

(2016) 07 AP CK 0044

In the Andhra Pradesh High Court

Case No : C.M.A. Nos. 825 & 826 of 2014

Bhargavi Real Estate Private Limited

APPELLANT

Vs

Kolanu Janardhana Reddy

RESPONDENT

Date of Decision : 04-07-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 14A

Citation : (2016) 5 ALT 585 : (2016) 6 AndhLD 10 : (2017) 1 ICC 227

Hon'ble Judges : Sri Sanjay Kumar and Dr. B. Siva Sankara Rao, JJ.

Bench : Division Bench

Advocate : Mr. M.V.S. Suresh Kumar, Counsel, for the Appellant; Mr. M. Achutha Reddy, Counsel, for the Respondent Nos.1 and 2

Final Decision : Allowed

Judgement

Sri Dr. B. Siva Sankara Rao, J.—The appellant in CMA.No.825 of 2014 was the 4th defendant in O.S.No.22 of 2011 on the file of I Additional District Judge, Nalgonda. The appellant Nos.1 to 12 of CMA.No.826 of 2014 are the defendant Nos.17, 34, 45, 51, 54, 64, 75, 81, 84 to 87 in the above mentioned suit. The 4th defendant as petitioner in I.A.No.364 of 2014 and the other defendants supra as petitioners in I.A.No.538 of 2014 maintained two applications against the two plaintiffs by name K. Janardhan Reddy and Kolanu Rama Swamy Reddy Memorial Trust, represented by said K. Janardhan Reddy and by showing the other defendants out of 102 defendants in O.S.No.22 of 2011 as co-respondents, to set aside ex parte decree dated 20.09.2012 passed against them respectively and permit them to contest the suit by filing written statement.

2. The plaintiffs supra filed the suit against 102 defendants mentioned supra for the reliefs of declaration of 1st plaintiff is absolute owner of the plaint schedule property with consequential permanent injunction restraining the defendants from interfering with so called possession of the plaintiff over the plaint schedule property consisting of Ac.24-03 guntas agricultural dry land in S.Nos.28/A of Ac.4-11 guntas, 55/AA of Ac.10-35 guntas and 65/A of Ac.8-37 guntas of

Dandumalkapur Village of Choutuppal Mandal, Nalgonda District within the boundaries prescribed respectively in the schedule. In the array of the plaint as also can be seen from the copy of plaint and the trial Court's decree dated 20.09.2012 in question, there is nothing to show any of the 102 defendants are represented by any of the power of attorney holders or agents. There is no separate address given to any of the 102 defendants in the plaint long cause title as contemplated by Order 7, Rule 1 (b) & (c) CPC, but for showing as if all are C/o. S. Sudhakar Reddy (6th defendant Manager, GM City, Dandumalkapur Village, Choutuppal Mandal, Nalgonda District). There is no such description contemplated to furnish so vaguely even from reading of clause (c) of Order 7, Rule 1 CPC and in fact Order 6, Rule 14 A CPC mandates that the pleadings filed by a party shall be accompanied in the statement by a prescribed form, as provided in Rule 14, regarding the address of the party.

3. Order 6, Rule 14 A CPC is as follows:

"14A. Address for service of notice: - (1) Every pleading, when filed by a party, shall be accompanied by a statement in the prescribed form, signed as provided in rule 14, regarding the address of the party.

(2) Such address may, from time to time, be changed by lodging in Court a form duly filled up and stating the new address of the party and accompanied by a verified petition.

(3) The address furnished in the statement made sub-rule (1) shall be called the "registered address" of the party, and shall, until duly changed as aforesaid, be deemed to be the address of the party for the purpose of service of all processes in the suit or in any appeal from any decree or order therein made and for the purpose of execution, and shall hold good, subject as aforesaid, for a period of two years after the final determination of the cause or matter.

(4) Service of any process may be effected upon a party at his registered address in all respects as though such party resided there at.

