

(2012) 08 AP CK 0048

In the Andhra Pradesh High Court

Case No : C.C.C.A. No"s. 61 and 87 of 2012

T. Srinivas and another

APPELLANT

Vs

E. Ravinder and another
 Smt. T. Padmini @ G.
Padmini Vs E. Ravinder and Others

RESPONDENT

Date of Decision : 27-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 97, 96

Citation : (2012) 6 ALT 441

Hon'ble Judges : G. Rohini, J;C. Praveen Kumar, J

Bench : Division Bench

Advocate : L. Ravichander, representing Sri C. Ramachandra Raju and Sri R. Chandrasekhar Reddy, for the Appellant; J.V. Suryanarayana, rep. Sri T. Sudhakar Reddy Counsel, for the Respondent

Judgement

G. Rohini, J.—These two appeals are preferred u/s 96 of C.P.C. aggrieved by the dismissal of two claim petitions filed under Order 21 Rule 97 of C.P.C. in E.P. No. 34 of 2007 in O.S. No. 8 of 1996 on the file of the Court of the III-Senior Civil Judge, City Civil Courts, Secunderabad. The appellants herein are the claim petitioners. The respondent No.1 in both the appeals is the decree-holder / plaintiff in O.S. No. 8 of 1996 filed for specific performance of an Agreement of Sale executed by the respondent No.2 herein. The said suit was decreed by judgment dated 15.4.2003. Against the said judgment and decree, the defendants filed C.C.A. No. 340 of 2003. A Division Bench of this Court by judgment dated 15.11.2006 dismissed the appeal and confirmed the decree and judgment of the trial court. The Special Leave Petitions filed by the defendants were also dismissed by the Supreme Court by order dated 10.08.2007.

2. Thereafter, the plaintiff/decreed-holder (respondent No.1 herein) filed E.P. No. 34 of 2007 with a prayer to get the sale deed executed through process of the Court. At that stage, the defendants 2 & 3 in the suit filed E.A. No. 264 of 2007 u/s 47 and Order 21 Rule 97 of C.P.C. contending that they are in possession of the

E.P. schedule property and raising an objection as to the very maintainability of the execution petition. The defendant No.4 also filed a similar claim petition being E.A. No. 305 of 2007. By separate orders dated 26.04.2012 the Court below dismissed both E.A. No. 264 of 2007 and E.A. No. 305 of 2007 holding that the claim petitions were not maintainable under Order 21 Rule 97 of CPC. Hence the present appeals by the claim petitioners.

3. CCCA. No .61 of 2012 is preferred by the defendants 2 & 3 against the order in E.A. No. 264 of 2007 whereas CCCA. No. 87 of 2012 is preferred by the defendant No.4 against the order in E.A. No. 305 of 2007.

4. We have heard the learned counsel for both the parties.

5. It is contended by Sri L.Ravichander, the learned Senior Counsel appearing for the appellants that the Court below committed a grave error in dismissing the claim petitions as not maintainable. It is also contended that the procedure adopted by the Court below in dismissing the claim petitions without permitting the claim petitioners to produce oral and documentary evidence on their behalf was not only contrary to the provisions of Section 47 read with Order 21 Rule 97 of C.P.C. but also in violation of the directions of this Court in CRP Nos. 2196 & 4101 of 2011. In support of the said contention, the learned counsel placed reliance upon Chalugu Basivi Naidu and Others Vs. Chalugu Bheemi Naidu and Others,

6. On the other hand, Sri J. V. Suryanarayana, the learned Senior Counsel appearing for the 1st respondent (decree-holder) while relying upon Pothuri Thulasidas Vs. Potru Nageswara Rao, submitted that the remedy under Order 21 Rule 97 of C.P.C. is available only to the decree-holder or the purchaser of any such property sold in execution of a decree and therefore the applications are rightly dismissed by the Court below as not maintainable.

7. In the light of the rival submissions noticed above, the point that requires consideration is whether the claim petitions filed by the appellants herein under Order 21 Rule 97 of C.P.C. are maintainable.

8. If the said point is answered in affirmative, then it is necessary to consider the next point whether the Court below committed an error in dismissing the claim petitions without giving an opportunity to the appellants herein to lead evidence.

