

(1999) 07 AP CK 0054

In the Andhra Pradesh High Court

Case No : CMA No. 786 of 1998 and Batch

Arif Abdul Ghani and others

APPELLANT

Vs

S. Maheshwar Rao and others

RESPONDENT

Date of Decision : 21-07-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 101, Order 21 Rule 103, Order 21 Rule 97, Order 21 Rule 98, Order 21 Rule 99

Citation : (1999) 4 ALD 300 : (1999) 4 ALT 306 : (1999) 2 APLJ 169

Hon'ble Judges : S. Sundershan Reddy, J

Bench : Single Bench

Advocate : Mr. Mohd. Ghulam Hussain, for the Appellant; Mr. Mohd. Imtiaz, for Vinod Kumar and Murali Narayan Bung, for the Respondent

Judgement

1. This batch of civil miscellaneous appeals may be disposed of by a common order as they arise out of a common order passed by the learned senior Civil Judge, City Civil Court, Hyderabad, allowing the applications filed by each of the respondents/claim petitioner, purported to have been filed under Order 21, Rule 97 of the Code of Civil Procedure. The petitions filed by them are more or less similar and raise the same question. The learned Judge upheld the plea of the respondents/claim petitioners and their objections for execution of the decree in EP No.41 of 1984. The claim petitions were accordingly allowed. Hence these civil miscellaneous appeals by the Decree holders.

2. In all these appeals, learned Counsel for the appellants, Sri Mohd. Ghulam Hussain, contends that the trial Court has committed serious errors in allowing the claim petitions filed by the respondents/ claimants. It is submitted that the trial Court failed to follow the mandatory procedure provided under Order 21, Rule 101 of the CPC (for short "the Code"). It is also urged that the lower Court failed to record any findings whatsoever on the actual question that arises for consideration in the claim petitions. It is not clear and evident from the order passed by the learned trial Judge as to what is the relief granted to the

petitioners in the matter.

3. Sri Mohd. Imtiaz, learned senior Advocate, appearing on behalf of Sri Murli Narayana Bung, learned Counsel for the respondents/claim petitioners submits that the order under appeal does not suffer from any infirmity. The learned trial Judge discussed each and every aspect of the matter and accordingly upheld the objections putforth by the respondents/claim petitioners. It is urged that the appellants herein have gone to the extent of tampering with the Court record, which has been noticed by the trial Court in reaching its conclusions. The order under challenge does not require any interference by this Court.

4. Before advertng to the points urged by the learned Counsel appearing on behalf of the parties, it may be appropriate to briefly notice the facts leading to the filing of the claim petitions by the respondents/ claim petitions.

5. One late, Munnabai purchased the property in question namely the premises bearing Municipal No.10-4-67 from one Col. Abdul Sameed through a registered sale-deed on 8th Farwardi, 1346-Fasli. Ex.B5 is the certified copy of the registered sale-deed; whereas Ex.B6 is the plan of the property annexed to Ex.B5. One late Radhakishan was looking after the said property for and on behalf of Munnabai. Munnabai executed a Will-deed in favour of Brij Mohan, Hari Pyari Bai and Savitri Bai on 26-11-1974 bequeathing the said property in their favour and got the same registered on 26-11-1974. Ex.B1 is the "certified copy of the registered Will-deed.

