

(1989) 07 AP CK 0014

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1005 of 1988

Osmania University

APPELLANT

Vs

Dr. Rajeshwar Rao and Others

RESPONDENT

Date of Decision : 21-07-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 115(c)
Specific Relief Act, 1963 — Section 6

Citation : (1989) 07 AP CK 0014

Hon'ble Judges : Jagannadha Rao, J

Bench : Single Bench

Advocate : H.S. Gururaja Rao, for Osmania University, for the Appellant; K.G. Sastry, R. Venugopal Reddy and Mr. B. Subhashan Reddy, for the Respondent

Judgement

Jagahnadha Rao, J.—The Osmania University, as an agent of the Andhra Government, is resisting, in these revisions, a claim by various plaintiffs-mostly claiming to be trespassers in adverse possession of a large tract of urban land of about Ac.8-00-which to-day may be costing a few crores of rupees in Hyderabad city.

2. These 13 revision petitions are filed by the Osmania University (defendant in various suits filed by the respondents). The revisions are directed against an order granting temporary injunction against the petitioner under Order 39, Rule 1, C.P.C. There is considerable history behind the litigation which goes back to 1956 and it is necessary to refer to the same.

This history can be gathered from the decision of the Supreme Court in Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another, .

3. The Government of Nizam of Hyderabad acquired, under the Hyderabad Land Acquisition Act of 1309 F. various extends of land belonging to one Nawab Zainnuddin after whose death the property devolved on Nawab Habibuddin. The lands were in R.S. No.10/1 (corresponding to plot No.94) admeasuring Ac. 10-02

guntas, R.S. No. 10/2 (corresponding to plot No. 104) admeasuring Ac.9-33 guntas; and R.S. No.7, 8 and 9 (corresponding to plot No. 111) of an extent of Ac. 26-14 guntas. The acquisition of the land took place between 1932 and 1937 for the benefit of Osmania University which was then administered as a Department of the Government of Hyderabad. The University acquired an independent legal status of its own under the Osmania University Revised Charter, 1947 promulgated by the Nizam. On 13.2.1956 the Osmania University filed the suit (O.S.No.1/56) against Nawab Habibuddin, in the City Civil Court, Hyderabad claiming that the above extent of land was acquired by the Government of its benefit and seeking eviction. The suit was dismissed by the trial Court in 1959 on the ground that plot No. 111 was not acquired by the Government and that though plot Nos. 94 and 104 were acquired the University failed to prove possession thereof within 12 years, according to the decision of the Full Bench of the Madras High Court in *The Official Receiver of East Godavari Vs. Chava Govindaraju and Another*, . In regard to the plot Nos. 94 and 104 it was found by the trial Court that Nawab Habibuddin had encroached thereupon in the year 1942 which was more than 12 years before filing of the suit. The University filed *The Official Receiver of East Godavari Vs. Chava Govindaraju and Another*, against the judgment but the same was dismissed by a Division Bench of this Court on 24.1.1964. So far as plot No.111 was concerned, the University sought to file certain additional documents in the appeal to show that even that extent of land was acquired by the Government but the said additional evidence was rejected. The State Government was not a party to the above said proceedings.

4. On 8.5.1964, the University wrote a letter to the Government of Andhra Pradesh requesting it to take steps for summary eviction of the persons in possession under the provisions of the Andhra Pradesh Land Encroachment Act (Act 3 of 1905). On 8.12.1964 the Tahsildar Government of Andhra Pradesh, acting u/s 7 of the said Act issued a notice to Nawab Habibuddin to vacate the land and on 15.12.1964, the Tahsildar passed an order of eviction against the said Nawab Habibuddin. The latter then filed an appeal to the Collector which was dismissed in 1965 and a further appeal to the Revenue Board was dismissed in 1968. The matter was taken to the Government in a further appeal which was dismissed on 26.11.1973. During the pendency of the appeal before the Revenue Board various extents were sold by Nawab Habibuddin for valuable consideration and there were also subsequent sales by the said persons.