Point No.1:

9. Before going into the legal aspects, it is necessary to refer to some more facts borne out of the record.

10. The suit schedule property consists of a building bearing No. 10-2-376 constructed on leasehold plot No. 278 situated at West Maredpally, Secunderabad. The case of the plaintiff/1st respondent herein is that the defendant No. 1/respondent No. 2 herein had executed an agreement of sale dated 25.5.1995 (Ex.A1) in favour of the plaintiff thereby agreeing to transfer

the suit schedule property together with the leasehold rights for a total sale consideration of Rs.32,03,000/- and that a sum of Rs.4,00,000/- was paid as advance. Alleging that the defendant No.1 failed to execute the registered sale deed in favour of the plaintiff despite the readiness and willingness expressed by the plaintiff to perform his part of obligation, he filed the suit for specific performance of Ex.A1 agreement of sale and to direct the defendant No.1 to execute and register the sale deed in respect of the suit schedule property after receiving the balance sale consideration. It is to be noticed that initially the suit was filed against the sole defendant i.e., the respondent No.2 herein. However the appellants herein got themselves impleaded as the defendants 2 to 4 claiming that the defendant No.1 had executed Ex.B5 agreement, dated 24.08.1994 in their favour for transfer of the leasehold rights in respect of the suit schedule property for a total sale consideration of Rs.19,50,000/-. It was also claimed by them that the entire sale consideration was paid by them to the defendant No.1 and that on an application made by them the Government of A.P. had converted the leasehold land into freehold land and Ex.B4 conveyance deed, dated 14.10.1996 was executed in favour of the defendants 2 to 4. Thus it was claimed that they were bonafide purchasers of the suit schedule property for valuable consideration.

11. Both the parties adduced evidence in support of their respective claims and on appreciation of the same the trial court found that the Ex.A1 agreement of sale dated 25.05.1995 was true, valid and binding on the defendants. It was also found that Ex.B5 agreement under which the defendants 2 to 4 claimed title was a collusive document and that it was not binding on the plaintiff and that the payments allegedly made under Ex.B5 were not true and valid. It was further held that the plaintiff was always ready and willing to perform his part of contract and thus by judgment dated 15.04.2003 the suit was decreed with costs and the defendant No.1 was directed to execute and register the sale deed in favour of the plaintiff in respect of the suit schedule property after receiving the balance sale consideration. All the defendants together filed CCA. No. 340 of 2003 and it was dismissed by this Court by judgment dated 15.11.2006 thereby confirming the findings recorded by the trial Court. Even the SLP preferred by the defendants was dismissed by the Supreme Court and thus the judgment and decree in O.S. No. 8 of 1996 has become final.

12. Pursuant thereto, the decree-holder/1st respondent herein filed E.P.No.34 of 2007 under Order 21 Rule 34 of C.P.C. against the 1st defendant/the 2nd respondent herein for execution and registration of the sale deed through process of the Court including the delivery of vacant and peaceful possession of the suit schedule property.

13. It is to be noticed that this Court while dismissing CCA. No. 340 of 2003 directed the plaintiff/1st respondent herein to deposit the balance sale consideration of Rs.28,03,000/- before the Court below within a period of three months. In compliance with the same, the 1st respondent herein had deposited

the said amount before filing E.P.No.34 of 2007.

14. In the said execution petition, two claim petitions (EA. Nos. 264/2007 and 305/2007) came to be filed by the appellants herein purportedly u/s 47 read with Order 21 Rule 97 of CPC claiming that they are in possession of the suit schedule premises which is constructed on a leasehold plot. It is contended that they are residing in the suit premises in their own right pursuant to the execution of a regular conveyance deed dated 14.10.1996 by the Estate Officer, Secunderabad, representing the State of A.P. and as such the execution petition which is filed against the 1st defendant alone, who has nothing to do with the delivery of possession of the said property, is liable to be rejected so far as the claim for possession of the suit schedule property is concerned.

15. The 1st respondent herein/plaintiff/deed-holder opposed the claim petitions by filing counters and while the said claim petitions were pending enquiry, the claimants/appellants herein filed E.A. No. 69 of 2011 and E.A. No. 71 of 2011 under Order 6 Rule 17 of C.P.C. seeking permission to amend their respective claim petitions by incorporating two paragraphs. The said applications were dismissed by the Court below by orders dated 3.6.2011. Aggrieved by the same, the claimants filed CRP. Nos. 4101 of 2011 and 2196 of 2011.

