

IN THE COURT OF THE IX ADDITIONAL DISTRICT JUDGE
WANAPARTHY

Wednesday, the 26th day of June, 2019.

Present:-Sri Boya Srinivasulu,
IX.Additional District Judge,
Wanaparthi,

Civil Misllaneous Appeal No.1 of 2019.

Between:

- 1.Bakki Chinna Bichanna S/o Kistanna age 65 yrs, Occ:
Agriculture
- 2.Bakki Venkateshwarlu S/o Pedda Bichanna age 30 yrs, Occ:
Agriculture

Both are R/oDagadapally village Chinnambavi mandal
(earstwhile Weepangandla mandal) Wanaparthi District.

...Appellants.

And,

- 1.Bakki Chinna Kistanna S/o Pakeeraiah age 70 yrs, Occ:
Agriculture
- 2.Bakki Balaswamy S/o Pedda Kistanna age 60 yrs, Occ:
Agriculture
- 3.Bakki Srinivasulu S/o Pedda Kistanna age 42 yrs, occ: Teacher

All are R/o Dagadapally village, Chinnambavi mandal (earstwhile
Weepangandla mandal) Wanaparthi District.

...Respondents.

Appeal filed against the Status quo order passed by the
Senior Civil Judge, Wanaparthi in I.A.No.437 of 2018 in O.S.No.67
of 2018 dated 3.12.2018.

Between:

- 1.Bakki Chinna Bichanna S/o Kistanna age 65 yrs, Occ:
Agriculture
- 2.Bakki Venkateshwarlu S/o Pedda Bichanna age 30 yrs, Occ:
Agriculture

Both are R/oDagadapally village Chinnambavi mandal
(earstwhile Weepangandla mandal) Wanaparthi District.

..Petitioners/plaintiffs

And,

- 1.Bakki Chinna Kistanna S/o Pakeeraiah age 70 yrs, Occ: Agriculture
- 2.Bakki Balaswamy S/o Pedda Kistanna age 60 yrs, Occ: Agriculture
- 3.Bakki Srinivasulu S/o Pedda Kistanna age 42 yrs, occ: Teacher

All are R/o Dagadapally village, Chinnambavi mandal (earstwhile Weepangandla mandal) Wanaparthy District.

..Respondents/defendants.

Appeal filed under Order 43 Rule 1® of CPC.

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This Civil Miscellaneous Appeal coming before me for final hearing on 22.4.2019 in the presence of Sri S.Baleeshwaraiah, Advocate for the appellants and of Sri T.Srinivasa Chary, Advocate for respondents and upon perusing the material papers on record and having stood over for consideration till this day, this court delivered the following:

ORDER

This appeal arise from the orders of Senior Civil Judge's Court, Wanaparthy in I.A.No.437 of 2018 in O.S.No.67/2018 dated 3.12.2018 whereby and where under. The petitioners claim for grant of interim injunction restraining the respondents, their heirs, agents and workmen from interfering with the peaceful possession and enjoyment of the petitioners over the petition schedule property which was ordered for both parties to maintain Status quo.

2. Before adverting to the appeal grounds the case of the parties in the pleadings in a nut shell is as under:

The arrayed parties hereinafter as they deposed in the trial court for the clarity.

The petitioner No.1 is owner and possessor of the dry land bearing Sy.No.487/AA to an extent of Ac.2-01 gts and petitioner No.2 is the owner and possessor of dry land bearing No.487/A an extent of Ac.2-02 gts total extent of Ac.4-03 gts situated in the limits of Dagadapally village of Chinnambavi mandal (erstwhile Veepangandla mandal), both the petitioners are agnates cultivating the suit lands jointly. The respondents have no right or authority over the petition schedule land, but raised a boundary dispute and started interfering with the peaceful possession of the petitioners. At their instance a Mandal Surveyor has demarcated the petition schedule land and conducted a panchanama and they erected stone pillars around the petition schedule land. On 2.9.2018 the respondents along with their men came over to the petition schedule land removed the stone pillars and also on 4.9.2018 all the respondents destroyed the mango garden raised by the petitioners in the petition schedule land, hence there is no alternative the petitioners filed Interlocutory application along with suit.