5. On 19.3.1974, one writ petition came to be filed as W.P.No. 1539/74, by T.Krishna Rao and V.Kesava Rao questioning the application of the Andhra Pradesh Land Encroachment Act, claiming to be in possession for over 30 years as against the Government. The said writ petition was dismissed by Chinnappa Reddy, J. (as he then was) and there were two writ appeals before a Division Bench by each of the writ petitioners separately, as W.A.No.908/75 and W.A.No.922/75. At that stage, two other persons filed an independent writ petition as W.P.No.796/75. The two writ appeals and the writ petition were

allowed by a Division Bench of this Court on 30.6.1977 on the ground that a bona fide dispute regarding title arose and that in such a context it was not proper for the State Government to decide for itself that the encroaches were trespassers and evict them under the Land Encroachment Act. On appeal by the State Government against the said judgment of the Division Bench, the Supreme Court confirmed the same holding that the State Government could not have resorted to the summary remedy and that it was better the matter was decided by a civil court. I shall refer to the details of the judgment of the Supreme Court a little later.

6. Subsequently, the State of Andhra Pradesh filed O.S.No.36/86 in the month for January, 1986 in Sub-Court, Ranga Reddy District impleading 31 defendants and claiming the relief of a declaration of title by the Government and for permanent injunction and in the alternative, for possession. The said suit is pending in that Court. In the mean time, the respondents in these 13 revision petition filed separate suits for permanent injunction against the University on the ground that the University was still unlawfully trying to interfere with their possession. In these suits, interlocutory applications were filed under Order 39, Rule 1, C.P.C. for temporary injunction and the said petitions were allowed by the trial Court, the District Munsiff, Hyderabad east and North, on 10.3.1986 holding that the State Govt. had to establish its possession and title over the suit lands and that until the same was done, it could not be said that the various plaintiffs in these suits were trespassers. When the High Court and Supreme Court have held that the plaintiff cannot be evicted summarily it could not be said, at the stage of I.As. that the plaintiffs have not established their title to the land. The plaintiffs have marked their sale deeds and the validity there of had to be decided in the respective main suits. The Government according to the trial Court, only for perpetual injunction and not for a declaration. It was held that the position of the plaintiffs over the said land was evident and that was why the Government of Andhra Pradesh had filed O.S.No.36/86 for declaration and possession. (At an earlier stage, the trial Court noticed that the suit of the Government was for declaration and for perpetual injunction). Exs.B-1 to B-6 marked for the Government did not establish possession and Ex. B-2 (the delivery proceedings under the Land Encroachment Act) was already quashed by the Supreme Court. It was observed that until the Government succeeded in the respective main suits, the Government could not interfere with the peaceful possession of the plaintiffs and so the University could not also interfere. With these findings the trial Court allowed the I. As. filed under Order 39, Rule 1, C.P.C.

7.The University filed separate appeals before the District Court, Ranga Reddy District. In paragraph 5 of the judgment the appellate Court merely referred to the filing of Exs.A-1 to A-3 for the plaintiffs and Exs.B-1 to B-6 for the defendant Government. It did not refer to the details of Exs.B-2, B-3. It then referred to the earlier history of the litigation and then referred to the following observations of the Supreme Court in Government of A.P.v.T.Krishna Rao, AIR 1982 3C.1081 (at

1085 Para 9).

".....that the question as to the title to the three plots cannot appropriately be decided in a summary enquiry contemplated by Sections 6 & 7 of the Act, The long possession of the respondents and their predecessors-in-title of these plots raises a genuine dispute between them and the Government on the question of title, remembering especially that the property, admittedly, belonged originally to the family of Nawab Habibuddin from whom the respondents claimed to have purchased it. The question as to whether the title to the property came to be vested in the Government as a result of acquisition and the further question whether the Nawab encroached upon that property thereafter and perfected the title by adverse possession must be decided in a properly constituted suit. May be, that the Government may succeed in establishing its title to the property, but, until that is done, the respondents cannot be evicted summarily."

The lower Appellate Court then observed that from the above observation of the Supreme Court, it was clear that the purchasers were in possession from a long time and that there is a genuine dispute regarding title and that unless the Government succeeded in establishing title, the purchasers from Nawab Habibuddin could not be evicted summarily. The lower appellate Court then observed :

"the respondent-Osmania University has neither title nor possession over the suit property. The suit filed by the respondents against Habibuddin in O.S.No.1/56,was dismissed and the appeal... was also dismissed by the High Court.

