

A. Ramloo and ors. Vs. G. Sreeramachandra Murthy and ors.

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SooperKanoon Citation : sooperkanoon.com/434115

Court : Andhra Pradesh

Decided On : Feb-24-1999

Reported in : 1999(2)ALD590; 1999(2)ALT624

Judge : Ramesh Madhav Bapat, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 99 - Order 1, Rules 1, 3, and 10 - Order 2, Rule 6 - Order 22, Rules 3 and 9; [Evidence Act, 1872](#) - Sections 68, 101 and 103

Appeal No. : CCCA No. 57 of 1997

Appellant : A. Ramloo and ors.

Respondent : G. Sreeramachandra Murthy and ors.

Advocate for Def. : Mr. M.V. Ramana Reddy for N. Venkatrayudu, Adv.

Advocate for Pet/Ap. : Mr. J. Prabhakar, Adv.

Judgement :

1. This appeal is filed by the defendants 1 to 3 and 5. The 4th defendant died during the pendency of the suit. The said defendant was given up by the plaintiffs on the ground that he vacated the property and died.

2. Originally the suit was filed by Eight plaintiffs-respondents herein. Plaintiff No.6 died during the pendency of the suit. His legal representatives were not brought on

record as per the provisions of Order 22 CPC. But an application in IA No.987 of 1994 was filed by the plaintiff Nos.9 to 13 under Order 1 Rule 10 CPC which was allowed on 2-12-1994 and consequently they were brought on record as plaintiffs 9 to 13.

3. It further be seen from the record that originally the suit was filed among others by plaintiff No.8 named Ch. Appa Rao but his name was substituted with Ch. Bharani Kumar on the ground that he died executing a Will in favour of Ch. Bharani Kumar. An application IA No.1007 of 1995 was filed by the plaintiffs under Order 1 Rule 10 CPC to substitute the name of Ch. Appa Rao with Ch. Bharani Kumar. The suit was filed by the plaintiffs for declaration of their title as an absolute owners of the suit schedule property admeasuring 7150 Sq. yards forming part of Sy. No.403/A (Paiki) new RS No.120/7 situated at Slieikpet village, Yousufguda, Hyderabad and for mandatory injunction directing the defendants to demolish the illegal constructions and deliver back possession to the plaintiffs. The property was described in the suit schedule as follows :

North:Neighbours landEast:Neighbours landWest:Neighbours
landSouth:Neighbours land

4. The plaintiff No. 1 was examined as PW1 and he produced certain documents and they were marked as Exs.A1 to A21. No evidence was led on behalf of the defendants. The details of Exs.A1 to A14 under which the plaintiffs are claiming title are as follows :

plff.No.Extentof landDateof sale deedSubPlotNo.ConsiderationRs.

Sq. yards No.1122820-10-65F1,375/-No.2128020-10-65G750/-No.3126720-10-65C750/-No.4382.8418-6-66E1,000/-No.5126720-10-65D750/-No.656122-10-65A-2700/-No.760022-1-65B-2750/-No.8564

22-10-65A-3700/-

7149-84 Total6,775/-

No sale deed was filed by plaintiff No.5 in the trial Court. The alleged Will, which is alleged to have been executed by plaintiff No.5 in favour of Ch. Bharani Kumar, was also not filed. On evidence, the learned Judge decreed the suit of the plaintiffs on 26-12-95. Assailing the said judgment and decree, the present appeal is filed by the defendants.

5. During the pendency of CCCA No.57 of 1997, CMP No.21554 of 1998 was filed by the appellants to receive Ex.B1 patta certificate by way of additional evidence, which was ordered by this Court. CMP No.21611/98 was filed by the appellants seeking permission to raise the additional grounds in the appeal and it was allowed. CMP No.3507 of 1999 was filed by the appellants seeking permission to raise further additional grounds. The total extent of the land of which the plaintiffs sought declaration of title and mandatory injunction is to the extent of 5882.84 sq. yards as per Exs.A1 to A14.

6. The learned Counsel Mr. J. Prabhakar appearing on behalf of the appellants-defendants submitted at the Bar that only looking to the pleadings of the plaintiffs as pleaded in the suit, the suit ought to have been dismissed by the learned Judge at the trial itself. It was contended by the learned Counsel for the appellants that Order 1 Rule 1, Order 1 Rule 3 CPC provides as to who can be plaintiff to the suit and who can be defendant in the suit. The learned Counsel for the appellants submitted that all the plaintiffs in the suit are not proper parties. The learned Counsel further submitted that plaintiff No. 6 died during the pendency of the suit. His legal representatives were not brought on record as per Order 22 CPC. But after expiry of the period of limitation, an application was filed under Order 1 Rule 10 CPC to bring plaintiffs 9 to 13 on record, which is totally illegal order, and that requires to be set aside. Since the plaintiff No.6 died and no proper procedure of bringing the legal representatives on record was adopted by the plaintiffs, the suit filed by the plaintiff No.6 stands abated.

