
(2007) 09 AP CK 0034

In the Andhra Pradesh High Court

Case No : C.R.P. No"s. 3400, 3777 and 3909 of 2007

Pemula Vijayarathnam and Another

APPELLANT

Vs

Boyapati Singa Rao and Others

RESPONDENT

Date of Decision : 13-09-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47
Specific Relief Act, 1963 — Section 34

Citation : (2008) 1 ALD 88 : (2007) 6 ALT 425

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

Bench : Single Bench

Advocate : Y. Venkateswarlu, for the Appellant; Unnam Muralidhar Rao in C.R.P. No. 3400 of 2007 and Srinivas, for M.V.S. Suresh Kumar in C.R.P. No. 3909 and 3777 of 2007, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—These Civil Revision Petitions are coming up for Admission. However, submissions at length were made by Sri Venkateswarlu, Counsel representing the Revision Petitioners in all these Civil Revision Petitions and Sri Unnam Muralidhar Rao and Sri Srinivas, representing Sri M.V. Suresh Kumar, Counsel representing the respondents.

2. C.R.P. No. 3400/2007 is filed by the Revision Petitioners/Judgment-debtors as against an order dated 29-6-2007 on the file of Principal Junior Civil Judge, Kavali, made in E.P. No. 15/2006 in O.S. No. 327/97. C.R.P. No. 3909/2007 is filed as against an order dated 17-1-2007 on the file of Principal Junior Civil Judge, Kavali in E.P. No. 7/2006 in O.S. No. 326/97. C.R.P. No. 3777/2007 is filed as against an order made in E.A. No. 415/ 2007 in E.P. No. 7/2006 in O.S. No. 326/97 dated 30-7-2007. After hearing the Counsel, while reserving Orders in all these Civil Revision Petitions, on 3-9-2007, this Court made an order of status quo obtaining as on the said date to be maintained for a period of two weeks.

3. These matters are being disposed of by this Common Order in view of the

commonality of both facts and also Law which had been argued in elaboration.

4. Sri Venkateswarlu, the learned Counsel representing the Revision Petitioners in all these Civil Revision Petitions would maintain that in the light of the facts and circumstances, the very suit as framed is not maintainable and even otherwise the relief of mandatory injunction cannot be put into execution in the absence of a Decree for recovery of possession and this objection can definitely be raised u/s 47 of the CPC and without making proper enquiry the orders impugned in C.R.P. No. 3400/2007 and C.R.P. No. 3909/ 2007 had been made. The learned Counsel also incidentally pointed out to Section 34 of the Specific Relief Act and also the proviso and would maintain that in the light of the same, inasmuch as the Decree is a nullity, the same cannot be put into execution. The learned Counsel incidentally also had pointed out to several factual details and also the respective contentions of the parties and the findings recorded by the original Court and the first appellate Court in these proceedings and would maintain that even if the facts are to be taken into consideration, the way in which the matters had been disposed of cannot be sustained and accordingly the impugned orders in these matters to be set aside and the matters to be remitted for proper enquiry into the objections raised by the petitioners. The Counsel also placed strong reliance on several decisions to substantiate his submissions.

5. Per contra, Sri Muralidhar Rao, Counsel representing the respondent/Decree-holder in C.R.P. No. 3777/2007 (sic.) had taken this Court through the findings recorded in the proceedings in the light of the respective pleadings of the parties and also the evidence available on record and would maintain that in the facts and circumstances, it cannot be said that the Decree is a nullity and the Executing Court cannot go behind the Decree and hence the Executing Court made the impugned orders in accordance with Law. The learned Counsel while further elaborating his submissions had pointed out that though the relief of mandatory injunction had been granted, in a matter of this nature, it cannot be said that it is totally without jurisdiction for the reason that initially a suit for declaration of title and perpetual injunction had been filed which had been subsequently amended and in the light of the peculiar facts and circumstances, the objections raised by the Judgment-debtors are only with a view to delay the proceedings and hence absolutely there is no justification in again remitting the matters especially in the light of the convincing reasons which had been recorded by the learned Principal Junior Civil Judge, Kavali. The Counsel also relied upon several decisions to substantiate his contentions.

6. Sri Srinivas, Counsel representing Sri M.V.S. Suresh Kumar, would maintain that in the facts and circumstances, the relief of mandatory injunction would be inclusive of the relief of possession and the mere fact that the relief of possession as such had not been specifically prayed for or specifically the same had not been granted, would not alter the situation in the light of the respective pleadings of the parties, the evidence available on record, on the strength of which clear findings had been recorded while making the Decree. This is not a

case of inherent lack of jurisdiction of the Court to entertain the suit and in the light of what is being pointed out, it cannot be said that this can be a sustainable objection and the Executing Court is well justified in making such an order. The Counsel also placed strong reliance on several decisions to substantiate his submissions.

7. Respondents in C.R.Ps. 3400/2007 and 3909/2007 obtained Decrees in O.S. No. 327/97 and 326/97 against these Revision Petitioners and there appears to be some element of controversy relating to the identity of the property as well. These Decrees were put into execution and the learned Principal Junior Civil Judge, after recording reasons ultimately came to the conclusion that these objections cannot be considered by the Executing Court in view of the fact that the structures in the E.P. Schedule property had not been removed by the Judgment-debtors and as per the Decree, the Judgment-debtors are bound to remove the structures, in default, the same to be removed through process of Court and accordingly allowed the Execution Petitions since J.Drs. had not removed them. Aggrieved by the same, C.R.P. Nos. 3400/ 2007 and 3707/2007 had been filed.

