

(1998) 03 AP CK 0051
In the Andhra Pradesh High Court
Case No : AAO No. 390 of 1997

Afzal Begum

APPELLANT

Vs

Ahmed Ali Khan and Others

RESPONDENT

Date of Decision : 12-03-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 1, Order 9 Rule 2

Citation : (1998) 2 ALD 774 : (1999) 1 AnWR 153 : (1998) 2 APLJ 189

Hon'ble Judges : P. Ramakrishnam Raju, J; B. Sudershan Reddy, J

Bench : Division Bench

Advocate : Mrs. T.H. Sowbhagyalakshmi, for the Appellant; Mr. M.V. Raja Ram, for the Respondent

Judgement

B. Sudershan Reddy, J

1. This Civil Miscellaneous Appeal by the petitioner-plaintiff is against the orders in I. A.No. 1396 of 1996 in O.S.No.1474 of 1996 dated 20-12-1996. The appellant herein filed O.S.No.1474 for declaration and possession of the plaint Schedule I property, portion of the said house against Defendants 1,3 and 4 and for relief of ownership in respect of Schedule HI property against Defendants I to 3. However, the appellant herein prayed for relief of perpetual injunction in respect of the ground portion of the said house.

2. The petitioner-plaintiff claims to be the true and absolute owner of the suit schedule property having purchased the same for valuable consideration under registered sale deed dated 20-1-1975. Improvements are stated to have been made by her spending huge amounts. The first defendant is her husband and he was looking after (he suit schedule property as her trustee. It is also averred that the appellant and the first respondent and their children migrated to United States of America but were frequently visiting the city of Hyderabad and staying in the said house. For the reasons for her absence from the city, the General Power of Attorney deed is stated to have been executed in favour of her brother.

3. It is her case that all of a sudden she was informed by the in-laws of her daughter that the first respondent has sold away and handed over the first floor RCC portion of the said house to strangers. On verification from her well-wishers she had come to know that the first defendant executed sale deed in favour of Defendants 2 and 3 on 1-7-1996 and Defendants 3 and 4 on 12-8-1996 alienating the suit schedule property. It is also alleged that during the said verification, she had come to know that the first respondent herein got a registered gift deed executed in his own favour by committing act of forgery and impersonation as if she had executed the gift deed on 2-11-1986. She had never intended to gift the said house. The gift deed is the result of forgery and impersonation and therefore, it is a void document. Under those circumstances, the first respondent would not have alienated the property in favour of Respondents 2 to 4 is the case of the appellant. It is under these circumstances, the suit by the petitioner for declaration of title and recovery of possession and also perpetual injunction in respect of the ground floor portion.

4. The suit is resisted by the respondents-defendants. The first respondent asserts that he had purchased the suit schedule property- in the name of the petitioner-plaintiff and she had voluntarily executed the gift deed dated 2-11-1983 under which he had become the true and absolute owner. In his capacity as the owner, he had alienated the suit schedule property in favour of the respondents-defendants 2 to 4 for valuable consideration. It is the case of the respondent-defendants 2 to 4 that they have purchased the suit schedule property for valuable consideration after having satisfied about the title of the first respondent. The other aspects of the pleadings need no reference for the purpose of disposal of this appeal.

5. It appears that number of applications were filed by the petitioner-plaintiff including I.A.No.1396/96 seeking temporary injunction against the respondents from interfering with the possession and enjoyment of the entire suit schedule property i.e., entire ground floor of House No.3-784/3 measuring 667.66 Sq.yards, situated at King Koti, Hyderabad till the disposal of the suit. The trial Judge after an elaborate consideration of the matter came to the conclusion that the petitioner has failed to establish prima facie case relating to her possession and the balance of convenience also was not in favour of the petitioner for granting temporary injunction. Hence this appeal.

