

HONOURABLE SRI JUSTICE P.NAVEEN RAO

C.C.C.A.Nos.332 & 333 of 2019

Date: 12-11-2019

C.C.C.A.No.332 of 2019:

Between:

Syed Zaki Hussain Razvi
S/o.Syed Muzaffar Hussain Razvi,
Aged 45 yrs, Occu : Business,
R/o.Flat No.103,
Heritage Apartment, H.No.1-7-382 to 386,
Musheerabad, Hyderabad.

.....Appellant/Claim Petitioner

And

1. Sunitha Goel W/o.Kedarnath Goel (died),
Per L.Rs, 2 to 5

.....Respondent/Decree holder

2. Gulam Ali S/o.Gulam Reza & others

..... Respondents/Defendants

The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

C.C.C.A.NOs.332 & 333 OF 2019

COMMON JUDGMENT:

Heard Sri M.R.S.Sreenivas learned counsel for appellants in both the appeals and Sri K.Srinivas, learned counsel for respondents 4 and 5 in both the appeals. Parties herein are referred to as arrayed in E.As.

2. These two CCCAs are filed challenging the common order passed by Hon'ble V-Senior Civil Judge, City Civil Court at Hyderabad dated 24.07.2019 made in E.A.No.903 of 2016 in E.P.No.278 of 2016 in O.S.No.1665 of 2012 and E.A.No.881 of 2016 in E.P.No.280 of 2016 in O.S.No.1666 of 2012.

3. Late Sunita Goel instituted O.S.Nos.1665 of 2012 and 1666 of 2012 seeking to grant decree of eviction of defendants from the suit schedule shops and for arrears of rent and damages/mesne profits. By separate judgments rendered on 26.10.2015, trial Court decreed the suits. Challenging judgments and decree the first defendant filed A.S.Nos.19 and 18 of the 2016 respectively in the court of IX Additional Chief Judge, City Civil Court, Hyderabad. By separate judgments dated 29.09.2016 both appeals were dismissed. He filed S.A.No.929 of 2016 in this Court. It was dismissed by judgment dated 12.11.2018. The decree holder filed E.P.Nos.278 and 280 of 2016 respectively for delivery of possession of the suit schedule shops. On 28.11.2016 trial court ordered to issue warrants to deliver possession of the schedule shops to the decree holder. At this stage, E.A.Nos.881 and 903 of 2016

respectively are filed by claim petitioner. Both E.As, are dismissed by common order.

4. To the extent relevant, facts are as under :

4.1. According to claim petitioner agreement of sale was executed on 23.12.2009 between him and late Smt Susheela Devi to sell property bearing Municipal H.Nos.3-6-317 and 318, Hyderguda, Hyderabad and considerable amount of sale consideration was already paid. As per the agreement he got the tenant evicted on 10.02.2011 by paying him Rs.10,00,000/- and entered into possession and he is running the "Swadish Tea and Tiffin Centre". As legal heirs of Smt Susheela Devi were not honouring the agreement of sale, he filed O.S.No.208 of 2015, to grant decree of specific performance of agreement of sale dated 23.12.2009 pending in the court of XXV Additional Chief Judge, City Civil Court, Hyderabad. He would urge that decree holder is aware that claim petitioner is in possession of the suit schedule property but deliberately was not made a party to the suits and E.P.

4.2. *Per contra*, according to decree holder in property bearing Municipal H.No.3-6-317 and 318, Hyderguda, Hyderabad comprising of ground and first floor (shops and residential portions), late Smt Susheela Devi has 1/3rd share holding which was accrued to her by virtue of award passed by Lok Adalat on 23.11.2007 in O.S.No.543 of 2006 on the file of the II Additional Chief Judge, City Civil Court, Hyderabad. Smt Susheela Devi died on 01.11.2011. After her death in terms of registered will deed bearing document No.158 of 2006 dated 25.09.2006 Smt Sunitha Goel succeeded to the said extent of share in the joint family

property. Smt Sunitha Goel would claim that she succeeded to E.P. schedule property by virtue of registered deed of partition dated 24.08.2012. She denies existence of an Agreement of sale dated 23.12.2009 claimed to have been executed by late Smt Susheela Devi and part payment of sale consideration and that she lodged police complaint in Cr.No.276 of 2016, in Police Station, Narayanaguda. She claimed that judgment debtors were in possession of suit schedule shops as on the date of decree and denies the possessory assertion of claim petitioner.

