

IN THE COURT OF THE SENIOR CIVIL JUDGE: PUNGANUR

Present: Sri B.Babu Naik.,
Senior Civil Judge, Punganur,

Monday, the 21st day of October, 2019

C.M.A.NO.1 OF 2019

Between:

C.A.Kamalamma, W/o.Late C.Anjappa, aged about 51 years, Hindu,
Cultivation, residing at D.No.16-154, High School street, Punganur.

...Appellant/2nd Respondent

And:

1. Koneti Ramachandra, S/o.Late K.Narayanaswamy, Hindu, aged about 66 years, residing at D.No.6-120, K.K.Palyam, Punganur, Chittoor District. (Petitioner in I.A.No.539/2015)
2. Alla Harinatha Reddy, S/o.A.Reddeppa, Hindu, aged about 49 years (1st respondent in I.A.No.539/2015) residing at Marlapalle village, Melumdoddi post, Punganur Mandal.

... Respondents

Appeal against Common Order and Decretal order passed by the learned Principal Junior Civil Judge, Punganur dated 25.06.2018 in I.A.No.539 of 2015 and I.A.No.29 of 2016 in O.S. No.224 of 2015.

I.A.No.539 of 2015

Between:

Koneti Ramachandra

... Petitioner

And:

1. Alla Harinatha Reddy,
2. C.A.Kamalamma.

...Respondents

I.A.No.29 of 2016

Between:

C.A.Kamalamma

... Petitioner

And:

Koneti Ramachandra

...Respondent

This appeal is coming on 16-09-2019 before me for final hearing in the presence of Sri.C.Mallikarjuna Reddy, Advocate for the Appellant and of Sri.G.Sailendra Kumar, Advocate for the 1st respondent and the 2nd respondent remained exparte; and upon hearing their arguments and having stood over for consideration till this day, this Court delivered the following:

ORDER

1. This Civil Miscellaneous Appeal is filed against common orders dated 25.06.2018 of the trial Court passed in I.A.No.539 of 2015 and I.A.No.29 of 2016 in O.S. No.224 of 2015 on the file of the Principal Junior Civil Judge's Court, Punganur.
2. The Appellant herein is the 2nd respondent in I.A.No.539 of 2015 and the respondents herein are the petitioner and 1st respondent. Therefore, for convenience sake, the parties before this court will be referred in this order as they were arrayed in I.A.No.539 of 2015.
3. The averments of the affidavit filed along with petition in I.A.No.539 of 2015 in brief are that this petition is filed by the petitioner under Order 39 Rule 1 of CPC for grant of temporary injunction. The petition schedule property originally belonged to Late Nanjamani and the petitioner and his ancestors are tenants of deceased Nanjamani since 60 years and the petitioner succeeded the same from his ancestors. Above Nanjamani died about 40 years back and subsequently the petition schedule property was succeeded by her daughter late Rani Mahadevamani and she died about 25 years back and thereafter her son Late Raja succeeded the property and the said Raja also died about 13 years back and there are no legal heirs to said Raja. It is stated that after the death of the father of petitioner, the petitioner is in possession and enjoyment of the petition schedule property as tenant without any objection. The revenue authorities mutated the name of petitioner in revenue records. The petitioner and his family members are depending upon the income derived from the petition schedule property by cultivating the same. About 15 days back the respondents 1 and 2 caused obstruction to the petitioner and tried to dispossess the petitioner from petition schedule property.

About two days back when the petitioner was trying to dig trenches in the petition schedule property to plant mango trees, the respondents tried to cause obstruction and the petitioner is unable to resist the high handed acts of the respondents. Hence, the petition.

4. The 2nd respondent filed counter by denying all the allegations mentioned in the petition and further contends that the petitioner and his two brothers Venkatramana and Sankara have filed A.T.C.No.6/1985 on the file of Tenancy Tribunal-cum-Principal Junior Civil Judge, Punganur against Late Rani Mahadevamani, Late Melipatla Nanjamma and Late C.Anjappa in respect of petition schedule property for declaration that they are cultivating tenants of Late Rani Mahadevamani and Late M.Nanjamma and questioned the registered sale deed dated 17.12.1984 executed by the above persons in favour of C.Anjappa and also sought for the relief of permanent injunction. The said A.T.C.No.6/1985 was dismissed on 28.07.1994. The petitioner and his two brothers filed A.T.C.No.1/1994 on the file of II Additional District Judge, Madanapalle and the same was also dismissed on 22.01.2008 and upon that the petitioner and his brothers filed C.R.P.No.1252/2008 before the Hon'ble High Court of A.P. and the same was dismissed on 13.08.2014. The petitioner and his father filed O.S.No.100/1979 on the file of Principal Junior Civil Judge's Court, Punganur against Late Rani Mahadevamani, Late M.Nanjamma and Late C.Anjappa for permanent injunction in respect of the petition schedule property. Later the said suit was transferred to District Munsif Court, Madanapalle and renumbered as O.S.No.429/1979 and it was decreed in favour of petitioner, his brother and mother and upon that Late C.Anjappa preferred A.S.No.21/1989 before the Hon'ble II Additional District Court,