The Court then referred to Ex. B-5, a memo of the Government dated 14.12.1984 to the Collector, Ranga Reddy District, referring to the subsequent opinion of the Advocate General that the property belongs to the Government and not the University and that therefore the University could not interfere with the possession of the plaintiffs. The lower appellate Court thought that the Government had merely filed a suit for declaration and possession (though in fact it was a suit for declaration and injunction with an alternative relief for possession) and that therefore the University had no right or possession over the property. It also observed that the plaintiffs were in possession for a long time and the University has neither ownership nor possession and further that the Government was not a necessary party. The prima facie case and the balance of convenience were in favour of the plaintiffs. With these observations the temporary injunction granted by the trial Court in the various suits was confirmed. It is against these orders that the defendant-Osmania University has preferred these revision petitions.

8. It is argued by Sri.H.S. Gururaja Rao, the learned counsel for the University that both on the question of prima facie title and possession, the orders passed by the lower courts are vitiated on account of "non-consideration" of crucial documentary evidence, warranting interference under S.115(c) of the C.P.C. It is pointed out that the lower appellate Court nowhere considered Ex. B-2 which

shows that, in the land encroachment proceedings initiated in 1964 under the A.P. Land Encroachment Act, the Government of Andhra Pradesh took possession on 3.6.1967 and handed over the same again to the University and that this fact was published in the A.P.Gazette Ex. B-3, dated 1.2.1968 and even Ex. B-3 was not considered. It is also argued that even if the quashing of the Land Encroachment Act proceedings by the Supreme Court and the Supreme Court might have resulted in the consequence of Ex. B-2 delivery proceedings also being set aside still, that would, in law, constitute a re-entry on 3.6.1967 by the Government within 30 years from 1942 when the above possession is supposed to have started. Reliance is placed here on Mamidi Venkata Satyanarayana Manikyala Rao and Another Vs. Mandela Narasimhaswami and Others, So far as the findings in the earlier civil suit (O.S.No.1 of 1956) that Ac.8-22 guntas in plot No. 104 (S.No. 10/21 was allowed to be retained by Habibuddin or that Ac.26-14 guntas in plot No. 111 (S. Nos. 7,8,9) was not acquired are concerned, it is argued that these findings are not binding on the A.P.Government inasmuch as the Government was not a party to O.S.No. 1.1956. Further, it is stated that the additional evidence not permitted in the C.C.C.A. by the High Court can now be filed in the Government suit O.S.No.36/86 or in the present suit so far as plot No. 111 is concerned. It is pointed out that in the present batch of suits the Osmania University, is contesting as an agent of the Government, having obtained fresh possession from the Government on 3.6.1967 and that therefore the earlier judgments in O.S.No. V56 and C.C.C.A. no longer affect The University it is argued is now vested with a fresh right of possession having got it from the true-owner again on 3.6.67. It is argued that a trespasser cannot get an injunction against the true-owner. It is also argued that none of the respondent-plaintiff nor their vendor Ravi Subba Rao filed writ petitions questioning the land encroachment proceedings and that they cannot rely upon the judgment in Writ Appeal or of the Supreme Court.

9. On the other hand, it is argued for the respondents-plaintiffs by Sri R.Venugopal Reddi, Sri K.G.Sastry and Sri B.Subhashan Reddi, that the above contentions are not correct and that in any event, the findings of the lower Courts cannot be disturbed under S.115, C.P.C. as no question of jurisdiction is involved. The decision of the Supreme Court in Government of A.P.V.Krishna Rao, (supra) is stated to be sufficient to entitle the plaintiffs to obtain a temporary injunction against the University not only because the University was a party to O.S.No. 1/56 and the C.C.C.A. but also because the possession of the present plaintiffs is to be maintained till the suit of the Government O.S.No.36/86 is decreed.

10. The point for consideration is: Whether the finding regarding prima facie title and possession is vitiated due to non-consideration of the crucial documents Ex. B-2 (delivery proceedings) and Ex. B-3 (A.P.Gazette) and whether the respondents are, therefore, not entitled to injunction and whether interference is permissible under S.115(c) of the C.R.C?

