
(2001) 01 AP CK 0020
In the Andhra Pradesh High Court
Case No : CRP No. 5193 of 1997

Mogulla Ailamma and others	Vs	APPELLANT
Samba Yellaiah and another		RESPONDENT

Date of Decision : 30-01-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 16, Order 6 Rule 5, Order 8 Rule 3

Citation : (2001) 2 ALD 606 : (2001) 2 ALT 445 : (2001) 1 APLJ 240

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Mr. L. Narasimha Reddy, for the Appellant; Mr. R. Subhash Reddy, for the Respondent

Judgement

1. The defendants in OS No.119 of 1996 on the file of the Court of the District Munsif, Warangal, are the petitioners. The respondents/plaintiffs filed a suit for declaration and perpetual injunction in respect of the suit schedule property. Their plaint case is that they purchased the suit schedule property jointly which was subsequently partitioned between plaintiff and others. The defendants claiming title to the land are trying to interfere with the plaintiffs' enjoyment.

2. The defendants filed an application under Order VI, Rule 5 of Code of Civil Procedure, 1908 ("CPC" for brevity) seeking a direction from the trial Court to the plaintiffs to furnish particulars as to (i) when the division took place between the plaintiffs and Sailu; (ii) who was the scribe and elders for the division of the lands; (iii) the date, month and year of alleged joint purchase and (iv) the names of scribes and attestors and payment of consideration amount. The application being IA No.265 of 1997 was opposed by the plaintiffs contending that the provisions of Order VI were complied with by the plaintiffs duly pleading the material facts and that the defendants by filing the application are trying to extract the evidence from the respondents and therefore such application is not maintainable. The trial Court relying on the judgment in A.H. Bhat Vs. K.R. Picture Combines, , came to a conclusion that under Rule 5 of Order VI the

defendant is not entitled to seek a direction to the plaintiffs to disclose their evidence. Aggrieved by the order dated 13-11-1997 dismissing IA No.265 of 1997, the present civil revision petition is filed.

3. The learned Counsel for the petitioner submits that the particulars required by the defendants would only result in better statement of the nature of the claim of the plaintiffs and by dismissing the defendants' application the lower Court failed to exercise jurisdiction vested in it. The learned Counsel for the respondents/ plaintiffs submits that the defendants are not entitled to ask for evidence as to the particulars of date, month and year of division, mediators presence during the partition and the names of scribe and attestors, who witnesses execution of the document and payment of consideration.

4. Order VI of CPC deals with pleadings generally, whereas Order VII deals with the pleadings in the "plaint" and Order VIII deals with "written statement, set off and counter claim". Rule 3 of Order VI is a provision, which is directory to the effect that the forms of pleadings in Appendix-A to CPC when applicable shall be used for all pleadings. It also lays down that where the Forms in Appendix-A are not applicable, Forms of the like character as nearly as may be shall be used in all pleadings. Appendix-A does not contain a Form for a suit for declaration and injunction. Therefore, Appendix-A is of no avail. Order VIII, Rule 3 deals with the pleading where the subject-matter of the suit is immovable property. It lays down that where the subject-matter of suit is immovable property the plaint shall contain (i) description of the property sufficient to identify the property and (ii) in case, the immovable property can be identified by the boundaries or numbers in record of statement or survey, the plaint shall specify such boundaries or numbers. In any suit, where subject-matter is immovable property, compliance with Rule 3 of Order VII is sufficient compliance and the provision in Rule 5 of Order VI has no place. Order VI, Rule 16 which empowers the Court to strike out the pleadings, also does not contain any situation where the plaint allegedly contains, insufficient particulars. Therefore, when the plaintiffs give the particulars of the boundaries or the numbers in a record of statement or survey of the immovable property, which is the subject-matter of the suit, it shall have to presumed that sufficient particulars are given. While adjudicating the application under Order VI, Rule 5, the trial Court has to keep this in view. In the present case, the petitioners/defendants in their affidavit accompanying IA No.265 of 1997 stated as under:

"I submit that respondents have filed the suit seeking declaration of title and permanent injunction with an IA No.259 of 1996 seeking temporary injunction in respect of Survey Number 851 to an extent of Ac.5.08 gts out of Ac.10.16 gts. dry situated at Inapur village of Cherial Revenue Mandal of Warangal District.

I submit that respondents have pleaded at para No.3 of the plaint that the agriculture land of Ac.10.16 gts. dry covered by Survey No.851 situated at Inapur village has been purchased jointly by the defendant No.1's husband and plaintiffs jointly which is an utter lie. When he was called upon to produce the

same, through IA No.271 of 1996 he has taken a dishonest and false plea that it is with the defendants. In fact to the knowledge of these defendants such a document does not exist nor was it the case of the plaintiffs in the suit. However the falsity of the plea will be exposed in due course."

5. The averments disclose that the plaintiffs pleadings are in accordance with Rule 3 of Order VII, in that, numbers in the record of survey have been clearly mentioned. The other aspects like the date of purchase, the date of partition, the names of the attestors, scribe and mediators are all matters of evidence and the plaintiffs cannot be compelled to disclose them to the defendants. This view is also supported by the judgment in A.H. Bhatt's case (supra) relied on by the learned Counsel for the respondents/plaintiffs.

6. Therefore, it should be held that the trial Court has not committed any error in exercise of jurisdiction and the impugned order does not suffer from illegality or material irregularity. The civil revision petition is accordingly dismissed with costs.