
(2004) 02 AP CK 0066
In the Andhra Pradesh High Court
Case No : SA No. 1035 of 2001

Government of Andhra Pradesh and Others	APPELLANT
Vs	
M.A. Razack	RESPONDENT

Date of Decision : 12-02-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2004) 2 ALD 800

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Government Pleader for Assignments, for the Appellant; A. Anantha Reddy, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The Government of A.P. represented by its Chief Secretary and two others, the unsuccessful defendants in O.S. No. 260 of 1985 on the file of VIII Assistant Judge, City Civil Court, Hyderabad and in A.S. No. 115 of 1995 on the file of II Member Tribunal For Disciplinary Proceedings-cum-VII Additional Chief Judge, City Civil Court, Hyderabad, had preferred the present Second Appeal assailing the concurrent findings recorded by both the Courts below raising the following substantial question of law.

"Whether the Civil Court has jurisdiction to entertain a suit in view of the bar imposed by Section 46 of the Administration of the Evacuee Property Act, 1950 when the property was declared as evacuee property ?"

2. The learned Government Pleader for Land Ceiling in all fairness had submitted that except the above substantial question of law, no other substantial question of law would arise for consideration in the present Second Appeal and all other questions are only ancillary questions in relation thereto. The learned Counsel also would maintain that no doubt, concurrent findings had been recorded by both the Courts below, but however, in the light of Exs.B-3, B-4, B-7, B-8 and

B-10 definitely it can be taken that this is a notified evacuee property and since it is a question relating to the jurisdiction of the Civil Court to entertain the suit, the same can be raised at any point of time. The learned Counsel also had pointed out that though a specific plea in this regard was not taken and no issue relating thereto was framed, it is not as though the respondent-plaintiff had been taken by surprise since this aspect was raised and argued in detail even in the Court of first instance and the same was discussed at length by the learned VIII Assistant Judge, City Civil Court, Hyderabad at para No. 13 of the judgment. The learned Counsel also submitted that though Exs.B-1 to B-10 were marked on behalf of appellants-defendants, none had been examined. But, however, in the light of Sections 28 and 46 of the Administration of the Evacuee Property Act (hereinafter referred to as the "Act" for the purpose of convenience), the jurisdiction of the Civil Court definitely can be said to be barred to entertain a suit of this nature. The learned Counsel also made elaborate submissions in relation to the nature of the prayer which had been prayed for in this suit and had concluded that these reliefs definitely cannot be granted by the Civil Court. Then the disputed question in controversy is whether the property is evacuee property or not. The learned Counsel had also taken this Court through the relevant provisions of the Act in detail in this regard.

3. Per contra, Sri A. Anantha Reddy, the learned Counsel representing the respondent-plaintiff had taken this Court through the evidence of P.W.I and also Exs-A-1 to A-18 in detail and had commented that though a question relating to jurisdiction of the Civil Court had been raised, in the facts and circumstances, it cannot be said that it is a pure question of law and such ground may have to be substantiated by sufficient material. The learned Counsel for the respondent-plaintiff also would maintain that there was no plea in the written statement nor any issue was framed in this regard, except making certain submissions at the time of arguments and definitely this would not be sufficient for the purpose of substantiating the question of jurisdiction. The learned Counsel for the respondent-plaintiff also had drawn attention of this Court to Exs.A-1 and A-3 title deeds and also Exs.A-2 and A-4 plans annexed thereto. The learned Counsel for the respondent-plaintiff also had drawn the attention of the Court to Ex.A-5 the judgment of this Court dated 15-11-1988 in Writ Petition No. 2270 of 1985 quashing the Government's claim in relation to the land in question. The learned Counsel for the respondent-plaintiff also submitted that no further action had been initiated in pursuance of the directions if any, made in the said writ petition and the said order had attained finality. The learned Counsel for the respondent-plaintiff also made elaborate submissions in relation to Ex.A-16 equallent to Ex.B-1 Memorandum dated" 6-12-1967 and had contended that in the light of the same, it cannot lie in the mouth of the Government to contend otherwise. The learned Counsel for the respondent-plaintiff also referred to Exs.A-17 and A-18 the judgments of the Special Court under A.P. Land Grabbing Act, dated 28-7-1993 and had submitted that these judgments would amply establish the case of the respondent-plaintiff. The learned Counsel for the respondent-plaintiff

