

HON'BLE SRI JUSTICE S.V. BHATT

C.R.P.No.742 OF 2009

ORDER:

Heard Mr.J.Suresh Babu for revision petitioners and Mr.M.V.S.Suresh Kumar for respondent.

The plaintiffs in O.S.No.1030 of 1997, in the Court of the Principal Senior Civil Judge, Ranga Reddy, are the revision petitioners. On 05.11.2008, O.S.No.1030 of 1997 was dismissed by judgment impugned in the revision. Hence, the revision.

The revision petitioners filed the suit under Section 6 of the Specific Relief Act (for short 'the Act') read with Order VII Rule 1 of CPC for recovery of possession from respondent. The case of revision petitioners is that the 2nd petitioner is a registered partnership firm carrying on business in construction of buildings, apartments etc. The 2nd petitioner as part of its business activity has undertaken development of apartments at Plot Nos.63 to 66, Municipal House bearing No.18-112/3/A/1 at Hanumanpet, Malkajgiri Municipality, Ranga Reddy District. On 13.09.1993, agreement was entered into between revision petitioners and the respondent for purchase of 794 sq. yards of constructed area along with 43.64 sq. yards of undivided share in the property referred to above. The 2nd petitioner claims to have constructed the said flat covering 930 sq. ft instead of 794 sq. ft. Therefore, the respondent shall have to pay for the constructed area viz., 136 sq. ft at Rs.240/- per sq. ft. Thereby, the total cost of the apartment was determined as Rs.2,23,200/-. It is further alleged that the 2nd petitioner on the request of respondent has undertaken a few

additional items of civil works and on account of execution of these additional items, the respondent has to pay a sum of Rs.93,763/- to 2nd petitioner. In all, according to 2nd petitioner, the respondent was due in a sum of Rs.1,59,520/- to 2nd petitioner. It is alleged that the respondent filed C.D.No.72 of 1995 before the District Forum, Ranga Reddy under Section 12 of the Consumer Protection Act complaining against the alleged works carried out by 2nd petitioner and the failure of 2nd petitioner to perform the obligations. On 16.02.1996, C.D.No.72 of 1995 OP was ordered directing the 2nd petitioner herein to pay a sum of Rs.2 lakhs with interest at 15% from 15.12.1994 till the date of repayment to the respondent. It is contextual to refer that the order in C.D.No.72 of 1995 was the subject matter in F.A.No.184 of 1996 and the said F.A was disposed of on 21.05.1997. Adverting to the relationship between the petitioners *inter se*, it is alleged that the 1st petitioner entered into agreement of sale and paid the entire sale consideration on 13.04.1996 for purchase of flat which was already under contractual obligation with respondent. The 1st petitioner paid entire sale consideration and he was given possession of the suit flat. The cause of action for filing the instant suit for recovery of possession is that on 05.06.1997, the respondent with the clout he has in the locality, broke open the locks of suit schedule flat, occupied the same by dispossessing the 1st petitioner. The definite case of petitioners is that the respondent has no manner of right to take forcible possession of the suit flat from 1st petitioner. The respondent ought to have worked out his remedies for possession or any ancillary relief by filing a separate suit and the

manner of taking forcible possession from 1st petitioner is illegal and actionable. Hence, the suit for recovery of possession under Section 6 of the Act.

The respondent filed written statement alleging that he entered into agreement of sale with M.Satyanarayana, M.Karuna Bai and 2nd petitioner as first party and respondent as second party for purchase of suit flat. On 04.10.1993, the parties referred to above formalized the transaction by executing registered sale deed both for undivided share in Plot Nos.63 to 66 and also for the finished area in the proposed venture. The respondent claims to be in actual and physical possession of suit flat by virtue of and in terms of sale deed Ex.B-1 dated 04.10.1993. A few allegations in the quality of construction etc., are stated by the respondent. Those allegations are not relevant for consideration of the prayer under Section 6 of the Act. Therefore, the case of both parties on possession of property, in brief, is adverted to. The respondent claims to have taken symbolic possession for carrying out works and the respondent being an employee of South Central Railway basing upon Ex.B-1 mortgaged the flat and obtained loan from his employer. It is stated the respondent was requesting the 2nd petitioner, being the construction company, to issue a formal letter of legally handing over possession to respondent. It is stated that reference to order in C.D.No.72 of 1995 is incorrect, for the same was set aside by the State Commission in F.A.No.184 of 1996 and both have to be read together for understanding the purport of orders of Consumer Forum. The respondent denies that he had forcibly taken

possession of suit flat on 05.06.1997. It is further stated that the actual and physical possession of suit flat from the date of Ex.B-1 continued to be with respondent and the suit for recovery of possession is not maintainable. He prays for dismissal of the suit.