6. Munna Bai, Hari Pyari Bai and Savitri Bai agreed to sell the suit premises to one T. Ganesh Singh and Mohd, Hasheem through agreement of sale dated 12-2-1975 vide Ex.B2. According to the said agreement of sale, the vendors agreed to deliver the actual possession of the premises, where there were no tenants in part performance of the agreement and possession of the remaining portion occupied by the tenants was to be handed over to the purchasers after termination of legal proceedings against the tenants. The vendors delivered a portion of the suit premises, which was vacant to the vendees on the date of agreement, Ex.B2. It appears that the said T. Ganesh Singh and Mohd Hasheem filed OS No.573 of 1982 against Brij Mohan, represented by his General Power of Attorney Shaik Maqbool Ahmed for specific performance of agreement of sale, which was decreed ex parte on 19-4-1983 and a decree was passed for the relief of specific performance of the agreement ofsale only. It is evident from the record that the plaintiffs therein claimed for perpetual injunction also, but the said relief was struck-off in the prayer portion ofthe plaint. However, in the place of the prayer for injunction, the relief of eviction of the tenants from the remaining portion of the premises and for recovery of possession thereof appears to have been substituted. After passing of the decree in OS No.573 of 1982, T. Ganesh Singh and Mohd. Hasheem filed the present EP No.41 of 1984 for specific performance of the agreement of sale and also prayed for recovery of the remaining portion of the suit premises, which is admittedly in the possession of the tenants. The said Ganesh Singh and Mohd. Hasheem, the decree holders

have sold the decree to one Arif Abdul Ghani, Shaik Yousuf and Mohd. Abdul Khadir under Ex.B11. Accordingly, these purchasers of the decree were impleaded as Decree holder Nos.3 to 5 in the EP by order dated : 14-3-1986 by deleting the names of the original decree holders. During the pendency of the EP, Brij Mohan died and his legal representatives were brought on record as Judgment Debtor Nos.2 to 4.

7. T. Ganesh Singh and Mohd. Hasheem appears to have deposited the sale consideration of Rs. 1.15 lakhs and the same was withdrawn by the legal representatives of late Brij Mohan. On their failure to execute the sale-deed, the trial Court executed the same in favour of the decree holder Nos.3 to 5 under Exs.B3 and B4. On receipt of the registered sale-deed, the trial Court appears to have passed orders on 14-10-1988 to deliver the documents to the DHRs Nos.3 to 5. It appears that instead of delivery of the documents, the decree holders obtained a warrant for delivery of possession of the immovable property. However, the warrant was returned unexecuted on 22-11-1988 and a fresh warrant for delivery of the possession of the suit premises in the possession of the tenants was issued which has given rise to the present cause. Pursuant to the said warrant, those portions under the occupation of the tenants were sought to be recovered by the decree holders and the tenants therein have resisted the attempt of the decree holders and filed the claim petitions purporting to be under Rules 97 and 99 CPC.

8. The claim of the present claim petitioners is that originally they were tenants of their respective portions in the suit premises and subsequently purchased the same from Brij Mohan through registered sale-deeds. They have filed documentary evidence under Exs.A1 to A104. Ex.A14 is the registered sale-deed through which one of the claim petitioners purchased a portion of the suit premises from Brij Mohan. Exs.A25 to A47 are the rental receipts issued by late Brij Mohan in favour of the claim petitioners. Exs.A48 to A52 are the documents showing that the claim petitioners have been enjoying the water and electricity amenities. Ex.A23 is the another registered sale-deed executed by Brij Mohan. There is enormous evidence on record to show that the claim petitioners are in possession of their respective portions from which they are sought to be dispossessed by way of execution of the decree in EP No.41 of 1984.

9. On consideration of the oral and documentary evidence, the trial Court came to the conclusion that the claim-petitioners cannot be dispossessed from their respective portions by the decree holders. It is further held that the claim petitioners are the lawful owners of the respective portions in their possession having acquired the title from their predecessors in title under whom they were tenants for some time. The evidence of RW1, adduced on behalf of the decree holders is dis-believed by the trial Court. The trial Court also held that the claim of the decree holders is based on an unregistered document, Ex.B1 which cannot be taken into consideration.