also placed reliance on a decision reported in Siddu Venkappa Devadiga Vs. Smt. Rangu S. Devadiga and Others, and had contended that the Appellate Court normally cannot go outside the pleadings and make out a new case. The learned Counsel for the respondent-plaintiff ultimately concluded stating that at any rate no one was examined on behalf of the appellants and in the absence of any material so show that the property is a declared evacuee property, there is no question of considering the question whether the suit is barred by virtue of the provisions of Sections 28 and 46 of the Act or not. The learned Counsel for the respondent-plaintiff ultimately concluded that this being a Second Appeal and concurrent findings had been recorded by both the Courts below, such findings not to be disturbed by this Court.

4. Heard both the Counsel. Perused the oral and documentary evidence available on record and also the findings recorded by the Court of first instance and also the findings recorded by the appellate Court as well. The respondent-plaintiff pleaded in O.S. No. 260 of 1.985 on the file of VIII Assistant Judge, City Civil Court, Hyderabad as hereunder:

"The plaint schedule property is part of plot No. 8-D in Survey No. 403 (New) and 129(old) in Road No. 3 of Banjara Hills, Hyderabad which consists of an area of Ac.3-02 guntas. Out of this land, the plaintiff purchased an extent of 3685 square yards from it's owner under a registered sale deed dated 18-7-1968 and his vendor had purchased the same along with other land on 6-7-1966 from the son of the original pattadar Khaja Mohiuddin Ansari. The plaintiff developed the said land, constructed a boundary wall, constructed a house therein and also fixed a sign board of the name of the plaintiff and names of his children and has been residing there. There are houses on the northern and western side of this property and on the southern side, there is 20 feet wide road a common one, for him and one Bapaiah Chowdhary whose son is now living in the adjoining plot. The Government has no manner of right over the said land. In order to grab this land and other nearby lands, a weaker section of the society made a false representation to the defendants stating that this land is a lawaris land and seeking allotment of the same by which defendants 1 and 2 initiated proceedings of recognition against Khaja Mohiuddin Ansari for which publications were given in "Siasat" on 16-3-1984 and in the Gazettee on 16-8-1984 which are improperly given. The plaintiff could not approach the third defendant within time as he came to know about such publication on 27-1-1985. Later on, he presented a petition before third defendant who refused to accept the same stating that the Defendants 1 and 2 had already cancelled patta and a direction was also issued to the third defendant to resume the land from the possession of plaintiff which, according to plaintiff is illegal, void and arbitrary and without giving any consideration. If such an order is carried out, the plaintiff would suffer irreparable loss and injury and when defendants 1 to 3 have no manner of right to cancel the patta granted in favour of their predecessor in title thus stating the plaintiff has sought for reliefs in this suit."

5. The third defendant in the suit-third appellant herein filed the written statement denying all the allegations and taking a stand that:

"All the sale deeds on which the respondent-plaintiff is relying on are concocted and forged documents. It was further pleaded that the plaintiff did not construct any residential house in that property nor obtained any municipal permission and when there is only small bit of land existing, the payment of land revenue cannot be said to be proper as said land is not an agricultural land. The boundaries of the plaint schedule property are not correct and it called for the strict proof of the ownership of the land by Khaja Mohiuddin Ansari during 1354 fasli and later on, as to it's recognition by the Government of Andhra Pradesh. The re-organisation and resumption was ordered by the Government after taking effective steps and after issuing specific notification and after completing the time limit and de-recognition was given by the Government and the said allotment was given to Ambedkar Huts Welfare Association, Hyderabad. As the objection raised by the plaintiff was the time barred it was rejected and thus the action of the defendants is legal. The land was also taken possession on 4-2-1985 under a panchanama after completion of all formalities and therefore, the plaintiff is not in possession of the suit land. As he is not in possession of this land he will not suffer any injury or damage and he did not issue any notice as he was dispossessed from the land on 4-2-1985. According to the defendants, the suit land is valued at Rs. 1,43,400/- at the rate of Rs. 130/- per sq. yard as fixed by the Government and therefore, the plaintiff has to pay Court fee thereon and as the plaintiff is not in possession of the property as on the date of the suit he cannot claim any injunction and thus on the above grounds, the defendants sought dismissal of the suit."