4.3. Before the Trial court, Judgment Debtor No.1 was set *ex parte*.

4.4. Before the Trial court Judgment debtor No.2 denied receiving any consideration from claim petitioner and handing over possession of suit schedule property to him. According to judgment Debtor No.2 on 04.04.2007 he had settled partnership account with judgment debtor No.1 and therefore, he is nothing to do with the 'Tea and Tiffins business' and therefore, question of receiving money by him after that date would not arise and that he is falsely dragged into the controversy.

5. The trial Court framed three issues for consideration, They read as under :

1. Whether the claim petitioner is entitled for a declaration that he is the absolute owner and possessor of the schedule shops ?
2. Whether the claim petitioner is entitled for injunction restraining the decree holder, her men, agents, etc., from interfering with his possession and enjoyment over the schedule shops ?
3. To what relief ?

6. On assessment of evidence on record, learned trial Judge, recorded the following findings :

1. As alleged agreement of sale dated 23.12.2009 is unregistered and the same is not admissible in evidence and therefore, cannot be looked into ;

2. The contention of claim petitioner that he has entered into possession of suit schedule property and based on decree obtained by plaintiff he cannot be evicted is not found favour with trial Court for three reasons :

(a) Though he was vehemently contending that he paid .10,00,000/- to the tenant, evicted him and entered into possession no evidence in proof of such payment is brought on record. Further, judgment Debtor No.2 denied receipt of said amount ;

(b) Trial Court noticed inconsistent stand of claim petitioner on date of taking possession and nature of business being conducted by him ;

(c) Further, the defendant No.1 instituted O.S.No.1296 of 2012 against Smt Susheela Devi on 30.07.2012 to grant injunction against interference by Defendant in possession and enjoyment of very same suit schedule property and consistently claimed that he is in possession of the suit schedule shops.

7. The trial Court held that claim petitioner cannot be declared as having right title and interest over suit schedule properties and further held that claim petitioner is not entitled to seek injunction against decree holder on interference with his possession on suit

schedule property. Accordingly, answered all the three issues against the claim petitioner.

8.1. Placing reliance on several documents marked in his claim petition, learned counsel for appellant submitted that these documents clinchingly establish that he is in possession and enjoyment of the suit schedule properties and that he became the owner.

8.2. Learned counsel for the appellant sought to place reliance on the judgment of the Hon'ble Supreme Court in **“Shrimant Shamrao Suryavanshi and another Vs Pralhad Bairoba Suryavanshi (dead) by LRs and others¹”**.

8.3. According to learned counsel, as held by the Supreme Court, Section 53-A of the Transfer of Property Act (for short 'the Act') provide protection to a transferee who in part performance of contract had taken possession of property. According to learned counsel all the conditions required under Section 53-A of the Act are complied by the claim petitioner and he was validly kept in possession of the suit schedule property.

9.1. Learned counsel for the decree holders submitted that the claim petitioner was never in possession and in occupation and is making a false claim. Learned counsel further submitted that challenging the judgment rendered by Trial Court he filed A.S.Nos.18 and 19 of 2016 and thereafter S.A.No.929 of 2016. He would therefore submit that the 1st defendant/tenant all along

¹ (2002) 2 Supreme Court Cases 676

claimed that he was in possession and he should not be interfered by the plaintiff in the suit.