10. One of the important findings of the trial Court is that in the original plaint in

OS No.573 of 1982, it is pleaded that the possession of the premises was already delivered in favour of the plaintiffs that is the original decree holders No. 1 and 2. This fact is also evident from the recitals of agreement of sale, Ex.B2. The covenant under Ex.B2, itself, would show that the possession of the remaining portion occupied by the tenants shall be handed over to the vendees as and when the legal proceedings pending against them come to an end. Under those circumstances, the trial Court came to the conclusion that there was no relief as such prayed for by the plaintiffs in OS No.573 of 1982 for recovery of those portions which remained in the occupation of the tenants. It was a suit for specific performance of an agreement of sale only and not for recovery of possession. Ex.CI is the certified copy of the decree dated 19-4-1983. The decree holders Nos.1 and 2 filed IA No.880 of 1983, under Ex.C2, purporting to be one u/s 152 of the Code to amend the Decree. In the affidavit of the first decree holder, it is clearly stated that subsequent to the filing of OS No.573 of 1982 a portion of the suit premises was sold away by Brij Mohan and under those circumstances they do not want to prosecute the suit in respect of such property which was sold by him and the same was to be deleted from the decree.

11. One of the present decree holders examined as RW1, has admitted this fact covered by Ex.CI and C2 in his cross examination. For all the aforesaid reasons, the trial Court came to the conclusion that the proceedings in the Court were tampered with by the present decree holders. The relief for possession has been included in the plaint by way of tampering with the plaint. The trial Court also found that the Ministerial staff of the Court, when directed by the Court to deliver the sale-deeds after receiving the same from the Registrar's Office, prepared the warrant of delivery of possession of the immovable property.

12. In my considered opinion, the findings so recorded by the trial Court do not suffer from any infirmity. The learned trial Judge had taken into consideration each and every document filed by the claim petitioners under Exs.A1 to A104, which would establish in clinching terms, their lawful possession in the premises in question from which they are sought to be dispossessed under the execution of the decree. The oral evidence adduced on behalf of the claim petitioners vide PWs.1 to 4 has also been taken into consideration. The trial Court has also taken into consideration Exs.BI to B12 and Exs.CI to C2 and the oral evidence of RW1.

13. For all the aforesaid reasons, I do not find any reasons whatsoever to disturb the findings of the trial Court that the respondents-decree holders have gone to the extent of tampering with the record of the Court. Even in the execution petition, the sale-deeds after their registration was sought to be delivered, but not possession. In fact there is no decree for recovery of possession as such.

14. It is true that the claim petitions purported to have been filed by the respondent/claim petitioners are ill-drafted as pointed out by the learned Counsel for the appellants. In the claim petitions there is no specific prayer as to what order the Court is required to pass. The Court, as rightly pointed out by the learned Counsel for the appellants, merely allowed the applications. May be so.

But inartistic drafting of the pleadings itself may not be a ground for rejecting the same as long as cause of action is disclosed. Both the parties have let in evidence in support of their respective contentions. Such evidence let in by them has been taken into consideration. On that ground alone it is not possible to remit the matter for fresh consideration.

15. However, Mohd Ghulam Hussain, learned Counsel would contend that the order passed by the learned trial Court is vitiated on the ground of procedural irregularity. It is submitted that the claim petition filed under Order 21, Rules 97 and 99 of the Code is required to be adjudicated as if it is a suit. It is pointedly urged by the learned Counsel for the appellants that the claim petition is required to be tried as a suit and the entire procedure that is applicable for the trial of a suit, right from the institution of the application till pronouncing the judgment and decree, is to be followed. The entire procedure prescribed right from Order 1 to Order XX of the Code may have to be applied, is the submission. According to the learned Counsel, non-compliance with the procedure prescribed in the Code, for trial of the suit, in the matter of disposal of the claim petition under Order 21, Rules 97 and 99, would vitiate the entire order and decree.

16. In this case, it is complained that the trial Court had failed to settle the issues that arise for consideration in the claim petitions. Even the points for consideration are not framed. Therefore, the findings, if any, recorded by the trial Court are not with reference to the issues. For this reason alone, the order under appeal is required to be set aside, is the submission.

17. Here it may be appropriate to have a look at Rule 101 of Order 21 CPC, which reads as :

"All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application, and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions."

18. A bare reading of the Rule would make it abundantly clear that the claim petitions filed under Rule 97 or 99 is required to be adjudicated in a comprehensive manner. All questions, including the questions relating to the right, title or interest in the property arising between the parties may have to be decided by the executing Court, itself. The necessity of filing separate suit for adjudicating such questions relating to right, title or interest is dispensed with.

