

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

C.C.C.A.Nos.146 and 147 of 2006

COMMON JUDGMENT:

Aggrieved by the common judgment dt:11.05.2006 passed by learned XIV Additional Chief Judge, City Civil Court, at Hyderabad (Fast Track Court) in O.S.No.333 of 2004 and O.S.No.301 of 2002, K. Narayana Rao—the plaintiff in former suit and defendant in latter suit which went against him preferred CCCA Nos.146 of 2006 and 147 of 2006 respectively.

2) O.S.No.333 of 2004 (old O.S.No.114 of 2001 on the file of III Senior Civil Judge, City Civil Court, Secunderabad) was filed by the plaintiff against D.1 to D.5.

a) The plaintiff's case is that he purchased the plaintiff schedule mentioned plot No.68 measuring 211 sq.yards situated in Thokatta village, Secunderabad Cantonment under registered sale deed dt:11.01.2001 from D.4 Society as D.4 allotted the said plot to plaintiff, who was its Member. Plaintiff has been in peaceful possession and enjoyment of the plot. However, defendants 1 to 3 and 5 tried to meddle with the suit plot without any right, title or interest over the same and D.1 to D.3 were offering the suit plot for sale to several intending buyers without any right to do so. Hence, the plaintiff filed the suit for declaration of his right and injunction against D.1 to D.3 and D.5. Originally, suit was filed against D.1 to D.4 and later

D.5 was added since she allegedly purchased the suit plot from D.1.

b) D.1 and D.2 remained *exparte*.

c) D.3 adopted the written statement of D.5.

d) D.4 filed written statement almost admitting the plaintiff's case. In its statement it clarified that during the year 1984, sale deed was executed in respect of suit plot in favour of D.1 by 2 office bearers of the society alone without any authority and the said sale deed along with 15 other unauthorized sale deeds were cancelled by the Society as per law. The sale deed stood in favour of D.1 was cancelled by a registered cancellation deed dt:15.07.1986. D.1 along with others initiated Arbitration Proceedings in ARC Nos.97/1993 and 7/1994 on the file of Arbitrator, Co-operative Sub-Registrar, Hyderabad seeking declaration that the cancellation of their sale deeds was illegal. The Arbitrator by his order dt:20.03.1995 held that cancellation of those sale deeds including that of D.1 was valid. The matter was further carried in appeal (Writ Appeal) unsuccessfully by D.1 and by the time of filing written statement, the matter was pending before Hon'ble Apex Court in Civil Appeal Nos.7310 and 7311/1997. D.4 further clarified that subsequent to cancellation of the unauthorized sale deeds, it has executed valid sale deeds in favour of different persons and so far as suit plot is concerned, it executed sale deed dt:11.01.2001 in favour of the plaintiff. Thus it supported the case of plaintiff.

e) D.5 filed written statement denying all the plaint averments. Her case is that she is the absolute owner and possessor of suit Plot No.68 having purchased from D.1 under registered sale deed dt:29.10.1998. Ever since the date of purchase, she has been in possession and she cleared entire plot and fenced it all around and erected a name board showing her title and possession. She was not informed by D.1 about any material defects in her title and the enquires and encumbrance certificate obtained by D.5 also did not disclose any such defects. To show her lawful title, D.1 gave a certified copy of judgment and decree in O.S.No.3687 of 1986 of the Court of Assistant Judge, Secunderabad wherein D.1 was held to be the owner of the suit plot. It is further pleaded by D.5 that after purchasing the suit plot, she obtained building sanction from the Secunderabad Cantonment Board vide Resolution No.2(1-21) dt:03.03.2001 and also obtained clearance from Airports Authority of India and dug a bore well and fixed motor and pipes. Seeing plaintiff's sale deed she came to know for the first time that D.4 allegedly resumed suit plot even before the Award dt:20.03.1995 passed in ARC No.7/1994. D.5 was not a party to those arbitration proceedings and hence they do not effect her right. She contended that when once a sale deed was validly executed and registered and possession was delivered to her vendor i.e, D.1, she acquired absolute title and possession and subsequently any cancellation of a registered sale deed could

be done only by way of a decree of Civil Court under Sec.31 of Specific Relief Act and not by the 4th defendant Society under Andhra Pradesh Cooperative Societies Act. She thus contended that the cancellation was illegal and not tenable. She thus prayed to dismiss the suit.

