

(2011) 04 SC CK 0069

In the Supreme Court Of India

Case No : Civil Appeal No. 6409 of 2002

Dr. Shehla Burney and Others

APPELLANT

Vs

Syed Ali Mossa Raza (Dead) by L.Rs. and Others

RESPONDENT

Date of Decision : 21-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 5, Order 7 Rule 7, 100
Limitation Act, 1963 — Article 65

Citation : (2011) AIRSCW 2694 : (2011) 4 AWC 3624 : (2011) 5 JT 137 :
(2011) 3 LW 62 : (2011) 5 MhLj 340 : (2011) 4 MPLJ 40 : (2011) 164 PLR 127 :
(2011) 3 RCR(Civil) 345 : (2011) 113 RD 456 : (2011) 4 SCALE 838 : (2011) 6
SCC 529 : (2011) 3 Supreme 401

Hon'ble Judges : G. S. Singhvi, J;Asok Kumar Ganguly, J

Bench : Division Bench

Advocate : Huzefa Ahmadi, Ejaz Maqbool, Wajid Ali Kamil and Sakshi Banga, for the Appellant; A.M. Singhvi and V. Giri, Roy Abraham, Kishore Rai, Jaiveer Shergill and Himinder Lal, for the Respondent

Final Decision : Allowed

Judgement

Asok Kumar Ganguly. J.

1. This appeal is from a judgment dated 3rd April 2002 by the High Court of Andhra Pradesh in a First Appeal. The material facts of the case, as appear from the records, are discussed herein below.

2. As asserted by the Appellants, the suit land (Original Suit No. 164/76) falls under Survey No. 129/64. The Respondents No. 1, 2 and 3 were the original Plaintiffs and according to them the suit land falls in Survey No. 129/55. The Appellants herein are the legal heirs of original Defendant No. 2. The Respondents 4/1 and 4/2 are the legal heirs of original Defendant No. 1. Respondents 1, 2 and 3, as noted above, are the original Plaintiffs. The case of the Appellants is that the suit land belonged to one Dr. Zafar Hussain who transferred the same to one Sajid Hassan by a registered sale deed dated

20.1.1950. Thereupon, Sajid Hassan sold on or about 22.7.1963 the said land to Razia Begum, the predecessor-in-title of original Defendant No. 1 by a registered sale deed for a total consideration of Rs. 6000/-. Razia Begum remained in uninterrupted and peaceful possession of the said property from the date of her purchase. On or about 11.08.1963 Razia Begum obtained house construction loan from the Housing Cooperative Society, Mellapelly Limited and thereafter permission for construction was accorded on or about 18.02.1964 by the Hyderabad Municipal Corporation. The original Defendant No. 1 was in possession and enjoyment of the property till it was transferred on 20.6.1973 to one Lateef Hassan Burney, the predecessor-in-title of the Appellants (original Defendant No. 2) as the nominee of the Defendant No. 1 in terms of the rules of the Housing Society. Then, on 4.12.1975, the original suit (O.S.164 of 1976), out of which this proceeding arises, was instituted in the Court of the 4th Additional Judge, City Civil Court, Hyderabad by the Plaintiffs against Razia Begum alleging that the Plaintiffs' father Saiyed Shah Abdul Khader was the Pattedar and Landlord of land bearing Survey No. 129/55 (old), New Survey No. 165 admeasuring 3 Acres and 26 guntas situated at Kachcha Tattikhana Sivar village Shaikpet and the then Taluk West, now Hyderabad Urban Taluk. It was also alleged that the patta was transferred in the name of the father of the Plaintiffs by Sarafe-e-Khas Mubarak on 25th Azar in 1340 Fasli and the father of the Plaintiffs through a registered document Tamleeknama (Settlement Deed) on 10th Aban, in 1347 Fasli which corresponds roughly to the year 1930 transferred the land to his wife Fatima Sogra, the mother of the Plaintiffs. It was further alleged that after the aforesaid transfer the said Fatima Sogra, the Plaintiffs' mother, remained in continuous and exclusive possession of the same till her death on 24.07.1973. On her death the Respondents No. 4/1 and 4/2 illegally occupied the suit land. In the said suit Razia Begum, the predecessor-in-title of Respondent No. 4/1 and 4/2, filed her written statement pleading therein that she is a bone fide purchaser of the suit land by Rs. 6000/- after issuing a public notice in the Daily Siyasat on 19.06.1963. No objections were received from anybody and the sale deed was finally registered with the plan on 22.07.1963. It was also pleaded in the written statement that she obtained the necessary permission for construction and obtained a loan from Housing Cooperative Society and had completed the construction till the basement level. No objection was raised by the Plaintiffs with the construction and she has perfected her title against the Plaintiffs by way of adverse possession. In her written statement she also pleaded that she transferred on 20.6.1973 the property in favour of Lateef Hassan Burney, predecessor-in-title of the Appellants. On the filing of the written statement, Lateef Hassan Burney was impleaded as Defendant No. 2 by an order of the Court dated 4.11.1982.