11. From the facts set out earlier, it is firstly clear that the judgment in O.S.No. 1/56 and the C.C.C.A. was a litigation between the Osmania University as plaintiff and Habibuddin (or his vendees) as defendant and the Government of Andhra Pradesh not being a party thereto, the said judgment is clearly not binding on the State Government. It follows then that if the Osmania University is contesting not in its character as in O.S.No. 1/56 (and the C.C.C.A.) but as a person who has been put into possession afresh by the Government (as per Ex. B-2 delivery proceedings dt.3.6.1967 and Ex. B-3 Gazette dt. 1.2.68), the claims of Osmania University cannot be but can be defeated only on the basis of the judgment in O.S.No. 1 /56 (or the C.C.C.A.) but can be defeated only on the basis of a lawful claim against the State. In the present batch of suits, the University is claiming possession afresh from Government on 3.6.1967 as agent of the Government which is claiming to have got possession under the Land Encroachment Act proceedings. Thus O.S.No. 1/56 or the C.C.C.A. are prima facie not in the way of the University. The Courts below were clearly in error in thinking that because in O.S.No. 1/56 (and the C.C.C.A.) the university figures as a party, that judgment still holds good against the University. They did not notice the fact that the University is now fighting the case as agent of the Government.

This is serious misapprehension on the part of the lower Courts.

12. Secondly, on the question of prima facie title, the trial Court proceeded on the basis of inasmuch as Ex. B-2 delivery proceedings stood set aside by the Supreme Court/High Court in the writ proceedings, the plaintiff's title, reckoned from 1942 would be more than 30 years before 1986, when the Government filed the suit. This clearly ignores the fact that even if the delivery proceedings dated 3.6.1967 under the Land Encroachment Act are set aside as being irregular or bad, even such re-entry by the true owner i.e. Government would clearly constitute a break in the adverse possession, even it started from 1942. This is clear from the judgment of the supreme Court in Manikyala Rao v. Narasimha Swami (supra) which has accepted that the re-entry by the true owner could be legal or illegal and might have been, in fact, set aside (such as in proceedings u/s 6 Specific Relief Act) but still it would be an effective break to the trespasser's adverse possession. This principle is too well settled as by M.N.Mukherjee, J in Girish Chandra Pal Vs. Baikuntha Nath Singha and Others, and by the Madras High Court in Dandamudi Narasayya and Another Vs. Movva Subbayya and Others, All the High Court have taken the same view and this is also the law in England that the reentry be the true owner even if unlawful, would interrupt the adverse possession of the trespasser. (See *Trustee, Executors and Agency Ltd v. Short* (1888) 13 A.C.793, and *Lowe v. Telford*, 1876 (1) A.C.414, quoted in the Calcutta and Madras judgments respectively). The Supreme Court not only endorsed this view in Manikyala Rao v. Narasimha Swami (supra) but also held that even "symbolic possession" obtained (unlawfully) by the true owner will be "tantamount to delivery of actual possession" resulting in a break in the trespassers' adverse possession, and they approved Sri Radha Krishna Choudarj

iv. Ram Bahadur, AIR 1977 P.C.I 97(2) 16 All. LJ 33. Both the lower Courts have, in my view, failed to notice this aspect which is covered by a decision of the Supreme Court. While the trial Court thought the quashing of the land encroachment proceedings in W.Ps. resulted in the setting aside of the delivery proceedings dated 3.6.1967, it failed to note that the delivery, even if illegal, created a gap in the adverse possession, before 30 years had elapsed the documentary evidence relating to the delivery proceedings in Ex. B-2 dated 3.6.1967 and the Gazette, Ex,B-3 dated 1.2.1968.

