

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM

C.C.C.A. No.110 of 2015

JUDGMENT:

This is an appeal filed by the appellants/plaintiffs aggrieved by the judgment and decree dated 01.04.2015 passed by the learned Chief Judge, City Civil Court, Hyderabad (for short, 'the trial Court'), in O.S.No.317 of 2011, dismissing the suit, thereby refusing to grant injunction against the respondents/defendants.

For the sake of convenience, the parties will henceforth be referred as they were arrayed before the trial Court.

The 1st plaintiff is Government of Andhra Pradesh, represented by Executive Engineer, R&B; and the 2nd plaintiff is the Tahsildar, Khairatabad Mandal, Hyderabad. The case of the plaintiffs, in brief, is that the property over an extent of Ac.36-36 guntas was purchased by the H.E.H. Nizam, Raj Pramukh of Hyderabad, represented by its Executive Engineer, Hyderabad, Buildings Division, under a registered document bearing No.1151/91 dated 20.06.1951, registered with Registrar of Hyderabad. The total extent of Ac.36-36 guntas, equivalent of 1,76,000 square yards, was purchased for a consideration of Rs.14,09,160/-, and since the date of purchase, the property is in the custody and possession of the 1st plaintiff, having succeeded the same from the H.E.H. The Nizam, Raj Pramukh of Hyderabad. The property is in absolute possession and enjoyment of the plaintiffs. Out of 1,76,000 square yards, an extent of 983 square yards has been leased out in favour of Association of Engineers, and same is in the possession of Association of Engineers and they constructed a building, and the land appurtenant to the building is in continuous usage of the Association of Engineers. The lease in favour of Association of Engineers was being renewed from time to time. In and around 22.05.2011, defendants attempted to encroach the suit schedule property admeasuring 1132 square

yards, without any right, title over the property and in those circumstances, the plaintiffs filed the suit seeking perpetual injunction against the defendants.

The defendants filed written statement asserting that they purchased the suit schedule property admeasuring 1132 square yards from a company viz., NCC Finance Limited, for a valuable consideration of about Rs.13 crores through a registered sale deed dated 30.12.1998; and that the claim of plaintiffs that the suit property of 1132 square yards forms part and parcel of 1,76,000 square yards is false and the suit property was never in possession of the plaintiffs. It is further asserted that the defendants and their predecessors-in-title were in possession of the property of 1132 square yards all along and same is established and evident from various judicial proceedings earlier, and further the plaintiffs on an earlier occasion suffered a judgment and decree in the hands of their predecessors-in-title, thereby the plaintiffs were restrained from interfering with the lawful possession and enjoyment of the property of 1132 square yards by the defendants; and therefore prayed for dismissal of the suit.

Basing on the pleadings, the trial Court framed the following four issues for trial.

- (i) Whether the plaintiffs are entitled to a decree for perpetual injunction restraining the defendants, their agents, henchmen, representatives, nominees, assignees and all persons claiming through the defendants etcetera from interfering with the peaceful possession and enjoyment of the plaintiffs over the plaint schedule property?
- (ii) Whether the plaintiffs have got lawful possession of the suit schedule property as on the date of the suit and at all relevant times for seeking the equitable relief of perpetual injunction as prayed for?
- (iii) Whether in the facts and circumstances stated in the written statement, the plaintiffs are not entitled to the equitable relief injunction?
- (iv) To what relief?

On behalf of plaintiffs, PWs.1 and 3 were examined, and documents Exs.A1 to A4 were marked. On behalf of defendants, DW.1 was examined, and documents Exs.B1 to B45 were marked.