f) Basing on the above pleadings, the trial Court framed the following issues:

- 1) Whether the sale deed dated 29.10.1998 executed by the first defendant in favour of the fifth defendant is true, valid and binding on the plaintiff?*
- 2) Whether the decree in O.S.No.3687/1986 dated 28.02.1995 is true, valid and binding on the plaintiff?*
- 3) Whether the plaintiff is entitled to the declaration of title as prayed for?*
- 4) Whether the plaintiff is entitled to the consequential permanent injunction as prayed for?*
- 5) To what relief?*

3 a) While-so 5th defendant in O.S.No.333 of 2004 in her turn filed O.S.No.301 of 2002 (old O.S.No.700 of 2001 on the file of I Junior Civil Judge, City Civil Court, Secunderabad) against the plaintiff in O.S.No.333 of 2004 seeking perpetual injunction in respect of the same property.

b) The trial Court framed the following issues:

- 1) Whether the plaintiff is entitled to permanent injunction restraining the defendant from interfering with his property?*

2) *To what relief?*

4 a) She also filed L.G.O.P.No.1552 of 2001 under Sec.8(1) of A.P Land Grabbing (Prohibition) Act, 1982 for a declaration that she is the owner of the property and for a direction to the respondents viz., K.Narayana Rao and V. Laxmi, M/s. Balaji Housing Cooperative Society Limited, not to interfere with her peaceful possession.

b) The 2nd respondent remained *exparte* and other respondents contested the matter with the same pleadings as in O.S.No.333 of 2004.

c) The trial Court framed the following issues:

- 1) *Whether the petitioner is the owner of the schedule property?*
- 2) *Whether the respondents have grabbed the petition schedule property?*
- 3) *Whether the petitioner is entitled for compensation at the rate of Rs.5,000/- per month from the date of the application?*
- 4) *Whether the respondents are to be prosecuted for the alleged grabbing?*
- 5) *Whether the petitioner is entitled for Rs.12,55,000/- compensation?*
- 6) *To what relief?*

5) All the matters were transferred and made over to the Court of XIV Additional Chief Judge, City Civil Court, Hyderabad and all the three were clubbed together and

evidence was recorded in O.P.No.1552 of 2001. The trial Court condensed the issues in all the three matters as following points:

- 1) *Whether the plaintiff has valid title to the suit property?*
 - 2) *Whether the first respondent has valid title to the property?*
 - 3) *Whether the plaintiff is in possession of the property or the first respondent is in possession of the property?*
 - 4) *Whether the plaintiff acquired title to the property?*
 - 5) *To what relief, the parties are entitled to?*
- 6) For convenience sake the trial Court referred Smt. Kavitha Krishna Raj (D.5 in O.S.No.333 of 2004) as the petitioner and K.Narayana Rao (plaintiff in O.S.No.333 of 2004) as the respondent.
- 7) During trial PW.1 was examined and Exs.A.1 to A.17 were marked on behalf of petitioner. On behalf of respondents, RWs.1 to 3 were examined and Exs.B.1 to B.22 were marked.
- 8 a) Point No.1 is concerned, the trial Court having regard to the Arbitration proceedings initiated by the vendor of the petitioner namely V.Laxmi and others and later carried the matters to Cooperative Tribunal, High Court and also upto Supreme Court unsuccessfully, held that V.Laxmi had no title

to the suit property and consequently the petitioner who is her purchaser also gets no title to the suit property.

b) With regard to the point No.2, the trial Court made certain observations i.e, no single document is filed in proof of existence of new society i.e, Balaji Mutually Aided Housing Cooperative Society Limited and the respondent i.e, K. Narayana Rao was the member of the said Society and similarly no document is filed to show that the suit plot was allotted to him by the said society. With these observations the trial Court came to conclusion that the GPA of respondent is a land grabber and he in connivance with one Mr. Rajendar Reddy, who was the erstwhile President of the Society and who executed Ex.B.5—sale deed in favour of respondents, tried to grab the land. It further held that since there was no society in existence by the date of execution of ex.B.5, it was a bogus document brought into existence by Rajendar Reddy and RW.2 in the name of respondent to snatch away the property and therefore, respondent has no title to the property.