6. On the strength of the pleadings of the parties, the following issues were settled:

- (1) Whether the plaintiff is entitled for declaration as sought for by him?
- (2) Whether the plaintiff is entitled for perpetual injunction as prayed by him?
- (3) To what relief?

7. On behalf of the respondent-plaintiff, P.W.I was examined and Exs.A-1 to A-18 were marked. On behalf of the appellants-defendants none had been examined, but Exs.B-1 to B-10 were marked. The Court of first instance came to the conclusion that by virtue of the title deeds marked as Exs.A-1 and A-3 the respondent-plaintiff could establish his title to the suit property and also possession as on the date of filing of the suit, and the question of this property being vested in the custodian as evacuee property also had been considered. But, however, the said stand taken by the appellants-defendants was negated after recording reasons at para No. 13 of the said judgment.

8. Aggrieved by the same, the defendants preferred A.S. No. 115 of 1995 on the file of II Member Tribunal For Disciplinary Proceedings-cum- VII Additional Chief

Judge, City Civil Court, Hyderabad and the appellate Court at para No. 9 had framed the point for consideration and had proceeded to discuss all the aspects commencing from para Nos. 10 to 18 and ultimately had arrived at a conclusion that the appeal is liable to be dismissed confirming the findings recorded by the Court of first instance, no doubt without costs. Aggrieved by the same, the present second appeal is preferred.

9. The only substantial question, of law which had been raised and canvassed at length by the learned Counsel representing the appellants has been already specified supra. The evidence of P.W.I available on record, is clear and categorical. P.W.I deposed at length relating to the title to the property especially in reference to Ex.A.1 original sale deed and Ex.A-3 the certified copy of the sale deed and also the plans annexed to Exs.A-1, A-2 and annexed to Ex.A-3, Ex.A-4. The findings in detail had been recorded by both the Courts below on the factual aspects. Apart from it, the certified copy of the Order dated 15-11-1988 in Writ Petition No. 2270 of 1985 would go to show that the claim of the Government in relation thereto had been quashed, no doubt with certain directions. But in pursuance of the said directions, no further proceedings had been initiated. Ex.A-7 is the A.P. Gazettee dated 16-8-1984, Ex.A-8 is the representation of the plaintiff dated 29-1-1985 made to the District Collector, Hyderabad, Ex.A-10 is the demand notice issued by M.C.H., Ex.A-11 is the tax receipt issued by MCH., the intimation relating to the direction to deposit sanction of electricity charges is Ex.A-12, electricity bill is Ex.A13, letter received from Deputy Director, Survey and Settlement dated 18-2-1985 is Ex.A-14 and Ex.A-16 -Ex.B-1 memorandum were marked. Exs.A-17 and A-18 are certified copies of decree and judgment in LGC No. 12 of 1990 on the file of the Special Court under A.P. Land Grabbing Act, dated 28-7-1993 respectively. The findings recorded in Exs.A-17 and A-18 also had been referred to at length and ultimately both the Courts had arrived at a conclusion that the respondent-plaintiff was able to establish his case. At this stage it may be appropriate to have a look at the nature of reliefs prayed for in the plaint. At para No. 19 of the plaint, it was prayed (1) declaring the publication in the daily Siasat News paper dated 15-3-1984 is vague and illegal and also publication of summon in the Gazettee of A.P. issued by the third defendant dated 16-8-1984 is improper and illegal; (2) declaring the order of de-recognition of the allotment of the then H.E.H Nizam Government with respect of land in Sy.Nos.129 old and 403 new and Municipal Plot No. 8-D at Road No. 3, Banjara Hills, Hyderabad and cancellation of its patta granted in the name of Khaja Mohiuddin Ansari by the Defendants 1 and 2 and its implementation by the defendants is null, void and illegal; (3) the perpetual injunction against the Defendants 1 to 3 in their official capacity as public officers and their concerned subordinate officers and officials restraining them from implementing or enforcing the order of resumption passed by Government of Andhra Pradesh Revenue Department in Memo No,I355/Q2/ 84-10 dated 9-1-1985 of the suit property from the plaintiff and his family and thereby disturbing his peaceful possession and enjoyment of the same. On the strength of the A.P. Gazettee