9.2. He would submit that on detailed consideration of the evidence on record, the first appellate court also affirmed the decision of the trial court. Not satisfied with the concurrent finding of the trial court and the first appellate court, the 1st defendant/tenant filed S.A.No.929 of 2016 and the said second appeal was also dismissed affirming the decision of the trial court and first appellate court. From the pleadings raised in the first appeal and the second appeal, it is clearly evident that all along the tenant was in occupation and was therefore, contesting the decree to evict him from the suit schedule property.

9.3. Learned counsel also filed copy of the report of the Forensic Science Laboratory dated 11.01.2018 in support of his contention that the report justifies the contention of plaintiff all along that the alleged agreement of sale was a forged and fabricated document and based on the said forged and fabricated document a false claim is set up.

10. The crux of the issue is whether claim petitioner is in possession of suit schedule property so as to have a say in the Execution Petition.

11. Main plank on which claim petitioner set up his claim is on the alleged agreement of sale dated 23.12.2009 and in terms thereof he claimed to have paid .10,00,000/- to evict the existing tenants and entered into possession.

12. The material documents on record do not inspire confidence in the contention of learned counsel for Appellant on his

possessory claim and to discredit the finding of fact arrived at by the learned trial Judge on assessment of voluminous evidence on record. Merely because there is some correspondence by statutory authorities/police on various aspects of doing business does not clinch the issue in his favour when, as rightly held by learned trial Judge, there is no evidence on possessory claim.

13. From the judgment rendered by the first appellate Court and this Court it is clear that the 1st defendant/tenant has been prosecuting the litigation against the plaintiff contending that he is in possession and he should not be disturbed from possession. As noticed in the judgment in second appeal, plaintiff filed I.A.No.1051/2012 under Order XV-A of Code of Civil Procedure (CPC), to direct the defendants to deposit arrears of rent. The said application was allowed on 21.01.2013. Plaintiff also filed I.A.No.372/2015 under Order XV-A Rule 2 of CPC to strike off the defence of the defendants. The trial court allowed the petitions on merits on 04.09.2015. These two orders are not challenged by the defendants. In the first appeal as well as in second appeal the 1st defendant vehemently contended that the trial court passed orders erroneously under Order XV-A of CPC. This would clearly show that all along the 1st defendant was claiming to be in possession and was contesting the prayer of the plaintiff for eviction and consequential decree granted in favour of plaintiff, in the first and second appellate courts. The Second Appeal was decided on 12.11.2018.

14. The trial Court also considered the documents marked on behalf of decree holder with reference to her allegation that a

fabricated agreement of sale document brought into existence forging signatures. Trial Court has also took note of the suit instituted by claim petitioner to grant decree of specific performance.

15. The complaint filed by decree holder alleging creation of fraudulent document and forgery of signatures was registered as Cr.No.276 of 2016 in Narayanaguda Police station and on completion of investigation charge sheet was filed. Trial Court took cognizance, registered the case as C.C.No.199 of 2018 on charges of committing offences under Sections 406, 420, 468, 467, 471, 506 and 120-B of Indian Penal Code and case is pending trial. There appears to be a serious dispute raised on the alleged agreement of sale dated 23.12.2009. However, that is the issue for consideration by the competent Court in pending O.S.No.208 of 2015 and no opinion is expressed.

16. There is no quarrel with the proposition of law on the scope of Section 53-A of the Act. However, what is required to be seen is, as part of the part performance of the contract, the claim petitioner ought to have been put in possession and was in occupation of the premises when the suit was instituted/when it was decreed. As clearly enunciated by the trial Court, no clear evidence was brought on record to show that the claim petitioner was put in possession and was actually in possession and enjoyment of the property. On the contrary, as noticed above, the 1st defendant in the suit, who was the tenant, has been contesting the decree granted in favour of plaintiff before the first appellate court and second appellate court and the second appeal was decided on

12.11.2018. It is thus apparent that the 1st defendant was asserting that he is in possession and that he should not be evicted. Thus, no cogent evidence was brought on record to show that the claim petitioner was put in possession in order to grant relief by the Execution Court.