Madanapalle and the same was allowed on 07.04.1995. Thereafter the petitioner and his family members filed S.A.No.313/1995 before the Hon'ble High Court of A.P. and the same was dismissed on 08.11.2006 confirming the order given in A.S.No.21/1989 and the plaintiff has filed the present suit suppressing the above facts with a malafide intention. The 2nd respondent is the 2nd wife of Late C.Anjappa and she has a daughter by name C.A.Sunitha and they became entitled to the petition schedule property by virtue of registered Will dated 05.03.1998 executed by Late C.Anjappa. Above said Anjappa got three sons and one daughter through his 1st wife and they filed suit in O.S.No.34/1998 against the 2nd respondent, her husband C.Anjappa and daughter Sunitha for grant of permanent injunction and said suit was referred to Lok Adalath. As per the Award dated 28.02.1998 the petitioners in the said suit were directed not to interfere with the possession and enjoyment of 2nd respondent, her daughter and C.Anjappa in respect of 'B' schedule property in O.S.No.34/1998 and the family members of petitioner herein are very much aware of the said proceedings. The petitioner and his family members never cultivated the petition schedule property and the revenue records were obtained by the petitioner by managing the revenue authorities. The 1st respondent do not have any right over the petition schedule property and the petition filed by the petitioner is barred by res-judicata and hence the petitioner is not entitled for the relief as prayed for and therefore the 2nd respondent prayed the Court to dismiss the petition.

5. The 2nd respondent/2nd defendant also filed petition in I.A.No.29/2016 against the petitioner/plaintiff seeking the relief of temporary injunction. In the petition, the 2nd respondent re-iterating

the contents of the counter in I.A.No.539/2015 and further stated that her husband by name Anjappa purchased the petition schedule property under a registered sale deed dated 17.12.1984 and after the death of her husband the 2nd respondent and her daughter became entitled to the petition schedule property by virtue of registered Will dated 05.03.1998 executed by C.Anjappa. Further, the suit filed by the plaintiff itself is not maintainable as the principles of res-judicata applies under Section 11 of C.P.C and prayed the Court to grant temporary injunction in favour of the petitioner/2nd defendant.

6. The respondent/plaintiff filed counter by reiterating the contents of the petition in I.A.No.539/2015 and further stated that there is no document filed by the petitioner/2nd defendant stands in the name of C.Anjappa or herself. Further the respondent/plaintiff is a poor person depending on the income derived from the petition schedule property and the petitioner/2nd defendant or her husband were never in possession and enjoyment of the petition schedule property. The Revision petition was dismissed by the Hon'ble High Court of A.P. only on technical grounds and the 2nd defendant has to prove whether she has right, title over the petition schedule property and until then she cannot claim any interim injunction order in her favour. There is no cause of action for counter claim and hence prayed the Court to dismiss the counter claim petition with costs.

7. During the course of enquiry before the lower Court Exs.P1 and P2 have been marked on behalf of the petitioner and Exs.R1 to R7 have been marked on behalf of the 2nd respondent.

8. After considering the material available on record, the lower Court allowed the petition with a direction that both parties shall maintain

Status-Quo over the petition schedule property till the disposal of the suit.

9. The appellant/2nd defendant preferred the above CMA against the common Order and decree made in I.A.No.539 of 2015 and I.A.No.29 of 2016 in O.S. No.224 of 2015 dated 25-06-2018 by directing both parties to maintain Status-Quo. The appellant/2nd defendant challenged the lower court order and decree for the following grounds:

(i)The order and decree of the lower court are contrary to law. The trial Court has failed to appreciate the facts of the appellant's case that the 1st respondent, his father and brothers continuously agitating the same matter from 1979 upto the Hon'ble High Court of A.P. on two lines, on by filing suit in O.S.No.429/1979 on the file of Principal District Munsif Court, Madanapalle originally filed in O.S.No.100/1979 on the file District Munsif, Punganur and went upto the Hon'ble High Court of A.P. and ultimately the second appeal No.313/1995 filed by the 1st respondent and his brothers was dismissed and the history of the same i.e., suit Register Extract Ex.R2 which is from the suit stage to second appeal before the Hon'ble High Court of A.P. in that the claim of the maternal grandfather, the father of the 1st respondent and his brothers as tenants. The claim of the tenancy was rejected and the suit filed for protecting their possession was dismissed by the Hon'ble High Court of A.P. and on another line the tenancy case filed in ATC No.6/1985 on the file of District Munsif, Punganur was also dismissed the same and the appeal against the same in ATA No.1/1995 on the file of Hon'ble Additional District Judge, Madanapalle was also dismissed and the CRP filed by the 1st respondent and his brother in CRP No.1252/2008 was also dismissed on 13.08.2014 by the Hon'ble High Court of A.P. Thus on both lines

the 1st respondent, his maternal grandfather, father and brothers failed to prove the possession and it is clearly observed on Ex.R3 certified copy of orders under Ex.R3 holding that the husband of the appellant was in possession of the present disputed property.

