

State of A.P. and ors. Vs. Mohd. Jalaluddin Akbar @ Mohd. Jalaluddin Ali Khan and ors.

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Court : Andhra Pradesh

Decided On : Apr-22-2004

Reported in : 2004(4)ALD109

Judge : L. Narasimha Reddy, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 39, Rule 1

Appeal No. : CMA Nos. 1074 and 1075 of 2004

Appellant : State of A.P. and ors.

Respondent : Mohd. Jalaluddin Akbar @ Mohd. Jalaluddin Ali Khan and ors.

Advocate for Def. : Venkateswara Rao Gudapati, Adv. for ;V. Dyamani in CMP No. 1074 of 2004 and ;M.S. Ramachandra Rao for ;Gudapathi Venkateswara Rao, Adv. for ;V. Dyamani in CMP No. 1075 of 2004

Advocate for Pet/Ap. : Additional Advocate-General in CMP Nos. 1074 and 1075 of 2004

Judgement :

L. Narasimha Reddy, J.

1. These two civil miscellaneous appeals are disposed of together, since they arise between the same parties and under the same set of facts.

2. C.M.A. No. 1074 of 2004 is filed against the order dated 20-2-2004 in I.A. No. 373 of 2003 in O.S. No. 54 of 2003 on the file of the Senior Civil Judge, Vikarabad, Ranga Reddy District. C.M.A. No. 1075 of 2004 is filed against the order of the same date in I.A. No. 369 of 2003 in O.S. No. 53 of 2003 on the file of the same Court. Since the parties in both the suits and IAs are same, they are referred to as arrayed in the suits. Through the orders under appeal, the Trial Court granted temporary injunction under Order 39, Rule 1 C.P.C., in favour of the plaintiffs. Hence, the defendants preferred these appeals.

3. O.S. No. 54 of 2003 is filed by four plaintiffs, represented by their Special Power of Attorney, Ponnuri Bala Kutumba Rao, for the relief of declaration, that they are the absolute owners of the plaint schedule property admeasuring Ac. 12.00 in Sy.No. 1 (part) of Chilkuru Village, Moinabad Mandal, Ranga Reddy District, and for consequential perpetual injunction against the defendants, viz., the State of A.P., represented by its District Collector, Ranga Reddy District; Divisional Forest Officer, Hyderabad Range, Ranga Reddy District, and Forest Range Officer, Rajendranagar Range. In O.S. No. 53 of 2003, the same plaintiffs are represented by a different General Power of Attorney, by name, Dasari Nageswar Rao. This suit is filed on the same lines as the other suit, and for the same relief, but in respect of different piece of land of Ac. 12.00 in the same survey number.

4. The case of the plaintiffs is that the land in Sy.No. 1 admeasuring about 1600 acres is the private property of H.E.H. Nizam of Hyderabad, and the father of the plaintiffs by name, Zaheeruddin Ali Khan, applied to the Nizam, on 25th Sherwar, 1341 Fasli (roughly about 1931), for sanction of Ac.50.00 in Sy.No. 1 of Chilkuru Village. It was pleaded that the father of the plaintiffs was sanctioned the said extent of land, on consideration of Rs. 10,000/- and the same was confirmed subsequently in the year 1953. It was further alleged that a letter was issued in the year 1940 (15th Azur 1350 Fasli) by the Awal Talukdar, acknowledging the receipt of Rs. 10,000/- and directing the Deputy Superintendent, Bandobust, to deliver the possession of the land. The possession is said to have been delivered to the

father of the plaintiffs.

5. The plaintiffs further contended that their father died in the year 1983 and thereafter they sold an extent of 26 acres in the year 1999 and that they are in possession of the remaining extent of 24 acres. They alleged that their father and themselves have been enjoying the possession of the land by selling the grass, and that the defendants started interfering with their possession in July 2003 by seeking to take the law into their hands and obstructing the plaintiffs from enjoying the suit schedule land.