The revision petitioners adduced oral evidence of PWs.1 and 2 and marked Exs.A-1 to A-3. The respondent adduced oral evidence of DWs.1 to 3 and marked Ex.B-1 to B-21.

The trial Court framed the following issues for consideration:

- “1) Whether the plaintiff is entitled for recovery of the possession of the suit schedule property from the defendant?
- 2) Whether there is privity of contract between the first plaintiff and defendant?
- 3) To what relief?

With the assistance of learned counsel appearing for the parties, I have perused the judgment impugned in the revision. The revision is filed under Section 115 of CPC, for the enquiry under Section 6 of the Act is summary in nature. Appeal is not provided against the decree and the judgment and this Court has to consider the challenge to judgment impugned in the revision within the confines of Section 115 CPC. Keeping the scope of judicial review under Section 115 CPC, the findings recorded by the trial Court are firstly summarized. The learned trial Judge had disbelieved the evidence of P.Ws.1 and 2 and the possession claimed by 1st petitioner and P.W.1 on the strength of cross-examination of P.W.1. It is not the case of revision petitioners either that there is misreading of oral evidence by the trial Court.

On the other hand, no challenge on this aspect of the judgment is made before this Court. The trial Court had taken note of the happenings from 04.10.1993 till 13.04.1996, the alleged dispossession on 05.06.1997 and held that the petitioners failed to prove actual and physical possession of the suit flat and, accordingly, dismissed the suit.

Mr.Suresh Babu contends that the judgment impugned under revision is erroneous, illegal and the trial Court failed to take note of the findings recorded by the District Commission under Ex.A-2 and State Commission under Ex.A-3. According to him, the respondent prayed for delivery of possession during the pendency of the matter before Consumer Disputes Redressal Forum and that itself is sufficient to presume that the respondent was not in possession under sale deed dated 04.10.1993 and the possession claimed by respondent without evidence is improbable and unbelievable and is liable to be set aside. Learned counsel has specifically drawn the attention of the Court to Exs.A-2 and A-3. He prays for setting aside the judgment impugned in the revision and restore possession to 1st petitioner.

Mr.M.V.S.Suresh Kumar contends that filing of O.S.No.1030 of 1997 is without *bona fides*. The plaint does not disclose the execution of Exs.B-1, B-2 and B-20. According to respondent, the 2nd petitioner is a construction company. Under Ex.B-1, the undivided share is purchased in Plot Nos.63 to 66 and also consideration is paid for construction. The 2nd petitioner cannot and could not claim exclusive possession of suit flat after the sale

deed is executed under Ex.B-1 and in the totality of circumstances, he contends that the suit is filed to extract more money from respondent. According to learned counsel, the findings recorded by the trial Court are based on evidence and upon construction and appreciation of oral and documentary evidence.

This Court for the limited purpose of appreciating the controversy had perused the evidence and the consideration of evidence by trial Court does not disclose any improbability or illegality. Hence, he prays for dismissal of the revision.

I have taken note of the rival contentions of the parties.

Now, the point for consideration is—

“Whether the revision petitioners are entitled for restitution of possession of suit flat under Section 6 of the Act or not and whether the judgment in O.S.No.1030 of 1997 is legal and tenable”?

This Court finds it convenient to chronologically consider the case by reference to documentary evidence. On 04.10.1993, Ex.B-1 was executed in favour of respondent by 2nd petitioner and owners of the suit schedule property. The relevant clauses under Ex.B-1 read thus:

- “1. Sri Manda Satyanarayana, s/o late M.Prasada Rao, Aged about 71 years, Occupation: Retd. Govt. Employee, R/o House No.6-3-240/4, Premnagar, Hyderabad.
2. Smt.Manda Karuna Bai, w/o Shri M.Satyanarayana, Aged about 67 years, Occupation: Housewife, R/o House No.6-3-240/4, Premnagar, Hyderabad.

Represented by and acting through their duly constituted General Power of Attorney SHRI K.HANUMANTHA RAO, s/o SHRI

K.RAMAKRISHNAIAH, aged about 30 years, Occupation: Business, resident of H.No.35-8, G.K.Colony, Sainikpuri Post, Secunderabad – 500594, hereinafter called the Vendors which expression unless repugnant to the context shall mean and include their successors, administrators and assigns of the First Part.

