(2002) 07 AP CK 0021

Andhra Pradesh High Court

Case No: S.A. No. 540 of 1991

Hakim Mohammed Habeebuddin Quadri and Others		APPELLANT
	Vs	
Mohammed Habeerbur Rahman Died Per Lrs. 2 to 6 and Habeebunnisa Begum and Others		RESPONDENT

Date of Decision: July 19, 2002

Acts Referred:

- Andhra Pradesh Vacant Lands in Urban Areas (Probibition of Alienation) Act, 1972 - Section 7(2)
- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 31

Citation: (2002) 07 AP CK 0021

Hon'ble Judges: P.S. Narayana, J

Bench: Single Bench

Advocate: S.V. Enkat Reddy, for the Appellant; C. Ramesh Sagar, for the Respondent

Final Decision: Dismissed

Judgement

P.S. Narayana, J.
The appellants had preferred the present Second Appeal having been unsuccessful in O.S. No. 4137/79 on the file of VIII Assistant Judge, City Civil Court, Hyderabad and also in A.S. No. 310/82 on the file of I Additional Special Judge for SPE & ACB Cases-cum-Additional Chief Judge, City Civil Court, Hyderabad.

2. The appellants are the legal representatives of the 1st defendant. The original plaintiff who is also no more and his legal representatives having been brought on record subsequent thereto, had instituted the suit O.S. No. 4137/79 on the file of VIII Assistant

Judge, City Civil Court, Hyderabad for the relief of declaration of his title relating to the plaint schedule property and recovery of possession.

3. It may be appropriate to deal with the respective pleadings of the parties for better appreciation of the facts of the case.

4. For the purpose of convenience, the parties are referred to as "plaintiff" and "defendants" as arrayed in the suit.

5. It was pleaded in the plaint that the plaintiff is the owner of the vacant land measuring 300 sq.yards bearing municipal door No. 12-2-37/A/4 situated in Kasu Brahmananda Reddy Nagar colony, Asifnagar, Hyderabad. The sketch of the suit plot is filed along with the plaint. The suit plot and the adjacent land admeasuring 4800 sq.yards which formed part of Sy. No. 4 in K.B. Colony was owned by Mir Barkat Ali Khan Prince Mukaram Jah and the same was disposed of in favour of Kusro Kareem under a registered sale deed dated 1-12-1966 which was registered on 20-12-1966 and Kusro Kareem was put in possession of the land purchased by him. Subsequently the said Kusro Kareem divided the land into plots and obtained lay out sanctioned tentatively approved from the Municipal Corporation of Hyderabad and he disposed of a plot of land bearing Plot No. 143 measuring 300 sq.yards in favour of Mahmood Ali Khan under a registered sale deed dated 21-12-1966 which was registered on 31-12-1966. Mahmood Ali Khan had applied permission for building in the said plot as per file No. 14/TP/A3/76. Subsequently he submitted a reminder petition on 15-1-1977. The municipal authorities issued a letter dated 14-2-1977 directing him to pay betterment charges amounting to Rs. 3600/-. The said Mahmood Ali Khan had entered into an agreement of sale in favour of the plaintiff on 15-2-1976 and having received the sale consideration had handed over vacant possession of the plot to the plaintiff. The first defendant illegally and unauthorisedly erected two temporary rooms over the same. The plaintiff came to know about it on 8-11-1978 and the plaintiff approached the husband of the defendant and demanded him to remove the unauthorized construction. The 1st defendant falsely alleged that he had a sale deed for the said land. The plaintiff submitted a petition to the municipal authorities for dismantling the unauthorized construction. The municipal authorities had not taken any action thereon. The plaintiff could not get the sale deed registered in his favour from his vendor and so he could not take any legal action earlier. Mahmood Ali Khan executed the sale deed in favour of the plaintiff on 22-10-1979 as per the agreement of sale earlier executed and sale deed was registered on the same day. The Municipal Corporation of Hyderabad had issued a special notice of assessment on 8-6-1979 in respect of the suit plot assessing the open land to a tax of Rs. 72.37 paise for half year. The plaintiff has paid the municipal tax for the period from 1-4-1979 to 30-9-1979. Mahmood Ali Khan had also obtained exemption u/s 7(2) of A.P. Vacant Land in Urban Area Act as per permit dated 4-12-1975. Apart from it, permission for alienation was also obtained by him to dispose of the suit plot in favour of the plaintiff u/s 26 of the Ceiling and Regulation of the urban land in India. The plaintiff got issued a notice to the 1st defendant on 21-2-1979 calling upon her to remove the unauthorized temporary sheds and deliver the suit plot to

