APHC010389062016

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3397]**
(Special Original Jurisdiction)

MONDAY,THE NINTH DAY OF MARCH
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA RAO

SECOND APPEAL NO: 66/2016

Between:

Sri Mallelli Rama Murthy (died) and Others **...APPELLANT(S)**

AND

Sri Mallelli Venkateswara Rao Died and Others **...RESPONDENT(S)**

Counsel for the Appellant(S):

1. VENKATESWARA RAO GUDAPATI

Counsel for the Respondent(S):

1. GHANTA SRIDHAR
2.

The Court made the following:

Reserved on 26.02.2026
Pronounced on 09.03.2026
Uploaded on 09.03.2026

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

SECOND APPEAL No.66 of 2016

JUDGMENT:

This second appeal under Section 100 of the Code of Civil Procedure ("C.P.C." for short) is filed aggrieved against the judgment and decree, dated 27.02.2006, in A.S.No.25 of 1999, on the file of the Senior Civil Judge, Kovvur, in reversing the judgment and decree, dated 07.04.1999, in O.S.No.593 of 1990, on the file of the I Additional Junior Civil Judge, Kovvur, West Godavari District.

2. The appellants herein are the defendants and the respondents herein are the plaintiffs in O.S.No.593 of 1990, on the file of the I Additional Junior Civil Judge, Kovvur, West Godavari District.

3. The plaintiffs initiated action in O.S.No.593 of 1990, on the file of the I Additional Junior Civil Judge, Kovvur, West Godavari District, with a prayer for grant of permanent injunction restraining the defendants and their men from interfering with the plaintiffs possession and enjoyment of the plaint schedule property and for costs of the suit.

4. The learned I Additional Junior Civil Judge, Kovvur, West Godavari District**,** dismissed the suit filed by the plaintiffs without costs. Felt aggrieved of the same, the unsuccessful plaintiffs in the above said suit filed A.S.No.25 of 1999, on the file of the Senior Civil Judge, Kovvur. The Senior Civil Judge, Kovvur, allowed the appeal suit, by setting aside the judgment and decree

passed by the trial Court. Aggrieved thereby, the defendants in the suit approached this Court by way of second appeal.

5. For the sake of convenience, both parties in the second appeal will be referred to as they are arrayed in the original suit.

6. The case of the plaintiffs, in brief, as set out in the plaint averments in O.S.No.593 of 1990, is as follows:

One Siddayya had two sons by name Mukkaiah and Bheemaiah. The defendants are the sons of Mukkaiah and Bheemaiah had two sons and two daughters, by name Mallelli Venkateswara Rao/plaintiff No.1, one predeceased son Rama Dasu, Ghanta Nakshatram and Pendem Sithratnam. The plaintiffs pleaded that the deceased Rama Dasu had only one son by name Rama Krishna, who is the plaintiff No.2 and the schedule property along with another extent of northern Ac.16.00 cents originally belongs to Matripragada Bhujanga Rao and the plaintiffs predecessors paid Nazarana to the said Bhujanga Rao Zamindar and took possession of the land of an total extent of Ac.32.00 cents. The plaintiffs further pleaded that in partition of the land between the sons of Siddayya, the defendants' father got the northern Ac.16.00 cents and the father of the plaintiff Nos.1, 3 and 4 Bheemaiah got the southern Ac.16.00 cents of land. The plaintiffs further pleaded that Mukkaiah and Bheemaiah partitioned the land and are enjoying the same separately by metes and bounds for the last more than forty years.

The plaintiffs further pleaded that their names were also entered in the Government records, showing the possession of respective persons and after the death of Mukkaiah, the estate of Mukkaiah was fell on the defendants and after the death of Bheemaiah, the plaintiffs succeeded to the estate of Bheemaiah. The plaintiffs further pleaded that Mallelli Bheemaiah during his lifetime, executed two unregistered settlement deeds dated 26.04.1984 in favour of plaintiff Nos.3 and 4 settling an extent of Ac.4.00 cents out of the schedule property to each of the plaintiff Nos.3 and 4 and subsequently, Mallelli Bheemaiah executed a registered settlement deed in favour of the defendant No.3 on 16.06.1984 and during his lifetime, Mallelli Bheemaiah paid the taxes in his name and afterwards the plaintiffs are paying the taxes according to their convenience and are enjoying the same with absolute rights.

