
(2002) 09 AP CK 0005

In the Andhra Pradesh High Court

Case No : CRP No"s. 502 and 505 of 2002

S. Malla Reddy and Others

APPELLANT

Vs

Future Builders Co-operative Housing Society and Another

RESPONDENT

Date of Decision : 18-09-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 16, Order 8 Rule 9

Citation : (2003) 1 ALD 402 : (2002) 6 ALT 244 : (2003) 1 CivCC 706

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : Vedula Venkataramana, for the Appellant; M.S.N. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

D.S.R. Varma, J.—These two Revision Petitions are filed against the common order dated 4.1.2000 passed by the Court below in I.A. Nos. 415 and 416 of 2000 in O.S. No. 1 of 2000.

2. I.A. No. 415 is filed under Order 6, Rule 16 C.P.C. to strike out the pleadings filed on behalf of the defendants or otherwise to expunge the written statement filed in their names by their previous Advocate Sri Sunil Kumar in O.S. No. 408/1994 on the file of III Additional Judge, City Civil Court, Secunderabad, which was transferred and numbered as O.S. No. 1/2000 on the file of the lower Court.

3. I.A. No. 416/2000 was filed by the defendants under Order 8, Rule 9 CPC read with Section 151 CPC to permit the defendants to file a detailed written statement.

4. By the impugned common order and decree, the Court below dismissed both the I.As. Hence, the defendants in the suit filed the present revision petitions.

5. The suit was filed for declaration of title and injunction with regard to the

disputed property of about Ac.4.10 guntas of Tirumalgiri.

6. For the sake of convenience, the parties shall be referred to as plaintiff and defendants.

7. It is necessary to go into the facts of the case. The suit was filed in the year 1994 by the plaintiff for declaration of title and injunction. The plaint averments in brief are that the plaintiff is a society with the object of acquiring the lands for the benefit of the members. When the society was not registered, the suit land was identified as fit for the purpose of making plots for the benefit of the members. At that point of time one Mr. Mohd. Sarvar, who was the original owner with whom the society negotiating, entrusted the further work to the defendant for effecting the purchase and other formalities, as it was not registered by then. In this regard, an agreement was entered into between the 1st defendant and the plaintiff - society. The said agreement is dated 8.3.1978 and the same is marked as Ex.B-28. As per the said agreement it was specifically agreed that the 1st defendant will get the land measured and after obtaining the legal opinion as to title, will pay money to the original landlord and obtain possession after getting sale deed executed in the name of the society after the society is registered. Subsequently the society was registered. In the meanwhile the 1st defendant had purchased the land from the original owner not only in his name, but also in the name of his family members and they were defendants 2 to 4. In other words according to the plaintiff, the 1st defendant along with other defendants were only custodians of the property belong to the plaintiff - Society. As agreed, the sale transaction was completed between the original owner and the 1st defendant on 2.1.1979. Another agreement dated 16.9.1981, Ex.B29 was entered into between the plaintiff and the 1st defendant to the effect that the plaintiff will hold the land as owner and that the expenses incurred by the 1st defendant from the date of purchase to the date of delivery of possession of the land to the plaintiff towards survey, demarcation and for development and for protection of the land will be paid to the 1st defendant after rendering accounts.

8. Subsequently when the plaintiff transformed into a registered society, started demanding the defendants to transfer the disputed land in the name of the plaintiff. For one reason or the other, the request of the plaintiff was not acceded to and the same was being postponed and the 1st defendant has also not rendered any account of expenses incurred by him during the interregnum period. Hence the plaintiff-society, filed the suit.

9. The defendant filed a written statement stating inter alia that these defendants held it for the benefit of the plaintiff and after the society was incorporated on 28.8.1981, delivered the land to the plaintiff and also executed a Memorandum dated 16.9.1981 which was ratified by the plaintiff- society.

10. In paragraph No.3 of the written statement it is stated that after the suit is filed there was mediation and settlement and a sum of Rs. 1,00,000/- (Rupees one lakh only) was paid as full quit to these defendants and these defendants are

willing to transfer the patta in favour of the plaintiff who has already acquired the title as stated in the plaint.

11. From the above it is clear that the 1st defendant almost agreed with the plaint pleadings. There appears to be no conflict whatsoever between the plaint pleadings and the averments made by the defendants on vital issues. The only dispute highlighted by the defendants was that there was a settlement out of mediation and the defendants are willing to transfer the patta of the disputed land in favour of the plaintiff if a sum of Rs. 1,00,000/- was paid to them as full and final settlement.

12. The written statement was filed on 19.1.1995. Subsequently the defendant filed the present I.As. for the relief referred as already stated above.