(5) Where the registered address of a party is discovered by the court to be incomplete, false or fictitious, the Court may, either on its own motion, or on the application of any party, order-

(a) in the case where such registered address was furnished by a plaintiff, stay of the suit, or (b) in the case where such registered address was furnished by a defendant, his be struck out and he be placed in the same position as if he had not put up and defence.

(6) Where a suit is stayed or a defence is struck out under sub-rule (5), the plaintiff or, as the case may be, the defendant may, after furnishing his true address, apply to the Court for an order to set aside the order of stay or, as the case may be, the order striking out the defence.

(7) the Court, if satisfied that the party was prevented by any sufficient cause

from filing the true address at the proper time, shall set aside the order of stay or order striking out the defence, on such term as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit or defence, as the case may be.

(8) Nothing in this rule shall prevent the Court from directing the service of a process at any other address, if, for any reason, it thinks fit to do so."

4. From reading of the Order 6, Rule 14 A CPC supra, it is the duty of the plaintiff while filing the plaint to furnish the registered addresses of each of the defendants for purpose of service of all process in the suit with any change of address known from time to time so as to effect the service on the party respectively at the registered address for filing process to that address. In fact, Sub Rule 5 of Order 6, Rule 14 A CPC even shows not only duty of the party from above but also duty of the Court that where the address is incomplete or false or fictitious, the court may either on its own motion or an application of any party where it is the plaintiff furnished the address to stay the suit and where the address by the defendants, to struck off his defence as if he did not put forth his defence and it is only after furnishing the true and correct address to enable the party to apply to the Court for an order to set aside the order of stay or order striking out the defence, that too on showing to the satisfaction of the Court of party was prevented by a sufficient cause from filing true address at the proper time, leave about the power of Court to direct service of process at any other source which it thinks fit from further reading of sub rules 6 to 8 of Order 6, Rule 14 A CPC supra. The plaint ought not to have been numbered from the mandatory requirements for registered address required to be furnished is not furnished with each of the defendants name, fathers name and address to serve the process for securing appearance. Even numbered, the Court could not have been allowed without furnishing the correct address, to proceed with the matter for non-furnishing of the registered address but for to stay the suit proceedings till such furnishing. It was not done in the case on hand. It appears only on the C/o. address notice served on the 6th defendant and there is no service individually much less to the acknowledgment with proof on other defendants 1 to 102 other than 6th defendant supra respectively i.e., required for service contemplated by Order 5 CPC either on the defendants or his agent if any duly recognised contemplated by Order 3 CPC particularly Rule 6 Order 3 CPC. It is not even a pleading much less shown in the plaint anywhere including the long cause title or short cause title of 6th defendant is agent as contemplated by Order 3, Rule 6 CPC for other defendants among 1 to 102 supra. It is pursuant to the service on 6th defendant, it appears he filed written statement before the trial Court. The 6th defendant received the summons only for himself and refused to receive the summons sent to him for other defendants as in his care of address. It is not even the case of all other defendants are residing with and in same premises of 6th defendant so to mention or for the summons returned as refused by 6th defendant. Therefrom also there are no summons served and the trial Court could not set ex parte all other defendants, but for directing to take notice afresh

to correct address by so furnishing. It is a wrong committed by the trial court thereby in setting them ex parte by unmindful of the provisions and fallen pray to the deception of the plaintiffs on the Court.

5. The plaint filed was in June 2011 and the written statement of the 6th defendant filed was in the 1st week of August 2011, through his advocate, that too while admitting the plaint contents as if 1st plaintiff is absolute owner of the suit schedule property in saying 1st plaintiff purchased from Cooperative Tenant Farming Society, Malkapur, to which he was a member for valuable consideration and in possession and by admitting other plaint averments as true including Para 8 and 9 saying defendant Nos.7 to 102 have paid money for house sites to defendant Nos.1 to 5 and demanded the site manager to locate their plots in suit schedule property, which is in the possession of the 2nd plaintiff and also by saying plaint Para 10 averments of plaint are all true, however ultimately in saying to dismiss the suit with costs. If at all the 6th defendant to concede the suit claim, he could have done so as contemplated by Order 10 CPC by appearance without need of filing any written statement, but for to show a colourable contest and disposal if any and for reasons better known.