13. Thirdly, all the plaintiffs are claiming as purchasers from Ravi Subba Rao who in his turn purchased from Habibuddin and, it is now conceded that none of them has filed any writ petition questioning the proceedings under the Land Encroachment Act. The W.Ps. questioning the Land Encroachment Act proceedings were filed only by other purchasers from Habibuddin, namely, Krishan Rao, Kesava Rao and two others. If the plaintiffs have not chosen to challenge the said proceedings, it is prima facie not possible for them to contend that the eviction under the Land Encroachment Act was bad. The judgments in W.A. (and other W.P.) and of the Supreme court in Government of A.P. v. T.Krishna Rao (supra) prima facie do not relate to the eviction proceedings against the plaintiffs by the Government in 1964 and the actual eviction on 3.6.1967. It is however argued for the respondents-plaintiffs that in the W.As. there is an observation at the end of the judgment that the notice given to Habibuddin is quashed. It is argued that the entire notice so quashed covers not only the cases of the writ petitioners but other, such as the plaintiffs who did not file writ petitions. In reply, it is argued for the University that the High Court had necessarily to say so because the Tahsildar took out, in 1964. Encroachment Act proceedings only against Habibuddin as by that time the latter had not sold others and the W.A.judgment should be treated as quashing summary eviction proceedings only against the four persons who filed the W.Ps. This is also a very important aspect which was not taken note of by the lower Courts.

14. Fourthly, the Courts below relied on the observation in the judgment of the Supreme Court that until the civil suit by the Government is decreed, the trespassers cannot be evicted. From this, it does not, in my view, follow that the trespassers are entitled to injunction against the true owner. Merely because a true owner cannot evict a trespasser forcibly, it does not follow that a trespasser can obtain injunction as of right against the true owner. The remedy of permanent or temporary injunction is, it is well settled, basically an equitable relief and the plaintiff must come to court with clean hands. The plaintiff cannot therefore normally be permitted to seek the aid of the court to protect his unlawful possession for seeking injunction against the true owner. If the trespasser cannot get an injunction against the Government, the true owner, the trespasser cannot equally obtain injunction against the University, which is now claiming afresh as the agent of the Government from 3.6.1967. Therefore though the Supreme Court stated in Government of A.P. v. T.Krishna Rao (supra) that the writ petitioners therein cannot be evicted summarily till evicted by regular

suit, the converse, viz., that the trespasser should get an injunction against the true owner, does not follow. This aspect has also been ignored by the lower Courts.

15. Fifthly, so far as the question of actual possession is concerned, the lower appellate Court did not at all consider Ex. B-2 delivery proceedings dated 3.6.67 or Ex. B-3 gazette publication regarding the same, dated 1.2.68. The writ petitions filed in the High Court 1974 were directed against the orders of the Government confirming in Land Encroachment proceedings. The Government was disposing of the appeals preferred by the encroachers against the judgment of the Revenue Board dated 26.11.1973 and the appeal to the Revenue Board was against the orders of the Collector of year 1965 and the appeal to the Collector, in its turn, was against the orders of the Tahsildar dated 15.12.1964. It will thus be noticed that the subject matter of the writ petitions, W.As, and the Supreme Court judgment was the order passed by the Tahsildar on 15.12.1964 for summary eviction and it was that order that was quashed in the writ appeal and which was confirmed by the Supreme Court. Neither the Government nor the High Court nor the Supreme Court had any occasion to take note of or to deal with the actual delivery proceedings dated 3.6.1967 (Ex. B-2) and the gazette publication dated 1.2.1968 (Ex. B-3). All that the Supreme Court stated ultimately was that the eviction proceedings under the summary procedure were not appropriate to a case where there was a bona fide dispute and the Supreme Court stated that the matter should be adjudicated in a civil suit. The Courts, below were therefore, bound when they came to the question of actual possession, to deal squarely with the delivery proceedings, Ex. B-2 dated 3.6.1967 and the gazette publication, Ex. B-3, dated 1.2.1968 even though these proceedings also get consequentially set aside after the Division Bench and the Supreme Court quashed the summary proceedings. The learned counsel for the petitioner-Osmania University therefore argued that there is no averment in the plaints filed by the respondents as to when and how the respondents had recovered possession, by way of restitution-subsequent to 3.6.1967, the date when the Government took delivery-and that in the absence of such an averment the plaintiffs cannot be said to be in physical possession. In my view, the lower appellate Court grossly erred in not even referring to the contents of Exs.B-2 and B-3 delivery proceedings and as to their effect and importance on the question of actual possession of the plaintiffs. This is. another serious lacuna in the orders passed by the lower appellate Court.