him. The 1st defendant had sent a reply with false allegations. She has alleged that the 2nd defendant was her tenant in the suit property. The 1st defendant has created a bogus title deed for the suit land and has got a bogus Municipal No. 12-2-36/A-4 which does not find place in the municipal records. Even assuming that there is any such number it does not have any relevancy to the suit property which bears the Municipal No. 12-2-37/A/4. Both the defendants do not have any right to squat over the suit plot and they are liable to pay damages for use and occupation at the rate of Rs. 100/- per month from 1-12-1979 till the date of ejectment of the defendants from the property. The defendants should demolish the unauthorized constructions and hand over vacant possession on the suit plot to the plaintiff.

6. The 1st defendant had filed a written statement denying all the allegations. A specific stand was taken that the plaintiff is not the owner of the suit land and that its Municipal number is 12-2-37/A/4. The sketch filed along with the plaint is incorrect. It is true that land measuring 4800 sq.yards was purchased by Khusro Kareem from Mir Barkath Ali Khan under a sale deed dated 1-12-1966. But it is not correct to state that the land covered by the sale deed includes the suit land. The sale deed dated 1-12-1966 in favour of Khusro Kareem was entered in the records of the Registration Department on 20-12-1966 and the document would have been returned to the purchaser some time thereafter. The allegation that Khusro Kareem divided the land into plots and obtained temporary lay out sanction and disposed of the Plot No.143, comprising of 300 sq. yards to Mahmood Ali on 21-12-1966 is incorrect. No such lay out could be sanctioned unless the original sale deed is filed. Khusro Kareem could not have obtained the lay out sanctioned even before he got possession of the sale deed in his favour. The alleged sale by Khusro Kareem in favour of Mahmood Ali Khan is fictitious, nominal, undervalued and executed without any consideration. The vendor of the plaintiff has never purchased the property and he is not in possession of the suit land. The real person behind the suit is Mohd. Murtuza Khan who is working in the Municipal Corporation of Hyderabad. Taking advantage of the nominal and fictitious alleged sale deed dated 21-12-1966 in favour of Mahmood Ali Khan regarding the non-existing plot the said Murtuza Khan attempted to fabricate the evidence to connect the suit land on an imaginary plot. In pursuance of the said attempt he might have got up an application from Mahmood Ali for sanction of the building plan and the alleged reminder. The allegation that Mahmood Ali Khan entered into an agreement of sale with the plaintiff on 16-2-1976 and received full consideration and executed an agreement of sale is false. The alleged agreement is a concocted document and ante dated to suit the false recitals of sale deed dated 22-10-1979. No alleged sale deed was executed on 22-10-1979. The agreement of sale is not in respect of the suit land. The allegation of delivery of possession in the agreement of sale is false. The suit land was having two rooms from 1976 onwards. It is false to state that this defendant illegally occupied the suit land on 26-9-1978. It is not true that two temporary rooms were constructed on the suit land. It is also not true that the plaintiff learnt about it on 8-11-1978 and demanded the husband of this defendant to delivery possession of the land. This defendant is in possession of the suit land measuring 300 sq.yards having