The plaintiffs pleaded that they are in possession and enjoyment of the schedule property and either the defendants or any other person are never in joint possession of the schedule property and the defendant who have no respect for law are making all sorts of efforts to dispossess the plaintiffs from the schedule property. The plaintiffs further pleaded that they got issued a registered notice dated 08.10.1988 to the defendants and to the Government Officials and the defendants have received the same. The plaintiffs further pleaded that since a week days prior to the filing of the suit, the defendants again are proclaiming in the village that they will forcibly trespass into the

schedule land and dispossess the plaintiffs from the schedule land, as such, the plaintiff is constrained to file the present suit.

7. The defendant No.3 filed written statement before the trial Court. The brief averments in the written statement filed by the defendant No.3, which was adopted by the defendant Nos.1 and 2 are as follows:

The Nazarana was paid to the Zamindar by Mallelli Mukkayya only and he took possession of Ac.32.00 cents in R.S.NO.394 of Lakkavaram and the same is in continuous possession and peaceful enjoyment of Mallelli Mukkayya and the defendants. The defendant No.3 pleaded that they have raised cashew nut garden in the northern Ac.10.00 cents of land about four years back and the plaint schedule land is in continuous possession and enjoyment of the defendants and their predecessors since more than fifty (50) years. The defendant No.3 further pleaded that the plaint schedule land and some other land was also belonged to his father Mukkayya and the defendants and their predecessors paid the land revenue. The defendant No.3 further pleaded that the defendants are in actual possession of the plaint schedule property and they are enjoying the same and the plaintiffs or the deceased Bheemaiah has no right over the plaint schedule property, as such, she prayed to dismiss the suit with costs.

8. On the basis of above pleadings, the learned I Additional Junior Civil Judge, Kovvur, West Godavari District, framed the following issues for trial:

1) Whether the plaintiffs are entitled to the permanent injunction prayed for?

2) Whether the defendants' father has got title and if so whether the plaintiff has got any valid transfer under the Act? and
3) To what relief?

9. During the course of trial in the trial Court, on behalf of the plaintiffs, P.Ws.1 to 3 were examined and Exs.A-1 to A-11 were marked. On behalf of the defendants, D.Ws.1 to 4 were examined and Exs.B-1 to B-11 were marked.

10. The learned I Additional Junior Civil Judge, Kovvur, West Godavari District**,** after conclusion of trial, on hearing the arguments of both sides and on consideration of oral and documentary evidence on record, dismissed the suit without costs. Felt aggrieved thereby, the unsuccessful plaintiffs filed the appeal suit in A.S.No.25 of 1995, on the file of the Senior Civil Judge, Kovvur, wherein the following points came up for consideration:

1) Whether the plaintiffs (Appellants) are entitled for permanent injunction as prayed for? and
2) Whether there are sufficient grounds to set aside the decree and judgment of the Trial Court?

11. The learned Senior Civil Judge, Kovvur, i.e., the first appellate Judge, after hearing the arguments, answered the points, as above, against the defendants and allowed the appeal suit filed by the plaintiffs. Felt aggrieved of the same, the defendants in O.S.No.593 of 1990 filed the present second appeal before this Court.

12. On hearing both side counsels at the time of admission of the second appeal 11.09.2025, this Court framed the following substantial questions of law:

I. *"Whether the appellate Court is correct in reversing the findings of the trial Court, contrary to the evidence & pleadings"?*

II. *"Whether the appellate Court can grant relief of injunction when the plea of the partition is not established by the respondent/ plaintiff's herein and the same is evident as per Ex.A5"?*

III. *"Whether the appellate Court is correct in granting of relief of injunction without establishing the exclusive possession in the property"?*

13. Heard Sri Venkateswara Rao Gudapati, learned counsel for the appellants/defendants and Sri Ghanta Sridhar, learned counsel for the respondents/plaintiffs.

14. The law is well settled that under Section 100 of CPC, High Court cannot interfere with findings of fact arrived at by first appellate Court, which is final Court of facts, except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence.

In the case of ***Bhagwan Sharma v. Bani Ghosh***[1]**,** the Apex Court held as follows:

> "The High Court was certainly entitled to go into the question as to whether the findings of fact recorded by the First Appellate Court which was the final Court of fact were vitiated in the eye of law on account of non-consideration of admissible evidence of vital nature."

In the case of ***Kondira Dagadu Kadam v. Savitribai Sopan Gujar***[2]**,** the Apex Court held as follows:

> *"The High Court cannot substitute its opinion for the opinion of the First Appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence."*

15. Both the parties in the suit are interrelated and the admitted case of both the parties is that one Siddhaiah had two sons by name Mukkaiah and Bheemaiah. The defendants are the sons of Mukkaiah. Bheemaiah had two sons and two daughters viz., the plaintiff No.1 and another son, who died and the plaintiff No.2 is the son of the deceased son of Bheemaiah and the daughters of Bheemaiah are the plaintiff Nos.3 and 4. Therefore it is evident that the defendants belong to Mukkaiah branch and the plaintiffs belong to Bheemaiah branch.

