

**(2003) 07 AP CK 0087**  
**Andhra Pradesh High Court**  
**Case No:** SA No. 236 of 1992

Jonnala Sura Reddy and Another

APPELLANT

Vs

Tityyagura Srinivasa Reddy and  
Others

RESPONDENT

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**Date of Decision:** July 8, 2003

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 33 Rule 1

**Citation:** AIR 2004 AP 222 : (2003) 6 ALD 513 : (2003) 6 ALT 46 : (2004) 1 CivCC 417

**Hon'ble Judges:** C.Y. Somayajulu, J

**Bench:** Single Bench

**Advocate:** B.V.S. Sivaram Prasad, for the Appellant; P. Gopal Das, for the Respondent

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**Judgement**

@JUDGMENTTAG-ORDER

C.Y. Somayajulu, J.

This is an appeal by the defendants in OS No. 16 of 1984 on the file of the Court of the Second Additional Munsif Magistrate, Guntur. Respondents are the legal representatives of T. Somireddy, (plaintiff), who filed the aforesaid suit for an injunction restraining the appellants from interfering with his possession over the plaint schedule property.

2. The Trial Court, after considering the evidence on record, decreed the suit. On appeal in A.S. No. 38 of 1990, the lower appellate Court confirmed the judgment and decree of the trial Court and dismissed the appeal. Hence, this appeal.

3. This appeal was admitted on the following substantial questions of law, (i) whether the plaintiffs can file a fresh suit on the same cause of action after withdrawing the earlier suit filed for the same relief and on the same cause of action and (ii) whether an injunction can be granted in favour of a person who has not come to Court with clean hands and who played fraud on Court.

4. The undisputed facts are plaintiff filed O.S. No. 14 of 1984 on the file of Court of II Additional Munsif Magistrate, Guntur on 18-1-1984 against the appellants seeking an injunction restraining them from interfering with his possession over the plaint schedule property alleging that on 13-5-1964 they tried to interfere with his possession over the plaint schedule property and filed LA. No. 42 of 1984 in that suit under Order 39 Rule 1 of the CPC seeking an interim injunction against the appellants during pendency of the said suit. The Court ordered notices to the appellants without granting ex parte interim injunction in favour of the plaintiff. Thereafter the plaintiff, Somireddy filed the present suit O.S.No. 16 of 1984 for the same relief and on the same cause of action alleging that on 13-5-1964 the appellants tried to interfere with his possession over the plaint schedule property and sought for permanent injunction restraining the appellants from interfering with his possession, and filed an application seeking interim injunction pending the suit against the appellants. An ex parte injunction was granted in his favour. On 19-1-1984 plaintiff filed a memo in O.S.No. 14 of 1984 withdrawing the suit. The learned District Munisif by his order dated 19-1-1984 advanced the said suit and dismissed it as not pressed. In this suit the contentions of the appellants is that the suit is not maintainable in view of Order 23 Rule 1 CPC and in any event since plaintiff did not come to Court with clean hands he is not entitled to the injunction sought for.

5. The contention of the learned Counsel for the appellants is that since the plaintiff, Somireddy did not, at the time of withdrawal of O.S. No. 16 of 1984, obtain permission from the Court to file a fresh suit on the same cause of action and for the same relief, the suit is barred under Rule 1 of Order 23 CPC, and in any event since Somireddy filed this suit suppressing the fact of his filing a suit earlier, is but an abuse of process of law and amounts to playing fraud on Court and so he is not entitled to equitable relief of injunction. The contention of the learned Counsel for the respondents is that since the suit O.S. No. 16 of 1984 was filed on the same day on which the memo for withdrawal of suit O.S.No. 14 of 1984 was filed, it cannot be said that the second suit is not maintainable. It is his contention that in view of the peculiar facts and circumstances of the case, the plaintiff Somireddy was obliged to file a separate suit and in any event the concurrent findings of fact of both the Courts below show the high-handed interference by the appellants with the possession of the plaintiff Somireddy, and the attitude of the defendants and so there are no grounds to interfere with the concurrent findings of fact arrived at by both the Courts below.

6. The plaint in this case was presented on 19-1-1984. Exs.B.28 and B.29 show that the earlier suit O.S. No. 14 of 1984 was withdrawn on 19-1-1984. So, it is clear that withdrawal of suit O.S. No. 14 of 1984 and filing of this suit took place on the same day, i.e., on 19-1-1984. Even assuming that this suit was filed only after the order permitting withdrawal of O.S. No. 14 of 1984 was passed, this suit is clearly barred by Rule 1 of Order 23 CPC because the plaintiff, while withdrawing O.S. No. 14 of

1984 did not seek permission of the Court to file a fresh suit on the same cause of action.

7. Since there is not even a whisper about the plaintiff filing a suit earlier, in the plaint in this case, it is clear that plaintiff did not come to the Court with clean hands. It is well known that injunction which is an equitable relief would not be granted to a person who does not come to the Court with clean hands, and who is guilty of suppression of facts.

8. The facts in *Satishkhosla v. Elililly Ranbaxy Ltd. and Anr.* (1998) CLT 1 are exactly similar to the facts in this case. In that case also plaintiff filed a second suit for injunction when in the earlier suit filed by it no interim injunction was granted. A Division Bench of Delhi High Court held that, filing of a second suit without making reference to the earlier suit, amounts to playing fraud to gain advantage and is but an attempt to overreach the Court.

9. Learned Counsel for the respondent relying on [Vizag Medical Stores, Maharanipet, Visakhapatnam Vs. Bharat Heavy Plate and Vessels Ltd., Visakhapatnam](#), contends that this suit is maintainable. I am not able to agree with the said contention. In that case an application seeking to withdraw the suit with permission to file fresh suit was filed. Permission to withdraw the suit was given but permission to file a fresh suit was refused by the trial Court. When that order was challenged before this Court, a learned Single Judge held that application under Rule 1 of Order 23 cannot be dissected into two separate individual portions and a relief of permission to withdraw the suit without granting relief to file a fresh suit cannot be granted. The question whether a second suit can be filed without obtaining the leave of Court while seeking permission to withdraw the earlier suit was not considered in that case.

10. In the present case, there was not even a prayer in the memo filed in O.S. No. 14 of 1984 for permission to file fresh suit. Therefore, the question of the Court granting permission to file a fresh suit, when the plaintiff did not seek such relief does not arise. The conduct of the plaintiff is also apparent from the facts of this case. For the reason that plaintiff did not come to Court with clean hands he is not entitled to the injunction.

11. For the above reasons, the Second Appeal is allowed and the suit O.S. No. 16 of 1984 on the file of Second Additional Munsif Magistrate, Guntur is dismissed. In the circumstances of the case, the parties are directed to bear their own costs.