6. An affidavit was filed on the same lines in support of the applications for grant of temporary injunction under Order 39, Rule 1 C.P.C. They filed certain documents before the Trial Court such as the challan, under which the amount of Rs. 10,000/- is said to have been paid; the receipt issued by the Executive Officer, Sharfekhas; letter dated 15th Azar 1350 Fasli, said to have been issued by the Awar Talukdar; Faisal Patti for the year 1963-64; letters dated 1-1-1997 and 3-12-1997 issued by the MRO, Moinabad etc. In all, the plaintiffs filed Exs.P-1 to P-39. They have also filed certain documents relating to the acquisition of land by the Government of A.P. from the Nizam and the proceedings of Forest Settlement Officer in respect of neighbouring lands.

7. The defendants filed written statements in the suits as well as the counter-affidavits in the I.As. It is their case that the entire land in Sy.No. 1, was the private property and H.E.H. Nizam of Chilkuru and this land along with an extent of about 15,000 acres in 14 Panchas, forming part of private estate of H.E.H. Nizam, was acquired by them, in the year 1956, under the Land Acquisition Act. It is stated that though at the time of acquisition, the extent in Sy.No. 1, was roughly indicated as 1415 acres, by the time they notified it as a reserve forest, through G.O. Ms. No. 1732, dated 25-6-1965, it emerged as only 1211 acres after excluding area covered by roads etc. Thereafter the Government issued orders, notifying it as national park. It was alleged that the plaintiffs do not have any right, claim or interest in any part of the land in Sy.No. 1. They filed copies of the relevant notifications, pahanis and various related documents. They were marked as Exs.R1 to R-22. On consideration of the matter, the Trial Court granted temporary

injunction.

8. Learned Additional Advocate-General submits that the plaintiffs did not file any documents, which can be treated as the source of their title and that they did not place any record before the Trial Court to show that they are in possession of the suit property, at any point of time, muchless, as on the date of filing of the suit. He submits that the Trial Court proceeded as though it was for the defendants to prove that they have any title or possession, and even though there did not exist any material to support the claim of the plaintiffs, it granted the temporary injunction. He takes exception to certain observations made by the learned Senior Civil Judge in the orders under appeal, as regards the submissions made by the Government Pleader before the Trial Court.

9. Sri M.S. Ramachandra Rao, and Sri Gudapati Venkateswara Rao, learned Counsel, have represented the plaintiffs in the respective CMAs. They contend that it is not necessary for the plaintiffs to prove their title at the stage of consideration of applications under Order 39, Rule 1 C.P.C., and that the material placed by the plaintiffs before the Trial Court was sufficient to hold that the plaintiffs were in possession and enjoyment of the suit schedule property as on the date of filing of the suit. They stressed upon the fact that the total extent of the land in Sy.No. 1 was 1600, whereas the one acquired by the Government was only 1415 acres. They submit that the Trial Court took the correct and proper view that the defendants cannot have any right or claim over the balance of the land in Sy.No. 1.

10. The plaintiffs filed the suits for declaration of their title in respect of the suit schedule properties. They also filed applications under Order 39, Rule 1, for grant of permanent injunction. The question as to whether the plaintiffs can be said to be holding any title for the suit schedule land, has to be considered at the trial and disposal of the suits. Applications under Order 39, Rule 1 CPC, need to be disposed of on considerations, different from those relevant for declaration of title.

11. It hardly needs any emphasis that it would be sufficient for the plaintiffs to show a semblance of title at the stage of consideration of applications under Order 39, Rule 1 C.P.C. However, they can succeed in such applications, if only they are

able to establish that there is a prima facie case in their favour, which mostly relates to the aspect of possession; balance of convenience, for grant of temporary injunction, and to demonstrate that they would be subjected to irreparable loss, if injunction is not granted. In such applications, though it is not necessary for the plaintiffs to establish their title, they have to prove that they are in possession and enjoyment of the suit schedule land. It is only then, that the Court can consider the feasibility of preventing the defendants from interfering with the possession. Grant of temporary injunction itself presupposes the plaintiffs being in possession of the suit schedule land. Since the proceedings are interlocutory in nature, it was open to the plaintiffs to establish their possession on the basis of documentary evidence, such as, entries in revenue records, or any documents constituting admission on the part of the defendants.

