious error in failing to discuss all these documents. If the oral and documentary evidence is examined in its totality it will be clear that the necessary ingredients for grant of injunction exist in favor of the plaintiffs. The sale deeds, the record of rights books, Oppudala Patram / consent letter show that the plaintiffs are having *prima facie* case in their favour. Possession also follows title. Revenue records, which are issued by the competent authorities viz., Tahasildars and are counter signed by the Revenue Divisional Officer, also have evidentiary value in the matter of possession. They cannot be totally ignored. The plaintiffs have purchased the property under two sale deeds of the year 2013. The link documents are of the year 2001. They have got their names mutated in revenue records by following the procedure under law. Greater harm will be caused to them if an injunction is not granted. The defendants-respondents only filed some revenue records pertaining to the years 2015 to 2017. Therefore, the balance of convenience is in favour of plaintiffs alone. Irreparable loss will be caused to the plaintiffs, if the property that is purchased under valid sale deeds were not allowed to be enjoyed and possession is claimed by the defendants. The loss cannot actually be compensated in terms of money.

Therefore, for all these reasons, this Court is of the opinion that the lower Court committed an error in refusing the injunction. The failure to discuss all the documents and their implication is clear in this case. The Courts have a duty to discuss all the documents along with the entire oral evidence before coming to a conclusion that there is a *prima facie* case, balance of convenience and irreparable loss. This cannot be emphasized or overemphasized. Miscarriage of justice will result if the impugned order is allowed to remain.

Hence the impugned order is set aside and CMA is allowed and injunction as prayed for is granted restraining the defendants (respondents herein) from interfering with the plaintiffs' (appellants herein) peaceful possession and enjoyment of the suit schedule property. No costs.

The *prima facie* opinions expressed by this Court are for the purpose of deciding the present C.M.A. only and will not come in the way of the adjudication of the matter on merits during the trial of the suit.

As a sequel to the order passed, miscellaneous petitions pending, if any, shall stand closed.

SD/- P. RAMA KRISHNA
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

[One Fair Copy to the Hon'ble Sri Justice D.V.S.S. SOMAYAJULU,
For his Lordships Kind Perusal]

To,

1. The IV Additional District Judge, Tirupathi, Chittoor District. (with records, if any)
2. One CC to SRI. RAGHAVAN K. THALAPAKA Advocate [OPUC]
3. 9 L.R. Copies.
4. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
5. The Secretary, A.P. High Court Advocates Association Library, High Court Buildings, A.P.
6. Two CD Copies

Chp

SCA
The Section officer, V.R. Section, High Court of A.P

HIGH COURT

DATED:12/06/2019

18/7/2019
OC

Rs. 21 = 00

ORDER

CMA.No.1269 of 2018

(14)

ALLOWED THE CMA

SA
24/6/19