17. To discredit the claim of decree holder, by side wind, claim petitioner sought to rake up inter se dispute on property claims among the family members and that suit schedule property does not belong to decree holder. On assessment of evidence on record learned trial Judge, rejected the said contention also and held that the suit schedule property belongs to decree holder. No cogent evidence is brought to my notice to discredit this finding also.

18. In the counter affidavit filed on behalf of respondents 4 and 5 deposed by Sri Kedarnath Goel, it is specifically alleged that in collusion with respondents 2 and 3/Judgment Debtors, in order to avoid execution of decree and their eviction from the subject premises, the claim petitioner filed E.A., and it was not a bonafide prosecution of a valid claim. It was also contended that the claim petitioner having invoked the jurisdiction of competent court by filing civil suit to grant decree of specific performance, the present application is not maintainable. It is further contended that the claim petitioner took 39 adjournments and successfully dragged on the E.P., proceedings staling the eviction of judgment debtors 1 and 2 depriving the owners to get back their property. These contentions are not denied by the claim petitioner.

19. On consideration of rival submissions and the evidence placed on record, I see no merit in the contentions urged by

learned counsel for claim petitioner. The trial Court considered all aspects and on detailed assessment of evidence on record came to correct conclusion and does not call for interference.

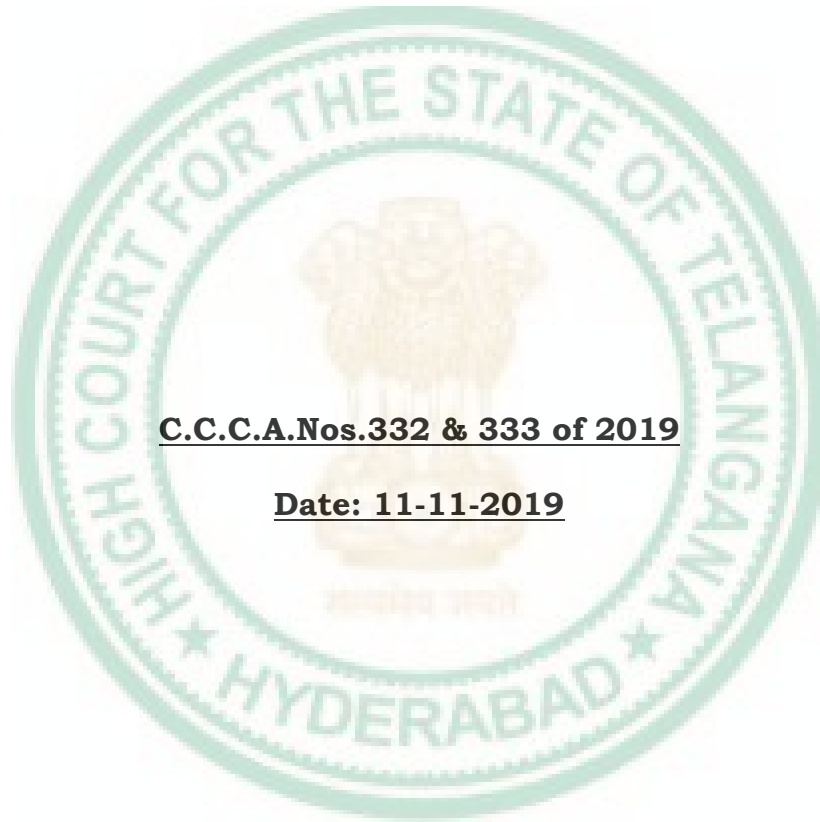
20. Accordingly, both CCCAs are dismissed. Pending miscellaneous petitions if any shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 12.11.2019
rds/kkm



HONOURABLE SRI JUSTICE P.NAVEEN RAO



C.C.C.A.Nos.332 & 333 of 2019

Date: 11-11-2019