5. All the respondents filed counter. In the counter the respondents denied the averments of petition and contending that the respondents are cultivating the suit lands since their forefathers, they have succeeded the same and also other lands were there to their forefathers, Since long time they have been cultivating the petition schedule lands, but due to ignorance and illiteracy their father by name Mala Pedda Kistanna could not get

mutated the same in to his name, the names of the fathers of the petitioners continued in the revenue records, but some period their father name has been recorded in possession column of pahanies as share holders, the respondents also having rights in the petition schedule lands as co-owners. The Revenue Inspector and Tahasildar of Dagadapally visited the spot and submitted report in which it is clearly stated that petition schedule land in Sy.No.487 to an extent of Ac.4-03 gts has been cultivating by the respondents since their forefathers. But taking advantage of entries in the revenue records the petitioners are now claiming the same without having any rights. The petitioners instead of filing a suit for partition filed suit for perpetual injunction to defraud the rights of respondents and hence the suit is not maintainable and that there is no prima facie case and balance of convenience in favour of the petitioners and prayed to dismiss the petition.

8. Before the lower court for the petitioners EXs.P1 to P12 and for the respondents EXs.R1 to R5 documents are marked by consent. The lower court having considering the pleadings, documents marked as exhibits after hearing arguments disposed off the petition with a direction to both parties to maintain status quo over the petition schedule lands till disposal of the suit and aggrieved by it the petitioners have come up with the present appeal with the following grounds.

It is settled principle of law that the status quo order should not be granted in injunction petition after consent, and that even under extra ordinary circumstances if the same is granted the court has to specifically decide and mention as to who is in possession of the suit land. The order of the lower court is illegal. The appellants are the owners and possessors of petition schedule lands and it is proved by proved by producing latest pass books, ROR, pahanies and also old pahanies which are Exs.P1 to P12. The Lower court failed to look in to these documents. Exs.R1 to R3 filed by the respondents does not show the title and possession as on the date of suit. There is no document to show the title and possession of the respondents over the petition schedule land and prayed to allow this appeal by setting aside the status quo orders passed by the Senior Civil Judge, Wanaparthi in I.A.437/2018 in O.S.67/2018 dated 3.12.2018 and grant injunction order restraining the respondents, their heirs, agents and workmen from interfering with the peaceful possession and enjoyment of the appellants.

9. There is no additional evidence in the appeal stage by either of the parties to it.

10. Heard the learned advocates for both the parties, who have argued on the same lines as contended by them in their respective pleadings. This court has perused the entire case record meticulously.

11. Now the point for consideration is:

1. Whether the petitioners/plaintiffs are entitled to temporary injunction as prayed for or not ?

2. To what relief ?

12. The petitioners have to establish prima-facie case, balance of convenience and irreparable injury. In order to prove said fact the onus lies on the petitioners/plaintiffs. The petitioners are contending that the first petitioner is the owner and is in possession and enjoyment of the land in Sy.No.487/AA to an extent of Ac.2-01 gts and second petitioner is the owner and in possession and enjoyment of land in Sy.No.487/A to an extent of Ac.2-02 gts at Dagadapally village of Chinambavi mandal. Both the petitioners are cultivating the suit lands jointly.

On the other hand the respondents are contending that the suit lands are forefathers of the petitioners and respondents. The petitioners are cultivating the petition schedule lands since their forefathers and they succeeded the petition schedule lands. Since long time the respondents cultivating the petition schedule lands. Now the dispute is whether the petitioners are in possession and enjoyment of the petition schedule properties, or the respondents are in possession and enjoyment over the same. The petitioners have filed revenue records such as pattadar pass book and title deed, 1-B form and adangals. As per the patadar pass book and title deed of the petitioner No.1, shows that the petitioner No.1 has got Ac.2-01gts in Sy.No.487/AA and some other lands similarly the petitioner No.2 has got land in

Sy.no.498/A to an extent of Ac.2-02 gts and some other lands. The pattadar pass book and title deed of petitioners No.1 and 2 are marked as Exs.P1 and P2 respectively. Similarly the first petitioner has filed 1-B form which is marked as EX.P3, on perusal of it the first petitioner is the owner not only the land in Sy.No.487/AA to an extent of Ac.2-01gts but also he is owner of other lands in different survey numbers. The petitioners have filed Ex.P4 which is copy of pahani for the Fasli 2017 issued on 29.8.2018, on perusal of it the first petitioner is in possession of the land in Sy.No.487/AA to an extent of Ac.2-01gts. Ex.P7 is the No.3 Account(adangal pahani) which supported the case of petitioner No.1, shows that the petitioner No.1 is the pattadar and enjoyer of the above said land.