The trial Court observed that PW.1-K. Gopalakrishna, Executive Engineer (R&B), though, on the one hand, deposed that the plaintiffs are in possession of 1,76,000 square yards admeasuring Ac.36-36 guntas of land having purchased same for a valid sale consideration of Rs.14,09,160/- and the suit schedule property is a part and parcel of same, and that the defendants tried to interfere with the possession of the appellants on 22.05.2011 claiming title over 1132 square yards of land, however, on the other hand, deposed that neither he nor the officials of the plaintiffs were physically present at the suit schedule property nor seen the defendants on 22.05.2011, and therefore cannot say whether the defendants tried to interfere with the possession of the appellants in the suit schedule property. It was further observed that though PW.1 stated that his predecessor by name Ashok is still in service, he was not examined as a witness in this case. It was further observed by the trial Court that PW.1 admitted in his evidence that prior to purchase of the suit schedule property by the defendants, the property belonged to M/s NCC Finance Limited and that the plaintiffs initiated proceedings under Section 4(1) of the A.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1968, (for short, 'the Eviction Act') before the Estates Officer against the vendor of the defendants seeking his eviction from the suit schedule property, however, the Estates Officer dismissed the same vide orders dated 01.03.1996 and the plaintiffs did not file appeal against the orders passed by the Estates Officer.

The trial Court thus observed that PW.1 had no knowledge about the suit schedule property and also no knowledge about the alleged interference of defendants 1 to 3 with the suit schedule property on 22.05.2011.

The evidence of PW.2 (who was the Tahsildar prior to PW.3) was eschewed, as he didn't turn up for cross examination, though filed his chief affidavit.

With respect to the evidence of PW.3-N.Srinivas Reddy (present Tahsildar of Khairtabad Mandal), the trial Court observed that PW.3, in his cross examination, admitted that he is working as Tahsildar since 09.06.2014, however, he is not aware of the contents of the plaint and written statement; and that he is also not aware of the orders passed in W.P.No.788 of 2002 (Ex.B-18). Further, PW.3 though stated in his chief examination that the suit schedule property is part and parcel of the property covered by Exs.A1 and A2, however, made a contra deposition that he does not know whether the suit schedule property forms part of the property covered under Exs.A1 and A2. The trial Court further observed that PW.3 deposed that he is not aware of the dispute with respect to suit property in C.S.No.9/1/1951; and also not aware of the proceedings initiated by the plaintiffs against the vendors of the defendants under the Eviction Act, and the orders passed by the Estates Officer under Exs.B14 and B15. PW.3 also deposed that he is also not aware of the defendants obtaining permission for conversion of land use from residential to commercial use (Ex.B19) and also about the request made by the defendants for extension of time limit for construction of commercial complex in the suit schedule property.

The trial Court, while appreciating the evidence of defendants, observed that it is the consistent evidence of DW.1 that defendants 1 to 3 purchased the suit schedule property for a valuable consideration from M/s NCC Finance Limited under a registered sale deed bearing Document No.16/99 dated 30.12.1998. And, on an earlier occasion, when the plaintiffs filed a petition under the Eviction Act before the Estates Officer, seeking eviction of the vendors of defendants, the Estates Officer, vide orders 01.03.1996, dismissed the

petition; and that the vendor of the defendants obtained permission under G.O.Ms.No.200, MA Department, dated 14.04.1998 for change of land use from residential purpose to commercial purpose, by paying the prescribed fee, and the defendants, after entering into an agreement of sale dated 12.08.1998 with their vendor, filed an application under Section 269, U.D., before the Income Tax Department, seeking transfer of the property in favour of the defendants under the agreement of sale and the authority vide order dated 05.11.1998 has granted NOC, by marking a copy of same to the Sub-Registrar, Sanjeeva Reddy Nagar. It is further evidence of DW.1 that the GHMC has acquired an extent of 63.33 square yards for road-widening and the defendants have parted with their land, however, availed Floor Space Index instead of compensation. And thereafter the defendants obtained sanction for construction of commercial complex comprising Stilt plus Five Upper Floors vide Permit No.177/71 dated 16.02.2001, and after surrendering 63.33 square yards for road widening, the defendants were constructing a compound wall and at that juncture the Deputy Executive Engineer, R&B Department, interfered with their possession, aggrieved by which the defendants filed a complaint with Panjagutta Police which was registered as Crime No.968 of 2001 under Sections 447 and 427 IPC. It was further deposed that the defendants filed W.P.No.788 of 2002 before the High Court, and the High Court vide order dated 28.09.2004, disposed of the writ petition holding that respondents 1 to 3 cannot interfere with the possession of the defendants, and in spite of same the plaintiffs are interfering with the peaceful possession of the defendants. It was further deposed that the appeal filed by the plaintiffs against the order passed in W.P.No.788 of 2002 came to be dismissed thereby the order dated 28.09.2004 became final. DW.1 further deposed that as the defendants could not proceed with construction due to the pendency of the writ petition, the time limit stipulated for construction lapsed, and therefore they applied to the GHMC for extension of time and same was granted vide letter dated 08.09.2005 (Ex.B20). It is also the evidence of