6. The trial Court pursuant to the written statement though practically no issues arise for no dispute involved from the said written statement of the 6th defendant by showing as if defendant Nos.1 to 5 and 7 to 102 remained ex parte, practically ignoring the factum of there is no service much less personally on the defendant Nos.1 to 5 and 7 to 102, formulated and settled the issues as to the plaintiffs are entitled to declaration of 1st plaintiff is absolute owner of the suit property and entitled to perpetual injunction as prayed for and recorded the evidence of 1st plaintiff as PW.1 and one Ram Reddy as PW.2 and the 6th defendant as DW.1 and by exhibiting 25 documents on behalf of plaintiffs with no documents on behalf of 6th defendant under the colourable contest, decreed the suit on 20.09.2012.

7. The judgment though practically ex parte, but for 6th defendant by filing written statement conceding the suit claim with no contest participated shown in the suit record as if a contest, refers at Para-2 gist of the written statement of conceding the suit claim and at Para 12 the evidence of DW.1-6th defendant in the cross examination saying he admits the title and possession of plaintiffs and there is nothing to show E. Venkata Swamy, the then president is competent to transfer the property, in the absence of any resolution passed by General Body or approval by Managing Committee, thereby relying on said evidence decreed the suit. As discussed supra, it is practically an ex parte decree, in particular so far as defendant Nos.1 to 5 and 7 to 12 concerned.

8. It is pursuant to which on coming to know of said decree, the respective petitioners i.e., 4th defendant in I.A.No.364/2014 and some of the other defendants out of 102 defendants referred supra in I.A.No.538/2014, filed the applications to set aside the impugned decree.

8(a). Their respective affidavit averments in nutshell show the suit was presented on 03.06.2011 as can be seen from the record by showing C/o. address of all defendants as if under 6th defendant though they have their own permanent addresses with different families and different residential houses in different places, with some malafide intention on the part of the plaintiffs in showing wrong addresses, as if all other defendants under C/o. address of D.6-Sudhakar Reddy though he is no way concerned with any of the defendants, but for henchman of the plaintiffs in cause serving summons and notices only on 6th defendant without any service on defendant Nos.1 to 5 and 7 to 102 and by keeping them in dark and managing to cause set them ex parte in the suit on 07.11.2011. It is from that collusion between the plaintiffs and 6th defendant in cause filing a written statement in support of the false claim of plaintiffs by admitting the suit claim through him and obtained a fraudulent and collusive decree.

8(b). It is further contest of 4th defendant that he is concerned with an extent of Ac.10-35 guntas in survey No.55/AA and Ac.4-11 guntas in S.No.28/A out of the plaint schedule property, which he purchased from defendant Nos.1 to 3 for valuable consideration and divided the same into house plots and converted the land into house plots and sold many of the house plots to various persons out of it. While so on 08.08.2013, the petitioner/D.4 was undertaking the work of levelling the land, the plaintiffs came to the suit property and tried to obstruct the 4th defendant of his work by exhibiting the collusive decree, to his shock and surprise. He immediately cause verified the matter and came to know all these facts of their succeeding in getting a decree fraudulently and under that guise, the plaintiffs want to occupy the property, which made them to file the petition to set aside the said decree which is within time of 30 days from the date of their knowledge for there is no service of summons.

