

IN THE COURT OF THE III ADDL.DISTRICT JUDGE, GADWAL

Wednesday, this the 10th day of September, 2014.

PRESENT : Sri P.Prabhakar
III Addl.Dist.& Sessions Judge,
Gadwal.

Appeal Suit No.1 of 2014

Between :

B.Abdul Kareem Sab S/o Ismail Sab, Age: 76 years,
Occupation:Agriculture, Resident of Momin Mohalla, Gadwal Town,
Mahabubnagar District.

...Appellant/Plaintiff

And

Kurva Krishna S/o Badenna, Age: 31 years, Occupation:Agriculture,
Resident of Sangala village of Gadwal Mandal, Mahabubnagar District.

....Respondent/Defendant

Memorandum of Appeal filed on behalf of appellant U/O XLI Rule 1 of
CPC against the Judgment and Decree Dated.17-09-2013 in O.S.No.34 of
2012 on the file of Junior Civil Judge, Gadwal dated:17-09-2013

Between:-

B.Abdul Kareem Sab S/o Ismail Sab, Age: 76 years,
Occupation:Agriculture, Resident of Momin Mohalla, Gadwal Town,
Mahabubnagar District.

...Plaintiff

AND

Kurva Krishna S/o Badenna, Age: 31 years, Occupation:Agriculture,
Resident of Sangala village of Gadwal Mandal, Mahabubnagar District.

... Defendant

Sub : Suit is filed for permanent injunction:

This Appeal suit is coming on before me for final hearing on 22-
08-2014 in the presence of Sri K.Md.Ismail, Sri K.Ravi Prakash Goud and
Sri P.Vishnu Vardhan Reddy, Advocates for the Appellant/Plaintiff and
Respondent remained exparte and the matter having stood over for
consideration till today this court delivered the following:

J U D G M E N T

1. This appeal arises against the decree and judgment dated
17.09.2013 passed in OS 34/2012 by the Court of Junior Civil Judge,
Gadwal dismissing the suit of plaintiff filed for permanent injunction
against the defendant restraining him from interfering with his
possession and enjoyment of schedule land admeasuring Ac.2.33

guntas bearing Sy.No.153/Ta situated at Jilladabanda village of Gadwal Mandal without costs.

2. Case of plaintiff is as follows:-

3. Schedule land was purchased by him and one Mohammed Murthuza under a registered sale deed no.1201/1970 dated 13.08.1970 from its original owner Vijayabhasker Reddy. Thereafter they disposed of the said land to an extent of Ac.9.00 guntas in favour of one M.Venkatrami Reddy and V.Venkataraja Reddy sons of Vema Reddy vide registered sale deed No.1300 dated 16.10.1978 retaining the plaint schedule extent. Plaintiff got mutated his name in all the revenue records. Since the time of purchase plaintiff is in continuous possession and enjoyment of schedule land along with Mohammed Murthuza his co-owner. Defendant is utter stranger. He has no right over schedule extent. In spite of it on 12.2.2012 when the plaintiff was doing agricultural operations in schedule land he came to the suit land and tried to forcibly dispossess him from schedule land. Plaintiff with the help of his neighbours managed the situation. Defendant left the schedule land threatening plaintiff to dispossess him at any point of time. Plaintiff is law abiding citizen. He is not in a position to resist the highhandedness of defendant. Hence the suit.

4. Defendant was set exparte as he failed to file written statement within stipulated time forfeiting his right to file written statement.

5. Before the trial court on behalf of plaintiff PW.1 examined and Exs A1 to A5 marked. On considering the oral and documentary evidence let in on behalf of plaintiff the trial court dismissed the suit of plaintiff without costs.

6. Having aggrieved against the dismissal of the suit unsuccessful plaintiff preferred this appeal with the following grounds.

1. Decree and judgment passed by the trial court is contrary to law,

weight of evidence and probabilities of the case.

2. Judgment of the trial court is based on unrealistic assumptions and no credence was given to the effort of the plaintiff in submission of his case and case was dismissed ignoring the documents filed.

3. The trial court failed to peruse the documents submitted by the Appellant exhibited as Exs A1 to A5 and also his oral testimony.

4. The trial court instead of decreeing the suit of plaintiff as prayed erroneously dismissed the suit against the established principles of law.

7. For these and other grounds that may be urged at the time of hearing appeal may be allowed setting aside the decree and judgment passed by the trial court and to decree the suit of plaintiff granting permanent injunction against the defendant restraining him from interfering with his peaceful possession and enjoyment of schedule land as prayed.

8. Now the Points for consideration are:-

1. Whether plaintiff is entitled for permanent injunction as prayed ?

2. Whether decree and judgment passed by the trial court is sustainable ?

9. For the sake of convenience the parties are hereafter referred to as per their ranking before trial court.

10.POINT No.1:-

In order to prove the case of plaintiff he got examined himself as PW.1 and relied on Exs A1 to A5 pattadar passbook, certified copies of registered sale deeds, ROR, Pahanies for the year 2009-10 and 2011-12 plaintiff examined as PW.1 filed chief examination affidavit reiterating the averments made in the plaint. Counsel for plaintiff/appellant submitted that the trial court erred in dismissing the suit merely on the ground that the plaintiff failed to produce the