DW.1 that in view of interference of plaintiffs in spite of the orders dated 28.09.2004 in the W.P.No.788 of 2002, the defendants filed Contempt Case No.600 of 2011 and this Court vide orders 10.06.2011 (Ex.B-22) closed the contempt case by recording the submission of the plaintiffs that they have restored the *status quo* existing prior to obtaining injunction order by restoring the compound wall and erecting the gate and that the appellants will not object to the defendants proceeding with the construction. It is the further evidence of DW.1 that when the Receiver-cum-Advocate Commissioner filed an application in Application No.566 of 2010 in C.S.No.9/1/1951 before the High Court against the Commissioner of Police, Hyderabad and 106 others seeking direction for protection of property of 1027 square yards, which is part and parcel of Survey Nos.106 and 107, which is suit schedule property, the defendants got impleaded in the said application, arrayed as respondents 108 to 110, and the High Court dismissed the application by observing that the defendants have filed clinching evidence in support of their title and possession and as such the said application is untenable. Further, in a similar Application No.797 of 2009 against 109 respondents, the defendants got impleaded as respondents 110 to 112, and said application was also dismissed. Likewise, in Application No.763 and 764 filed by one Mr. Ali Mohsin Khan, Application Nos.121 and 122 of 2011, and Application No.794 of 2010 filed by one Hyder Unnisa Begum against the Official Liquidator, High Court of A.P., the defendants got impleaded as respondents and the said applications were also dismissed.

The trial Court, after appreciating the oral and documentary evidence available on record, dismissed the suit, by recording a finding that the plaintiffs failed to prove their possession over the suit schedule property.

Aggrieved by the same, the appellants herein preferred the present appeal on the following grounds.

(1) That the Court below failed to appreciate that the suit schedule land of 1132 square yards belongs to the State and the same is forming part of the land acquired vide registered document No.1101/ 1951 dated 20.06.1951.

(2) The finding in the writ petition W.P.No.788 of 2002 that the respondents are in possession cannot be treated as evidence of possession, and the same is required to be established in the trial Court by adducing concrete evidence.

(3) The Court below failed to appreciate that the proceedings under A.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1968, are summary in nature, and no reliance can be placed on the same.

(4) The permissions obtained by the respondents from various authorities neither confer nor confirm the title.

(5) The Court below erred in discarding the evidence of PW.3 – Tahsildar.

(6) The Court below failed to appreciate the evidence adduced on behalf of the appellants, in proper perspective, and also placed undue reliance on the evidence adduced on behalf of the respondents, which is irrelevant for the purpose of resolving the issue.

Heard learned counsel for the appellants/plaintiffs, and learned counsel for respondents/defendants.