8(c). Similar affidavit contest of the 17th defendant on behalf of some of the defendants referred supra in I.A.No.538 of 2014, he purchased house plot of 500 square yards vide plot No.66 in S.No.28 from the 4th defendant under registered sale deed of 2001, his grand son by name Pavan Kumar Reddy purchased another 500 square yards vide plot No.65 in S.No.28 from 4th defendant in 2001, D.25-Ch.Sanjeeva purchased 500 square yards vide plot No.65 in S.No.28 from 4th defendant in 2004, D.34-V.R.N.Reddy purchased 1000 square yards covered by plot Nos.54 & 55 from 4th defendant in 2000 and also purchased 2 more plot Nos.98 & 99 of 1216 square yards in S.No.28 from 4th defendant in 2001 and D.34 subsequently donated 1216 square yards of house plots to his daughter Smt. V. Namratha Reddy vide gift settlement deed of 2012, D.45-Smt. G.V.V. Laxmi purchased 300 square yards vide plot No.714/32 in S.No.28 from 4th defendant in 2004, D.51 - J. Sathish purchased 300 square yards vide plot No.714/37 in S.No.28 from 4th defendant in 2006, D.53 - K. Santhosh purchased 500 square yards vide plot No.965/1 in S.No.28 from 4th defendant in 2003, D.54 - K. Uma Maheshwar purchased 500 square yards vide plot No.966 in S.No.28 from 4th defendant in 2003, D.64 - Pamu Kishor Kumar purchased 500

square yards vide plot No.977 in S.No.28 from 4th defendant in 2001, D.65- Bandela Sudhakar Reddy purchased 500 square yards vide plot No.978 in S.No.28 from 4th defendant in 2004, D.74 - G. Saraswathi purchased 500 square yards vide plot No.991 in S.No.55 from 4th defendant in 2004, D.75 - G. Rajendar purchased 500 square yards vide plot No.992 in S.No.55 from 4th defendant in 2004, D.81 - D. Laxmi Narsaiah purchased 500 square yards vide plot No.999 in S.No.55 from 4th defendant in 2004, D.82 - D. Lalitha purchased 500 square yards vide plot No.998 in S.No.55 from 4th defendant in 2003, D.84 - Ch. Venu Kumar purchased 500 square yards vide plot No.1004 in S.No.55 from 4th defendant in 2004, D.85 - M. Krishnaiah purchased 500 square yards vide plot No.1005 in S.No.55 from 4th defendant in 2004, D.86 - D. Prabhakar Reddy purchased 500 square yards vide plot No.1006 in S.No.55 from 4th defendant in 2004 and D.87 - P. Krishna Reddy purchased 500 square yards vide plot No.1007 in S.No.55 from 4th defendant in 2004. It is therefrom sought for setting aside the ex parte decree saying it is a fraudulent one and obtained behind back of the defendants and without service.

8(d). The counter affidavit filed by the 1st plaintiff in opposing the two applications filed under Order 9, Rule 13 CPC are that, said averments respectively are not correct, 6th defendant is the site manager of defendant Nos.1 to 4 of Dandumalkapur. Several defendants purchased lands from defendant Nos.1 to 4, and 6th defendant site manager is known to all defendants and thereby plaintiffs mentioned for all defendants as C/o. address of 6th defendant, who informed to all other defendants about the suit filed and pending against them and 6th defendant refused to receive summons as per the instructions of other defendants. It is further contended that 1st plaintiff filed a criminal complaint in Choutuppal Police Station against all defendants of the suit under Sections 447, 427 and 506 IPC pending as C.C.No.279/2011 from the police final report on the file of Judicial First Class Magistrate Court, Ramannapet and they are defending the criminal case by engaging advocates and there was a compromise of the matter along with the suit claim in the police station with oral assurance of not to interfere with the possession and enjoyment with the suit property of the plaintiffs and thereby, the criminal complaint mentions pending of the suit and the injunction orders passed and thereby they got knowledge and some of the defendants filed suits for injunction in regard to schedule property against the plaintiffs, which are pending on the file of Junior Civil Judge, Ramannapet and Senior Civil Judge, Bhongir. It is contended therefrom that all they got knowledge of the suit and the decree passed therein from written statement contest of 6th defendant, who also deposed as DW.1 and thereby it is not an ex parte decree but for contested decree. It is also averred that after passing of the decree, plaintiffs alienated part of suit property to third parties, who made several constructions with permission of Panchayat in the year 2013, and the defendants have no manner of right in seeking for setting aside the decree alleging as fraudulent decree and obtained deceitfully. It is further averred that defendant Nos.1 and 2 given GPA to defendant Nos.3 and 4 and

