

(2013) 08 AP CK 0037

Andhra Pradesh High Court

Case No: A.S. No. 338 of 2013

M/s. Shankar Hills Plot
Purchasers and Another

APPELLANT

Vs

Ch. Anantha Reddy and Others

RESPONDENT

Date of Decision: Aug. 5, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11, 96

Citation: (2013) 6 ALD 355 : (2013) 5 ALT 688

Hon'ble Judges: S.V. Bhatt, J; L. Narasimha Reddy, J

Bench: Division Bench

Advocate: K.V. Satyanarayana, for the Appellant; C. Hanumantha Rao, for the Respondent

Final Decision: Disposed Off

Judgement

L. Narasimha Reddy, J.

The plaintiffs in O.S. No. 907 of 2006 on the file of the III Additional District Judge (Fast Track Court), Ranga Reddy District at L.B. Nagar, Hyderabad, are the appellants. They filed the suit for the relief of perpetual injunction to restrain the respondents from interfering with the suit schedule property as well as to restrain them from alienating the same. The 1st appellant is an association registered under the A.P. Societies Registration Act and the 2nd respondent is said to be its President.

2. The averments in the plaint in brief, are that the plaintiff A schedule property admeasuring about 460 acres in different survey numbers of Vattinagulapally Village, Rajendranagar Mandal, Ranga Reddy District, was owned by respondents 1 and 22 and a layout was prepared in respect of that area dividing the same into 3328 plots of 500 square yards each. Respondents 1 to 22 are said to have entered into agreement of sale on 23.08.1982 with one Mr. P. Ramanaiah Chowdary, and that said Ramanaiah Chowdary has arranged for execution of sale deeds on the basis of two General Powers of Attorney dated 05.03.1983 and 14.04.1983, said to

have been executed by the owners of the land. It was also pleaded that the power of attorney, in turn, executed sale deeds transferring 2745 plots between 1983 and 86.

3. The purchaser of the plots are said to have constituted themselves into the first appellant-society. It is stated that to protect the interests of the plot owners, the President of the Association, by name Sri Yelamanda filed O.S. No. 360 of 1996 against some of the vendors and their GPA for the relief of perpetual injunction in respect of a schedule property. The suit is said to have been dismissed, on the ground that the President of the society is not competent to maintain it and that A.S. No. 369 of 2005 is pending against the same. The present suit is said to have been filed, duly rectifying the defect pointed out in the earlier suit. Plaintiff B schedule is said to be the property covered by the sale deeds in favour of the members of the first appellant-society.

4. Respondents 1 to 7 herein, being defendants 3, 5, 6, 20, 21 and 22, filed I.A. No. 948 of 2011 under Order VII Rule 11 C.P.C. with a prayer to reject the plaint. According to them, they are the pattadars and enjoyers of the land in question and that they have also been issued pattadar pass books and title deeds. It was alleged that the appellants have fabricated and manipulated the power of attorney and resultant transactions. It was also mentioned that in view of the orders issued by the Government in Municipal Administration in G.O.Ms. No. 111, it is not possible for any one to undertake any construction activity or to make a layout of the land, in the villages mentioned in the G.O., which includes Vattinagulapally. Reference was also made to the earlier suit filed by the President of the so-called society, writ petitions and suits. They pleaded that the filing of the present suit is an act of misuse of process of Court, the suit is barred under law, and that the same cannot be entertained by the trial Court. The I.A. was opposed by the appellants.

5. Through its orders, dated 02.07.2012, the trial Court allowed the I.A. and rejected the plaint. Hence, this appeal, u/s 96 of C.P.C.

6. Heard Sri K.V. Satyanarayana, learned counsel for the appellants, and Sri C. Hanumantha Rao, learned counsel for the respondents.

7. The appellants filed the suit for the relief of perpetual injunction of two different kinds. The first is to restrain the respondents from interfering with their alleged possession over the suit schedule property and the second is to restrain the respondents from alienating the said property. On the face of it, the second limb of the relief is not permissible in law. Such relief, if at all, can be claimed only in an interlocutory application and not as a principal relief in the suit.

8. The respondents entered appearance, in the suit on receipt of notice and filed I.A. No. 948 of 2011 under Order VII Rule 11 C.P.C. for rejection of the plaint. The ground pleaded by them for rejection of the plaint is not referable to any provision of law. Their endeavour was to convince the Court that there are no merits in the claim of plaintiffs, particularly in view of the decrees passed by civil Courts, or orders passed

by this Court in writ petitions and other proceedings.

9. Even if the facts pleaded by the respondents can be taken as true, they cannot constitute the basis to reject the plaint. It is only when the filing of a suit is barred under any provision of law, or when the contents of a plaint, even if taken as true, do not disclose cause of action, that a plaint can be rejected under Rule 11 of Order VII C.P.C. The other grounds mentioned therein are about the payment of Court fee. The respondents did not cite any reasons, that can be traced to Rule 11 of Order VII. In case the judgment rendered by a Civil Court in relation to the dispute between the parties has any bearing upon the present suit, it can be pleaded as operating *res judicata*.

10. However, we find force in the contention of the respondents that there are several defects in the suit. If they are brought to the notice of the trial Court, it can be a case for return of the plaint, than for rejection thereof. For instance, whenever the relief of perpetual injunction is claimed in the suit, it must be with reference to a specific item of property. Except that the plaintiffs have furnished the numbers to certain plots, they did not indicate the particulars. The second aspect is that it was not even pleaded that the 1st plaintiff purchased the land; divided the same into plots, and allotted to its members. The Association came into existence, after the so-called purchases. Therefore, the ownership of the plots, if at all, is with the respective purchasers. The mere fact that the purchasers formed themselves into an association cannot be a ground to claim the relief of perpetual injunction, for and on behalf of such persons. Added to that, the individual purchaser must feel the grievance, in relation to his plot. The grievance in this regard cannot be general or common.

11. Therefore, we allow the appeal and set aside the judgment and decree passed by the trial Court, rejecting the plaint. I.A. No. 948 of 2011 shall stand dismissed. We, however, direct that the trial Court shall return the plaint and require the plaintiffs to comply with the requirements, such as,

- a) showing the names of the individual owners of the plots, together with the particulars of sale deeds through which, they have purchased;
- b) the boundaries of the respective plots purchased by the individual plaintiffs; and
- c) the nature of possession enjoyed by them over the respective plots, and the nature of interference from the respondents.

12. The trial Court shall also require the plaintiffs to remove the second limb of the prayer in the suit, viz., to restrain the respondents from alienating the suit schedule property; unless the prayer for declaration of any rights is included. The miscellaneous petitions filed in this appeal shall also stand disposed of. There shall be no order as to costs.