

C. Pratap Reddy Vs. C. Goverdhan Reddy

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Court : Andhra Pradesh

Decided On : Sep-05-2006

Reported in : AIR2007AP21; 2006(6)ALD126; 2006(6)ALT95

Judge : G. Yethirajulu, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 151 - Order 23, Rule 1(3)

Appeal No. : C.R.P. No. 4297 of 2006

Appellant : C. Pratap Reddy

Respondent : C. Goverdhan Reddy

Advocate for Def. : None

Advocate for Pet/Ap. : D. Seshadri Naidu, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

G. Yethirajulu, J.

1. This Revision Petition is filed by the plaintiff in O.S. No. 7 of 1996 on the file of the Principal Junior Civil Judge, Sangareddy. The respondent is the defendant in the said suit.

2. The plaintiff filed the said suit for perpetual injunction restraining the defendant from interfering with his possession of the property to an extent of Ac.4-18 guntas. The suit was decreed for an extent of Ac.4-02 guntas by granting permanent injunction against the defendant. The plaintiff, being aggrieved by the Judgment of the lower Court denying the relief to a particular portion of the land, preferred A.S. No. 23 of 2001 on the file of I Additional District Judge, Medak at Sangareddy. During the pendency of the Appeal, he filed an application covered by I.A. No. 594 of 2006 under Order 23, Rule 1(3) read with 151 of C.P.C. praying the appellate Court to permit him to withdraw the suit with a leave and permission to file a comprehensive suit as against respondent for recovery of possession of the land which is under the illegal occupation of the defendant. The lower Court, through the order, dated 24-07-2006 dismissed the application by observing that this is not a fit case to permit the petitioner to withdraw the suit with a leave and permission to file a comprehensive suit against the defendant for recovery of possession of land. The plaintiff, being aggrieved by the order of the appellate Court, preferred the present Revision challenging its validity and legality.

3. As the matter involves the question of law, the matter was taken up for disposal at the admission stage.

4. In view of the circumstances, the point for consideration is:

Whether the petitioner is entitled to withdraw the suit with a leave and permission to file a comprehensive suit for recovery of possession of the land and whether the order of the lower Court, dated 24-07-2004 sic. 2006 is liable to be set aside?

5. The plaintiff filed the suit for bare injunction in respect of Ac.4-18 guntas in Sy. No. 379/AA. During the pendency of the suit, a Commissioner was appointed and the Commissioner, on physical verification of the lands of the respective parties, submitted a report mentioning that the plaintiff was in possession of an extent of Ac.4-02 guntas of land and accordingly, the lower Court granted perpetual injunction in respect of Ac.4-02 guntas land only in favour of the plaintiff. The Commissioner's report further discloses that about 23 guntas of land is not in possession of the plaintiff. On the basis of the above observation, the plaintiff decided to file a comprehensive suit for recovery of possession of the land in

possession of the defendants which was expected to be in possession of the plaintiff.

6. The learned Counsel for the petitioner submitted that unless the Court grants permission to withdraw the suit with a liberty to file a comprehensive suit, so much prejudice will be caused to the petitioner. He further submitted that the appellate Court also can grant permission to the plaintiff to withdraw the suit by invoking the powers under Order 23 Rule 1(3) of C.P.C. In support of his contention, he relied on a decision of the Madras High Court reported in Ameenabi deceased and Ors. v. Ameerbi and Ors. 1998 (1) Current Civil Cases 57 (Mad.). wherein a single Bench of the Madras High Court, held as follows:

The power of the appellate Court to permit the plaintiff to withdraw the suit cannot be doubted. Immediately after filing of the second appeal the plaintiff has also filed a comprehensive suit for declaration of title and recovery of possession making all the persons interested in the property as parties to the suit. When the parties are already at issue and they have been fighting tooth and nail on the question of title I do not think the plaintiff should be debarred from withdrawing the suit with liberty to her to get necessary relief in the subsequently instituted suit.

The Court further observed as follows:

The Court felt that interests of justice require that plaintiff should be permitted to prosecute the subsequently instituted suit and further permit her to seek the relief which is asked for in that suit. The decision in this suit of the findings rendered herein should not be a bar for her prosecuting the subsequent litigation. This is a fit case where permission sought for should be granted.

In the case covered by the above decision, during the pendency of the previous suit, a comprehensive suit has been filed adding all necessary parties and including all the reliefs. In view of those circumstances, the appellate Court allowed the suit to be withdrawn by holding that the power of the appellate Court to permit the plaintiff to withdraw the suit cannot be doubted. But, in the present matter, the plaintiff has yet to file a comprehensive suit for recovery of possession and other reliefs.

7. In *Ammini Kutty v. George Abraham* : AIR1987 Ker246 . a single Bench of the Kerala High Court held as follows:

O. 23. R-1 does not stipulate that the power there under cannot be used for destroying vesting rights. The most that could therefore be suggested is that while exercising its discretion under the rule, the court should take into account all relevant circumstances and act in a judicial manner. The effect of granting permission to withdraw, with liberty to bring a fresh suit, is to place the parties in the same position as they would have been, had the suit been not instituted at all.

8. The plaintiff filed the suit for perpetual injunction for an extent of Ac.4-18 guntas and the injunction was granted in respect of Ac.4-02 guntas by decreeing the suit. The grievance of the plaintiff is that the decree was not granted in respect of the remaining 16 guntas of land on the basis of the report of the Commissioner that the plaintiff is in possession of an extent of Ac.4-02 guntas only. If the plaintiff decides to file a suit either for declaration of title or recovery of possession, it can be confined to 16 guntas only as the defendant is not disputing his possession in respect of Ac.4-02 guntas. The present suit will not become a bar for the plaintiff to file a separate suit either for declaration of title or for recovery of possession or any other reliefs in respect of 16 guntas of land for which a different cause of action will be the basis for filing that kind of suit. The present suit is on a simple cause of action that the defendant threatened to enter the land of the plaintiff .For an injunction suit, any number of times the cause of action may arise, whereas in a suit for declaration of title and recovery of possession, the date on which the defendant disputed the plaintiff's title and the date on which the plaintiff lost possession of the land is the basis of cause of action, therefore, the plaintiff even without withdrawing the suit and in view of the dismissal of the suit in respect of 16 guntas only, he is at liberty to file a suit for 16 guntas either for declaration of title or for recovery of possession or such other reliefs subject to the limitation etc.

9. In the light of the above circumstances, the permission to withdraw the suit is not necessary and the plaintiff has every liberty to file a suit for recovery of possession and declaration of title in respect of 16 guntas of land against the defendants by continuing to have the decree in force in respect of an extent of

Ac.4-02 guntas.

10. With the above observations, the Civil Revision Petition is dismissed giving option to the plaintiff to file a suit for declaration of title or recovery of possession or other relief in respect of the remaining extent of land while maintaining the decree in respect of Ac.4-02 guntas. No costs.

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