

(2006) 07 AP CK 0013
Andhra Pradesh High Court
Case No: SA No. 287 of 1994

Manda Yadagiri (died) by LRs.
and Another

APPELLANT

Vs

Gujjula Venkat Reddy @ Venkat
Malla Reddy (died) by LRs.

RESPONDENT

Date of Decision: July 12, 2006

Citation: (2007) 1 ALD 101

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: A. Pulla Reddy, for the Appellant;

Final Decision: Allowed

Judgement

L. Narasimha Reddy, J.

The defendants in O.S. No. 98 of 1981, on the file of the District Munsif, Bhongir, filed this second appeal, aggrieved by the judgment rendered by the trial Court in that suit, and affirmation of the same by the Court of Subordinate Judge, Bhongir, in A.S. No. 10 of 1991.

2. The respondents filed the suit, for the relief of perpetual injunction, against the appellants. It was pleaded that the respondents are the absolute owners and possessors of the suit schedule property in Sy. No. 410, admeasuring Ac. 1-26 guntas, at Mallapur Village of Bhongir Mandal, having purchased the same on 27-12-1955, from one Smt. Ameena Begum, for a consideration of Rs. 99/-. They pleaded that they are in continuous possession of the property, and have grown number of trees on it. Their grievance was that the appellants have attempted to cut the trees on 28-4-1981. Hence, they prayed for the relief of perpetual injunction.

3. The appellants filed a written statement. They denied the title of the respondents. It was pleaded that the respondents have encroached into the suit land to an extent of 0-20 guntas in the year 1979, and that the dispute, in this regard, was referred to

the elders of the village. They also pleaded that one of the appellants is a protected tenant, over an extent of Ac.8-25 guntas, including the suit land. Reference was made to the kasra pahani, patta certificate, etc.

4. The appellants filed an additional written statement, stating that the respondents have filed O.S. No. 49 of 1979, by pleading the same cause of action and praying for the same relief, in the same Court, and that even while the said suit was pending, the present suit was filed. Through its judgment, dated 25-2-1991, the trial Court decreed the suit. Aggrieved thereby, the appellants filed A.S. No. 10 of 1991, in the Court of Subordinate Judge, Bhongir. The appeal was dismissed on 25-3-1994.

5. Sri A. Pulla Reddy, learned Counsel for the appellants, submits that the Courts below have committed several mistakes. He submits that the trial Court wrongly framed the issue, touching on the title, whereas, the suit was for the relief of injunction simpliciter. He further contends that the plea as to the effect of filing of second suit, on the same cause of action, was treated, as though it is the one touching one res judicata. He submits that the lower appellate Court had not only committed the same mistakes, but also had proceeded on a wrong assumption of fact that O.S. No. 49 of 1979 was got dismissed, as not pressed, by the time the present suit was filed.

6. Though the respondents were served with notices, they have not chosen to enter appearance.

7. The relief claimed in O.S. No. 98 of 1981 was the one, for injunction simpliciter. In such a suit, the issues that normally arise for consideration would be, as to whether the plaintiff in the suit is in possession of the suit schedule property, and whether he is entitled for the relief of perpetual injunction. The first issue framed by the trial Court touched on this aspect. However, as many as 7 issues were framed, touching on the question of title and other related aspects. For instance, Issue Nos. 2 and 3 read as under:

(2) Whether the plaintiff is the owner and possessor of the suit land?

(3) Whether the plaintiff purchased the suit land on 27-12-1955 from the pattedar, viz. Ameena Begum W/o. Mohd. Yousuffuddin Saheb, for a consideration of Rs. 99/- as alleged in the plaint?

Undoubtedly, such issues are outside the scope of the suit.

8. A specific plea was raised by the appellants to the effect that the respondents filed O.S. No. 49 of 1979, in the same Court, for the same relief, as regards the very suit property. Touching on this aspect, the trial Court framed additional issue as under:

Whether the suit is not maintainable as O.S. No. 49 of 1979 operates as res judicata as contended by defendants.

An attempt on the part of the appellants herein, to cut the trees, was mentioned as the cause of action in both the suits. While in the first suit, the timing of such attempt was mentioned as April, 1979, in the instant suit, the date was referred to as 28-4-1981. It is impermissible to file two different suits, for the same cause of action. The mere fact that the act was repeated by the defendant, does justify the filing of a separate suit on each occasion, while the suit filed earlier, is pending. Once the respondents have filed a suit for the relief of perpetual injunction, alleging that there is an attempt on the part of the appellants to cut the trees, it was not open to them, to file another suit, on the same cause of action, but by referring to a different date.

9. A perusal of the additional issue framed by the trial Court discloses that it proceeded, as though a plea of res judicata arises for consideration. The question of res judicata would arise, if only there existed an earlier adjudication on merits, as between the same parties, on the same issue. When there was no decision on merits in O.S. No. 49 of 1979, there was no occasion, or basis for the trial Court to have framed any issue, touching on res judicata.

10. So far as the lower appellate Court is concerned, apart from affirming the two aspects referred to above, it proceeded as though O.S. No. 49 of 1979 was not pending, by the time the present suit came to be filed. It is a matter of record that O.S. No. 98 of 1981 was filed on 2-5-1981, whereas, O.S. No. 49 of 1979 was got dismissed, as not pressed, on 7-9-1981. Once it emerges that O.S. No. 49 of 1979 was pending, on the same cause of action, by the time the present suit was filed, a question of maintainability crops up. Whatever may have been the justification in registering the suit, not being aware of the factum of pendency of another suit, on the same cause of action, the trial Court ought to have dismissed the same, once the said fact was brought to its notice.

11. Hence, the second appeal is allowed, and the judgment and decree of the lower appellate Court are set aside. There shall be no order as to costs.