16. It is the specific contention of the plaintiff that the plaint schedule property along with northern Ac.16.00 cents originally belongs to one Matripragada Bhujanga Rao and the predecessors of the plaintiffs and the defendants paid Nazarana to the said Bhujanga Rao Zamindar and took

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[1] **AIR 1993 SC 398**
[2] **AIR 1999 SC 471**

possession of Ac.32.00 cents and later in partition of the said land, the sons of Siddhaiah, by names Mukkaiah and Bheemaiah partition the entire Ac.32.00 cents of land and the defendants' father got northern share of Ac.16.00 cents and Bheemaiah got southern share of Ac.16.00 cents. The defendants in the written statement itself specifically pleaded that the entire Ac.32.00 cents of land was purchased by the defendants' father by paying Nazarana to the original owner Bhujanga Rao Zamindar and since then, the father of the defendants and the defendants are in the possession and enjoyment over the plaint schedule properties.

17. The defendants pleaded in the written statement itself that the Nazarana was paid to Sri Matripragada Bhujanga Rao by Mallelli Mukkaiah, who is the father of the defendants and took possession of Ac.32.00 cents of land and the same is in continuous possession and peaceful enjoyment of Mallelli Mukkaiah and his sons i.e. the defendants.

18. The plaintiffs herein approached the Civil Court for seeking the relief of prohibitory injunction against the defendants and their men from ever interfering with the possession and enjoyment over the plaint schedule property. In a suit for permanent injunction, to restrain the defendants from interfering with the plaintiffs' possession, the plaintiffs will have to establish that as on the date of filing the suit, they were in lawful possession of the suit property and the defendants have tried to disturb such lawful possession. The plaint schedule property herein is only a dry land to an extent of Ac.16.00 cents out of Ac.32.00 cents, it is not difficult to prove the physical or lawful

possession in the plaint schedule property and the possession may be established with reference to the actual use and cultivation.

19. As could be seen from the material available on record, the plaintiffs relied on the evidence of P.W.1 to P.W.5 and Ex.A-1 to Ex.A-11. The main contention of the plaintiffs is that their predecessors paid Nazarana to the original owner Bhujanga Rao and took possession of Ac.32.00 cents of land. The plaintiff No.1 is aged about 52 years and he is the best person to speak about the alleged payment of Nazarana to the original owner Bhujanga Rao. But, he did not enter into the witness box to prove the same. The plaintiff No.2 led evidence as P.W.1, as per his evidence, by the date of death of Mukkaiah, the plaintiff No.2 was aged about 10 years old, therefore, he is not having any personal knowledge about the jointness of Mukkaiah and Bheemaiah. Furthermore, he is not aware about the partition of the property in between Mukkaiah and Bheemaiah and he do not know when the said separation of land had taken place between his grandfather and his brother. Therefore, his evidence is not even sufficient to come to a conclusion about the alleged payment of Nazarana to the real owner Bhujanga Rao and also the partition of Ac.32.00 cents in between Mukkaiah and Bheemaiah. Furthermore, he admitted in his evidence in cross-examination that he has not filed any document to show that his grandfather paid Nazarana to the original owner and there is no documentary proof evidencing the partition of Ac.32.00 cents of land in between Bheemaiah and Mukkaiah. He further admits that he has not filed any patta to show that Bheemaiah is the owner of the suit schedule

land. His evidence clearly go to show that he is not having any personal knowledge about the acquisition of Ac.32.00 cents of land by Bheemaiah and he is also not having any personal knowledge about the alleged partition of the properties in between Mukkaiah and Bheemaiah, because he is aged about 10 years by the date of the death of Mukkaiah.

20. P.W.2 is the person who closely related to the plaintiffs and he admits that he is none other than brother's wife of the plaintiff No.3 and he admits that P.W.1 is none other than the son-in-law of his brother and his evidence in Chief-examination is confined to the ownership and possession of the plaintiffs. There is no whisper in the evidence of P.W.2 about the source of acquisition of the plaint schedule property by the plaintiffs and when the plaintiffs came into the possession of the plaint schedule property.

21. P.W3 is another witness of the plaintiffs, his evidence go to show that he purchased an extent of Ac.9.50 cents on 02.09.1988, which is situated to the West of the plaint schedule property. In cross-examination, in his evidence he admits that the total extent of R.S.No.394 is Ac.240.00 cents and he cannot say who has been in possession of the land and also the total extent of respective persons in Sy.No.394. He further admits that he is not aware about how the Eastern side land owner came into the possession of the property. Therefore, his evidence is also not even sufficient to come to a conclusion that the plaintiffs are in a possession and enjoyment over the plaint schedule property as on the date of filing of the suit.