c) With regard to points 3 to 5 the trial Court observed that though the allotments made in favour of V. Laxmi and some others were cancelled under Ex.B.6—Award but suit plot was not allotted to anybody even by the date of disposal of the appeal by the Supreme Court in the year 1997 and there was also no evidence that the society resumed the plot and took back possession and so also it was not sold to anybody by then and hence, it has to be presumed that Laxmi the vendor

of the petitioner was continued to be in possession of the suit plot. It further observed that Laxmi executed Ex.A.1—sale deed dt:29.10.1999 in favour of the petitioner and petitioner pleaded that she cleared the bushes and shrubs in the entire plot and started constructing her house and put a fencing all around the site and the Advocate Commissioner who visited the suit site in O.S.No.114 of 2001 reported about the presence of fencing on the Southern side, a compound wall with cement bricks on the Northern side and the other 2 sides and also presence of small rooms constructed with bricks in the suit site. On these observations, the trial Court held that the petitioner established that Laxmi and subsequently the petitioner have been in continuous possession of the property and claimed title to the same adverse to the interest of the Society from 1984 till 2001.

d) Basing on the above findings in Points 1 to 5, the trial Court dismissed the suit—O.S.No.333 of 2004 on the ground that Narayana Rao failed to prove title or possession and decreed the suit—O.S.No.301 of 2002 and granted perpetual injunction in favour of the petitioner.

Hence the two appeals.

9 a) **CCCA No.146 of 2006**: Heard arguments of Sri Vedula Venkata Ramana, learned Senior Counsel for appellant and Sri G. Purushotham Rao, learned counsel for respondent No.5. Though Sri K. Mahipathi Rao, learned counsel and Sri Manu, learned counsel filed their Vakalats for respondent

Nos.1 and 3 respectively but no arguments were addressed. Though notice to respondent Nos.2 and 4 were served but there is no representation on their behalf.

b) **CCCA No.147 of 2006**: Heard arguments of Sri Vedula Venkata Ramana, learned Senior Counsel for appellant and Sri G. Purushotham Rao, learned counsel for respondent.

10) For convenience sake the parties in these two appeals are referred as they stood before trial Court in O.S.No.333 of 2004.

11 a) Addressing common arguments in both the appeals Sri Vedula Venkata Ramana, learned Senior Counsel for appellant/plaintiff argued that the allotment made in favour of D.1, who is the vendor of D.5 was held to be void and illegal by hierarchy of Courts from Arbitrator to Hon'ble Apex Court and considering the record pertaining to this aspect, the trial Court rightly held that D.1—V. Laxmi had no title to the property and consequently D.5, who is her purchaser also has no title to the property and to this extent the trial Court was perfectly right. He further argued that in Ex.B.6 the Arbitrator-cum-Cooperative Sub-Registrar clearly held that the petitioners 1 to 7 in ARC No.7 of 1994 including V. Laxmi being the 6th petitioner were not in possession of the plots. Learned counsel referring Ex.B.6 pointed out that admittedly D.1—V. Laxmi was allotted Plot No.67 & 68 (suit plot) which were later cancelled along with other plots. So it was the

categorical finding of the Arbitrator that V. Laxmi was not in possession of the plots allotted to her including the suit plot. This finding was not disturbed by the Courts including Apex Court. So in essence, in earlier round of litigation all the Courts have consistently held that the cancellation of the plots allotted to V. Laxmi was valid and she was not in possession of the plots allotted to her. In view of the concurrent finding rendered by the Courts, D.1 and D.5 are estopped by those judgments to contend in the two suits under Appeals to the effect that V.Laxmi was still the owner and she could validly convey the suit plot in favour of D.5 and further, despite the cancellation V. Laxmi was in possession of the suit plot and she delivered possession to D.5 under Ex.A.1. On the aspect of estoppel by judgment, he relied upon the decision reported in ***Hope Plantations Ltd. vs. Taluk Land Board, Peermade and another***^[1].

b) Learned Senior Counsel further argued that inspite of the Courts concurrently holding that cancellation of allotment in favour of V.Laxmi was valid and that she was not in possession and the said finding attained finality, the trial Court totally ignored the said finding and gave a wrong finding as if the Society has not resumed the suit plot from V. Laxmi and no record was produced to that effect and hence it should be presumed that she continued to be in possession which she conveyed to D.5 under Ex.A.1—sale deed and therefore, Laxmi and subsequently, D.5 had enjoyed the suit plot

adverse to the title and interest of the Society as well as plaintiff. He vehemently argued that on the said wrong finding the trial Court erroneously decreed the suit—O.S.No.301 of 2002 filed by D.5. He fulminated that D.5 claimed injunction on the strength of the title of her vendor and herself but not on the strength of adverse possession. When there was no plea of adverse possession, the Court was not justified in awarding injunction decree under an unclaimed right.