purchased the same from her predecessor T. Narasimha. Prior to the defendant, her predecessors-in-title were in continuous, open and peaceful possession of the suit land. The suit plot adjoins the road leading to Muradnagar and it was sold by Khusro Kareem on 26-3-1966 to T. Narasimha under a registered sale deed along with two rooms also erected by Khusro Kareem for a consideration of Rs. 5000/- and actual possession was delivered to Narasimha. The said Narasimha made some alterations and sold the property under a sale deed dated 25-8-1978. The defendant has been in possession ever since. The property bears the No.12-2-36/A/4 and not 37/A/4. The allegation that the plaintiff could not take any action in the court of law as he was not armed with the sale deed is untenable. If the plaintiff was in possession as alleged by him and nothing prevented him from taking appropriate action on the basis of possossory title. The conduct of the plaintiff shows that he was never in possession of the suit plot. The vendor of the suit plot has no title and he could not have conveyed any title to the plaintiff. The alleged special notice of assessment said to have been issued by the Municipal Corporation in favour of Mahmood Ali Khan is manipulated at the instance of Mohd. Murtuza Khan. The plaintiff has embarked upon a fictitious sale deed dated 22-10-1979 obtained by Murtuza Ali Khan in favour of the plaintiff and this litigation is launched. The payment of property tax is managed to bolster up false case. Mohd.Murtuza Khan has conceived this scheme of obtaining all these documents to acquire the property ultimately from the plaintiff. The sale of vacant land not exceeding 1000 sq. meters does not require any permission. The exemption and the permission alleged in the plaint are got up for the purpose of the suit and to create false evidence. The plaintiff has suppressed the existence of two rooms in the plaint schedule property even by 1976. It is true that the plaintiff had got issued a notice to this defendant claiming that he is the owner of Plot No. 143 but all the contentions therein are false. A correct reply was issued by this defendant. The allegation that the defendant has created a bogus title deed for the suit land and a bogus Municipal number is incorrect. The title deed of this defendant is in respect of the suit land of which the defendant is in actual possession. After purchase the defendant made some further construction and Municipal Corporation had issued a notice dated 27-7-1979 describing the suit premises as 12-2-36/A/4. The construction was validated and compounding fee was collected from the defendant. The electricity connection was obtained to the premises by the defendant with its No. 12-2-36/A/4. It is true that this defendant has let out the premises to the 2nd defendant. The 2nd defendant is not a necessary party to the suit. The defendant being the absolute owner can use the plaint schedule property. She is not liable to pay any damages and much less at the rate of Rs. 100/- claimed in the suit. It is false to state that this defendant is in unauthorized occupation of the suit plot. The 1st defendant has incurred an expenditure of Rs. 15,000/- after purchase. Without conceding and without prejudice to the contentions of the 1st defendant, she is entitled for the sum of Rs. 15,000/- towards the cost of the construction. The defendant and her predecessors-in-title were in continuous and uninterrupted possession for more than 12 years and to the knowledge of the plaintiff. The suit is barred by limitation. The plaintiff should prove that there is a plot bearing No. 143 and its municipal number is 12-2-37/A/4 and that the suit plot is having the same number. The

suit is undervalued. The market value of each sq. yard by the date of suit is Rs. 100/- and the property is not less than Rs. 30,000/-. The cost of the land and the cost of the construction put together exceed Rs. 45,000/-. The Court fee paid is not correct. The plaintiff has prayed for the dismantling of the construction. In fact the plaintiff is praying for a decree of mandatory injunction but she has not chosen to value the relief and the Court fee has not been paid. The plaintiff is not entitled for the said relief.

7. The 2nd defendant virtually had adopted the written statement of the 1st defendant and had taken a stand that he had taken the property on lease from the 1st defendant.

8. On the respective pleadings of the parties, the following Issues were settled by the trial Court:

1. Whether the Court fee paid is sufficient and the suit is valued properly ?

2. Whether the suit is barred by limitation ?

3. Whether this Court has pecuniary jurisdiction to try the suit ?

4. Whether the plaintiff is entitled to the declaration as prayed for ?

5. Whether the plaintiff is entitled to the vacant possession of the suit property ?

6. Whether the plaintiff is entitled to the mesne profits @ Rs. 100/- per month from 1-12-1979 till the date of recovery of possession ?

7. To what relief ?

During the course of trial, PW-1 and PW-2 and DW-1 to DW-3 were examined and also Exs.A-1 to A-29, Exs.B-1 to B-12 and Exs.X-1 to X-3 were marked. The trial Court on appreciation of both the oral and documentary evidence had decreed the suit and aggrieved by the same, an Appeal was filed by the unsuccessful defendants i.e., A.S. No. 310/82 on the file of the Court of I Additional Special Judge for SPE & ACB cases-cum-Additional Chief Judge, City Civil Court, Hyderabad and pending the Appeal since the 1st defendant died, appellants 3 to 10 were added as legal representatives on 1-9-1989 in I.A. No. 73/89. Likewise, the plaintiff in the suit - the 1st respondent, also died and hence respondents 2 to 6 in the said Appeal were added as per the orders in I.A. No. 191/90 dated 21-9-1990. The appellate Court also had affirmed the Judgment and decree of the trial Court and aggrieved by the same, certain of the legal representatives of the 1st defendant had preferred the present Second Appeal stating that the other parties are not necessary parties in the Appeal since no relief is claimed against them.