they in turn sold the property to other defendants and created revenue records and bogus documents by managing revenue authorities and the petition averments of the decree in question is collusive and fraudulent are devoid of truth and the contested decree does not fall within the meaning of ex parte decree. It is the contest further that petitions to set aside the decree must be filed within 30 days from the date of decree and the petitions not so filed are barred by time and sought for dismissal of the petitions for non-diligence.

9. It is pursuant to which by separate orders passed by the learned I Additional District Judge, Nalgonda vide dated 02.08.2014 the petitions to set aside ex parte decree were dismissed with observation that, but for 6th defendant, other defendants remained ex parte and 6th defendant contested by filing written statement and deposed as DW.1. The suit was decreed on merits. From the counter contest in the two applications to set aside the ex parte decree invoking Order 9, Rule 13 CPC, the plaintiffs/respondents stated that they filed criminal complaint against all the defendants in Choutuppal Police Station and police filed final report and they were while defending by engaging advocates, there was a compromise in the police station also regarding the suit claim with oral assurance by defendants of not to interfere with the plaintiffs possession of the suit property and thereby it cannot be said they have no knowledge about the institution of the suit and obtaining of decree and in a decision of the Madras High Court in P. Muthusamy and Another v. P. Sekar, AIR 2009 (NOC) 921 (MAD.), it was held merely because some respondents were set ex parte on account of non-appearance, the decree cannot be construed as ex parte decree. Once there is a contest judgment, Order 9, Rule 13 CPC has no application and the proposition applies to the case on hand from the counter averments show the defendants/petitioners got knowledge of the suit and the decree passed. The lack of knowledge stated by them in the applications cannot be taken into consideration and the petitions are also barred by limitation. The orders dismissing the applications are impugned in these two civil miscellaneous appeals.

10. Heard learned counsel for the appellants respectively and also learned counsel for the plaintiffs/contesting respondents and perused the material on record.

11. As referred supra, even from the counter contest there is admittedly no addresses of the defendants separately furnished and no summons to any registered address of the defendants issued or obtained and there was no even any service of notice and it is the counter contest saying the 6th defendant to whose C/o. address summons of all defendants sent, refused to receive and therefrom they were set ex parte and only 6th defendant filed written statement and deposed as DW.1 and thereby it is the contention of not an ex parte decree but a contest decree and Order 9, Rule 13 CPC has no application. The said contention is baseless on its face. As contended by the defendants in their applications to set aside the ex parte decree and perusal of the factual matrix from the material on record referred supra, it clearly shows nothing but a