Learned Government Pleader appearing for the plaintiffs/R & B, by making reference to the document Ex.A1 (Sale deed dated 20.06.1951) would submit that the total extent of the land acquired by the plaintiffs is 1,76,000 square yards with clear boundaries delineated in Ex.A2-plan annexed to the sale deed-Ex.A1. Ex.A3 is the Tax Assessment by GHMC showing the tax assessed as “NIL” on account of the fact that the State being the owner of the land, no tax can be levied; and Ex.A4-copy of extract of Town Land Survey Register, the property in Survey No.107 corresponding to the present Town Survey No.3/1 would clearly establish that the land is Government Public Works Department which is in conformity with the description in the Sale Deed Ex.A1. There is no reason for the Court to disbelieve the evidence of PW.1 and PW.3 as they are

public servants and deposing before the Court by relying on unimpeachable documents and further they would not require to have personal knowledge about the transactions.

It is contended by the learned Government Pleader that there is no dispute that the Government raised various buildings for the Engineering Department and, as per Ex.A3, the property in 6-3-545 to 549 belongs to PWD Department, and as per the evidence of PW.1, a portion of the property has been leased out to Association of Engineers and the suit schedule land is appurtenant to the land leased out to the said Association, as the Association has utilized only 983 square yards as against initial allotment of 1500 square yards. It is further contended that purchase of the property by the defendants from persons who do not have title does not in any way confer title on the defendants and, thus, basing on the alleged sale deeds, which are non-est in the eye of law, the defendants cannot claim any right, title over the suit schedule property and, thus, the attempt of defendants to encroach the suit schedule property requires to be prevented by granting equitable relief of injunction.

It is also the contention of learned Government Pleader that the sale deeds Exs.B3 to B13 do not establish title in the property in the respective sale deeds in favour of vendors or the purchasers, as the property in 6-3-549 is the property of the State as is evident from Exs.A3 and A4. As a corollary, the alleged acquisition of the property by the defendants under Ex.B2 also does not confer any right, title and possession over the suit schedule property. Likewise, the reliance placed by the defendants on the proceedings of the Estate Officer under Ex.B15, the proceedings of HUDA under Ex.B16 and B17, the orders of the High Court in Ex.B18, B22, B23, B24, B30, B31, the receipt issued by the Municipal Corporation under Ex.B19 and the permission granted by the

Municipal Corporation under Ex.B20, B21, by themselves do not confer any right, title in the property either in favour of the defendants or their vendors.

It is further contended by the learned Government Pleader that the orders of the High Court in Ex.B24, B25, B26, B27, B28, B29 are not relevant and do not establish any right, title in the property in favour of defendants; and further the orders do not bind the plaintiffs as they are not parties to the said proceedings. Likewise the orders in Ex.B37 and B38 do not bind the plaintiffs as they are not parties to the same and, at any rate, they appear to be collusive decrees between two private parties, as the defendants failed to establish that they had valid right, title over the suit schedule property; and on the other hand, there is no reason to discard the title of the plaintiffs in the suit schedule property, as evidenced by Ex.A1, A2. It is contended that it is well settled that possession follows title and the Court below erroneously dismissed the suit, by not appreciating the evidence on record in right perspective.

On the other hand, Sri K. Raghuveer Reddy, learned counsel appearing for the respondents/defendants would submit that, at the outset, the suit filed by the plaintiffs is for bare injunction, and it is well settled that in a suit for injunction, the primary issue that requires to be considered is possession, and consideration of title is only incidental, and therefore, the documentary evidence placed by the defendants before the Court below clinchingly establish the possession of the defendants and their predecessors-in-title.

It is contended that the plaintiffs, on an earlier occasion, highhandedly tried to interfere with the possession and enjoyment of the defendants, and when the defendants filed W.P.No.788 of 2002, the High Court rightly intervened and granted relief and, as a matter of fact, the compound wall which was demolished by the plaintiffs was restored by the plaintiffs themselves and same is evident from the orders of the Court in the Contempt Case No.600 of 2011, dated 10.06.2011. The admissions made by the plaintiffs in their

evidence, so also their failed attempt to interfere with the possession of the respondents and their predecessors-in-title are evident from the judgment and decrees passed against the plaintiffs in the judicial proceedings. Learned counsel would further assert that the plaintiffs miserably failed to identify the suit schedule property by adducing cogent evidence, and failed to clinchingly prove that the suit schedule property forms part and parcel of the property covered under the sale deed document dated 20.06.1951.