19. The claim petitions filed after commencement of the Amendment Act, 1976 (with effect from 1-2-1977) may have to be disposed of in a comprehensive manner covering the question relating to right, title or interest over the property under execution. The claim petitions so filed under Rule 97 or 99 of Order 21, now, may have to be dealt with just as a suit in which the question of title and

possession could be gone into.

20. Let me deal with the decisions cited by the learned Counsel appearing on behalf of the parties in support of their respective contentions.

21. In *Tahera Sayeed Vs. M. Shanmugam and Others*, , this Court while dealing with the claim petitions under Order 21, Rule 97 CPC observed that "when a third party, not bound by the decree approaches the Court to protect this independent right, title or interest before he is actually dispossessed from the immovable property and files an application under Order 21, Rule 97, it must be treated to be an intimation to the Court as caveat to the decree-holder or purchaser or a person claiming through him and the Court is to treat it as a complaint or a counter in opposition as an application for the purpose of Order 21, Rule 97 and to adjudicate it under Rule 98 or Rule 101 which shall be final and conclusive between the parties. Justice K. Ramaswamy (as His Lordship then was) went to the extent of holding that if such facts are brought to the notice of the Court even by way of a counter in the execution proceedings or as an intimation in whatever manner, may have to be treated as an application under Order 21, Rule 97 and the same is maintainable. This judgment completely answers the plea put forth by the learned Counsel for the appellants that no relief could be granted to the respondents/claim petitioners, on the basis of an ill-drafted claim petition.

22. The Madras High Court while dealing with the nature and scope of Order 21 Rules 97 and 101 CPC in *N. Palaniappan Vs. G. Pandurangan*, , held that "the scope of the proceedings has been now broadened so as to include all questions arising between the parties and relevant to the adjudication of the application, including the questions as to the title of such parties in the property. These questions would include all those questions, which could have properly been raised in suits under the earlier Rule 103. To avoid delay, a deeming provision as to jurisdiction is also made, as stated above, in Order 21, Rule 101 CPC."

23. In *Vegulla Satyanarayana Murthy and Others Vs. Alluri Annapurnamma and Others*, , this Court while considering the true nature and scope of Order 21, Rules 97 and 101, observed :

"the determination of questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under Order 21, Rule 97 or 99 as referred to in Order 21, Rule 101 CPC is only to find out as to whether the obstructor or one who resists the claim for possession by the decree holder or auction purchaser or who was dispossessed in the execution of the decree by them, was in possession in his own right or through the judgment-debtor on the date of the suit or during the pendency of the suit. That inquiry is necessary to decide as to whether the decree-holder or the auction purchaser can obtain possession in pursuance of the decree or Court auction-sale that was already passed or held. Such an inquiry is not envisaged nor contemplated for determining the right or interest claimed by the decree-holders as against the obstructor de hors the decree."

It is further held :

"Determination of right, title and interest as envisaged under Order 21, Rule 101 CPC is to find out whether the obstructor was in possession on his account or on account of the some one other than the judgment debtor or on account of the judgment debtor."

It is observed that while it was summary earlier, it has to be now inquired just as in a suit. This judgment does not deal with the question as to the applicability of the entire procedure applicable for the trial of a suit, to a claim petition filed under Order 21, Rule 97 or 99. This judgment, no doubt, lays down the principle as to the nature and scope of the inquiry under Order 21, Rule 97 or 99 CPC.

24. In Arif Abdul Ghani and Others Vs. Shaik Chand and Others, , this Court took a view that the application filed under Order 21, Rule 97 cannot come within the purview of execution of decree and such an application should be treated as an application claiming title or interest in the suit schedule property and the same should be treated as if it was a suit. Such a claim petition is in the nature of a suit.