c) Regarding plaintiff's title, learned Senior Counsel again lampooned the finding of trial Court arguing that it was nobody's case that Balaji Mutually Aided Housing Cooperative Society Limited was not in existence on the date of Ex.B.5—sale deed. In her pleadings, D.5 never disputed the existence of D.4 Society. She has challenged the title of plaintiff not on the ground that it was a bogus sale deed executed by a non-existing Society but her plea was that cancellation of the allotment made to her vendor is not valid in the eye of law because such a cancellation was not made by a competent Civil Court but by an Arbitrator. He thus contended that when such is the plea of D.5 and when there was no issue regarding the existence and functionality of D.4-Society, the trial Court ought not to have embarked upon testing the validity of plaintiff's sale deed on the touchstone of non-existence of the Society. In the process, the trial Court without there being any evidence, made unwarranted comments as if the deceased M. Rajendar Reddy was the first conspirator and RW.2—the GPA

of plaintiff was his Assistant and both of them brought into existence Ex.B.5—sale deed to grab the suit plot and the plaintiff had nothing to do with the suit plot and he did not know anything about the sale transaction. On the contrary, he submitted, the evidence of RWs.1 to 3 coupled with Ex.B.5 would clearly show that the suit plot was allotted to plaintiff after cancellation of the earlier allotment to V. Laxmi and Rajendar Reddy in the capacity of President of the D.4 Society executed Ex.B.5—sale deed in favour of plaintiff and put him in possession. Therefore, the transaction was perfect in the eye of law. However, the trial Court on whimsical assumptions held as if the Society was not in existence by the date of execution of Ex.B.5 and hence the sale deed is a bogus document and on those findings, erroneously dismissed plaintiff's suit—O.S.No.333 of 2004.

He thus prayed to allow both the appeals.

12 a) In oppugnation, while supporting the two impugned judgments learned counsel for R.5/D.5 Sri G.Purushotham Rao, argued that plaintiff's suit is a comprehensive one for declaration and injunction whereas D.5's suit is only for perpetual injunction and in view of nature of the two suits, the burden is heavy on the plaintiff to establish his valid title and possession to deserve the reliefs and in proving his case, the plaintiff cannot take advantage of defect if any, in defendant's stance. On this point he relied upon the following decisions:

(i) ***Brahma Nand Puri vs. Neki Puri rep. by Mathra***

Puri and another^[2]

(ii) ***Sajana Granites, Madras and another vs. Manduva Srinivasa Rao and others***^[3]

(iii) ***T.K. Mohammed Abubucker (died) through L.Rs and others vs. P.S. M. Ahamed Abdul Khader and others***^[4]

b) Learned counsel further argued that sofaras title is concerned, plaintiff miserably failed to prove his title to suit plot inasmuch as D.4 Society was found to be not in existence by the date of Ex.B.5—sale deed and further, RW.2 and M. Rajender Reddy were held to have conspired together to grab the suit plot and plaintiff was setup for this purpose and therefore, Ex.B.5—sale transaction was held to be a bogus one. As such, plaintiff cannot derive any title under Ex.B.5. In that backdrop, inspite of the defect if any in the title of D.5, he cannot take advantage of it as he being the suitor for declaratory relief.

c) Sofaras D.1's title is concerned, he argued that in the alleged cancellation proceedings under Ex.B.6, D.1 was not a party and therefore the cancellation is not valid. Further, cancellation was not done through the order of Civil Court but it was unilaterally done by the Society. Hence, D.1's title was not effected. He relied upon the follows decisions:

(i) ***Badugu Venkata Durga Rao and another vs. Surneni Lakshmi***^[5]

(ii) ***K. Gopal Reddy vs. Secretary and others***^[6]

d) Regarding possession of the suit plot, learned counsel argued that as rightly held by the trial Court, no iota of evidence was produced by either plaintiff or D.4 to show that the Society resumed the suit plot from V.Laxmi and therefore, she was rightly held to be in possession which she conveyed to D.5 under Ex.A.1—sale deed. D.5 could establish her possession in the light of Advocate Commissioner's report. Since her suit is only for perpetual injunction, she succeeded in the suit by establishing her possession. He relied upon the following decisions to buttress the point that the plaintiff in a suit for injunction, can succeed on the strength of possession by the date of suit:

(i) ***M.Kallappa Setty vs. M.V. Lakshminarayana Rao***^[7]

(ii) ***Chepana Peda Appalaswamy vs. Chepana Appalanaidu and others***^[8]

(iii) ***Seera Simhachalam and another vs. Pediredla Simhachalam and others***^[9]

(iv) ***Alla Seshukumar and another vs. Alla Radha Krishna***^[10]

(v) ***Ramavath Hasala Naik vs. Sabahavath Gomli Bai***^[11]

(vi) ***Sadasivuni Manmadeswara Rao vs. Patnana***

Lakshmana Rao and others ^[12]

He thus prayed to dismiss the appeals

13) In the light of above rival arguments, the points that arise for determination in both the appeals are:

(i) *Whether the plaintiff or D.5 has valid title to the suit property?*

(ii) *Whether plaintiff or D.5 has been in valid and effective possession of the suit property?*

(iii) *Whether the impugned judgments of the trial Court are factually and legally sustainable?*

(iv) *To what relief?*

14) **POINT No.1**: Plaintiff filed O.S.No.333 of 2004 seeking declaration and injunction against D.1 to D.5. Whereas D.5 filed O.S.No.301 of 2002 against plaintiff for perpetual injunction. As rightly submitted by learned counsel for D.5 and also held in the decisions cited by him i.e, ***Brahma Nand Puri's*** case(2 supra), ***Sajana Granites, Madras's*** case(3 supra) and ***T.K. Mohammed Abubucker's*** case (4 supra), in a suit for declaration, the plaintiff has to succeed only on the strength of his own title but not on the weakness of the case of defendant and there is no demur in this principle. It is an admitted case that originally the suit plot bearing No.68 and other plots belonged to D.4 Society. It is also an admitted fact that Plot Nos.67 and 68 were earlier allotted to D.1—V.Laxmi. Plaintiff's case is that since the allotment in favour of D.1 and

14 other plots in favour of some others was not in accordance with the by-laws of the Society, they were cancelled in the year 1986 and 12 plots were allotted to 12 Members and 4 plots including the suit plot were kept pending without allotment to anybody. Such cancellation was also approved by the Arbitrator in his Award under Ex.B.6 and said Award was confirmed by the Appellate Authority and also in Writ Petitions, Writ Appeals and finally by the Apex Court. The Society allotted Plot No.68 in favour of plaintiff in the year 2001 and sold it under Ex.B.5—sale deed and put him in possession. The plaintiff thus claims title and possession through the Society.

a) Whereas D.5 traces her title and possession through D.1. Her case is that the earlier allotment in favour of D.1 and some others in 1984 was a valid allotment and such allotment could not have been unilaterally cancelled by some members of the Society in 1986 because D.1 was not a party to the cancellation proceedings and cancellation was not ordered by a Court of Law. Even though the Arbitrator held that cancellation was valid, he did not give any finding that D.1 was dispossessed from the suit plot. Therefore, the trial Court rightly observed that D.1 and subsequently D.5 have been in continuous possession and enjoyment of suit plot from 1984 till 2001 adverse to the knowledge and interest of the Society and plaintiff. Since D.5's suit was only for a mere injunction and as she could establish her possession adverse to the

knowledge and interest of plaintiff and D.4, she was rightly granted injunction basing on her adverse possession though not under lawful title.

b) On a careful perusal of facts, evidence and law, I am unable to countenance the arguments advanced by D.5. Ex.B.6 would show the subsequent allottees filed ARC No.97/1993 for declaration of title and the original allottees including D.1—V. Laxmi in their turn filed ARC No.7/1994 for declaration of title in respect of their plots. Learned Arbitrator on appraisal of facts and evidence has ultimately granted declaration in favour of petitioners in ARC No.97/1993 denied such a declaration to the petitioners in ARC No.7/1994. Ultimately he allowed ARC No.97/1993 and dismissed ARC No.7/1994. Aggrieved, Laxmi and others filed CTA No.45/1995 against the Award in ARC No.97/1993 and CTA No.71/95 against the Award in ARC No.7/1994 before the Cooperative Tribunal and the said Tribunal in its judgments under Ex.B.7 and B.8 confirmed the Awards passed by the Arbitrator. Thereafter V.Laxmi and others preferred W.P.Nos.5179 and 5180 of 1996 and the same were dismissed by order dt:10.10.1996 (vide 1997 AnWR 138). D.1 and others preferred W.A.Nos.1481 and 1482 of 1996 and both of them were dismissed by a Division Bench of this High Court in its common judgment vide Ex.B.14. Later D.1 and others preferred Special Leave Petitions in the Supreme Court and they too were dismissed on 13.07.1997 vide Ex.B.9. So