3. Thereupon, on 18.12.1982, the original Plaintiffs filed an amended plaint impleading Lateef Hassan Burney. Thereafter, another suit was instituted on 15.1.1983 by the Plaintiffs against one Prahlad Singh, who had illegally occupied a portion of their property falling under Survey No. 129/55 (old). It may be

noted that in the subsequent suit Prahlad Singh did not dispute the fact that the suit property is part of Survey No. 129/55 (old). Thereupon, in O.S. No. 164 of 1976, the Defendant No. 2, predecessor-in-title of the Appellants, filed his separate written statement stating therein that the property belongs to Razia Begum, the original Defendant No. 1, before it was transferred in his name and the Razia Begum had perfected her title by adverse possession against Plaintiffs.

4. Then, the witnesses were examined by the Trial Court. Then by an order dated 19.12.1983 the trial Court appointed a Court Commissioner. The Court Commissioner with the help of a surveyor submitted a report on 25.4.1984.

5. Ultimately, by judgment dated 19.9.1985, the suit was dismissed and being aggrieved by the same an appeal was filed before the High Court in the year 1986. The High Court again by an order dated 5.2.2002 appointed an Advocate Commissioner to determine the location of the property which, according to the original Plaintiffs-Respondent, was falling in Survey No. 129/55(old). However, the contention of the Appellants is that the property was falling in Survey No. 129/64.

6. The Advocate-Commissioner appointed by the High Court submitted a report along with a Map in which it has been shown that the suit property falls under Survey No. 129/55(old) but that finding has been reached on the basis of the judgment and order in O.S. No. 331/1980 which was between the original Plaintiffs and one Sardar Prahlad Singh. In that suit (Suit No. 331/1980) no issue relating to the fact that the property of Prahlad Singh was in any other survey number than Survey No. 129/55(Old) was raised.

7. The learned Judge of the High Court framed the following three issues for consideration:

(a) Whether the suit land is in S. No. 129/55 as claimed by the Plaintiffs or in S. No. 129/64 as claimed by the Defendants.

(b) Whether the Defendants have perfected their title in respect of the suit land by adverse possession.

(c) What is the relief that the Plaintiffs are entitled to.

8. On the aforesaid three issues, the High Court in the impugned judgment gave a finding in respect of each one of the issues. In respect of issue (a), the High Court held that the suit property fell in Survey No. 129/55 (old) new No. 165 situated at Kachcha Tattikhana Sivar village Saikpet, Hyderabad and not in Survey No. 129/64. In respect of issue (b), the High Court came to a finding that the Defendants have failed to establish their plea by way of adverse possession. In respect of issue (c), the High Court came to a finding that the Plaintiffs are entitled to a decree for possession in the suit.

9. Against the said judgment, the present Appellants filed a Letters Patent Appeal before the Division Bench of the High Court. But in view of the judgment of the

High Court in *S. Shivraja Reddy and Ors. v. Raghuraj Reddy and Ors.*, the Division Bench of the High Court held that after the amendment of Section 100 of the Code of Civil Procedure, the Letters Patent Appeal filed after 1.7.2002 is not maintainable. The Letters Patent Appeal of the Appellant was returned by the High Court and the Appellants on 7.9.2002 filed a SLP before this Court in which on 27.9.2002 leave was granted and the special leave was converted into this appeal.

10. Mr. Huzefa Ahmadi, learned Counsel appearing on behalf of the Appellants, assailing the impugned judgment raised various issues.

11. The first issue which was raised was that no pleading and no prayer for a decree of possession was made against Lateef Hassan Burney, Original Defendant No. 2 (the Predecessor in title of the Appellants). Attention of this Court was drawn to the original prayer in the plaint and also the prayer in the amended plaint. It was, therefore urged that in the absence of any pleading and prayer for relief against the Defendant No. 2 (Predecessor-in-title of the Appellants), the suit is liable to be dismissed as against Defendant No. 2 in view of the provisions of Order VII of Code of Civil Procedure.

12. The second point urged was that the Respondent Nos. 1 to 3 (contesting Respondents) who are the legal representatives of the Original Plaintiffs, did not prove that the disputed land falls within Survey No. 129/55(old).

13. The third point on which the impugned judgment was assailed was that the contesting Respondents (original Plaintiffs) did not succeed in proving their title in respect of Survey No. 129/55.

14. It was also urged that the suit was barred by limitation under Article 65 of the Limitation Act, 1963 and the High Court should have held that the Appellants had perfected their title by way of adverse possession and even on the ground of equity no decree for possession can be passed in favour of the contesting Respondents who are the successor -in-title of the original Plaintiff.