13. The defendants filed the present I.As. stating that they approached one advocate by name Sri Sunil Kumar and gave vakalat to him and at his instance the 1st defendant simply signed on some blank papers to file written statement and that at a later point of time written statement was drafted in the manner in which it was made part of the record. According to them the contents of the written statement are almost in the nature of admitting the plaint averments, which was not at all intended by the defendants and the same would defeat their interests. They further stated that the concessions made in the written statement were the result of the mischief played by their advocate Sri Sunil Kumar. It is further stated that to that effect they approached the Bar Council of India and they also filed a police report.

14. It appears from the record that on a later date, the defendants filed a petition in I.A. 162/2000 in O.S. No. 1/2000 before the Court below seeking permission of the Court to change their advocate by name Sunil Kumar. The reasons for the change of advocate are not worth mentioning, inasmuch as the Court granted permission to the defendants to change the advocate without prejudice to the cases of both sides before the Bar Council of India and with a hope that the Counsel for the defendants withdraws his vakalat not on the allegations made in the petition, but by his good conscience.

15. Now the question that falls for consideration before this Court is whether the I.As. which are almost in similar nature though filed under different provisions are to be allowed or not? The Court below after elaborately discussing the material on record, dismissed the petitions.

16. The Counsel for the defendants submitted that a perusal of the written statement would reveal that it is totally contrary to the instructions issued by the defendants. It was only because of the mischief played by the Counsel. To substantiate his contentions the learned Counsel placed reliance on the factors like giving complaint to the police and also complaint to the Bar Council of India, against the Counsel who filed written statement conceding the plaint pleadings. However since the Court below passed no adverse remarks in the order dated 7.2.2000 passed in I.A. No. 162/2000 regarding the change of advocate, it is not

necessary for this Court to go into that aspect. But it has to be noted from the order of the Court below that it permitted the earlier Counsel for the defendants i.e., Sri Sunil Kumar to withdraw the vakalat only on the ground of propriety, but certainly not doubting the integrity of the Counsel.

17. Coming to the present dispute it has to be noted that the defendants filed a caveat No. 178/1994 contemplating filing present suit. It is very significant to note that this caveat petition was also drafted and filed upon the instructions of the defendants by the very same Counsel i.e., Sri Sunil Kumar. The said caveat petition was filed along with an affidavit on 7.7.1994 and whereas the present petitions were filed on 29.2.2000. It is also equally important to note that the written statement was filed in the year 1994.

18. It is rather surprising to note that the defendants did not realise the so called mischief played by their Counsel in the written statement filed in the year 1994, till the year 2000. The specific case of the defendants, as already stated, is that the concessions/admissions made in the written statement are contrary to their instructions. Therefore, they filed the present I.As., to expunge the earlier written statement and permit them to file a fresh detailed written statement.

19. As already pointed out even before the suit was filed, the defendants filed a caveat along with an affidavit. This affidavit was sworn in by the 1st defendant and the same is marked as Ex.B-1 in the present I.As. The relevant portion of the affidavit is extracted as under-

2. During the year 1978 the promoters of the Future Builders Co-operative Housing Society agreed to get it incorporated under the A.P. Co-operative Societies Act of 1964 and entrusted the function of procuring the land mentioned in the schedule hereunder for the purpose of Society and delivered a sum of Rs. 10,000/-. I negotiated with Mohammad Sarvar and 9 others the owners of the said land for purchase for the society. An agreement dated 8.3.1978 was entered between me and Mohd. Abdul Hai, Chief Promoters of the Society. It was agreed that in case of delay in the registration and incorporation of the society, the sale deed may be obtained in my name or in the name of my family for the benefit of the society and that after the incorporation, I may deliver the land to the said society who may be treated as owner from the date of incorporation. I also agreed for making necessary changes in patta and other revenue records in favour of this society after its incorporation.

2. Since there was delay in the registration of the society, I obtained the sale deed dated 2.1.1979 in my name with the funds provided by the promoters of the society. I got the patta also transferred in my name as well as of the other caveators.

3. The society was registered on 28.8.1981 and became incorporated. One of the conditions of the agreement is that the expenses incurred by me for the development of the land and its protection from the date of its purchase to the date of delivery be reimbursed to me by the society after taking accounts but so

far they have been postponing the question of settlement. As an agent I am entitled for lien on the land towards my expenses. Now it is understood that the respondent's society is trying to layout the land and dispose it off without paying the amount...