the record on evidence demonstratively shows that all the Courts to whom V.Laxmi and others approached have concurrently held that the allotment in favour of V. Laxmi and others was against the by-laws of the Society as there was no quorum to pass the Resolution. The Courts have also approved the subsequent allotment in favour of 12 Members. The trial Court rightly held that in view of the voluminous record approving the cancellation, Laxmi gets no title to the suit property and consequently D.5 also cannot derive any title through D.1. In these appeals, learned Counsel for D.5 argued as if D.1 was not a party to the cancellation proceedings and since cancellation was not done through a Court of law, the same is not valid and in that regard, he cited the decisions in ***Badugu Venkata Durga Rao's*** case (5 supra) and ***K. Gopal Reddy's*** case (6 supra). This argument does not hold water for the reason that as rightly observed by the trial Court, had the cancellation made by the Society rested there, this argument would have had some weight but in the instant case, D.1 and others themselves have carried the matter upto Supreme Court and invited the decision on the legality of cancellation and they fought an unsuccessful battle. Since cancellation was approved by all the Courts in the hierarchy, the same point cannot be reagitated by D.5 in these appeals. Hence, the cited decisions will not come to their rescue. As rightly argued by learned Senior Counsel for appellant, D.5 is estopped by the judgments. In ***Hope Plantations Limited's*** case (1 supra), the Apex Court held

thus:

“Para 26: It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstrably wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are “cause of action estoppel” and “issue estoppel”. These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the Code of Civil Procedure contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice.

Therefore, D.1 and D.5 cannot claim any legal and valid title in the suit property and the trial Court was right in holding to that extent.

15) Coming to the title of plaintiff, the trial Court held that Ex.B.5—sale deed was a bogus sale deed for the reasons

that D.4-Society was not proved to be in existence and RW.2 and M. Rajendar Reddy were conspirators to grab the property and plaintiff knew nothing about the sale transaction. On analysis of pleadings and evidence, it must be held that the above finding is quite unwarranted and a bull in the China Shop. As rightly agitated by learned Senior Counsel for appellant, it was nobody's case that D.4 Society was not in existence. A perusal of the plaint in O.S.No.301 of 2002 and written statement of D.5 in O.S.No.333 of 2004 would confirm this fact. In her pleadings D.5 did not take any categorical plea about the non-existence of D.4 Society. What all she mentioned in her written statement was that she was not aware about conversion of 4th defendant into a Mutually Aided Cooperative Housing Society Limited. Her knowledge or ignorance in this regard is of no consequence. Therefore, there was no need or occasion for the trial Court to entertain suspicion about the existence of D.4 Society to execute Ex.B.5—sale deed. Still in Para 22 of its judgment the trial Court mentioned as if the petitioner (D.5) questioned the very existence of the Society. It may be noted that the plaintiff to prove his title examined himself as RW.1 and his G.P.A Holder as RW.2 and Vice President of the D.4 Society as RW.3 and all of them categorically stated about the allotment of suit plot in favour of plaintiff and execution of Ex.B.5—sale deed. It may be noted that in the cross-examination of RW.3, D.5 has not given any emphatic suggestion to the effect that D.4 Society was not at all functioning and it was a bogus Society. What all

suggested was, when RW.3 gave the office address of the Society, it was put to him that the Society was not functioning at that address. So from this suggestion, it cannot be inferred that D.5 was challenging the very existence of D.4 Society that too without any pleading to that effect.

