
(1991) 02 AP CK 0001

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No's. 3044 and 3106 of 1990

Mohd. Jahangir

APPELLANT

Vs

Mallikharjuna Co-op. Housing Society Ltd.

RESPONDENT

Date of Decision : 28-02-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 39 Rule 1, Order 39 Rule 2, 115

Transfer of Property Act, 1882 — Section 53A

Citation : (1991) 1 ALT 575 : (1992) 1 AnWR 153

Hon'ble Judges : Eswara Prasad, J

Bench : Single Bench

Advocate : A. Panduranga Rao, for the Appellant; M.V. Durga Prasad, for the Respondent

Judgement

Eswara Prasad, J.—The petitioner in both these revisions is the defendant in OS No. 517/ 86 filed by the respondent in the Court of the Principal District Munsif, Hyderabad (East and North), for a permanent injunction restraining the petitioner from alienating the suit lands in an extent of Ac. 8-20 guntas in Survey No. 57 in Karmanghat village, Saroornagar Revenue Mandal, Ranga Reddy District.

2. The case of the respondent is that an agreement of sale dt. 15-8-81 (Ex. A-18) was executed by the petitioner in favour of the respondent, for sale of the suit lands at the rate of Rs. 20,000/-per acre and that the respondent paid Rs. 1,70,000/-on various dates by 10-8-82. It was the further case of the respondent that an agreement dated 3-12-82 (Ex. A-7) was executed by the petitioner along with his daughters and sons and the consideration was increased to Rs. 40,000/- per acre and that the possession of the lands was delivered to the respondent on the date of the first agreement. It was further alleged that the petitioner was trying to interfere with the possession of the respondent and was also trying to alienate the suit lands.

3. The respondent filed IA No. 1589/86 and 1588/86 for granting temporary injunction restraining the petitioner from alienating the suit lands and for an injunction restraining the petitioner from interfering with the possession of the respondent over the suit lands. The petitioner contended that the possession of the suit lands was not delivered pursuant to Ex. A-18 and that subsequently on the date of agreement Ex. A-7 on 3-12-82 possession of the lands in an extent of Ac. 4-00 only was given to the respondent, it was the further case of the petitioner that the agreement Ex. A-18 dated 15-8-81 as well as the subsequent agreement were terminated by issuing a notice to the respondent in Ex. B-3. The petitioner filed Exs. B-11 to B-14, which are the pahani patrikas for the years 1984 to 1988 in support of his contention that he has been in possession of the suit lands.

4. The trial Court held that possession of the entire extent of the suit lands was delivered to the respondent and that the agreement between the parties is subsisting and allowed both the applications and granted orders of injunction, as prayed for. The petitioner preferred appeals, i.e., CMA Nos. 36 and 37/89 in the Court of District Judge, Ranga Reddy District, against the said orders of injunction. The learned Judge agreed with the findings of the trial court and dismissed the appeals, while modifying the order of injunction restraining the alienation of the suit lands, pending disposal of the exemption application under Urban Land Ceiling Act by the Government of Andhra Pradesh or till the disposal of the suit, whichever is earlier. Aggrieved by the said judgment of the learned Dt. Judge, the defendant in the suit has preferred these revision petitions.

5. The main contention of the learned Counsel for the petitioner is that possession of the lands was never delivered to the respondent under Ex. A-18 and that the possession of the land in an extent of Ac. 4-00 was only delivered under the agreement Ex. A-7 dated 3-12-82, and that the consideration for the said extent of the land was received. He further argued that the agreement dated 15-8-81 did not subsist, as there was no clause in Ex. A-7 regarding the payment of any balance of consideration for the rest of the lands. He further contended that the appellate court did not give any finding regarding possession of the suit lands on the date of suit and that both the Courts below acted with material irregularity in ignoring the entries in the official documents in Exs. B-11 to B-14. It was the further contention of the learned Counsel that the respondent ought to have filed a suit for specific performance of agreement of sale and that the suit for mere injunction against the real owner of the lands is not maintainable, and is barred under Order 2 Rule 2 CPC. inasmuch as the respondent chose to file a suit for mere injunction, whereas the respondent ought to have sued for specific performance; and having failed to do so, will be precluded to sue for specific performance. This, according to the learned Counsel for the petitioners, is due to the fact that the respondent is aware of the fact that the contract was terminated and is not subsisting, and that, at any rate, the respondent was not ready and willing to perform his part of the contract, and that the respondent cannot seek the equitable relief of injunction.

6. The learned Counsel for the respondent contended that the respondent is in possession of the 6uit lands pursuant to the agreement of sale and is protected by Section 53A of the Transfer of Property Act. He relied on a decision of this Court in *S. Rajaiah v. P. Kistaiah*, 1986 (2) ALT 122 (NRC) and contended that a suit for a permanent injunction without any further relief, is maintainable. He submitted that the respondent could not sue for specific performance of the agreement of sale, as the application for exemption from the provisions of the Urban Ceiling Act is pending with the Government.

7. It is seen from Ex. A-18 that the respondent-society was permitted to plot out the lands. The agreement Ex. A-7, dated 3-12-82, prima facie, appears to be confined only to an extent of Ac. 4-00 of land, comprising plot Nos. 22 to 41 and 54 to 80. There is no mention as to what is to happen to the rest of the land. In order to avail the protection of Section 53A of the Transfer of Property Act, it is necessary that the terms of the contract should be certain. In the decision referred to above, this Court held that a permanent injunction can be asked for where the legally enforceable "obligation" exists in favour of the plaintiff in respect of possession which is sought to be protected. The respondent having chosen to sue for permanent injunction only, without seeking any relief of specific performance of the agreement of sale, prima facie, may be barred from filing such a suit under Order 2 Rule 2 CPC. In such circumstances, especially in view of the fact that the relief of injunction is an equitable relief, the same cannot be granted when the plaintiff has not shown his readiness and willingness to perform his part of the contract by seeking specific performance of the agreement of sale.

8. The Courts below were in error in ignoring the pahani patrikas Exs. B-11 to B-14, which are public documents. In Ex. A-18 it is nowhere recited that the respondent was in possession of the suit lands. Ex. A-7 shows that only Ac. 4-00 of land was put in possession of the respondent. In view of such circumstances, the findings of the court below are not sustainable, as they are fraught with material irregularities.

9. The Courts below ought not to have granted the injunction against the petitioners restraining them from interfering with the alleged possession of the respondent to the entire extent of the land.

10. CRP No. 3106/90 is partly allowed and the order in IA No. 1588/86 in OS No. 517/86 is partly set aside to the extent of Ac. 4-20 guntas and is partly confirmed in respect of Ac. 4-00 comprising plot Nos. 22 to 41 and 54 to 80 of the plaint schedule. In respect of the remaining land, the petitioners shall not make any constructions pending disposal of the suit. No order as to costs.

11. However, having regard to the fact that the suit is pending, and the dispute between the petitioners and the respondent has to be resolved in the suit, it will be expedient to restrain the petitioners from alienating the suit lands during the pendency of the suit. CRP No. 3044/90 is therefore, dismissed. No order as to

costs.

12. Any observations made in this judgment shall not be construed as any views expressed on the merits of the case and the trial Court will proceed with the suit without being influenced by such observations. The trial court will proceed with the trial of the suit expeditiously, and to complete the same within six months from the date of receipt of this order.