IN FAVOUR OF

Mr.K.Komol Reddy, s/o late K.Pratap Reddy, Aged about 38 years, Occupation: Employee, resident of H.No.18-112/1, Hanumanpet, Malkajgiri, Secunderabad, hereinafter called the purchaser which expression unless repugnant to the context shall mean and include their heirs, legal representatives, executors, administrators and assigns of the other part.

Whereas the vendors is the absolute owners and possessors of House bearing Nos.18-178/66, admeasuring 800 sft and plot of land admeasuring 928 sq.yds or 775.8 sq. mtrs in Plot Nos.63, 64, 65 & 66, covered by Survey Nos.860 & 861, situated at Hanumanpet, Malkajgiri Municipality, R.R.District which has been in full and absolute possession of the vendors herein having purchased by Mr.Satyanarayana & Smt.G.Karuna Bai, from M.Eswarlal & others.

And whereas the Huda has sanctioned construction of Ground Plus Two storeyed building on the schedule land as per the sanction vide Permit letter No.G1/701/93, dated 3.6.1993.

And whereas the vendors agreed to sell and the purchaser agreed to purchase an undivided house extent of 37.62 sq. ft out of house bearing Nos.18-178/66, along with undivided plot extent of 43.64 sq. yds or 36.48 sq. mtrs in the schedule house and land for consolidated price of Rs.22,000/- (Rupees twenty two thousand only) which is more fully described in the schedule given below and hereinafter called the "SCHEDULE PROPERTY" the parties wish to have a deed of sale executed in respect of the same.

xxxxxx

The schedule property shall be quietly entered into and upon and held and enjoyed together with the rents and profits to be received there from by the purchaser without any interruption or disturbance by the vendors or by any person claiming through or under him by any person whomsoever.

XXXXXX

XXXXXX

The vendors assure the purchaser that they have paid all taxes, etc., payable on this scheduled property. The vendors have no interest in the scheduled property sold.

SCHEDULE OF PROPERTY

All that piece and parcel of undivided house extent of 37.62 sq.ft and undivided land extent of 43.64 sq. yds or 36.48 sq. mtrs out of house bearing No.18-178/66, along with Plot Nos.63, 64, 65 & 66 of an extent of house admeasuring 800 sft and plot extent of 928 sq.yds or 775.8 sq. mtrs in Survey Nos.860 & 861, situated at Hanumanpet, Malkajgiri Municipality, R.R. District and the entire extent is bounded by:

NORTH: 30 FEET WIDE ROAD

SOUTH: PLOT Nos.62 & 67

EAST : 25 FEET WIDE ROAD

WEST : 25 FEET WIDE ROAD

In witness thereof the above named vendors have affixed their signatures to this deed of sale.”

From the above it is clear that the 2nd petitioner, being one of the executants of Ex.B-1, sold the schedule property covered by Ex.B-1. The operative portion of the document shows that the right and title have been conveyed to respondent and the respondent is entitled to enjoy the property without any objection. The 2nd petitioner claims to have constructed independent houses and continues to be in possession of the flats constructed by him. The 2nd petitioner if at all has undertaken any obligation, the obligation is only with regard to construction of a flat and to record any finding on the nature of relationship between the 2nd petitioner and the respondent, the petitioners did not produce documentary evidence. The burden is on the 1st and 2nd petitioners to prove

that possession in spite of execution of Ex.B-1 remained with 2nd petitioner and possession was given to 1st petitioner under Ex.A-1. The happenings from 04.10.1993 till the date of filing of suit show that possession of flat was not with 2nd petitioner and the 2nd petitioner was not entitled to convey the same in favour of 1st petitioner, but the 2nd petitioner, in fact, conveyed the same under duly executed documents. Ex.A-1 is agreement of sale and the trial Court had considered the improbability of execution of Ex.A-1 on the date of on which it is referred to and giving possession of suit flat under Ex.A-1 to 1st petitioner. The oral evidence of P.W.1 is considered in great detail by the trial Court. The admissions of P.W.1 go a long way to improbabilise the case pleaded by petitioners that on 05.06.1997, the respondent forcibly dispossessed the 1st petitioner; the petitioners failed to discharge the burden that possession of suit flat was disturbed on 05.06.1997. On the other hand, the independent consideration of Exs.B-1 to B-20 would go to show that in the totality of circumstances and having regard to the nature of arrangement between the parties, the respondent is in possession and the forcible occupation of flat alleged against respondent is not established. This Court is in agreement with the findings recorded by the trial Court. On the independent consideration of issues also, the points are answered against petitioners and in favour of respondent.

The revision fails and is, accordingly, dismissed. There shall be no order as to costs.

Consequently, pending miscellaneous petitions, if any, stand closed.

S.V.BHATT, J

Date:23.08.2016
Lrkm