It is the further contention of the learned counsel for the defendants that that all these aspects were properly considered and appreciated by the learned trial Judge and rightly recorded a finding that the plaintiffs failed to establish that they were in possession over the suit schedule property and rightly refused to grant injunction and thus dismissed the suit, and hence the same does not call for interference and thus prays for dismissal of the appeal.

On considering the factual background of the case, and the arguments of the learned counsel for the respective parties, the following points arise for consideration:

- (i) Whether the appellants/plaintiffs are entitled for perpetual injunction, with respect to the suit schedule property, based on the sale deed dated 20.06.1951.
- (2) Whether there are grounds to interfere and set aside the order passed by the learned Chief Judge, being erroneous on the facts and law.

It may be noticed that this being a suit for simplicitor injunction on the assertion that the plaintiffs have right, title over the suit schedule property, it is the obligatory on the part of the plaintiffs to prove their assertion that, at the relevant point of time when the cause of action has arisen, the plaintiffs were in possession of the suit schedule property. As it is the specific plea of the plaintiffs that they have right, title over the property, and possession follows

title, incidentally, it needs to be examined, based on the material evidence placed before the Court and the rival claims, *prima facie* as to whether the plaintiffs were able to establish their right, title over the property in absolute terms. The document of title relied on by the plaintiffs are primarily Exs.A1 and A2. Ex.A1 is the sale deed executed in the year 1951, and Ex.A2 is the plan annexed to Ex.A1-sale deed.

A perusal of Ex.A1 discloses that the plaintiffs had acquired an extent of 1,76,000 square yards or about Ac.36-36 guntas of land along with certain buildings in the land, as per Ex.A2-plan annexed to the sale deed. In Ex.A2-plan, the property which was subject matter of the sale deed was marked in RED. The total extent of land as per Ex.A1 and Ex.A2 is 1,76,000 square yards. Though Exs.A1 and A2 were marked through PW.1, there was no effort made to demarcate the portion of property to be identified as suit schedule property. While PW.1 deposed that about 1500 square yards were initially leased out to Association of Engineers, and the Association of Engineers had constructed a Building and been in continuous usage of land appurtenant to it, the lease deed alleged to have been executed in favour of the Association of Engineers on 08.11.2005 was not marked in evidence. Though PW.1 deposed that an extent of 983 square yards alone is in possession of Association of Engineers, the balance extent from out of the 1500 does not tally with the extent mentioned as suit schedule property i.e., 1132 square yards. No effort was made to demarcate in Ex.A2, the specific area which was said to be leased out to Association of Engineers, and also to demarcate the appurtenant land, if any, contiguous to the building constructed by the Association of Engineers.

Ex.A3-Tax Assessment by GHMC, showing the tax as "NIL" relates to the property bearing municipal numbers 6-3-545 to 6-3-549. It is not clear from Ex.A3 dated 17.05.2011 as to for which year the said tax assessment was made, and whether the said tax assessment relates to the building constructed by the

Association of Engineers or whether the assessment is in respect of the property under Ex.A1; and there is ambiguity with respect to same in the deposition of PW.1. Further, the tax demand of the GHMC does not, by itself, establish possession of the plaintiffs over the suit schedule property. A perusal of Ex.A2 would disclose that beyond the area marked in RED, there are other properties situated that are not forming part of Ex.A1.

As observed supra, as the plaintiffs failed to demarcate and pinpoint the suit schedule area in Ex.A2, it cannot be said with definiteness that the suit schedule property forms part of Ex.A1 property owned by the plaintiffs. As the property itself was not identified, it can be said that the plaintiffs failed to prove their possession over the suit schedule property.