16. Coming to C.R.P.No.1005/88 arising out of C.M.A. No. 18/87 and the I.A. filed in O.S.No. 171/84, the respondent-plaintiff therein claims to be a purchaser from Ravi Subba Rao who in turn purchased from Habibuddin. According to him, the extent of Ac.4-20 guntas in S.No.10/2 was part of Ac.8-22 guntas in plot No. 104 which was allowed to be retained by Habibuddin as declared in the earlier suit O.S.No. 1/56 and the C.C.C.A. So far as" this aspect of the matter is concerned, the State Government was not a part to the earlier suit or to the C.C.C.A. and therefore the findings, if any, in that suit are not binding on the

Government, or on its agent, the Osmania University now. Further, as stated earlier, neither Ravi Subba Rao, the vendor nor the respondent-plaintiff in this case, nor even Habibuddin filed any writ petition challenging the proceedings taken under the Land Encroachment Act. The question as to how far the respondent-plaintiff in this suit could rely on the judgment in the writ appeal arid on the judgment of the Supreme Court is a matter which should have been considered by the lower Courts. In fact, the Courts below did not notice that only T.Krishna Rao, Kesava Rao and two others filed writ petitions in the High Court questioning the summary eviction proceedings under the Land Encroachment Act and that none of the plaintiffs in this batch of suits nor their vendor Ravi Subba Rao nor his vendor Habibuddin filed any writ petition questioning the same.

17. From the above said discussion it is clear that the decision of the Courts below on the question prima facie title and possession of the respondents is vitiated by total non-consideration of Ex. B-2 delivery proceedings dated 3.6.67 and the gazette publication, Ex. B-3 dated 1.2.1968 and their legal effect and the fact that under those proceedings the Government put the Osmania University afresh in possession. The Courts below failed to note that those proceedings, even if they stand quashed by the judgment in the writ appeal and the Supreme Court, constitute a break in the adverse possession of the respondents-plaintiffs as were the decision of the Supreme Court in Manikyala Rao v. Narasimha Swami (supra). This will be so even if the Government as true owner could be treated as having taken only symbolic possession. That would be sufficient to create a break in the adverse possession. The courts below also failed to note that none of the respondents-plaintiffs filed write petitions in the High Court questioning the Land Encroachment proceedings and that none of them sought to obtain restitution after the quashing of the eviction proceedings so as to claim be in physical possession. In other words, non-consideration of Ex. B-2 and B-3 and their legal effect, as stated above, has vitiated the findings relating to prima facie as well as the finding relating to possession.

18. It is well settled that in a suit for permanent injunction of plaintiff cannot seek to obtain temporary injunction under Order 39, Rule 1, C.P.C. unless the plaintiff proves prima facie title and possession as well as balance of convenience. As the first two ingredients are not satisfied the Courts below could not have granted any injunction in favour of the trespassers against the true owner, the Government of the true owner's Agent, the Osmania University which got into possession under Ex. B-2 afresh on 3.6.1967.

19. The next question, however, is whether it is open to this Court to interfere in such circumstances, u/s 115, C.P.C. It is true that the Supreme Court has set aside the judgment of the High Court when the High Court, in certain cases interfered in revision with the orders passed under Order 39, Rule 1, C.P.C. In The Managing Director (MIG) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway, the Supreme Court reversed the decision of the High Court when the High Court interfered with orders passed under Order 39, Rule 1,

C.P.C. observing, however, as follows:

"It is not the case/that the first appellate Court exercised its jurisdiction either illegally or with material irregularity. That being so the High Court should not have invoked its jurisdiction under S.115 of the Civil Procedure Code."

In *The Municipal Corporation of Delhi Vs. Shri Suresh Chandra Jaipuria and Another*, , also the matter arose in proceedings under Order 39, Rule 1 C.P.C. and the interference by the High Court under S.115, C.P.C. was held to be bad. The High Court in that case did not act under S.115(c) but held that the Courts below declined to exercise jurisdiction vested in them. That was not a case falling u/s 115(c) of the C.P.C. Section 115(c) of the C.P.C. permits interference by the High Court if the subordinate Courts appear,

"to have acted in the exercise of its jurisdiction illegally or with material irregularity."