12. The entries in revenue records constitute acceptable material till they are contradicted by any superior category of documents or other material. In cases where the temporary injunction is sought for, in respect of a vacant land, the title assumes little more significance for the reason that possession follows title. The plaintiffs did not place any sale deed or its equivalent, before the Trial Court to show the existence of a semblance of title in their favour. Though they pleaded that the land was allotted to their father by H.E.H. Nizam, under a Royal order. Neither original nor a copy of it was placed before the Trial Court. They relied upon the letter dated 15th Azar, 1350 Fasli, which is equivalent about to 1940, to the effect that the Awal Talukdar has acknowledged the receipt of payment and directed delivery of possession. No proceedings, evidencing delivery of possession are filed. Even in the absence of such material, if the plaintiffs were able to place any record before the Trial Court, to show that they were in possession of the land as on the date of filing of the suit, it would certainly have been possible for the Trial Court to grant temporary injunction.

13. The record however, discloses that not a single document emanating from any competent authority was filed in this regard. They relied mainly upon a rough sketch or map, said to have been issued by the Mandal Revenue Officer (ROR), Moinabad. Not a single pahani for the contemporary period or other documents is filed by the plaintiffs. They have not placed any other material, such as receipts for

payment of land revenue etc. Such an extent of land, if held by the father of the plaintiffs, would certainly have constituted the subject-matter of declaration and further proceedings under the A.P. Agricultural Lands (Ceiling on Agricultural Holdings) Act. No proceedings of that nature were placed before the Trial Court.

14. Though it was for the plaintiffs to prove their possession, the defendants have come forward with voluminous record to show that the entire land in the survey number was acquired way back in the year 1956, and ever since then, it is in their possession, after having been converted as reserve forest. The entries in the revenue records, year after year, till the date of suit, were placed before the Trial Court.

15. The Trial Court proceeded on the footing that the land in Sy.No. 1 was 1600 acres and out of it, an extent of 1415 acres alone was acquired and out of it, only an extent of 1211 acres was notified as reserve forest. On these premises, it concluded that the plaint schedule property is part of the remaining land in Sy.No. 1. It extended this presumption as regards the possession also. Most of the order is devoted to point out that the plea taken by the defendants was unacceptable. The Trial Court did not take the trouble of appreciating the matter from the point of view of the plaintiffs to come to a conclusion that they are in possession of the suit schedule land.

16. One important aspect of the matter is, that the plaintiffs themselves were not sure as to the location of the suit schedule property. They filed applications for appointment of Commissioners to survey the lands. The Trial Court dismissed the same, on taking the view that it is an exercise to be undertaken at the hearing of the suit. No proceedings were available before it, to show that out of 1600 acres of the land in Sy.No. 1, the plaintiffs were delivered possession of any part of it, and if so, the boundaries therefor. The boundaries indicated in the suit schedule hardly provide any guidance.

17. The approach adopted by the Trial Court can be illustrated with the following excerpts:

'....The respondents have not adduced any evidence to establish prima facie that the Ex.P3 document and the numbers mentioned in it is, are not correct. Admittedly, the land acquisition officer has to follow some mandatory procedure before acquiring a particular piece of land either from the institutions or from the individuals. That procedure includes the perusal of the records pertaining to that land and getting the land measured by the survey department or by the surveyor of M.R.O. office and then issuance of notification etc. At this juncture, it cannot be said that the District Collector of Hyderabad before issuing the Ex.R1 land acquisition notification did not follow that procedure, in other words, did not get the proposed acquired land measured. Ex.P5 and Ex.R3 the copy of blue book prima facie support the contention of the petitioners that the land in Sy.No. 1 of Chilkuru that was recognized as the private property of the Nizam was nearly 1600 acres or 1500 acres. But the evidence on record does not support the contention of the respondents regarding the exact extend of land that was acquired for the Forest Department. The respondents are not in a position to substantiate their contention that whether 1417.15 acres was acquired for the Forest Department or whether only 1211 acres was acquired.... (Para 7)