collusive and fraudulent decree obtained behind the back of the defendant Nos.1 to 5 and 7 to 102. Once as referred supra from Order 7 and Order 6 CPC it is the duty of the plaintiff to furnish in the full cause title and separate and independent addresses which are known as registered address for service of all the defendants and the same was not furnished and even from the counter averments of the summons taken only to the C/o. address of 6th defendant, who refused to receive and not a case of taking notice to the individual addresses of any of the defendants other than 6th defendant among defendant Nos.1 to 102 and not even an averment of all they are residing in the premises of the 6th defendant even to say any of their refusal to set ex parte of all of them for refusal by 6th defendant. The trial Court should not have been set them ex parte but for ordering fresh notice to correct address. It is the fundamental principle from the latin maxim *actus curiae neminem gravabit* that act of court shall prejudice no man unless sanctioned by law. Such a recourse without any sanction by law for the trial Court either to number the plaint without furnishing in full cause tile of all the defendants their present residential address which is their registered address for service of summons on all the defendants and even numbered, duty of Court to see with a direction to furnish the registered addresses respectively of all to serve individually even to set ex parte later only on proof of service to the respective registered address to each of the defendants, that was not done and even the only other remedy statutorily open to the Court as referred supra is to stay the suit proceedings till furnishing of correct registered address of all the defendants and instead, the trial Court went wrong and committed an illegality in setting the defendants ex parte without even taking notice of the factum of no summons taken to the defendants to their respective individual addresses and there was no service or even deemed service on any of the defendants other than 6th defendant to set ex parte. It is totally ignored by the trial Court of not even a case 6th defendant is an agent recognised for any of the defendants to take the summons to the C/o. address of him. In the absence of which, a combined reading of Orders III & V CPC no way contemplates of service of summons of other defendants on the 6th defendant and to treat his refusal on behalf of defendant Nos.1 to 102 as if a sufficient service to set the defendants ex parte.

12. Once the necessary facts brought to the notice of the trial Court, which clearly proves the fraud played by the plaintiffs, for no Court to perpetrate the same, the trial Court should have been set aside the decree passed without service of summons against the defendants, that too when they sought for by invoking inherent power which inheres in every Court from its very constitution with all its elasticity to the necessity to sub serve the ends of justice and to prevent abuse of process. The trial Court instead of doing so, committed further wrong in saying as if filing a criminal complaint or mentioning about filing a suit constitutes knowledge about the suit proceedings and as if therefrom duty caste on the alleged accused of the criminal complaint to appear before any civil Court by making an enquiry from the suit number even furnished and to appear and

participate. Same is not contemplated by law as an obligation or a duty by any stretch of imagination for the trial court to went to such a conclusion from such a baseless contention raised in the counter of the plaintiffs in opposing the applications to set aside the ex parte decree.

13. As held by this Court in *Maganti Kanaka Durga v. Maganti Anil Kumar*, (2015) 5 ALD 375, the decree passed by the trial Court is nothing but an ex parte decree for all the defendants other than the 6th defendant who colluded with plaintiffs by colourable contest conceding the suit claim including in his evidence participated to show as if it is a contested decree and it is not contemplation of law to consider the decree as a contested decree and thereby it is nothing but practically an ex parte decree and the trial Court totally ignored this aspect also in dismissing the applications. Further, when Order 9, Rule 13 CPC says within 30 days from the date of knowledge the decree can be sought to set aside ex parte, it is unknown how the trial Court could come to the conclusion of the applications are filed beyond 30 days of knowledge from nothing proved from record to attribute knowledge before. Thereby the finding of the applications are barred by limitation is also unsustainable for absence of any material and in the absence of such showing even by the respondents/plaintiffs.

14. Having regard to above, the ex parte decree passed by the trial Court in the suit not only against respective defendants applicants but also against all other defendants is liable to be set aside in to for no service of summons other than against 6th defendant.

15. Accordingly and in the result, the C.M.A. Nos.825 & 826 of 2014 are allowed by setting aside the dismissal orders of the trial court dated 02.08.2014 in I.A. Nos.364 & 538 of 2014 and by allowing the petitions I.A. Nos.364 & 538 of 2014. The trial Court is directed consequently to restore the suit and treat the evidence recorded behind the back of the defendants with no value to use in future. The defendant Nos.4, 17, 34, 45, 51, 54, 64, 75, 81, 84 to 87 are directed to appear before the trial Court within one month from the date of receipt of this order and file their written statement/s within 15 days thereafter. The trial Court has to proceed further according to law after recording the appearance of the respective petitioners/defendants herein and by ordering summons to all other defendants to their correct addresses to be furnished by plaintiffs.

16. Pending Miscellaneous Petitions if any in C.M.A. Nos.825 & 826 of 2014 shall stand closed. No order as to costs.