In *Terene Trader v. Ramesh Chandra Jamnadas & Co.*, AIR 1987 SC 1492, the Supreme Court set aside the orders of the High Court in revision in a case arising under the provisions of Order 39 Rule 1, C.P.C. The Supreme Court while pointing out that the appellate Court had considered the entire evidence and come to the conclusion which could not be interfered with, also observed as follows:

"It is not the case that City Civil Court acted either illegally or with material irregularity in dismissing the plaintiff's application for temporary injunction." Likewise in *Madhavacharyulu v. Venkata Rao*, 1984 (1) ALT 27 (AP), which was also a case of revision arising out of proceedings under Order 39, Rule 1, CPC the learned single Judge refused to interfere on the ground that the relevant documentary evidence and affidavits were considered by the appellate court and that there was no illegal exercise of jurisdiction nor was such jurisdiction exercised with material irregularity.

20 The above cases therefore lead us to a consideration of the meaning of the words "exercise of jurisdiction illegally or with material irregularity". The above said words have come up for consideration before the Privy Council as well as the Supreme Court. In *Keshardeo Chamria Vs. Radha Kissen Chamria and Others*, the Supreme Court observed that these words did not cover either errors of fact or law and did not also refer to the ultimate decision arrived but "to the manner in which it is reached" and so stating the Supreme Court accepted the view of Bose, J. in his order of reference in AIR 1948 258 (Nagpur) The Supreme Court again had to deal with this clause in *D.L.F., Housing and Construction Company (P.) Ltd., New Delhi Vs. Sarup Singh and Others*, In that case it was observed:

"The words "illegally, and "with material irregularity" as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached."

21. Earlier in *Prem Raj Vs. D.L.F. Housing and Construction Pvt. Ltd. and Another*, the Supreme Court was dealing with a case where a suit for declaration that

certain contract was void on the ground of undue influence was filed. There an alternative plea was taken claiming specific performance of the same contract. When the said plea was allowed by the trial Court and was interfered with by the High Court in revision, the Supreme Court upheld the orders of the High Court in revision, the Supreme Court upheld the order of the High Court stating that the matter fell u/s 115(c), CPC observing:

"It is manifest that in holding that the appellant was entitled in the alternative to ask for the relief of specific performance, the trial Court had committed an error of law and so had acted with material irregularity or illegality the exercise of its jurisdiction within meaning of Sec. 115 (c) of the CPC.....to put it differently the decision of the trial Court on this question was not a decision on a mere question of law but it was a decision on question of law upon which the jurisdiction on of the trial Court to grant the particular relief depended. "

(emphasis supplied)

22. In other words, it was held that if the error of law committed by the lower Court was one which was responsible for the grant of the particular relief, it would be an illegality or material irregularity in the exercise of jurisdiction.

23. The Supreme Court had also occasion to consider Section 115, CPC generally in *Shri M.L. Sethi Vs. Shri R.P. Kapur*, . In that case, the meaning of the word "jurisdiction" was explained with reference to the speeches of Lord Reid and Lord Pearce in *Anisminic Ltd. v. Foreign Compensation Commission*, 1969 (2) AC 147. It was pointed out that the effect of the dicta in the above case was to reduce the difference between jurisdictional error and error of law within jurisdiction, "almost to vanishing point". It was further observed that the practical effect of the above said decision was that any error of law could now be reckoned as jurisdictional. Reference was also made to an article by Wade, "Constitutional and Administrative aspects of the *Anisminic* case" (1969) 85 LQR 198. It was observed that the reason as to why a question of limitation or *res judicata* was treated as a jurisdictional error was because the said error of law, on those questions was to be treated as raising a question of jurisdiction.

24. Be that as it may, on the facts of the present case, the non-consideration of two crucial documents, Exs. B-2 and B-3, and their legal effect on the question of adverse possession and also possession, in the light of the Supreme Court judgment in *Manikyala Rao v. Narasimha Swami* (*supra*) has in my view, resulted in the lower courts acting illegally as well as with material irregularity, in the "process of reaching the decision". It is, therefore, a case of an error committed while reaching the decision and it is not a case where the decision can be said to have been reached after consideration of the material evidence and where its effect is still sought to be attached as being without jurisdiction. In the latter case, no doubt, it would not be possible to say that there is any error of jurisdiction for if the procedure to reach the conclusion was correctly followed, the decision cannot be interfered with whether right or wrong. But if the error is

in the process adopted while reaching the conclusion, such as, non-consideration of the crucial documents, and their legal effect the matter squarely comes u/s 115 (c), C.P.C.