22. The plaintiffs relied on Ex.A-1 to Ex.A-3. Ex.A-1 to Ex.A-3 are the certified copy of the plaint in O.S.No.678 of 1988 and the certified copy of the Judgment and Decree in O.S.No.678 of 1988. The defendants herein filed the said suit in O.S.No.678 of 1988 against 3rd parties for seeking relief of prohibitory injunction. The plaintiffs herein are not the parties in the said suit. In the said suit also the defendants herein i.e. the plaintiffs therein pleaded that their father purchased and took possession of the Ac.32.00 cents of land. There is a specific recital in the plaint in O.S.No.678 of 1988 that, at the time of survey in the Government Revenue Records, the schedule property was by mistake noted by the Revenue Authorities as Ac.16.00 cents and the remaining Ac.16.00 cents is under the possession of Mukkaiah's brother. It does not mean that the defendants herein are admitting the possession of Bheemaiah.

23. The First Appellate Court in its judgment came to wrong conclusions that since the defendants herein are in possession of Ac.16.00 cents only and that they have filed the suit for an extent of Ac.16.00 cents of land alone against 3rd parties. As noticed *supra,* the defendants herein i.e. the plaintiffs therein pleaded that "*by mistake in the revenue records, the Revenue Officials noted as Ac.16.00 cents for the defendants and the remaining Ac.16.00 cents is in the name of Bheemaiah*". It does not mean that the defendants herein are admitting that the plaintiffs herein are in possession and enjoyment of Ac.16.00 cents of land. Therefore, Ex.A-1 to Ex.A-3 are no way useful to

prove that the plaintiffs herein are in possession and enjoyment of the plaint schedule property.

24. The plaintiffs also relied on Ex.A-4 and Ex.A-10, which are the bunch of tax receipts, the suit schedule survey number and extent is not at all mentioned in Ex.A-4 and Ex.A-10. The plaintiffs have not filed any scrap of paper to show that they are in the possession of suit schedule property and they have paid land revenue to the suit schedule property survey number. Mere payment of land revenue is not a proof of possession over the plaint schedule property. The tax receipts shows about the payment of land revenue by the person who paid the tax only. The law is well settled that "*the payment of tax receipts is not a conclusive proof of possession of the property*". Ex.A-5 is the registration extract of sale deed said to have been executed by the father of the plaintiff No.3 in favour of the plaintiff No.3. Ex.A-6 is the copy of legal notice and Ex.A-7 to Ex.A-9 are the postal acknowledgments. The plaintiffs relied on Ex.A-11 certified copy of the sale deed said to have been exhibited by E.Koti Reddy in favour of K.Gangadhara Reddy, it is a document of the 3rd party and does not relate to the plaintiffs or defendants. Ex.A-11 goes to show that the Bheemaiah was having land with one Rama Murthy at the Eastern side, who is the neighbor of the said land. It does not mean that the plaintiffs are in possession and enjoyment of the suit property.

25. The specific case of the plaintiffs is that the predecessors of the plaintiffs and defendants have purchased Ac.32.00 cents of land and subsequently, Bheemaiah and Mukkaiah partitioned the entire Ac.32.00 cents

of land, wherein Ac.16.00 cents of land on the southern side fell to the share of Bheemaiah and Ac.16.00 cents of land on the northern side fell to the share of Mukkaiah. The appellants herein/defendants in the suit pleaded in the written statement itself that their father Mukkaiah purchased total extent of Ac.32.00 cents and in the earlier suit proceedings also i.e. in O.S.No.678 of 1988 also the same is pleaded by the defendants herein i.e. the plaintiffs therein. The plaintiffs have not filed any single document or failed to produce any evidence to show that the predecessors of the plaintiffs and the defendants paid amount to the original owner of Ac.32.00 cents. The plaintiffs herein have not examined any other person to prove the alleged partition in between Mukkaiah and Bheemaiah, in the present case the alleged partition as pleaded by the plaintiffs is not at all proved by the plaintiffs by examining any of the neighbors of the plaintiffs. The plaintiffs failed to prove that they are in possession and enjoyment over the plaint schedule property by the date of filing the suit.