a) As stated supra, plaintiff was examined as RW.1. The plaintiff who had studied only upto VII Class, due to his old age and ignorance gave some inconsistent answers. For example, he stated that the registration of the Sale Deed took place in July, 2001 and he purchased the suit plot from Balaji Apartment Society instead of saying from Balaji Housing Cooperative Society Limited. He stated that he does not know the name of person who executed the sale deed but it was executed by office bearers of the Society. He admitted that he had no document to show that he was the Member of the Society. He admitted that at the time of execution of sale deed RW.2, who was his GPA Holder was involved in that transaction and hence he did not know anything about the transaction. He denied the suggestion that on the date of sale deed the Society was not in existence. There was no cross-examination to the effect that plaintiff (RW.1) was only a stooge for RW.2 and the deceased-Rajendar Reddy.

b) The GPA holder of plaintiff was examined as RW.2. He categorically deposed that he was the GPA holder of plaintiff and the suit plot was conveyed through registered sale deed dt:11.01.2001 by the Society in favour of plaintiff. In the cross-

examination he denied the suggestion that himself and Rajendar Reddy obtained GPAs in respect of the plots allotted by the Society and conducted real estate business. He also denied the suggestion that both of them purchased the plaint schedule site with their funds but in the name of R.1. He stated that Balaji Cooperative Housing Society Limited was renamed as Balaji Mutually Aided Housing Cooperative Society Limited. Like RW.3, he too stated that the society building was constructed in Plot No.1 of Balaji Enclave. He denied the suggestion that Rajendar Reddy, the executant of Ex.B.5 had vested interest in the site.

c) So inspite of clear evidence of RWs.1 to 3 to the effect that the plaintiff purchased the suit plot from D.4 Society under Ex.B.5—sale deed, basing on certain trivial aspects, the trial Court came to conclusion that Rajendar Reddy was the first conspirator and RW.2 was his Assistant and he obtained GPA from the plaintiff and he was running the litigation. Therefore, the observation of the trial Court regarding the existence of D.4—Society in the absence of a specific plea taken by D.5 is quite irrelevant and can be ignored. On the other hand, in view of the categorical evidence of RWs.1 to 3, the title of plaintiff in respect of suit plot is amply established. Accordingly, this point is answered in favour of plaintiff and against D.5.

16) **POINT No.2:** This point is concerned, the trial Court held that despite the cancellation of the sale deed, D.1 and

subsequently D.5 have been in continuous possession of the suit plot and plaintiff is not in possession. To come to the said conclusion, the trial court made the following observations:

(i) In Ex.B.16—cancellation document dt:17.01.1986, it was only mentioned that the document executed in favour of Laxmi was not admissible and so it was cancelled but there was no recital that she was dispossessed or the Society had taken back the possession of the site.

(ii) In Ex.B.6—the Arbitrator while approving the cancellation and subsequent allotment to 12 petitioners held that they were in possession of the respective plots on the principle that possession follows title and further their sale deeds contain a recital that vacant and physical possession was delivered to them. The trial Court observed that the principle possession follows title was limited to the 12 plots held by those petitioners but not to the suit plot as it was not allotted or sold by the Society to anybody and it has also not produced any record showing that it has resumed the land. Even the Supreme Court's observation that the respondents have raised construction over the plots relating to the 12 plots but not the suit plot as it was not allotted to anybody on the date of judgment of the Apex Court.

(iii) Laxmi asserted her possession in O.S.No.3687/1986.

(iv) The Advocate Commissioner appointed in I.A.No.534 of 2001 in O.S.No.114 of 2001 found fencing, a compound wall and small rooms in the suit plot which were claimed to be erected by D.5.

a) On a careful scrutiny of the evidence, the finding of the trial Court that D.5 but not plaintiff was in possession of the suit plot cannot be countenanced. It is true that in Ex.B.16 there was no specific recital to the effect that the suit plot was resumed possession from V. Laxmi. There is a reason for it. The suit plot was admittedly not resumed with the cancellation of allotment. It was resumed only in the year 1995. This fact has been mentioned in Para 4 of Ex.B.5—sale deed. So non-mentioning in Ex.B.16 is not a ground in favour of D.5.

b) Then Ex.B.6—Award is concerned, it must be said that the trial Court misunderstood the findings of the Arbitrator. The Arbitrator ultimately held as follows:

“With regard to possession, both the parties are claiming possession of the plots. As the allotments made and the sale deeds executed in favour of the respondents 1 to 7 in ARC 97/93 and the petitioners in ARC 7/94 are held to be void, and the sale deeds in favour of the petitioners in ARC 97/93 are held to be legal and valid, it follows that the petitioners in ARC 97/93 are in possession of the respective plots on the principle that possession follows title and the sale deeds contained a recital that vacant and physical possession has been delivered to them.