25. The Apex Court in Babulal Vs. Raj Kumar and Others, , observed that :

"The determination of the question of the right, title or interest of the objector in the immovable property under execution needs to be adjudicated under Order 21, Rule 98 which is an order and is a decree under Order 21, Rule 103 for the purpose of appeal subject to the same conditions as to an appeal or otherwise as if it were a decree. Thus, the procedure prescribed is a complete Code in itself. Therefore, the executing Court is required to determine the question, when the appellants had objected to the execution of the decree as against the appellants who were not parties to the decree for specific performance."

26. In Noorduiddin Vs. Dr K.L. Anand, , the Apex Court observed that :

"When the appellant claimed independent right, title and interest and resisted the execution, the decree-holder or the appellant should make an application under Rule 97(1) and the Court, in that event, is enjoined to adjudicate the claim and record a finding, allowing or rejecting the claim. It should be remembered that Parliament intended to shorten the litigation and to give effect to it, a simplified procedure was devised for adjudication. On the basis of the fact situation and the nature of the controversy, the claim has to be adjudicated expeditiously, in a period not exceeding six months and preferably on day to day basis by putting an end to the tendentious conduct of prolonging the proceedings by suitable orders."

27. An analysis of all these judgments would show that a claim petition filed under Order 21, Rule 97 or 99 CPC, as the case may be, is required to be decided not in a summary manner. All the questions relating to right, title or interest in the property, which is the subject matter of execution may have to be decided by the Court. For that purpose, the parties may have to be given an

opportunity to lead evidence, both oral and documentary. The trial Court is required to appreciate such evidence as may be left in by the parties and record its findings on all the questions that may arise for consideration. The claim petition is required to be heard and decided as if it is a suit. That is the scope of the proceedings. But, it does not mean that the Court is required to follow the same procedure as provided for in the enquiry and trial of a suit. The procedure prescribed for the trial and disposal of the suit, ultimately resulting in judgment and decree may be applicable for the disposal of the claim petition. But neither the result, nor the proceedings would be vitiated, if the entire procedure as such is not followed in a given case, by the Court. Wherever it is necessary for the effective disposal of the claim petition, the civil Court may follow the same procedure for the disposal of the claim petition, as is applicable for the disposal of the suit. The extent of applicability of the procedure may vary and depend upon the facts situation. Mere failure to frame issues or points for consideration would not vitiate the proceedings nor the decision itself. May be it is better and advisable for the civil Courts to reduce the controversy between the parties by focussing the same and by framing issues or points for consideration. The very purpose of the amendment dispensing with the requirement of filing of another suit to go into the question relating to right, title and interest in a claim petition is with a view to provide cheap and speedy justice. Therefore, the proceedings may not be converted into a cumbersome one by compulsorily applying the entire procedure applicable for the disposal of the suit. Such a view would defeat the very purpose and object of the amendment. It would be sufficient if the civil Court decides the matter after referring to the pleadings and the evidence available on record. Of course, it is needless to observe that whole of the CPC would be applicable depending upon the facts situation and desirability of such an application. The Courts below can always insist upon for compliance of such provisions of the Code of Civil Procedure, which may be necessary for the disposal of the case. But, the parties to the claim petition cannot insist upon the Court to follow the entire procedure commencing right from Order 1 to Order XX of the Code of Civil Procedure, which is applicable for the disposal of a suit.

28. For all the aforesaid reasons, I hold that the trial Court did not commit any illegality or irregularity in allowing the claim applications filed by the respondents/ claim petitioners. The findings are based on both oral and documentary evidence. The procedure adopted by the Court below is consistent with the Code of Civil Procedure. The parties have been provided with reasonable opportunity to lead evidence and make their submissions in the matter. In fact, the emphasis in the instant case by the appellants/decreed holders is with regard to the procedure adopted, but, not about the findings as such. The attempt of the appellants/decreed holders is to get the matter remitted for fresh consideration on the ground of procedural irregularity.

29. For all the aforesaid reasons, all these civil miscellaneous appeals fail and they are accordingly dismissed. Each party shall bear their own costs.