16. CRP. No. 2196 of 2011 was disposed of by this Court by order dated 29.8.2011 holding that the order under revision did not suffer from any irregularity or illegality. However it was observed:

I feel the ends of justice would meet if both the parties are permitted to lead oral and documentary evidence touching on all aspects which are raised in amendments and also in the original E.P.No.305 of 2007.

17. Subsequently CRP. No. 4101 of 2011 was also disposed of by this Court by order dated 18.11.2011 with similar observations.

18. Thereafter, the Court below heard both the parties and reserved orders in E.A. No. 264 of 2007 and E.A.No.305 of 2007. At that stage, on 20.04.2012 the claim petitioners filed a fresh application being EA(SR). No. 3251 of 2012 with a prayer to reopen E.A. No. 264 of 2007 and E.A. No. 305 of 2007 for the purpose of marking the documents that were already filed by them along with the claim petitions as well as some other documents, in terms of the orders passed by this Court in CRP. No. 2196 of 2011 and CRP. No. 4101 of 2011. The said application was returned by the Court below on the same day raising an objection as to the maintainability.

19. Simultaneously by separate orders dated 26.4.2012 the Court below dismissed the claim petitions i.e., EA. Nos. 264 of 2007 and 305 of 2007 filed under Order 21 Rule 97 of CPC. The said orders are challenged in these two appeals preferred u/s 96 of CPC.

20. As noticed above, the claim petitions were dismissed by the Court below on the ground that they were not maintainable under Order 21 Rule 97 of CPC since

the claim petitioners were parties to the main suit and that all the questions raised with regard to their rights were heard and decided while decreeing the suit which attained finality.

22. Sri L. Ravichander, the learned Senior Counsel appearing for the appellants vehemently contended that the Court below committed a grave error in dismissing the claim petitions as not maintainable since there was no decree as such against the appellants herein. Pointing out that the decree in O.S. No. 8 of 1996 was only against the defendant No.1 to execute and register the sale deed and there was no decree against the defendants 2 to 4 for delivery of possession, it is contended by the learned Senior Counsel that in the absence of such decree the claim petitioners/respondents herein ought to have been treated as third parties in possession of the suit property and therefore they are entitled to get their claim adjudicated when they are sought to be dispossessed by the decree-holder.

23. The appeals were contested by the decree-holder contending that the claim petitions as well as the subsequent applications for amendment were filed by them only to frustrate the decree granted in favour of the plaintiff. It is further contended that the appellants are not entitled to raise the issues which have already become final between the parties.

24. At the cost of repetition, it may be mentioned that O.S. No. 8 of 1996 in which the 1st respondent herein sought a decree for specific performance of an agreement of sale was decreed as prayed for and the said decree was upheld by this Court in CCCA. No. 61 of 2012 and the SLP was dismissed by the Supreme Court. Thus the decree has attained finality.

25. It is also not in dispute that the appellants herein are parties to the said suit having got themselves impleaded to the suit claiming title to the suit property under a prior agreement of sale stated to have been executed by the 2nd respondent herein. The trial court recorded a specific finding that the agreement allegedly executed in favour of the appellants was a collusive document and it was not binding on the 1st respondent herein.

26. Therefore, there is no substance in the contention on behalf of the appellants that they are not bound by the decree in O.S. No. 8 of 1996. It is no doubt true that there was no specific direction in the decree against the appellants herein for delivery of possession of the suit schedule property. However on that ground the appellants cannot contend that the decree is not binding on them. In fact a clear finding was recorded that they were not in possession of the suit property and the same was confirmed by this Court. Therefore it is un-understandable as to how they can re-agitate the said issue in the execution proceedings.

