

(1998) 08 AP CK 0083

Andhra Pradesh High Court

Case No: SA No. 374 of 1998

Yamparala Venkateswarlu and
others

APPELLANT

Vs

Shaik Khatumbi and another

RESPONDENT

Date of Decision: Aug. 20, 1998

Acts Referred:

- Specific Relief Act, 1963 - Section 38

Citation: (1998) 6 ALD 86 : (1998) 5 ALT 602

Hon'ble Judges: A. Hanumanthu, J

Bench: Single Bench

Advocate: Mr. S. Satyanarayana Prasad, for the Appellant; Mr. Syed Shareef Ahmed, for the Respondent

Judgement

1. This second appeal by the plaintiffs has been admitted on the substantial question of law that whether the bare suit for injunction without seeking declaration of title is maintainable and whether the Court fee paid on the plaint is correct.

2. The facts leading for preferring this second appeal are as under:

The appellants herein are the plaintiffs and the respondents herein are the defendants in the suit OS No.655 of 1981 on the file of the Principal District Munsif, Narasaraopet in Guntur District. They filed the suit for permanent injunction restraining the defendants and their men from interfering with their peaceful possession and enjoyment of the suit property consisting of Ac.4.36 cents in D No.382 situated in Rajapet village in Chilkaluripet taluq within specific boundaries. It is their case that the total extent of Ac.35.33 cents in D.No.382 originally belonged to Devisetti Subbaiah and his brother and in the partition of the family the said Subbaiah got Ac.17.66 1/2 cents out of the said land. Out of it, an extent of Ac.4.47 cents was purchased by the plaintiffs maternal uncle and the remaining extent of Ac.4.36 cents was purchased by the plaintiffs from D. Venkateswarulu son of said

Subbaiah under two registered sale deeds dated 21-5-1981. The total extent of Ac.8.83 cents purchased by the plaintiffs and their maternal uncle is a continuous plot and the said extent is bounded by ridges, and subsequent to the purchase, the plaintiffs have been in possession and enjoyment of their property. The defendants who have purchased the property to the south of the suit property from D. Adhinarayana have made attempts to trespass the suit land because of their brutal force in the village. Hence, the plaintiffs filed the said suit for permanent injunction. The defendants have resisted the claim of the plaintiffs. It is their case that the plaintiffs and their maternal uncle brought into existence the registered sale deed with false recitals mentioning more extent than the share for which their vendor is entitled, that the defendants purchased Ac.4.36 cents under four registered sale deeds, Exs.B1 to B4 prior to the sale in favour of the plaintiffs and their maternal uncle, that they have got some extent beyond the ridges and that the plaintiffs are not entitled for injunction as prayed for. They also have taken up a plea that the suit for bare injunction is not maintainable without seeking for declaration of the title and that the Court fee paid is not correct. The trial Court settled the relevant issues for trial. On behalf of the plaintiffs, PWs 1 to 3 were examined and Exs. A1 to A3 were marked. On behalf of the defendants DWs.1 and 2 were examined and Exs.B1 to B4 were marked. On a consideration of the oral and documentary evidence placed before him, the learned District Munsif, while holding that the plaintiffs have been in possession of the suit land, dismissed the suit on the ground that the suit for bare injunction is not maintainable without seeking the relief of declaration of title and that proper Court fee is not paid. On appeal in AS No.96 of 1984, the learned Additional Subordinate Judge also recorded a finding that the plaintiffs are in possession of the suit land but dismissed the appeal on the ground that the plaintiffs ought to have filed a suit for declaration of the title paying proper Court fee. Hence, the plaintiffs have come up with this second appeal. It may also be stated here that while admitting the second appeal, interim injunction has been granted in favour of the plaintiffs by an order of this Court dated 28-7-1989 and the said order of injunction is still in force till date.

3. The admitted facts are that the land purchased by the plaintiffs is within specific boundaries and is situated to the north of the land of the defendants. Under Exs.A1 and A2 the plaintiffs and their maternal uncle purchased Ac.8.83 cents and there are ridges all around of the said extent. The defendants purchased Ac.4.00 of land under Exs.B1 and B3 on 6-4-1981 and another Ac.0.36 cents under Exs.B2 and B4 on 14-5-1981 and the total of the land purchased under Exs.B1 to B4 comes to Ac.4.36 cents and this land purchased by the defendants is situated to the south of the land of the plaintiffs and their maternal uncle. A Commissioner was also appointed during the course of trial in the suit to make a local inspection of the disputed suit land and he submitted his report after local inspection. The Commissioner observed in his report thus:

"Between the land of the petitioners and that of the defendants, there is a dividing ridge which is clear. It is 2 feet in width and about 4 inches in height and thick with grass. From its appearance I am of the opinion that it is about 8 to 10 years old. Similarly there are ridges on the East and West of the petitioners and defendants lands. Also to the north of the petitioners and Peela Venkateswarlu there is a ridge. All these ridges are almost of the same kind and also of the same age."