(ii) The trial Court has also failed to note that there is no dispute with regard to original owners by name Nanjamma and her daughter and the sale deed dated 17.12.1984 under Ex.R1 in favour of C.Anjappa the husband of the appellant and the plea of tenancy of the 1st respondent and his ancestors from the same original owners is rejected by the Hon'ble High Court of A.P. on both lines.

(iii) The trial Court having observed that the disputed properties are reflecting under Exs.R1 to R7 simply observed in para 13 of its order that the present disputed property and the subject matter of the suit in O.S.No.429/1979 and CRP 1252/2008 are one and the same or not, though there is no dispute raised by either of the parties can be decided only after trial is erroneous and it is to be set aside.

(iv) The trial Court has failed to note that the 1st respondent has approached to discretionary relief of injunction with unclear hands since suppressed the earlier said proceedings of the Hon'ble Courts and also the principals of resjudicata and failed to appreciate and upheld the decisions of various verdicts of the Hon'ble Courts. If the principal of resjudicata is correctly applied the very suit of the plaintiff is to be dismissed. If that is applied and done the interlocutory application of R1 in I.A.No.539/2015 is also to be rejected.

(v) The observation of the trial Court everything is to be decided only after trial of the suit and it gives scope to the scrupulous litigation and there cannot have any end.

(vi) The trial Court ought to have dismissed the petition of the 1st respondent in I.A.No.539/2015 and ought to have allowed I.A.No.29/2016 filed by the appellant in the principal that possession follows title.

10. Heard both sides and perused the material on record.

11. The point for consideration is:

Whether the common order passed by the trial court is sustainable in law?

12. In order to substantiate the contention of the petitioner that he is in physical possession and enjoyment of the petition schedule property Exs.P1 and P2 are filed. Ex.P1 is the revenue document which goes to show that the petitioner is in possession and enjoyment of the petition schedule properties. Ex.P2 is the certified copy of registered Will dated 11.08.1967 executed by Late Manikyappa.

13. According to 2nd respondent after the death of C.Anjappa, she along with her daughter succeeded the petition schedule property and they are in possession and enjoyment of the same. She filed Exs.R1 to R7 to prove her contention. Ex.R1 is the certified copy of registered sale deed executed by Rani Mahadevamani and another in favour of C.Anjappa, Ex.R2 is the certified copy of suit register extract in O.S.No.429/1979, Ex.R3 is the certified copy of fair order in C.R.P.No.1252/2008 on the file of Hon'ble High Court of A.P., Ex.R4 is the certified copy of Will executed by C.Anjappa in favour of 2nd respondent and her daughter Sunitha, dated 05.03.1998, Ex.R5 is the certified copy of suit register extract in O.S.No.34/1998, Ex.R6 is the pattadar pass book stands in the name of C.Anjappa and Ex.R7 is the 1-B namoona.

14. Perused the documents filed by both parties. In these interlocutory applications, both the petitioner and 2nd respondent contending that they are in physical possession and enjoyment of the petition schedule property. But the documents filed by either side do not disclose that they are in possession and enjoyment of the petition schedule property as on the date of filing of the petitions. Exs.P1 and R1 contained the petition schedule property. As per Ex.R5 which is the certified copy of suit register extract in O.S.No.34 of 1998 the said suit was settled before Lok Adalath on 28.02.1998. In the said Award in column No.2 it was mentioned that the plaintiffs be and are hereby directed not to disturb the defendants' possession and enjoyment of the suit 'B' schedule property which is in their possession and enjoyment as per oral partition already effected. Above said 'B' schedule property is the petition schedule property herein. Ex.R7 shows that there is dispute before the Court with regard to the petition schedule property.

15. According to the petitioner Exs.P1 and P2 establishes his case that he is in possession and enjoyment of the petition schedule properties. As per 2nd respondent after the death of C.Anjappa, she succeeded the property and they are in possession and enjoyment of the petition schedule properties. So, when both the parties are having a common interest in the petition schedule property in view of filing the documents, the injunctive relief cannot be granted. It is pertinent to note that both parties filed the suits against each other and moved the litigation. The rights of the parties can be adjudged only after full-fledged trial but not at this stage. When such is the case, it can be said that only alternative relief is to direct both parties to maintain Status-Quo in respect of the petition schedule property. The order

passed by the trial Court is well reasoned warranting no interference.

Thus, this appeal is dismissed without costs.

16. In the result, the appeal is dismissed. No costs.

Typed to my dictation by the Stenographer Grade-II, corrected and pronounced by me in the open Court on 21st day of October, 2019.

Sd/- Sri. B.Babu Naik.,
Senior Civil Judge,
Punganur.

APPENDIX OF EVIDENCE

NIL.

Sd/- Sri. B.Babu Naik.,
Senior Civil Judge,
Punganur.