9. Sri Rudra Prasad, learned Counsel representing Sri C.V. Mohan Reddy, the learned Counsel for the appellants with all vehemence had made the following submissions. The learned Counsel had drawn my attention to paragraph 11 of the appellate Court

Judgment and had pointed out that the very framing of the point for consideration is in violation of the provisions of Order 41 Rule 31 C.P.C. The learned Counsel also had contended that even if the Judgment of the appellate Court from paragraphs 12 to 20 is carefully scrutinized, except discussing about the evidence of PW-3, the other evidence had not been properly appreciated and in fact there is total omission of the consideration of the material available on record and this itself will constitute a substantial question of law. The learned Counsel further contended that the appellate Court had completely ignored that in a suit for ejectment, the burden is squarely on the plaintiff and the plaintiff must either succeed or fail on his own strength irrespective of the stand which may be taken the defendants. The learned Counsel further contended that the Courts below had ignored Ex.B-9 - letter issued by the Municipal Corporation of Hyderabad dated 18-2-1981, stating that approval of the lay out was tentative without assignment of any plot numbers and the plot numbers given in the sale deed had not been approved by the Municipal Corporation of Hyderabad. The learned Counsel further contended that plot No. 143 is part and parcel of 4800 sq.yards sold by Barkath Ali Khan to Khusro Kareem on 1-12-1966 and hence it should be taken that the plaintiff was unable to establish the allocation of plot No. 143 and hence an adverse inference should have been drawn against the plaintiff for non-production of the sale deed dated 1-12-1966 in favour of Khusro Kareem. The learned Counsel also while further making elaborate submissions had commented about the evidence of DW-3. The learned Counsel had placed strong reliance on Gorrella Durga Vara Prasada Rao Vs. Indukuri Ram Raju and Others, , Ali Mohamood Vs. Special Court under A.P. Land Grabbing (Prohibition) Act, Hyderabad and another, , MIDAKANTI NAGABHUSHANA REDDY Vs. MIDAKANTI YELLAIAH 1999 (4) ALT 41, LOYA NAGAPATHI RAJU Vs. LOYA GANGAMMA 1996 (1) ALD 499, Gadiyaram Lakshminarayana Murthy Vs. Gadiyaram Venkata Rathnam, adopted son of G. Ramaiah (died) and Others, .

10. Sri Ramesh Sagar, the learned Counsel representing the legal representatives of the successful plaintiff - respondents in the Second Appeal, had contended that though the point framed for consideration cannot be said to be an elaborate one, the appellate Court had discussed all the aspects, especially the crucial evidence - the evidence of DW-3, and also the documentary evidence and had affirmed the findings of the trial Court. The learned Counsel also had drawn my attention to paragraphs 13, 14, 15 and 16 of the Judgment and also in particular had referred to paragraph 17 where the evidence of DW-3 and the admissions made by him had been well discussed. The learned Counsel also had contended that though there is no technical compliance of the provisions of Order 41 Rule 31 C.P.C., there is substantial compliance and especially in a case of this nature where concurrent findings had been recorded, in a Second Appeal this Court should be very slow in disturbing such findings. The learned Counsel had placed strong reliance on RAMANUJA NAIDU Vs. KANNAIAH NAIDU AND ANOTHER 1996 (4) SC 426 and also VEERAYEE AMMAL Vs. SEENI AMMAL (2002) 1 SCC 1324.

11. Heard both the counsel on record.

12. The Point, which had been framed by the appellate Court at paragraph-11 of the Judgment, reads as follows:

"In view of the above contentions, the point therefore that arises for determination in this appeal is as to whether the judgment and decree dated 12-7-82 in O.S. No. 4137/79 passed by the learned VIII Asst.Judge, City Civil Court, Hyderabad is liable to be set aside ?"