7. I am in agreement with the submission made by the learned Counsel for the appellants that on the death of plaintiff No.6, suit stands abated as far as plaintiff No.6 is concerned, unless his legal representatives are brought on record as long as the right to sue survives. But in the present case curiously enough, no such

procedure was adopted as contemplated under Order 22 CPC. But the plaintiffs filed an application under Order 1 Rule 10 CPC to bring the plaintiffs 9 to 13 on record which is not permissible under law. I find support to the above proposition in a ruling reported in *Morasa Anjaiah v. Kondragunta Venkateswarlu (died) and others*, : AIR 1993 AP156 (DB). It is a decision of the Bench of this Court. It was held as under:

'Where no steps are taken to bring the legal representatives on record under Rule 3 of Order 22 and the suit/appeal has abated and/or where the attempt to have the order of abatement set aside and bring the legal representatives of the deceased party on record failed, the defaulting party has to take the consequences mentioned in Rule 9 of Order 22 and he cannot be allowed to have recourse to the general provisions of Order 1 Rule 10 CPC for impleading the legal representatives of the deceased party by circumventing the provisions of Order 22.'

In the present case, I find that on the death of the plaintiff No.6, the suit stood abated. No steps were taken as contemplated under Order 22 CPC to file an application for setting aside the abatement and to bring legal representatives of the plaintiff No.6 on record. Therefore, it can be stated that no suit shall proceed on behalf of the plaintiffs 9 to 13 as if they are not parties to the suit.

8. The learned Counsel Mr. J. Prabhakar appearing on behalf of the appellants herein further submitted at the Bar that it is a case of misjoinder of the plaintiffs, misjoinder of defendants and also misjoinder of causes of action. The learned Counsel pointed out from the pleadings that the different extents of land were purchased by the original plaintiffs and according to their averments in the plaint, the defendants made encroachment of land to the extent of 5882.84 Sq. yards of land and therefore all the plaintiffs suing the defendants in one suit will amount to misjoinder of plaintiffs and misjoinder of defendants.

9. It is seen from the pleadings that according to the showing of the plaintiffs themselves that they had purchased 7150 Sq. yards of land forming part of Sy. No.403/A (Paiki) New RS No.120/7 situated at Sheikpet village. The plaintiffs have also pleaded specifically the extent of the land purchased by each of them under

different sale deeds. The seller may be one and the same. One plaintiff is not related to the other plaintiffs in any manner and it is not the case of the plaintiffs that an extent of 7150 Sq. yards was purchased by them jointly. It be so then it cannot be said that all the plaintiffs can file one suit. There is also one more reason to say that all the plaintiffs cannot file one suit because of the fact that it has not been the case of the plaintiffs that all the defendants at one time made encroachment on the entire extent of the land and therefore causes of action accrued to them at one and the same time. The plaintiffs have also not pleaded and given evidence to the effect that which defendant has encroached the land of which plaintiff but they are seeking declaration of title in general. When it is an accepted position that each one of the plaintiffs purchased different extents of land, then the remaining plaintiffs will not be entitled to get declaration of title in respect of the other pieces of land of which they are not the owners. Giving such type of decree is totally illegal and it also prejudiced to the plaintiffs themselves and therefore this Court has no hesitation in holding that it is a case of misjoinder of plaintiffs, misjoinder of defendants and misjoinder of causes of action.

10. The learned Counsel Mr. M. V. Ramana Reddy appearing on behalf of the plaintiffs-respondents herein submitted that the plaintiffs have been able to prove their title and ownership over the suit properties and therefore they are entitled to recover possession of the same. The defendants are trespassers and they are not entitled to continue on the land of the plaintiffs.

11. This Court is not in agreement with the above proposition made by the learned Counsel for the respondents herein when the plaintiffs filed the suit for recovery of possession on the strength of the title, the plaintiffs will stand or fall depending upon the evidence available on record. The plaintiffs must prove their case. The plaintiffs will not be entitled to get declaration of title if they failed in establishing their title in respect of the suit land.

12. As stated earlier, only one witness was examined on behalf of the plaintiffs. The plaintiff did not speak anything about the land, its survey number, plot number and the extent of the land held by each of the plaintiffs. Under these circumstances, the plaintiffs altogether will not be entitled to get the declaration of

title in respect of the entire extent of land as all of them are not the joint owners of the entire extent of the land.

13. In a ruling reported in *Moran Mar Basselios Cetheolicos and another v. Most Rev. Mar Poulouse Athanasius and others*, AIR 1954 SC 526, it has been held by their Lordships as under:

'That the plaintiff in ejectment suit must succeed on the strength of his own title. This can be done by adducing sufficient evidence to discharge the onus that is on him irrespective of whether the defendant has proved his case or not. A mere destruction of the defendant's title, in the absence of establishment of his own title carries the plaintiff nowhere.'