26. The defendants relied on Ex.B-2 to Ex.B-8. Ex.B-1 is the Adangal copy for R.S.No.394, issued by the Mandal Revenue Officer, Jangareddygudem, Ex.B-2 is the certified copy of the 10(1) account relating to R.S.No.352/D, Ex.B-3 is the certified copy of the decree in O.S.NO.116/45 and Ex.B-4 to Ex.B-8 are the land revenue receipts. The First Appellate Court came to a wrong conclusion in its judgment that Ex.B-2 shows that Ac.32.00 cents was registered in the name of Mallelli Mukkaiah and the said Mallelli Mukkaiah is elder to Bheemaiah, and that the entire extent might have been registered in

the name of Mukkaiah. It is nothing but a pervasive finding and another perversive finding arrived by the First Appellate Court in its judgment is that the defendants could not file any scrap of paper to show that their father got rights over Ac.32.00 cents of land and they are in possession of the entire extent of Ac.32.00 cents of land. Here the defendants have not approached the Civil Court for seeking relief of prohibitory injunction. The plaintiffs herein approached this Court for seeking relief of prohibitory injunction against the defendants to restrain them from ever entering into the possession and enjoyment over the plaint schedule property. As noticed *supra,* in a suit for seeking relief of prohibitory injunction, the plaintiffs have to establish their lawful possession of the suit property as on the date of filing the suit, but not by the defendants.

27. Learned counsel for the respondents placed reliance on a judgment in ***Ananthula Sudhakar Vs. P.Buchi Reddy (Dead) by LRs. and Others***[3]***,*** wherein the Apex Court held as follows:

> *"**13**. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled.*
> *We may refer to them briefly.*
>
> ***13.1)** Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.*

[3] **(2008) 4 Supreme Court Cases 594**

> ***13.2)*** *Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.*
>
> ***13.3)*** *Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction."*

In the case at hand, the defendants disputed the title of the plaintiffs in the written statement and the defendants pleaded that the plaintiffs are not having any title in the schedule property. But, the plaintiffs herein have not sought the relief of declaration of title or during the pendency of the suit proceedings they have not even amended the relief clause in the plaint for seeking relief of declaration of title in addition of relief of permanent injunction.

28. Learned counsel for the respondents placed reliance on a judgment in ***Rame Gowda (Dead) by LRs. Vs. M.Varadappa Naidu (Dead) by LRs.***[4]***,*** wherein the Apex Court held as follows:

> *"In* ***M.C.Chockalingam V. V.Manickavasagam, (1974) 1 SCC 48,*** *this Court held that the law forbids forcible dispossession, even with the best of title. In* ***Krishna Ram Mahale V. Shobha Venkat Rao, (1989) 4 SCC 131,*** *it was held that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law in* ***Nagar Palika, Jind V. Jagar Singh, (1995) 3 SCC 426,*** *this Court held that disputed questions of title are to be decided by due process of law, but the*

[4] **(2004) 1 Supreme Court Cases 769**

peaceful possession is to be protected from the trespasser without regard to the question of the origin of the possession. When the defendant fails in proving his title to the suit land the plaintiff can succeed in securing a decree for possession on the basis of his prior possession against the defendant who has dispossessed him. Such a suit will be founded on the averment of previous possession of the plaintiff and dispossession by the defendant."

In the case at hand, the plaintiffs failed to prove their own case as narrated in the plaint and also failed to prove their possession in the plaint schedule property. The evidence of P.W.1 to P.W.3 is not even sufficient to come to a conclusion that the plaintiffs and in possession and enjoyment over the plaint schedule property. In a suit for bare injunction, the plaintiffs have to plead and prove that they are in physical exclusive possession over the plaint schedule property. But the plaintiffs herein have failed to prove that they are in physical possession over the plaint schedule property as on the date of filing of the suit

29. The oral and documentary evidence produced by the plaintiffs is not even sufficient to come to a conclusion that the plaintiffs are in possession and enjoyment of the plaint schedule property as on the date of filing of the suit and on appreciation of the entire evidence on record, the learned trial Judge has rightly dismissed the suit with an observation that the plaintiffs are not entitled to seek relief of permanent injunction against the defendants in the present suit proceedings.

30. For the aforesaid reasons, I am of the considered view that the learned First Appellate Judge came to a wrong conclusion and set aside the findings

arrived by the learned trial Judge and setting aside the judgment of the trial Court, therefore, the judgment of the First Appellate Court is liable to be set aside.

31. In the result, the Second Appeal is **allowed** and the Judgment and decree, dated 27.02.2006 in A.S.No.25 of 1999, on the file of the Senior Civil Judge, Kovvur is hereby set aside. Considering the facts and circumstances of the case, each party do bear their own costs in the second appeal.

As a sequel, miscellaneous petitions, if any, pending in the appeal shall stand closed.

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V. GOPALA KRISHNA RAO, J.

Date: 09.03.2026
SRT