The second petitioner has filed 1-B form which is marked as Ex.P5. On perusal of it the second petitioner is the pattadar of land in Sy.No.487/A to an extent of Ac.2-02gts and other lands. The petitioners have filed Ex.P6 which is the pahani for the Fasli 2017 which shows the second petitioner is in possession of land in Sy.No.487/A to an extent of Ac.2-02 gts. Ex.P8 is the No.3 Account (adangal pahani) which supported the case of the petitioner No.2. Exs.P9 is the No.3 pahani for the Fasli 1974-1975 and Ex.P10 is the No.3 pahani for the Fasli 1984-1985, on perusal of it Malakistaih is the pattadar and enjoyer of the land in Sy.No.487 and some other lands. On perusal of these documents filed by the petitioners shows that the petitioners are in

possession and enjoyment over the petition schedule properties as on the date of filing of the suit.

13. On the other hand the respondents are admitting that the name of their father Mala Pedda kistanna not mutated in the revenue records in respect of the petition schedule property. The respondents are further admitting in the written statement that the names of the fathers of the petitioners are continued in the revenue record. But some time father name of the respondents recorded in the pahanies. On perusal of the Ex.R1, Ex.R2 and Ex.R3 which are village account No.3.(adangal pahanies), On perusal of Ex.R1 village account no.3 for the year 1998-1999 Mala Pedda Bichanna is the Khatadar but enjoyer is Mala Pedda Kistanna for the land to an extent of Ac.2-00 in Sy.No.487/A and Mala China Bichanna is the khatadar in Sy.no.487/AA to an extent of Ac.2-00 and its enjoyer is Mala Chinna Kistanna i.e. defendant no.1. EX.R2 is the No.3 account for the year 2000-2001 and Ex.R3 is the No.3 account for the year 2001-2002, on perusal of these no.3 accounts Mala Pedda Bichanna is the khatadar for Sy.no.487/AA and Mala Chinna Bichanna is the khatadar for Sy.No.487/A and its enjoyer is Mala Pedda Kistanna and Mala Chinna Kistanna(first respondent). On persual of Exs.R1 to R3 column no.13 the nature of enjoyment shown as co-sharer. Exs.R1 to R3 are secured by the respondents in the year 2011. But the suit was filed in the year 2018. The respondents are filed EX.R4 letter addressed by Tahasildar to the District Collector

dated 27.8.2018. This letter does not create any right and title in favour of the respondents. Ex.R5 are the photos of the land, whether or not these lands are the petition schedule properties. The respondents are not established that lands shown in Ex.R5 are the petition schedule lands.

14. The petitioners are filed the adangal copies, pahanies, 1-B Form, pattadar pass books and title deeds which clearly prima-facie proves that they are having prima-facie right and possession over the petition schedule properties. The respondents have not filed documents to show that as on the date of filing of the suit they are in possession and enjoyment over the petition schedule properties. The balance of convenience lies in favour of the petitioners. If the respondents are interferes in to the petition schedule lands, the petitioners will suffer irreparable loss which could not be compensated in terms of money. Hence this point is answered infavour of the petitioners.

15. Point No.2: To what relief ?

In the result this Civil Miscellaneous Appeal is allowed by setting aside the order dt.3.12.2018 in I.A.No.437/2018 in O.S.67/2018 made by Senior Civil Judge, Wanaparthi and granting temporary injunction in favour of the petitioners and against the respondents, their heirs, agents and workmen restraining them from interfering with the possession and enjoyment of the petitioners over the petition schedule land till

the disposal of the suit. Both parties shall bear their respective costs.

Typed to my dictation to the Stenographer Grade-I, corrected and pronounced by me in the open court on this the 26th day of June, 2019.

sd/-

IX.Addl.District Judge,
Wanaparthy.

Appendix of evidence
Nil

sd/-

IX.Addl.District Juge,
Wanaparthy,