The said ruling of the Apex Court has perfect application to the present set of facts. As stated earlier, no evidence was led by the plaintiffs to show the extent of the land held by each of them. The only arguments that the defendants are trespassers and they are not entitled to continue in possession, itself is no cause for the plaintiffs to seek decree.

14. There is one more ruling which supports the above proposition, which is reported in *Kanchi Subbamma and others v. Manmpalli Penchalaiah*, 1977 ALT 532. The aforesaid ruling also speaks that the plaintiff must prove his title and must establish the identity of the property. It was held by his Lordship as under :

'Plaintiff cannot get declaration of his title merely because the defendant has failed to prove his burden of proving title which the plaintiff claims lies on him and if he failed to discharge that burden his suit must fail irrespective of whether the defendant has proved his title to the land in question or not. The report of the Commissioner does not have any evidentiary value except to show that he saw on the site at the time when he inspected it. Except what he personally saw existing on the site at the time when he inspected the land no other fact with reference to the report can be proved. The Commissioner's report cannot be used only for the limited purpose of appreciating the evidence which the parties have led with reference to what he personally saw on the site when he inspected the land. It can never prove title or possession. Therefore, the appellated decree passed suffers

from two vital infirmities which in the facts and circumstances of the case, cannot be cured.'

15. As stated earlier, the plaintiffs only produced the sale deeds Exs.A1 to A14 but they were to be proved as per Section 68 of the Evidence Act by examining the attesting witnesses. Therefore, this Court is also of the considered view that Exs.A1 to A14 will not come to the help of the plaintiffs as this Court is inclined to hold that these are unproved documents and they do not satisfy the provisions of Section 68 of the Evidence Act.

16. The learned Counsel Mr. M. V. Ramana Reddy, appearing on behalf of the respondents herein pointed out Section 99 CPC, which reads as under :

'99. No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder (or non-joinder) of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court.'

17. It is true that the Appellate Court cannot vary the decree of the trial Court for misjoinder or non-joinder of parties but the Appellate Court has to approve that such decree can be varied without touching the jurisdiction of the Court. As stated earlier, the plaintiffs have no common causes of action. The prayer made in the plaint for declaration of title over the entire extent of the land in favour of the plaintiffs is illegal as all the plaintiffs have not purchased the property jointly, it also be seen that all the defendants did not give the cause of action to the plaintiffs at one and the same time and each of the defendants did not make encroachments on the entire extent. Therefore, this Court is of the considered view that it touches the jurisdiction of this Court and affecting the cases of the plaintiffs on merits. I find support to the above said proposition in a ruling reported in Karam Singh and others v. Kumar Sen and others, AIR 1942 All. 387. It was held by their Lordships as under :

'Applicability - Act or transactions when different should be so connected as to constitute one entity and causes of action against all defendants jointly - Court must have local jurisdiction to deal with controversies arising between plaintiff and

each of defendants - Order I, Rule 3 does not enable plaintiff as of right to join various causes of action against different defendants in same suit.

Order I, Rule 3 does not enable a plaintiff, as of right, to join various causes of action against different defendants in the same suit because in the first place, as Order 1 contains no provision corresponding with that in Order II, Rule 6 no Court would have any power to prevent any inconvenience which might arise out of a joint trial and in the second place, in order that the provisions of Order I, Rule 3 should be applicable it is necessary that the right to relief should arise out of the same act or transaction or series of acts or transactions which implies, that the acts or transactions, where they are different, should be so connected as to constitute a single series which could fairly be described as one entity or fact which would constitute a cause of action against all the defendants jointly. Whether this necessary condition exists in any particular case would depend upon the nature of the case but it is at least necessary that the Court in which the suit is instituted should have local jurisdiction in the first instance to deal with the controversies arising between the plaintiff and each of the defendants.'

18. In the present case, the defendants did not lead any evidence. The plaintiff examined only one witness. The defendants did not cross-examine the plaintiffs wholly. These are the major defects in the defendants' case. But still this Court is of the considered view that the plaintiffs cannot succeed in the suit.

19. The learned Counsel Mr. M. V. Ramana Reddy relied upon a ruling reported in Mahant Ramdhan Puri and others v. Chaudhury Lachmi Narain and others, AIR 1937 PC 42. I have gone through the said ruling. I hold that the said ruling has no application to the present set of facts at all. It is a suit which can be styled as good example of mis-joinder of plaintiffs, misjoinder of defendants and misjoinder of causes of action. Therefore, the appeal has to be allowed on the strength of the demerits which are created by the plaintiffs themselves in the suit.

20. Therefore, this Court allows the appeal and set aside the decree passed by the trial Court. In effect, the suit of the plaintiffs stands dismissed. No costs.