15. Mr. Giri, learned senior counsel for the Respondents submitted that the suit is for recovery of possession on the strength of title and not a suit for recovery of possession on the strength of possession. According to the learned Counsel the judgment of the High Court is clear that the evidence is not adequate for the Trial Court to prove the title to survey No. 129/55 nor it is adequate to prove that the plaint schedule property is survey No. 129/55. The learned Counsel further questioned the locus standi of the second Defendant to maintain this appeal. The learned Counsel also submitted that there is nothing on record to show the transfer of property in Survey No. 129/64. The learned Counsel ultimately submitted the matter should be remanded to the High Court for rehearing in view of inadequate evidence on record.

16. Considering these rival submissions, this Court is of the view that some of the submissions of the learned Counsel for the Appellants deserve acceptance.

17. The submissions of the learned Counsel for the Appellant that there is no prayer for decree of possession either in the original plaint or amended plaint against original Defendant No. 2 stands proved. The prayers in the original plaint and the amended plaint were placed before us. The prayer in the amended plaint is set out herein below:

(1) that a decree to be passed in favour of the Petitioners against the Defendant for possession of land measuring 2180 square yards situate at village Shaikpet, Banjara Hills, Jubilee Hills, Hyderabad bounded by East: Road, West: Plaintiff's land, North: Road No. 3, South: Road No. 14, as per annexed plan attached to the plaint, in survey No. 129/55 (old), New Survey No. 165, situate at Shaikpet, village, Hyderabad Urban by demolishing the illegal structures on the land;

18. It is clear that in the amended plaint the prayer is against the Defendant, therefore, the prayer is only against Defendant No. 1 and not against Defendant No. 2. In a case where prayer is not made against a particular Defendant, no relief possibly can be granted against him. Reference in this connection can be made to the provisions of Order VII of the Code of Civil Procedure. In this connection, Order VII, Rule 5 is relevant and is set out below:

5. Defendant's interest and liability to be shown. - The plaint shall show that the Defendant is or claims to be interested in subject-matter, and that he is liable to be called upon to answer the Plaintiff's demand.

19. Order VII, Rule 7 of CPC is also relevant and which is also set out below:

7. Relief to be specifically stated.-Every plaint shall state specifically the relief which the Plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the Defendant in his written statement.

20. In Sheikh Abdul Kayum Vs. Mulla Alibhai, it has been held by this Court that it does not lie within the jurisdiction of a Court to grant relief against Defendant against whom no reliefs have been claimed [See paragraph 13, page 313 of the report].

21. Same propositions have been reiterated recently by a judgment of this Court in Scotts Engineering, Bangalore Vs. Rajesh P. Surana and Others, . In paragraph 10 at page 258 of the report this Court found that even after the Appellant was arrayed as Defendant 6, the Plaintiff did not care to amend the plaint except making the Appellant as Defendant 6. No relief was claimed against Defendant 6. If we follow the said principle in the facts of this case we have to hold that no relief having been claimed against Defendant 2, who is the predecessor-in-title of the present Appellant, no relief can be granted against the present Appellant.

22. The objection of the Respondent that such point is taken only before this Court and not at an earlier stage of the proceeding cannot be countenanced

since this point goes to the root of the matter and for consideration of this point no further investigation in the facts of the case is necessary. This point actually appears from the admitted records of the case and this point is based on the provisions of the Code of Civil Procedure.

23. In this connection principles which have been laid down by Lord Sumner in *Surajmull Nagoremull v. Triton Insurance Co. Ltd.* 52 IA 126, are very pertinent. The learned Law Lord summarized the proposition so lucidly that we should do nothing more than quote it:

...No court can enforce as valid that which competent enactments have declared shall not be valid, nor is obedience to such an enactment a thing from which a court can be dispensed by the consent of the parties, or by a failure to plead or to argue the point at the outset.

24. The aforesaid propositions have been quoted with approval by this Court in *Seth Badri Prasad and Others Vs. Seth Nagarmal and Others*, at page 562.

25. Similar views have been expressed by this Court again in *Tarini Kamal Pandit and Others Vs. Prafulla Kumar Chatterjee (Dead) by Legal Representatives*, . After considering several decisions, including the one rendered in *Badri Prasad (supra)* this Court held as follows:

...As the point raised is a pure question of law not involving any investigation of the facts, we permitted the learned Counsel to raise the question.... (para 15 at page 1172)

26. In our view this point is sufficient to hold that the judgment of the Hon'ble High Court is not sustainable in law.

27. Apart from this, this Court finds that the Appellants had been in peaceful possession of the disputed property from July 1963 and their predecessor-in-interest was in possession of the same property from 1950 till the property was transferred by her to Lateef Hassan Burney, predecessor-in-title of the Appellant. After such transfer the construction started on the property and the Appellants have been residing there since 1964 and the suit came to be filed only in 1975. Even in that suit after impleading the original Defendant No. 2 no relief has been claimed against him.

28. In view of the aforesaid admitted factual position and the legal questions discussed above, this Court cannot affirm the views taken by the High Court. The judgment of the High Court is set aside and that of the Trial Court is affirmed. The appeal is allowed. There will be no order as to costs.