

HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO
+Civil Revision Petition No.5846 of 2017

#Between:

State of Telangana through
Secretary, Revenue Department,
Hyderabad, A.P. and other ... Respondents

Counsel for Respondent No.1 : Govt. Pleader for Arbitration

<Gist :

>Head Note:

? Cases referred:

¹ (2003) 8 SCC 752

² AIR 1968 SC 1413

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

Civil Revision Petition No.5846 of 2017

ORDER :

The revision petitioner is the plaintiff in O.S.No.505 of 2001 on the file of the X Additional Chief Judge, City Civil Court, Hyderabad. The respondent Nos.1 and 2 i.e., State of Telangana, through Secretary, Revenue Department and Smt. Nandamuri Basava Taraka Rama Rao Memorial Cancer Foundation represented by its Trustee, are the defendants 1 and 2 respectively in the suit.

2.The suit was filed for the relief of declaration of title for the plaint schedule property of 4,235 sq. yards with prohibitory permanent injunction in respect of said property and for such other reliefs and also that if at all there is any finding of plaintiff not in possession of that property to direct delivery of possession and for mesne profits. The plaint schedule property is described as said 4,235 sq. yards bearing Municipal No.8-2-120/11, which is western portion of Plot No.15 of Jubilee Hills, Hyderabad, bounded by North and South: roads, East: Plot No.14, Municipal No.8-2-120/99 of Mohd. Akram and West: Part of the said land of vendor.

3. It is pending the suit, I.A.No.832 of 2017 is filed for a direction to the 2nd respondent-2nd defendant-Trust to produce their building sanctioned plan to locate the plaint schedule property also with reference to it. The petition supporting affidavit with reference to plaint averments speak that the suit land is part of plot No.15 of

Ac.1.30guntas towards Jubilee Hills, East road, Hyderabad, with Municipal No.8-2-120/H allotted by Jubilee Hills Municipality to one Mr. Ather Engineer Saheb under firman, dt.26th Moharram 1359 Hijri =07.03.1940, leave about the similar allotments from said Survey No.129 into plots from lay outs prepared by said Municipality and approved on 17.07.1943 and photostat copy of it filed with plaint by saying said payment of Rs.875/- by plaintiff's vendor supra and put him in possession for the plot No.15 recorded at Sy.No.87 of the Municipal record vide Ex.A.14(translation Ex.A.14-A) and filed by 1st defendant Government and wife of said Ather sold out of it, the western portion of 4235sq.yards by registered sale deed dated 30.11.1969 (No.3556/68) to plaintiff, the suit property which is a vacant site surrounded by compound wall built by the 2nd defendant entity and the building sanctioned plan of the 2nd defendant if produced could be helpful to prove the same.

4. The Counter affidavit and additional counter affidavit with reference to written statement of the C.E.O. of 2nd defendant for purpose of the petition is that, plaint claim of the plaintiff's vendor purchased the property from Nizam 70 years ago is based on oral assertion without any documentary support to it to grab the Government land which is along with other extents for a total of Ac.7.35guntas under 60years lease in favour of the 2nd defendant since 1989 with constructions made later time to time and paying municipal taxes since the year 2000 and the suit claim is a frivolous

ought to have some illegal gain if possible for plaintiff does not have any land either adjacent to the Trust property or nearby to it in the locality. The plaint averments of allotment by Nizam to the plaintiff's vendor was at Road No.2 or Road Nos. 10 and 14 is also unclear, further when burden lies on plaintiff to prove his right over suit property. The municipal approved plan of 2nd defendant from which the building constructed will not decide the issue of plaintiff's title, but for if at all the plaintiff to file what the Nizam by proceedings allotted to plaintiff and that the petition is only to protract the 15 years pending suit litigation even earlier there is a direction for early trial for disposal and sought for dismissal of the petition.

5. The impugned order dated 16.10.2017 of the lower Court speaks that case of plaintiff for title must succeed on own strength and not on any defence weakness and thus the sanctioned plan of 2nd defendant is not necessary for it will not decide title of the Plaintiff over suit property.

6. Heard rival contentions in the Revision from learned counsel for the petitioner attacking the legality and correctness of said order of lower Court and by Govt. Pleader for Arbitration for 1st respondent and counsel for the 2nd respondent supporting the order of the lower Court.

7. In fact, a perusal of the plaint averments show a reference made about plaint schedule property is wrongly included in the lease property between the defendants in the support of the suit reliefs.

Further, what are the documents relating to the plaintiff's right borne by record from evidence on record with reference to the pleadings and for the settled law not in dispute of plaintiff can win or lose his case on own strength, however, from the expression of the Apex Court in **RVVE Gounder Vs. Arulmigu Viswesaraswami and V.P.Temple**¹ says for said proof of burden is not static for where plaintiff if able to show by preponderance of probabilities his entitlement, burden shifts on to the defendants.

8. From this now, coming to scope of Order XI Rule 14 CPC, it reads "*Production of documents:- It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.*" Thus, the stage of the suit is immaterial so also on whom the burden lies in considering the application. In fact, the burden of proof pales significance from both the parties adduce evidence. Party cannot rely on extract doctrine of onus of proof or on the fact that he was called upon to produce as the party in possession of best evidence which would throw light on the issue in controversy if withheld, the same Court can draw adverse

¹ (2003) 8 SCC 752

inference as held by the three Judge Bench of the Apex Court in **Gopal Krishnaji Ketkar Vs. Mohammad Haji Latif²**.

9. In the case on hand, when it is the prayer for proof of the documents in the custody of the 2nd defendant, it is to say the description of the plan also reflected in furtherance of the plaintiff's suit claim. Once, such is the case, it is just in directing the party in possession of the document to produce rather than dismissal of the application.

10. Accordingly and in the result, the civil revision petition is allowed by setting aside the impugned dismissal order dt.16.10.2017 in I.A.No.832 of 2017 in O.S.No.505 of 2001 on the file of the X Additional Chief Judge, City Civil Court, at Hyderabad, directing the 2nd defendant to produce said sanctioned plans before the Court if necessary for marking the same in evidence by consent or otherwise as the case may be, for effective disposal of the lis and same is almost at fag end of trial.

11. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Dt.14.11.2017.

Mar/vvr.

Note: L.R.copy to be marked.

b/o.vvr.

² AIR 1968 SC 1413