Basing on these observations of the Commissioner in his report and the admissions made by the DWs. 1 and 2 in their evidence, the trial Court categorically held that the plaintiffs have been in possession and enjoyment of the suit land within those specific boundaries. The said finding of fact has also been confirmed by the appellate Court. The trial Court also observed that there is no dispute as to the identity of the suit land. All these facts are also not disputed before me. The trial Court dismissed the suit of the plaintiffs on the sole ground that the plaintiffs have not sought for the relief of declaration of their title and the Court fee paid is not correct. This finding has also been confirmed by the appellate Court. It is this finding that has been challenged in this second appeal.

4. The plaintiffs filed the suit for permanent injunction based on their possession of the suit land within specific boundaries. It is well settled that in a suit for injunction primary question to be considered is one of possession and the question of title also may be gone into incidentally. It is also well settled that a person in possession though without title can resist interference from another who has no better title than himself and get injunction vide [M. Kallappa Setty Vs. M.V. Lakshminarayana Rao](#) . It is not necessary for the person claiming injunction to prove his title to the suit land. It would suffice if he proves that he was in lawful possession on the date of filing of the suit and his possession was invaded or threatened to be invaded by the defendants and he is entitled to sought for mere injunction without adding the prayer for declaration of his title. Relying on the decisions of the Madras High Court in Swaminatha v. Narayanaswami, AIR 1936 Mad. 936) and a Division Bench of Bombay High Court in [Fakirbhai Bhagwandas and Another Vs. Maganlal Haribhai and Another](#) , a single Judge of our High Court in [Chepana Peda Appalaswamy Vs. Chepana Appalanaidu and Others](#) , categorically held that "It can, therefore, be stated as a matter of law, that a suit for bare injunction without a prayer for declaration is maintainable". In [Kallappa Rama Londa Vs. Shivappa Nagappa Aparaj and others](#) , Karnataka High Court also observed that where the plaintiff is in possession of the suit property and it cannot be said that he had obtained possession by fraud just prior to the filing of the suit, it cannot be said that the suit merely for perpetual injunction restraining the defendants from interfering with the peaceful possession of the plaintiffs without declaration of the title is not maintainable. Therefore, I have no hesitation to say that a suit for bare injunction without a prayer for declaration of title is maintainable and the Court fee paid for the relief of permanent injunction is correct. The finding of both the Courts below that the plaintiffs suit for bare injunction without seeking the relief of declaration of

title is not maintainable, is nothing but perverse and as such the same is liable to be set aside. In view of the categorical finding that the plaintiffs have been in lawful possession and enjoyment of the suit property within the specific boundaries, the Courts below ought to have granted injunction in favour of the plaintiffs. It may be a fact that the defendants raised a plea that the plaintiffs have no title to the suit property. On a plea of the defendants in their written statement that the plaintiffs have no title to the suit property, the plaintiffs need not seek the relief of declaration of title and their suit for bare injunction even without seeking for declaration of the title, is maintainable when they are able to establish their lawful possession and enjoyment of the suit property on the date of filing of the suit. It is sufficient for the plaintiffs to pay the Court fee on the relief of permanent injunction as prayed for by them.

5. The claim of the respondents-defendants seems to be that an extent of Ac.0.36 cents purchased by them under Exs.B2 and B4 is situated north of the existing ridge between the plaintiffs and the defendants lands and that the plaintiffs ought to have filed a suit for declaration of title to that extent. But when the plaintiffs have established that they have been in possession of that portion of the land also, they are entitled to permanent injunction. They are entitled to continue in peaceful possession and enjoyment of that portion of the land also till they are evicted under due process of law.

6. In the light of my above discussion, I hold that the plaintiffs suit for bare injunction without seeking the relief for declaration of their title is maintainable and the Court fee paid by the plaintiffs is correct.

7. In the result, this second appeal is allowed and the Judgments and decrees in AS No.96 of 1984 on the file of the Additional Subordinate Judge, Narasaraopet, and in OS No.655 of 1981 on the file of the Principal District Munsif, Narasaraopet, are set aside. The suit OS No.655 of 1981 is accordingly decreed with costs throughout as prayed for.