27. Even otherwise the law is well-settled that the remedy under Order 21 Rule 97 of CPC is available only to the decree-holder for possession of immovable property or the purchaser of any such property sold in execution of a decree. Rule 97 of Order 21 of CPC reads as under:

97. Resistance or obstruction to possession of immovable property

(1) Where the holder of a decree for possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

28. A plain reading of the above provision shows that it is a remedy available to the decree-holder if he is resisted or obstructed by any person in obtaining possession of the property. Whenever such an application is made by the decree-holder under Rule 97 of CPC complaining to the Court resistance or obstruction by any person, all questions arising between the decree-holder and any such person shall be adjudicated by the executing Court itself under Order Rule 101 of C.P.C. May be that, such an application filed by the decree-holder can be opposed by any person in possession by seeking adjudication of his objections, however such person himself cannot maintain an application under Order 21 Rule 97 of CPC.

29. The view expressed by us is fortified by the decision of the Supreme Court in *Shreenath and Another Vs. Rajesh and Others*, . Following the said decision, it was also held by a learned Single Judge of this Court in *Pothuri Thulasidas v. Potru Nageswara Rao* (2 supra) that it is not permissible for a judgment-debtor to file an application under Order 21 Rule 97 of CPC.

30. Having carefully gone through the decision in *Chalugu Basivi Naidu v. Chalugu Bheemi Naidu* (1 supra) relied upon by the learned counsel for the appellants, it appears to us that the view expressed by the learned Single Judge in *Chalugu Basivi Naidu v. Chalugu Bheemi Naidu* (1 supra) is contrary to the scope and object of Order 21 Rule 97 of CPC and therefore it cannot be held to be a good law.

31. In the light of the legal position noticed above, the appellants who are admittedly parties to O.S. No. 8 of 1996 and suffered a decree, under no circumstances can maintain the applications under Order 21 Rule 97 of C.P.C.

32. There is another aspect of the matter. We have already noticed that the appellants herein were not initially parties to O.S. No. 8 of 1996. They themselves got impleaded as defendants 2 to 4 claiming that the defendant No.1 had executed Ex.B-5 agreement in their favour for sale of the leasehold rights in respect of the suit schedule property in their favour even prior to the suit schedule agreement. However, the trial Court found that Ex.B-5 Agreement was not a genuine document. Even with regard to Ex.B-3 Transfer Agreement, dated 12.9.1996 and Ex.B-4 Conveyance Deed, dated 14.10.1996 under which the appellants/defendants 2 to 4 claimed that the leasehold rights of the property

were transferred in their favour, it was found by the trial Court that the said documents were brought into existence during the pendency of the suit in utter disregard to the interim order dated 29.1.1996 passed in I.A. No.25 of 1996 and therefore Section 52 of the Transfer of Property Act came into play and that the alleged transfer in favour of the defendants 2 to 4 was hit by the principles of doctrine of lis pendens. So far as possession is concerned, the defendant No.2 in his evidence as D.W.2 admitted that the possession was not delivered to him. In the light of the said evidence, the trial Court recorded a finding that the possession of the superstructure standing on the plot in question was still with the defendant No.1. The above said findings have become final and are undoubtedly binding on the defendants 2 to 4 i.e., the appellants herein.

33. As per Order 21 Rule 102 of C.P.C. nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit. Having considered the scope of Rule 102 of Order 21 of CPC it was held in Veerabathini Janardhan Vs. Terala Rajaiah (since died) per Legal Representative and Others, by one of us (G.Rohini, J) that the petitioner therein who was the transferee pendente lite cannot maintain an application under Order 21 Rule 99 of CPC.

34. The same principle is attracted to the case on hand since the appellants are claiming title and possession on the basis of an alleged transfer that took place during the pendency of O.S.No.8 of 1996. Hence on that ground also they cannot maintain the applications under Order 21 Rule 97 of CPC.

35. For the aforesaid reasons, we hold on Point No.1 that the claim petitions filed by the appellants herein under 21 Rule 97 of CPC are not maintainable and the Court below has rightly dismissed the same.

Point No.2:

36. Since the claim petitions filed under Order 21 Rule 97 of CPC are not maintainable, it is not open for the appellants to contend that the orders under appeal are bad for not giving an opportunity to them to lead oral and documentary evidence in support of their claim petitions.

37. Therefore, in our considered opinion, the interference by this Court is not warranted on any ground whatsoever. Accordingly, both CCA. Nos. 61 & 87 of 2012 are dismissed. No costs.