I, therefore hold that the petitioners in ARC 97/93 are in possession of the plots and the petitioners in ARC 7/94 are not in possession of the plots. So the petitioners

in ARC 97/93 are entitled to the relief of permanent injunction restraining the respondents 1 to 7 in ARC 97/93 from interfering with the possession of the petitioners in ARC 97/93.”

The finding of the Arbitrator concerning to possession is in two parts:

i) In first part, he held that petitioners in ARC No.97/1993 are in possession of the plots. Originally, 16 plots were allotted to D.1 and others and out of them, Plot Nos.67 & 68 were allotted to D.1—V.Laxmi. In the Award, it was also mentioned about the particulars of the plots that were subsequently allotted to petitioners in ARC No.97/1993. It would show that 9th petitioner was allotted Plot No.67. Therefore, the observation, petitioners in ARC No.97/1993 are in possession of the plots connotes that out of the 2 plots 67 & 68, D.1—V.Laxmi was not in possession of Plot No.67.

ii) Then coming to second part of the observation, it was held that the petitioners in ARC 7/94 are not in possession of the plots. V.Laxmi is the 6th petitioner in ARC 7/94. This observation connotes that she was not in possession of the other plot i.e, suit plot No.68.

So the cumulative effect of the finding of the Arbitrator is that Laxmi was in possession of neither Plot No.67 nor Plot No.68. It must be noted here that the aforesaid observation of the Arbitrator was upheld throughout and by the Apex Court. When D.1—Laxmi had no title and possession of the suit plot

as held in Ex.B.6, she cannot convey a better title or possession to her purchaser i.e, D.5.

c) Then the so called assertion of title and possession by Laxmi in O.S.No.3687/1986 (vide Ex.A.6) is concerned, the present plaintiff and D.4 are not parties and hence such assertion will not give any advantage to D.5. Since the said judgment is *in personam* but not *in rem*, D.5 cannot bank upon it.

d) Similarly the observations of Advocate Commissioner also will not enure to the benefit of D.5 to claim possession in view of the categorical finding given by series of Courts to the effect that her vendor had no possession. Therefore, the finding of the trial Court that D.1 and D.5 have been enjoying the suit plot since 1984 till 2001 adverse to the interest of D.4 and plaintiff is untenable.

e) Plaintiff is concerned, recitals in Ex.B.5 shows that the plaintiff was inducted into possession of the suit plot on the date of sale deed. Since the sale deed was a valid disposition made by D.4 Society in favour of plaintiff and as it was a vacant plot, the presumption possession follows title very much applies in favour of plaintiff. Hence, this point is held in favour of plaintiff and against D.5.

17) **POINT No.3:** In view of the findings in Points 1 and 2, the impugned judgments of the trial Court are not sustainable and hence liable to be set aside.

18) **POINT No.4**: In the result, both the appeals are ordered as follows:

- (i) CCCA No.146 of 2006 is allowed by setting aside the judgment and decree dt:11.05.2006 in O.S.No.333 of 2004 passed by learned XIV Additional Chief Judge, City Civil Court, at Hyderabad (Fast Track Court) and the suit—O.S.No.333 of 2004 is decreed in favour of plaintiff granting declaration and consequential injunction in respect of the suit property in favour of plaintiff and against defendants.
- (ii) CCCA No.147 of 2006 is allowed by setting aside the judgment and decree dt:11.05.2006 in O.S.No.301 of 2002 passed by learned XIV Additional Chief Judge, City Civil Court, at Hyderabad (Fast Track Court) and the suit—O.S.No.301 of 2002 is dismissed.
- (iii) No costs in both the appeals.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 08.06.2016

scs

[1] (1999) 5 SCC 590

[2] AIR 1965 SC 1506 (V 52 C 253)

[3] 2002 (1) ALT 466 (D.B)

[4] AIR 2009 Supreme Court 2966

[5] 2001 (1) ALD 86

[6] 2004 (2) ALD 317

[7] AIR 1972 Supreme Court 2299

[8] 1996 (2) ALT 389

[9] 2000 (2) ALT 479

[10] 2008 (1) ALD 748

[11] 2011 (2) ALD 350

[12] 2012 (2) ALT 54