From a perusal of the above affidavit and also the averments in the written statement would show that they are perfectly matching with each other. Further both the affidavits filed in support of the caveat petition and the written statement were drafted by the same Counsel i.e., Sunil Kumar against whom complaints were made both before police and also before Bar Council of India. Surprisingly the 1st defendant makes the complaint against the Counsel, only with regards to the contents in the written statement. But he has conveniently or intentionally forgotten about the sworn statement filed along with the caveat petition. Therefore, the complaint made by the defendants against the Counsel and the averments made in the present I.As. cannot be believed in the light of the sworn statement filed earlier in the caveat petition by the 1st defendant himself which was also drafted by the very same Counsel. In other words since the stand taken by the 1st defendant at the earlier point of time by way of caveat petition and the affidavit thereof is perfectly matching with the written statement, the averments made in the present I.As. cannot be believed.

20. Further the plaint obviously came to be filed only after the filing of the caveat No. 17871994 by the 1st defendant. Even after elimination of the written statement, the sworn statement, which is on record along with the caveat petition and the plaint pleadings are matching with each other. The only dispute or apprehension expressed by the 1st defendant in the caveat affidavit is that the plaintiff - society is contemplating to layout the land and dispose of the same without paying the amount due to him. It is specifically stated therein that he is only an agent of the land. Now if the averments made in the affidavit filed in support of the caveat petition as well as plaint pleadings and the written statement are read together, absolutely there is no inconsistency and the dispute of the defendant is only with regard to the payment of some due to him and nothing else.

21. This view is further strengthened for the reason that in the written statement and in the earlier affidavit, there is consistency with regard to the agreement entered into between the plaintiff and the defendants dated 8.3.1978 and 16.9.1981 marked as Exs.B-28 and B-29. The net result is that there is no conflict whatsoever as regards the title and the concession made in the written statement. The original dispute even before the filing of the suit, as already stated, is only with regard to the limited extent of getting back his amount which was promised by the plaintiff-society.

22. The Court below had elaborately discussed this aspect. I agree with the reasoning and findings thereof given by the Court below on this aspect and I hold that they are perfect and valid.

23. Before the Court below the defendant relied on a judgment reported in Bhikaji Keshao Joshi and Another Vs. Brijlal Nandlal Biyani and Others, , and contended that the Court can order striking out of the written statement and permit the defendants to file substituted written statement with specific pleadings. The Court below rightly distinguished the same and held that it is not applicable.

24. The lower appellate Court while dismissing the I.As. relied on a judgment of the Apex Court reported in Heeralal Vs. Kalyan Mal and Others, , wherein it was held that once the written statement contains an admission in favour of the plaintiff, the amendment of such admission of the defendants cannot be allowed to be withdrawn and such withdrawal would amount to totally displacing the case of the plaintiff which would cause him irretrievable prejudice. In another decision of the Supreme Court referred to by the Court below in B.K. Narayana Pillai v. Parameswaran Pillai and Anr. 2001 (1) SCC 712, it was held that though the defendant has a right to take alternative pleas in defence by way of amendment, it would be subject to qualifications which are (1) proposed amendment should not result in injustice to the other side and (2) any admission made in favour of the plaintiff should not be withdrawn and (3) inconsistent and contradictory allegations which negate admitted facts should not be raised.

25. In the present case the question now is whether the admissions made by the defendants in favour of the plaintiff can be withdrawn and the answer in the language of the Apex Court, is "not permissible".

26. As already discussed the admissions made in the written statement are absolutely matching with the original stand taken by the 1st defendant in the affidavit filed to his caveat petition and also with the pleadings and the only dispute raised is with regard to payment of money to the defendant. In such a case I am of the strong view that the defendant had not approached the Court with clean hands in filing the present I.As.

27. It has to be further noticed that the allegations made against the Counsel are not established so far. Mere filing of a complaint before the police or before the Bar Council of India, in the circumstances like the present one would only jeopardize the decency and dignity of the profession of the Advocate. This attitude of making wild and baseless allegations against the Counsel has to be dissuaded by all means. However, this observation shall not be understood as an opinion expressed by this Court on the proceedings already initiated and pending against the said Counsel. To put in a different way, the original stand of the defendant as stated in the affidavit filed in support of the caveat petition demolishes or cuts across the very basis for filing the present I.As. I am of the further view that if these type of allegations are made without substantiating them and if they are encouraged, it would lead to a situation where litigants with false cases would resort to smudging the career of genuine or innocent advocates. The conduct on the part of the defendant is palpably mischievous and this Court cannot lend any kind of support to a litigant like the defendant, who

has approached the Court with unclean hands.

28. It is also brought to the notice of this Court that in another suit which is not connected with the present suit, the defendant resorted to similar type of allegations against another Counsel, and of course the trial Court did not take into consideration those allegations.

29. The Court below had discussed in detail all the aspects and dismissed the I.As. with cogent and convincing reasons and I do not find any valid ground to interfere with the same. Accordingly I pass the order as under:

30. The revision petitions are dismissed with costs.