

**THE HON'BLE SHRI JUSTICE SANJAY KUMAR**

**SECOND APPEAL NO.837 OF 2014**

**DATED 6<sup>TH</sup> MARCH, 2015**

Between:

Smt.Ch.Suvartha

... Appellant/Plaintiff

and

Smt.Mehrunnisa Khatoon  
@ Meharunnisa Begum

... Respondent/Defendant

**THE HON'BLE SRI JUSTICE SANJAY KUMAR**

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**J U D G M E N T**

This second appeal by the unsuccessful plaintiff in O.S.No.238 of 2004 on the file of the learned II Additional Junior Civil Judge, Warangal, calls in question the concurring judgment of the learned Principal District Judge, Warangal, in A.S.No.51 of 2012, on the following suggested substantial questions of law.

1. Whether the suit property was transferred from the vendor to the Appellant as per Section 54 of the Transfer of Property Act under Ex.A1 which is a duly stamped document?
2. Whether the exercising of ownership and possessory rights by a person under a legally valid document in respect of his/her property by making constructions therein, would amount to creating ownership and possession to that person?

The suit, O.S.No.238 of 2004, was instituted by the appellant herein for a perpetual injunction restraining the defendant and her men from interfering with her possession and enjoyment over the suit property. The suit property is a house plot admeasuring 260 square yards situated in Sy.No.207 of Waddepalli Village, Warangal District. The appellant-plaintiff claimed that she had purchased the said plot under an agreement of sale dated 08.12.1990 (Ex.A1) and took possession of the same. She further claimed that she had constructed a compound wall on the north and south sides while the wall on the eastern side was constructed by the neighbour. While so, the respondent-defendant, whose house was to the south of the suit plot,

objected to the laying of a ceremonial foundation stone in the suit property leading to the filing of the suit.

The respondent-defendant contested the suit claim denying the right and possession claimed by the appellant-plaintiff over the suit plot. She claimed right over a plot admeasuring 583 square yards in Sy.No.207 of Waddepalli Village.

The appellant-plaintiff examined four witnesses and marked 15 documents while the respondent-defendant examined two witnesses and adduced two documents in evidence.

By judgment and decree dated 29.03.2011, the trial Court dismissed the suit holding that the appellant-plaintiff had failed to substantiate her claim that she was in possession of the suit plot. Dealing with Ex.A1 agreement of sale dated 08.12.1990, the trial Court found that the recitals therein did not disclose delivery of possession of the suit plot to the appellant-plaintiff. The trial Court further found that none of the other documents placed on record by the appellant-plaintiff supported or substantiated her claim that she had acquired any right, interest or possession over the suit plot under Ex.A1. The trial Court further found that Ex.A8, relating to property tax, contradicted the suit claim in as much as it disclosed that a two storied building was in existence as on 31.03.2002, while the appellant-plaintiff had claimed that the subject plot was a vacant plot as on the date of filing of the suit, 10.02.2004. The trial Court also found that the oral evidence of the appellant-plaintiff, speaking as PW.1, did not further her case as she admitted that no delivery of possession was effected under Ex.A1 agreement of sale and that no sale deed was executed thereafter. On the basis of the above findings, the trial Court held that the appellant-plaintiff failed to prove her right, title and possession over the suit plot and accordingly dismissed her claim.

In appeal in A.S.No.51 of 2012, the learned Principal District Judge, Warangal, upon examining Ex.A1 agreement of sale dated 08.12.1990, found that it was only a notarized document whereby one

Solomon agreed to sell an extent of 260 square yards in Sy.No.207 of Waddepalli Village to the appellant-plaintiff and undertook to execute a registered sale deed in her favour after obtaining necessary permissions and clearances. The learned District Judge affirmed the finding of the trial Court that there was no recital in Ex.A1 as to delivery of possession of the plot agreed to be sold thereunder to the appellant-plaintiff. It was further found that there was no other document to prove the possession of the appellant-plaintiff over the suit plot, as Exs.A6 to A11 had no bearing and were wholly irrelevant for the purposes of the suit as the appellant-plaintiff, speaking as PW.1, had clearly stated that Exs.A6 to A11 related to her residential house at Hanamkonda.