25. For the aforesaid reasons the C.R.Ps. are liable to be allowed.

26. The next question is regarding the nature of the order to be passed in the case. Section 115, C.P.C. states that in cases where grounds are made out for interference, the High Court "may make such orders in the case as it thinks fit". The Supreme Court has stated in Major S.S. Khanna Vs. Brig. F.J. Dillon, , as follows:

"But once a flaw of jurisdiction (under S.115) is found, the High Court need not quash and remit as is a practice in English law under the Writ of Certiorari to pass such order as it thinks fit."

27. The effect of not noticing Exs.B-2 and B-3 and their legal effect, as creating a break in adverse possession within the period of 30 years as decided by the highest court in the country in Manikyala Rao v. Narasimha Swami (supra) is that the finding that the plaintiffs-respondents have made out a prima facie case is liable to be set aside. Even if the matter is remitted the position would be the same in view of the decision of the Supreme Court. So far a physical possession is concerned, the matter may have to be remitted but that question would arise only if the decision on prima facie title is to be given in favour of the plaintiffs. Therefore, if the plaintiffs have not established prima facie title and even if it is assumed that on remission the court is likely to hold that the physical possession, as on the date of the present suits in 1984, is with the plaintiffs, notwithstanding their ouster earlier on 3.6.1967, the plaintiffs would not be entitled to temporary injunction under Order 39, Rule 1 C.P.C.

28. Before the suit of the Government (O.S.No.36/1986 Sub-Court Ranga Reddy District) which is pending is decided, even assuming that the respondent-plaintiffs in this batch of suits are in physical possession and the said physical possession is to be protected, neither they nor the University nor the Government can be permitted alter the nature of the urban-land in so far as it is vacant or has remained unconstructed for that may raise serious questions of equities. I would, therefore, consider it expedient and desirable that the respondents-plaintiffs should not be allowed to construct any buildings or walls on open land without the permission of the Court. I am, however, of the view that so far as constructions, if any; which have already been made by the respondents-plaintiffs are concerned they should not be interfered with by the Osmania University. The above, in my view, would balance the right of both the parties and will not create any problems at the time of disposal of the suit of the Government, O.S.No.36 of 1986.

29. In the result, the C.R.Ps. are partly allowed and the following directions shall issue:

(1) The petitioner-Osmania University will not interfere with the physical possession of the respondent-plaintiffs in respect of any constructions of buildings already made in the property as on to-day and the injunctions granted by the lower Court will remain restricted to that extent.

(2) The injunction in favour of the plaintiffs-respondents granted in clause (1) above will be subject to the following condition:-So far as land which has not been constructed upon for the purpose of any building, the respondents-plaintiffs or their vendees, under sale deeds or agreements of sale, shall not make any constructions of buildings (or walls) on open land, whether such vacant land has already been enclosed by fencing or compound wall.

(3) The Osmania University shall not also make any construction on any vacant land failing within the subject matter of these suits, without the permission of the lower Court.

(4) For the purpose of noting the existing condition of the land as on to-day, the trial Court shall appoint a senior officer of the Osmania University to prepare a report with plans and photographs of the existing constructions in the subject matter of the suits.

(5) In case any of the plaintiffs or their vendees or others act in violation of the above conditions, it shall be open to the Osmania University to bring the same to the notice of this Court for taking appropriate penal action under Order 39, Rule 2-A, C.P.C.

30. The above directions had to be given as a vast extent of about Ac. 8-00 of land originally belonging to the Government is claimed by the respondents-plaintiffs as trespassers or otherwise and to-day, the land is worth several crores of rupees and if the injunctions granted by the lower Court are maintained without any conditions and buildings are allowed to be constructed, the nature of the land will be altered and any relief to be given in the pending suit of the Government (O.S.No.26/86, Sub-Court, Ranga Reddy District) may be rendered nugatory. The C.R.Ps. are allowed partly as mentioned above. No costs.