Exs.B-3, B-4 and B-5 now a contention is advanced without raising even a plea in the written statement that inasmuch as this is an evacuee property, a suit of this nature is not maintainable before the Civil Court. As already referred to supra, this contention raised even before the Court of first instance and also before the appellate Court had been negatived. It is needless to say that always it would be essential to have factual foundation unless the plea of jurisdiction is a pure question of law and not a mixed question of fact and law and when there is no controversy at all on the factual aspects. In other words, when on the admitted facts by both the parties, the question of jurisdiction emerges for consideration, a question of implied bar of jurisdiction or explicit bar of jurisdiction or inherent lack of jurisdiction of Civil Court definitely can be raised. But when there is factual controversy, there should be factual foundation by raising a plea and a necessary issue has to be framed and unless that is done it would not be just and proper to entertain such question relating to jurisdiction. The Apex Court in a decision *Siddu Venkappa Devadiga v. Smt, Rangu S. Devadiga and Ors.* (supra), following the views expressed in the decisions in *Trojan and Co. Ltd. Vs. Rm. N.N. Nagappa Chettiar*, and *Raruha Singh v. Achal Singh* AIR 1961 SC 1097, had expressed the same view. It is no doubt true that Section 28 of the Act dealing with finality of orders under this chapter specifies:

"Save as otherwise expressly provided in this chapter, every order made by the Custodian-General, Custodian, Additional Custodian, Authorized Deputy Custodian, Deputy Custodian or Assistant custodian shall be final and shall not be called in question in any Court by way of appeal or revision or in any original suit, application or execution proceedings."

10. Likewise Section 46 of the Act dealing with jurisdiction of Civil Courts bar in certain matters reads as herejunder:

"Save as otherwise expressly provided in this Act, no Civil or Revenue Court shall have jurisdiction:

(a) to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not evacuee property or

(b) x x x

(c) to question the legality of any action taken by the Custodian-General or the Custodian under this Act or

(d) in respect of any matter which the Custodian General or the Custodian is empowered by or under this Act to determine."

11. There cannot be any controversy that a Civil Court cannot entertain or adjudicate upon the question whether any property or any right or interest in any property is or is not evacuee property. But there should be a foundation on facts in the respective pleadings of the parties. As already referred to supra, not only that such plea was not raised nor an issue in this regard was framed but also except marking certain documents, the Gazettes, etc., no evidence had been let

in on behalf of the appellants-defendants. In the light of the peculiar facts and circumstances, especially in the absence of any material to negative the clearly proved facts on the strength of Exs.A1, A-2, A-3 and A4 well supported by the other material available on record namely Exs.A-17 and A18 and also Exs.A5 and A16 = Ex.B1, I am of the considered opinion that both the Courts had recorded correct concurrent findings on appreciation of the material available on record and hence I do not see any reason to disturb those findings at the stage of Second Appeal. It is needless to say that inasmuch as except the aforesaid question, no other question had been canvassed by the respective Counsel representing the parties, the second Appeal is devoid of merits and the same shall stand dismissed. No costs.