All these things go to show that the contention of the respondents that on ground only 1211 acres of land is available in Sy.No. 1 and there is no land in excess of 1211 acres in Sy.No. 1 on ground is prima facie incorrect. The documentary evidence adduced by both the parties which are referred above, prima facie establish that the land that is available in Sy.No. 1 of Chilkuru, on ground is at more than 1211 acres which is alleged to be in the actual possession of the Forest Department.... (Para 7)

The respondents have not adduced any oral or documentary evidence to convince the Court at least prima facie that this Ex.P6, P8, P10 and P12 documents in Urdu are not the genuine documents and they are the created documents or they are brought into existence for the purpose of these cases.... (para 9)

Simply because, there is a notification under Section 4 of Forest Act in respect of 1211 acres of land in Sy.No. 1 of Chilkuru Village, it cannot be concluded that any claim of any person regarding any land in Sy.No. 1, cannot be attended to by a

civil Court and that land is part and parcel of that reserve forest area.... (Para 11)'

18. The defendants specifically contended that the plaintiffs did not show the boundaries of their land. The Trial Court met this objection by referring to a rough sketch, which is said to have been prepared by MRO (ROR). The respondents have placed before the Trial Court a letter issued by the District Collector to the effect that the post of MRO (ROR) did not exist at all at Moinabad Mandal. The rough sketch issued by a non-existing authority, weighed with the Trial Court. In Page 15 of the order, the Trial Court took the view that a comprehensive survey of Sy.No. 1 is necessary to settle the dispute between the parties, once for all, to avoid further litigation in relation to Sy.No. 1. It dismissed the I.A. for the appointment of a Commissioner for this purpose. That being the case, it is not known as to how and on what basis it has proceeded to grant temporary injunction in favour of the plaintiffs.

19. Learned Additional Advocate-General and the learned Counsel for the plaintiffs have relied upon several decisions rendered by the Supreme Court and this Court in support of their respective contentions. Since it is found that there is no material to disclose that the plaintiffs are in possession of the suit schedule property, this Court does not feel it necessary to refer to the said decisions, which mostly deal with the basic principles, in the matter of grant of temporary injunctions. Any further discussion on the matter is likely to have its effect on the adjudication of the suits. Suffice it to say, that there does not exist any material to show that the plaintiffs are in possession of the suit schedule property as on the date of filing of the suits. Hence, there was no basis for the Trial Court to grant temporary injunction. The orders under appeals are accordingly set aside.

20. The learned Additional Advocate-General submits that the observations made by the Trial Court in Para 14 of the orders, as regards the conduct of the Law Officers of the Government, are totally unwarranted. Inasmuch as the orders under appeals are set aside in their entirety, it is not necessary to deal with the observations of the Trial Court in Para 14 of the orders, separately.

21. The learned Counsel for the plaintiffs submit that in case the suit schedule land is permitted to be used by the defendants for any purpose, or if trees are planted,

it would become difficult for surveying the land in future and the suit itself may become infructuous.

22. After hearing both the parties, and after consideration of the entire material, this Court is of the view that the interests of the parties can be protected by directing the defendants not to alter the nature of the land, but permitting them to fence the suit schedule land to avoid encroachments by 3rd parties.

23. For the reasons stated above, the CMAs are allowed and the orders under appeal are set aside. It shall be open to the defendants to fence the land and protect it from being encroached by any one. To avoid further complications, it is directed that the defendants shall not undertake any plantation in the suit schedule land for a period of one year. They shall also not put the land to any other use. Since the written statements are filed and the parties expressed their willingness to proceed with the matter, without seeking adjournments, the Trial Court is directed to dispose of the suits, by the end of December, 2004. There shall be no order as to costs.