As can be seen from the respective pleadings of the parties and also the Issues which had been settled before the trial Court and the oral and documentary evidence adduced by the parties, I have no hesitation in stating that the Point which had been framed for consideration in Appeal is in a cryptic form and the same is not in conformity with the provisions of Order 41 Rule 31 C.P.C. The learned Counsel for the appellant had no doubt placed strong reliance on several decisions, including a decision of Division Bench referred (1) supra, wherein it was held that the provisions of Order 41 Rule 31 C.P.C. are mandatory, but however if the appellate Court in its Judgment had dealt with all the grounds taken in Memorandum of Appeal and had given decision on those grounds with reasons, it will amount to sufficient compliance within the meaning of Order 41 Rule 31 C.P.C. even though specific points for determination were not framed. The learned Counsel for the respondents also had brought to my notice that the respondents already filed E.P. No. 70/91 in O.S. No. 4137/79 and possession already had been taken.

13. The suit is for declaration of title, recovery of possession and other reliefs. It is needless to say that in a suit for ejectment, the burden is on the plaintiff to establish his title to the plaint schedule property irrespective of the defence which may be taken by the defendant. As can be seen from the discussion by the appellate Court, at paragraph-14 it was specifically observed that it is question of two claims for the same land and the original owner was Nawab Barkat Ali Khan from whom ultimately as purchasers or purchasers from purchasers these parties are claiming and are fighting the litigation. It is no doubt true that as contended by the learned Counsel for the respondents at paragraph-17, the relevant portion of the evidence of DW-3 in fact had been extracted and discussed in detail and in view of the said finding the learned Counsel for the respondents with all vehemence had contended that since the findings are concurrent findings recorded by both the Courts below, the said findings cannot be disturbed in this Second Appeal. It is no doubt true that as contended by the learned Counsel for the appellant certain aspects were left untouched, but undoubtedly the said approach was adopted by the appellate Court for the reason that if the material aspects are touched and findings are affirmed the appellate Court thought that it will be sufficient compliance of the provisions of the Code of Civil Procedure. It is needless to say that no doubt the first appellate Court is the final Court relating to appreciation of facts, but that does not mean that while affirming the findings all the details relating to the oral and documentary evidence are to be discussed so meticulously. It is suffice if the appellate Court had applied the mind and had appreciated at least the material oral and documentary evidence. The mere omission of non-consideration of immaterial evidence, which may not

tilt the decision in a case either way, may not be of serious consequence and that by itself may not vitiate the Judgment. This is the course which had been adopted by the appellate Court. The mere fact that the Judgment of the appellate Court is not satisfactory in all respects, or a different view could have been taken by the appellate Court while appreciating the evidence, by itself cannot be said to be a substantial question, so as to interfere in a Second Appeal.

14. It is no doubt true that as contended by the learned Counsel for the appellant, the point for consideration is not in accordance with Order 41 Rule 31 C.P.C. But however, as can be seen, commencing from paragraphs 14 to 19 of the Judgment, the appellate Court had taken into consideration both the oral and documentary evidence and also the claims of the respective parties and had affirmed the findings and hence the mere omission on the part of the appellate Court in not touching the evidence of DW-2, which may not be very relevant or which cannot tilt the case either way, by itself cannot vitiate the Judgment and it cannot be said that on that ground there is non-compliance of Order 41 Rule 31 C.P.C. While construing a Judgment, especially in the light of Order 41 Rule 31 C.P.C., instead of adopting a technical approach it is always better to look into the Judgment as a whole to arrive at a conclusion whether the appellate Court had discharged its duties as appellate Court properly and in substance had complied with the said provisions. I am well satisfied that, in the present case, the lower appellate Court also had taken into consideration the oral and documentary evidence, in particular the evidence of DW-3 and also had discussed the material documents - the title deeds, and had affirmed the findings recorded by the trial Court. In the light of the concurrent findings which had been recorded by both the Courts below, I do not see any reason to interfere with the same in this Second Appeal.

15. Accordingly, the Second Appeal is dismissed as devoid of merits. No order as to costs.