registered sale deed under which himself and another purchased the schedule land in the year 1970 vide document Number 1201 of 1970 dated 13.08.1970 referred in the plaint ignoring the pattadar passbook issued by the then Tahsildar, Gadwal within whose jurisdiction the schedule land is situated and certified copies of ROR and pahanies of the years 2009-10 and 2011-12 which prima-facie proved the right, title and possession of plaintiff over the schedule land. Counsel for plaintiff also submitted the trial also failed to see Ex.A2 certified copy of registered sale deed executed by the plaintiff and another in favour of others for an extent of Ac.9.00 guntas sold in the year 1978 vide document No.1300 of 1978 dated 16.10.1978. The trial court dismissed the suit merely on the ground that the plaintiff failed to file the sale deed under which himself and another purchased schedule Sy.Nos in the year 1970. In plaint plaintiff did not specifically plead the exact extent purchased by him and another vide document number 1201/1970 dated 13.8.1970 nor filed the relevant sale deed during his evidence to show the exact extent purchased by him more particularly to substantiate his claim that the schedule extent is the land retained by him and another from out of the land purchased in the year 1970. No explanation is offered for non filing the said sale deed original or its registration extract. For the above reasons the trial court dismissed the suit of plaintiff having felt that the plaintiff incidentally failed to prove his title over schedule extent.

11. Counsel for plaintiff relied on several decisions of Hon'ble High Court reported in 20009(5) ALD 807 rendered in the case of T.Yogaiah Naidu and another Vs., Mohd.Lateefullah Shareef and 2009 (6) ALD page 179 rendered in case of Bongunoori Bal Reddy and others Vs., D.V. Satyanarayana Raju and others for a proposition that in suit for perpetual injunction title does not assume primary importance. It is referred mostly to justify the claim for possession. He also relied on another decision of the Hon'ble High Court reported in 2009(6) ALD

page 1 rendered in case of Mohd. Ashrar Ahmed Shareef and another Vs., State of AP and another for a proposition once it is proved by the plaintiff that he is in possession of the property as a matter of course the relief of permanent injunction ought to have been granted leaving it always open to the respondents to evict the plaintiff by taking recourse to procedure prescribed by the law. Denial of relief to a person who is found to be possession that too on the strength of certain documents cannot be countenanced. It is a different that the plaintiffs have to prove their title as and when the situation warrants. Lastly he relied on another decision of Hon'ble High Court reported in 2012(2) ALD 94 rendered in case of Mohd.Khasim and others Vs., Selection Grade City, Municipal Corporation, Warangal.

12. Evidence spoken by PW.1 as to his physical possession and enjoyment of schedule land and the revenue records more particularly pattadar passbook, ROR extract and cultivation adangals(pahanies) for the years 2009-10, 2011-12 prima-facie proved that the plaintiff is given pattadar passbook recognizing his possession and enjoyment on mutation of his name in revenue records under Ex.A3. In the pahanies filed by the plaintiff to prove his possession and enjoyment of schedule land as on the date of filing of the suit also plaintiff is shown as possessor and pattadar of schedule extent of Ac.2.33 cents. Admittedly defendant remained exparte. Evidence spoken by PW.1 and the documents exhibited on his behalf remained unchallenged and unshattered.

13. Admittedly it is not the case where plaintiff had not filed any scrap of paper to prove his possession and enjoyment of schedule extent. The trial court simply dismissed the suit on the ground that the plaintiff failed to file the documents under which he purchased the land covered by schedule Sy.Nos including the schedule extent and the land sold by him and another in the year 1978 under Ex.A2. Vendees of plaintiff are not parties to the suit while grating the relief of injunction

sought by the plaintiff the courts in exercising such discretion must be judicious. Incidentally plaintiff has to prove his title to seek injunction besides his possession to clothe him with the relief of injunction and such possession must be lawful. In the facts absolutely there is no material to show that the physical possession and enjoyment by plaintiff is unlawful. It is not the contention of the defendant who failed to question either title or possession of plaintiff by filing written statement. Even in the appeal he remained *exparte*. In the circumstances documents exhibited by the plaintiff more particularly Exs A1 to A5 can be safely taken into consideration to consider lawful possession and enjoyment of schedule extent which the trial court failed to consider. In the light of above referred decisions of the Hon'ble High Court and the principles laid down in the above referred authorities as submitted by the counsel no roving enquiry is required as to the title in a suit for permanent injunction and the only thing to be decided is whether plaintiff who approached the court is in lawful possession and enjoyment of schedule extent and his rights are interfered. In the circumstances plaintiff duly proved his lawful possession and enjoyment of schedule land by exhibiting Exs A1 and A3 to A5 and also cause of action against the defendant who is nothing to do with the schedule extent. In the circumstances as matter of right plaintiff is entitled for permanent injunction as prayed and this point is answered in favour of plaintiff and against the defendant.

14.POINT No.2:-

In view of answering Point No.1 in favour of plaintiff/appellant and discussion made above in the circumstances as matter of right plaintiff is entitled for permanent injunction. The trial court erroneously dismissed the suit without considering the evidence of plaintiff and the documents exhibited on his behalf. Hence the decree and judgment passed by the trail court dismissing the suit of the plaintiff cannot be sustained.

In the result, this appeal is allowed granting permanent injunction restraining the defendant and his men from interfering with plaintiff's possession and enjoyment of schedule extent in any manner except under due process of law setting aside the decree and judgment passed by the trial court dated 17.09.2013 in OS 34 of 2012.

Dictated to Steno-Typist after transcribed by him, corrected and pronounced by me in open court on this the 10th day of September, 2014

**III Addl.District & Sessions Judge,
Gadwal**

Appendix of Evidence

-N I I -

**III Addl.District & Sessions Judge,
Gadwal.**