8. In E.A. No. 415/2007 in E.P. No. 7/2006 in O.S. No. 326/2007, police aid had been granted. It is needless to say that normally the Executing Court cannot go behind the Decree. Elaborate submissions were made that a Decree for a mere declaration cannot be put into execution. Here is a case where the relief of mandatory injunction had been granted and this Court had gone through the Decrees which were put into execution and this Court is of the considered opinion that the objections raised in this regard cannot be sustained for the reasons specified infra.

9. The learned Counsel representing the Revision Petitioners no doubt placed strong reliance on the undemoted decisions:

S. Ramesh and Others Vs. Dr. Mohammed Imam Hannorai and Another, , Hussain Khan Vs. Yadavalli Choultry (Trust), Kothapeta and others, , State of M.P. Vs. Mangilal Sharma, , Jaipur Development Authority Vs. Radhey Shyam and Others, , Vinay Krishna Vs. Keshav Chandra and another, , Vinay Krishna Vs. Keshav Chandra and another, , Potti Venkata Kasi Viswanadham Vs. Vallabha Vyas, , Parul Bala Roy Vs. Srinibash Chowmal and Others, , Indira Transport Vs. Rattan Lal, , Bhanwar Lal Vs. Satyanarain and another, , Krishna Prasad Singh Vs. Adyanath Ghatak and Another, , Narain Dass Vs. Atma Ram and Others, .

10. Reliance also was placed on the relevant provisions of the Transfer of Property Act and also the Specific Relief Act. The Counsel representing the respondents placed strong reliance on the undemoted decisions: Narinder Singh and Others Vs. Kishan Singh (dead) by L.rs. and Others, (1) An.W.R. 62 Maya Devi and Others Vs. Mehria Gram Dall Mill and Others, and Baban Narayan Landge Vs. Mahadu Bhikaji Tonchar and Others, . Further strong reliance was placed on Prabirendra Nath Nanday and Another Vs. Narendra Nath Nanday, ,

Sant Lal Jain Vs. Avtar Singh, , Paramu v. Balan AIR 2002 Ker. 97. The Apex Court at para-7 observed:

In the present case it has not been shown to us that the appellant had come to the Court with the suit for mandatory injunction after any considerable delay which will disentitle him to the discretionary relief, Even if there was some delay, we think that in a case of this kind attempt should be made to avoid multiplicity of suits and the licensor should not be driven to file another round of suit with all the attendant delay, trouble and expense. The suit is in effect one for possession though couched in the form of a suit for mandatory injunction as what would be given to the plaintiff in case he succeeds is possession of the property to which he may be found to be entitled. Therefore, we are of the opinion that the appellant should not be denied relief merely because he had couched the plaint in the form of a suit for mandatory injunction.

In Paramu's case AIR 2002 Ker. 97 the learned Judge of Kerala High Court at paras 10 and 11 observed:

The learned Counsel for the appellant submitted that the above decision is not applicable to the facts of this case as the plaintiff had set up a case of trespass and therefore he should have prayed for recovery of possession. This contention would have been valid if the defendant had set up a case of adverse possession or independent title in himself. His definite case in the written statement is that he was permitted to occupy the building after the mediation talk since the plaintiff was not willing to execute the sale deed. The agreement was on 20-7-1994, the trespass was between 23-10-1994 and 25-11-1994 and the suit was filed on 3-11-1994. The defendant is not interested in enforcing the agreement as he has obtained a decree for return of the amount paid by him. He has no other case of ownership or claim for possession with respect to the building.

Manthan Rama Murthy in his "Law of Adverse Possession" says "There is perhaps no legal conception more open to a variety of opinion than possession. Possession is a flexible term and is not restricted to mere occupation. Legal possession is occupation with the intention of exercising the right of ownership in respect of it. Mere act of user which do not interfere and are consistent with the owner's title are not sufficient to constitute dispossession of the owner or start adverse possession in favour of the occupant." In the light of the principle and in the light of the claim of the defendant that he was in permissible possession of the building, it is not possible to find that the relief prayed for was totally unsustainable. Moreover, if the defendant had raised an issue on this aspect, it would have been possible for the plaintiff to pray for amendment of the plaint to seek a formal prayer for recovery of possession instead of mandatory injunction.

11. The Decree and Judgment made in O.S. No. 326 and also A.S. No. 25/2002 and also in S.A. No. 372/2006 and batch had been placed before this Court and the relevant findings recorded in this regard also had been pointed out by the

Counsel representing the respective parties. Certain submissions were made in relation to whether the Decrees already made would operate as res judicata or not. On a careful analysis of the findings which had been recorded already in the proceedings which were fought by the parties upto the stage of Second Appeal, this Court is satisfied that the Executing Court is well justified in holding that the objections raised are unsustainable objections. It is pertinent to note that the Decree-holders are normally entitled to put the Decrees into execution. Unless there is inherent lack of jurisdiction or any other serious illegality touching the root, the Executing Court may have to put the Decrees into execution and the Decree-holders are entitled to have the fruits of the Decrees. The questions which ought to have been agitated at the stage of Suit, First Appeal or Second Appeal, when findings had attained finality, cannot be reagitated before the Executing Court. Exactly, the attempts which are being made by the Judgment-debtors are to again raise such grounds at the stage of execution and in the considered opinion of this Court this is impermissible.

12. On over-all appreciation of all the facts and circumstances and also in the light of the reasons which had been recorded by the learned Principal Junior Civil Judge, Kavali, this Court is thoroughly satisfied that these Civil Revision Petitions had been preferred only with a view to further delay the execution of the Decrees. In the light of the same, it is needless to say that the Civil Revision Petitions being devoid of merit, the same shall stand dismissed at the stage of Admission, with costs.