On the other hand, Ex.B-32 is the plaint in O.S.No.4795/1990 filed by one Kazim Ali s/o Nazir Ali against the 1st plaintiff seeking injunction with respect to House bearing Municipal No.6-3-549/A/1, which came to be decreed vide orders dated 27.01.1993 (Ex.B-33). Likewise, Ex.B-34 is the plaint filed by Jaffar Ali s/o Abid Ali against the 1st plaintiff in O.S.No.4796/1990 seeking permanent injunction with respect to property House bearing Municipal No.6-3-549/2/1 which also came to be decreed on 26.10.1992 (Ex.B-35). Both the suits relate to the property bearing Municipal No.6-3-549. The vendor of the defendants, viz., NCC Finance Limited, acquired the property through registered sale deeds from the legal heirs of respective individuals under Ex.B3 to B12. The description of the property shown under Ex.B3 to B12 relates to property No.6-3-549 and its subdivisions and an undivided small extent.

Exs.B-3 to B-12, Exs.B-32, B-33, B-34, B-35 are much prior to the filing of suit by the 1st plaintiff, and also much before in time than Ex.A3 which improbabilises the case of plaintiffs, and throws doubt on Ex.A3 as relating to the property bearing Municipal No.6-3-549.

The defendants came to acquire the property through Ex.B2 dated 30.12.1998 with specific door No.6-3-549 and its sub-numbers. At this point of time, it may be noted that Ex.A2, the property over which the plaintiffs claim right, is clearly delineated within the RED marked boundary drawn on the sketch. A perusal of the sketch in Ex.A2 leaves no manner of doubt that there is existence of other properties beyond the boundaries marked under Ex.A2, thereby probalising the assertion of defendants that the property under Ex.B2 does not form part and parcel of the property covered under Ex.A1 and Ex.A2, which is admittedly owned by the 1st plaintiff.

It is also to be noted that the 1st plaintiff suffered a decree in O.S.No.4795/1990 and O.S.No.4796/1990 under Ex.B-33 and Ex.B-35 respectively, with respect to Municipal No.6-3-549; and admittedly the judgment and decree therein had become final. In O.S.No.4795/1990 and O.S.No.4796/1990, injunctive relief was granted against the plaintiffs, and in favour of the predecessors-in-title of the suit schedule property, which goes to establish the possession of the predecessors-in-title of the defendants.

When viewed from this angle, Ex.B-18 and the admission of the then Executive Engineer S. Ashok of the 1st plaintiff that *status quo ante* existing prior to the obtaining temporary injunction in the suit O.S.No.317 of 2011 establish the stand of defendants with respect to possession of the suit schedule property, though these orders, by themselves, as contended by the learned Government Pleader, cannot be taken as proof positive with respect to the possession.

Yet another document which negates the claim of the plaintiffs is the proceedings initiated under the Eviction Act before the Estates Officer seeking eviction of the vendor of the defendants. The fact that in 1996, under Ex.B14, proceedings for eviction came to be initiated against the vendors of the

defendants presupposes the possession of the vendors of the defendants in the suit schedule property, which came to be confirmed through final orders of Estate Officer under Ex.B15.

In the light of the above discussion, it is not necessary for this Court to discuss the evidentiary value of Exs.B-19, B-20, B-21, B-22, B-23, B-24, B-25, B-26, B-27, B-28, B-29 and B-30. Even if one excludes the above documents exhibited on behalf of the defendants, it can safely be said that *prima facie* the defendants have established their possession and enjoyment over the suit schedule property and the plaintiffs have miserably failed to establish their possession over the suit schedule property.

IN THE RESULT, the appeal is dismissed, answering the points 1 and 2 against the appellants/plaintiffs, and in favour of the respondents/defendants. However, the findings recorded by the trial Court or this Court shall not disentitle the appellants/plaintiffs to assert and establish their right, title over the suit schedule property and recovery of possession thereafter, in accordance with law. No costs. Miscellaneous petitions, if any pending, shall also stand dismissed.

JUSTICE CHALLA KODANDA RAM

09th July, 2019

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THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM



C.C.C.A. No.110 of 2015

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