6. It is required to notice the averments made in the affidavit filed in support of the injunction application before the Civil Court. It is averred by the petitioner that she has been in continuous use and occupation of the premises either personally or through children etc. She stated that after her arrival from United States of America, the first respondent made repeated attempts to dispossess her from the entire ground floor of the suit schedule property but could not succeed. It is nowhere asserted about her exclusive possession of the suit schedule property except making vague allegations that the first respondent had making repeated attempts to dispossess the petitioner. The petitioner, admittedly, is residing in

United States of America and even according to her she visits the city of Hyderabad now and then.

7. The learned trial Judge rightly held that the petitioner herein failed to produce any record whatsoever in support of her possession of the ground floor. In fact the petitioner failed to implead all the purchasers and no claim is asserted by her in respect of the first floor of the property. In another affidavit filed in support of I.A.No.1553/96 as noticed by the learned Judge she had stated that she was dispossessed from peaceful possession of the ground floor of the suit schedule, property forcibly by Respondent No.1 by using antisocial elements. Having regard to the facts and circumstances of the case and the registered sale deed executed by the first respondent in favour of the purchaser under Exs.B1, 84 and B7, the trial Court rightly came to the conclusion that the petitioner is not in possession of any portion of the suit schedule property whatsoever. It is rather difficult to appreciate as to how the petitioner could assert that she continued to be in possession of the schedule property while she is staying in U.S.A. The third party affidavit filed by Respondents 2 to 4 by one Shaik Choudhary Nizamuddin who is the father-in-law of the daughter of the petitioner would show that he was in continuous possession of the ground floor of the suit property till the month of August, 1996 and he then handed over the possession to the purchaser after alienation in favour of Respondents 2 to 4 and others. However, certain movable articles were left with an intention to get them back subsequently. It is stated in the said affidavit that the petitioner was never in possession and enjoyment of the suit property but whenever she visits Hyderabad she was staying in the house of her brother Qamar Rasheed whose house is just opposite to the suit property. The findings of the learned trial Judge are based upon the material available on record.

8. Learned Counsel for the appellant submits that no counter-affidavits whatsoever have been filed by Respondent No. 1 in I.A.No.1396 of 1996. But the order reads as if a counter-affidavit was filed. This Court having regard to the facts and circumstances of the case and having regard to the repeated assertions made by the learned Counsel for the petitioner called for a report from the Chief Judge, City Civil Court, Hyderabad and a report is accordingly submitted by the learned Chief Judge, City Civil Court, Hyderabad on 2-9-1997 stating that counter-affidavit was filed on behalf of the respondents and Exs.A1 to A16 and Exs.B1 to B18 have been marked with consent- We do not find any reason whatsoever not to accept the report submitted by the learned Chief Judge, City Civil Court, Hyderabad. We accordingly accept the report in toto.

9. There is nothing on record to suggest that counter-affidavits were not filed by the first respondent and documents were not marked during the course of enquiry. The proceedings of the Court and its docket are sacrosanct. It is not possible for this Court to easily presume something contrary as to what is contained in the proceedings sheet of the trial Court. No Counsel would be permitted to raise such arguments casting aspersions on the Courts. We do not

approve the method adopted by the petitioner in this case. We would like to remind the Advocates appearing on behalf of the parties that in every proceedings they not only represent the cause of their clients but also represent the majesty of law. They are duty bound to assist the Court as Officers of the Court. They are not only advocates but Counsel. They are duty bound to Counsel the parties. Unfounded allegations and aspersions on the Courts would not be in the public interest. We do not wish to say anything further in the matter. The facts in the instant case speak for themselves.

10. We are satisfied that the order of the learned trial Judge is perfectly in accordance with law. The learned trial Judge had adverted to the points that arise for consideration. Every conceivable aspect of the matter is taken into consideration by the trial Court. In our considered opinion, the order does not require our interference.

11. The Civil Miscellaneous Appeal accordingly fails and is dismissed with costs.

12. However, the trial Court shall dispose of the other interlocutory application filed by the petitioner herein on their own merits uninfluenced by the observations. If any made in this appeal, as they are confined only for the purpose of disposal of the CMA arising out of an order in I.A.No.1396 of 1996 in O.S.No.1474 of 1996.