It appears that the appellant-plaintiff filed I.A.No.1375 of 2014 in A.S.No.51 of 2012 under Order 41 Rule 27 CPC at the stage of arguments seeking leave to examine one of the alleged attestors of Ex.A1 agreement of sale. However, the learned Principal District Judge, Warangal, was not inclined to accept this plea, given the oral evidence of PWs.2 and 3 who had claimed to be physically present at the time of the transaction under Ex.A1. The learned Judge was also of the opinion that permitting the additional evidence would not be of any assistance to the Court in as much as the recitals in Ex.A1 were of no help to the appellant-plaintiff. The learned Judge accordingly dismissed the said I.A. Further, upon analyzing various factual aspects of the matter, the learned District Judge held that the appellant-plaintiff had failed to prove her possession and enjoyment over the suit property as on the date of filing of the suit and accordingly dismissed the appeal.

Sri P.Bhakthavatsal, learned counsel for the appellant-plaintiff, would however contend that even if his client was taken to be a trespasser, as her right under Ex.A1 agreement of sale did not crystallize and remained inchoate, she would still be entitled to protect her possession over the suit plot. He would argue that the error of the draftsman in not incorporating the recital as to delivery of possession in Ex.A1 should not weigh against his client as her overt act in

constructing a compound wall on two sides clearly established her possession. He would further contend that in the light of the voluminous oral evidence adduced by her, the Courts below ought not to have dismissed the same lightly and ought to have held that she was in possession of the suit plot. He would also contend that the respondent-defendant failed to adduce evidence in support of her claim and that the Courts below did not give due importance to this aspect.

Sri P. Mehar Srinivasa Rao, learned counsel for the respondent-defendant, would however contend that in the light of Section 91 of the Indian Evidence Act, 1872, the appellant-plaintiff was bound by the recitals in Ex.A.1 agreement of sale and no evidence could be adduced in proof of the terms of such contract except the document itself. Learned counsel would further contend that it was for the appellant-plaintiff to succeed on the strength of her own case and that the weakness, if any, in the respondent-defendant's defence could not be taken advantage of by her.

Sri P. Bakthavatsal, learned counsel, placed reliance on ***KARTHIYAYANI AMMA V/s. GOVINDAN***<sup>[1]</sup>, wherein it was held that a person in possession cannot be evicted by force even by the rightful owner and that an injunction can be granted to protect a trespasser's possession even against the rightful owner.

There can be no doubting this legal proposition. However, the crucial factor is as to whether the appellant-plaintiff substantiated her claim of possession over the suit plot. Admittedly, apart from Ex.A.1 agreement of sale dated 08.12.1990, the appellant-plaintiff has no other document in support of her alleged possession over the suit plot. Notably, this document did not even contain a recital as to delivery of possession. As rightly pointed out by Sri Mehar Srinivasa Rao, learned counsel, this document would have to be considered on its own strength and it would not be open to the appellant-plaintiff to plead anything contrary thereto without substantial proof. Though the appellant-plaintiff claimed that she constructed a compound wall on two sides of the suit

plot, no documentary evidence whatsoever was placed on record in proof of the same. No permission from the local authority permitting such compound wall construction was placed on record. This so-called overt act of the appellant-plaintiff therefore remained unsubstantiated. The oral evidence adduced by the appellant-plaintiff was also given due consideration by the Courts below but was found to be insufficient to support her claim.

The endeavour of the appellant-plaintiff to examine one of the alleged attestors of Ex.A.1 agreement of sale failed when the appellate Court dismissed I.A.No.1375 of 2014 filed therein. Having allowed the said order to attain finality, it is not open to the appellant-plaintiff to now assail the finding of the appellate Court in this regard in the present second appeal. Order 41 Rule 33 CPC would not come to the aid of the appellant-plaintiff in this regard.

Further, Section 54 of the Transfer of Property Act, 1882, clearly provides that a contract for the sale of immovable property, which is to the effect that a sale of such property shall take place on the terms settled between the parties, would not, of itself, create any interest over such property. Ex.A.1 agreement of sale squarely falls under this description. In the absence of proof of possession pursuant to Ex.A1, the appellant-plaintiff cannot even aspire to the status of a trespasser and thereby seek to protect her alleged possession.

Thus, the appellant-plaintiff miserably failed to prove her claim of possession over the suit plot. The Courts below, being mindful of this fact, refused her relief. This Court finds no reason to interfere in the matter. No question of law, much less a substantial question of law, arises for consideration in this appeal, which is wholly devoid of merit.

The second appeal is accordingly dismissed. No order as to costs.

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**SANJAY KUMAR,J**

**6<sup>TH</sup> MARCH, 2015**

**PGS/SVV**

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[\[1\]](#) AIR 1980 Kerala 224