

Akram Men Vs Secunderabad Municipal Corporation

Court: Andhra Pradesh High Court

Date of Decision: Dec. 12, 1956

Acts Referred: Cantonments Act, 1924 " Section 107, 108, 109, 110, 114
Transfer of Property Act, 1882 " Section 53A

Citation: AIR 1957 AP 859 : (1957) 1 AnWR 135

Hon'ble Judges: Subba Rao, J

Bench: Single Bench

Advocate: Ramaswami Ayyangar and P.L. Gajapathi Rao, for the Appellant; K. Ramgopal, for the Respondent

Final Decision: Dismissed

Judgement

Subba Rao, J.

This second appeal is filed against the decree and judgment of the Court of the Disfc. Judge, Secunderabad, confirming that

of the District Munsiff in a suit filed by the Appellant for a declaration of his rights in respect of two mutton stalls and for an injunction restraining

the Defendant from interfering with his rights.

2. The facts, admitted or found, may be briefly stated. The Plaintiff is a butcher carrying on his trade in the mutton stalls owned by the Cantonment

authorities in Secunderabad. It appears that in 1929 there was a butchers" strike in Secunderabad and, during that period, the Plaintiff rendered

valuable assistance to the Cantonment authorities. In appreciation of his services, the Cantonment Board passed the following resolution dated

20th August. 1933:

3. Though the Cantonment authorities held every year a ballot for allotment of stalls, pursuant to the aforesaid resolution, the said stalls were not

included in the ballot and the Plaintiff was allowed to continue to be in exclusive possession thereof. As the Defendant, in violation of the terms of

the aforesaid resolution, attempted to auction the aforesaid two stalls along with the other stalls in the city, the Plaintiff filed the suit for a declaration

of his permanent right to the said stalls and for an injunction restraining the Defendant from interfering with his rights.

4. The Defendant pleaded that, under the resolution, the plain till was gild. only a concession, which could be revoked at their pleasure having

regard to the supervening circumstances. They also pleaded that, under the said resolution, no leasehold interest in perpetuity was created in favour

of the Plaintiff and that if it purported to do so the resolution could not legally create any such interest as no document, complying with the

provisions of the Kieffers Act of 1895 of the Cantonments Act was executed, in the event the Plaintiff sought to get by objections raised to the

Defendant by pleading that the grant was a Crown grant and that his possession was protected under the Transfer of Property Act.

5. Both the Courts held against the plaintiff's contention and dismissed the suit. Hence, the appeal.

6. "Learned Counsel for the Appellant contends that the lease of the stall by the Cantonment authorities in Plaintiff's favour was a Crown grant's

and, therefore the provisions of the Transfer of Property Act would not apply to such a grant. Section 2 of the Government Grants Act XV of

1895 says:

Nothing in the Transfer of Property Act, 1882, contained shall apply or be deemed ever to have applied to any grant or other transfer of land of

any interest therein heretofore made or hereafter to be made by or on behalf of the Government to or favour of any person whomsoever; but,

every such grant shall be construed and take effect as if in said Act has to been passed.

7. The section will apply only to a case where the grant was, made by or on behalf of the Crown. Assume; that the foresaid resolution

could be construed to be a grant of the stalls made in favour of, Appellant, obviously it was not a grant made by the Crown. Can it be said that, it was

a grant made on behalf of the Crown? If it is said that Cantonment Board in making the grant; acted on behalf of the Crown. The relevant

provisions of the Cantonments Act read:

Section 108. Subject to any special reservation made by the Central Government all property of the nature hereinafter in this section specified

which has been acquired or provided or is maintained by a Board shall vest in and belong to that Board, and shall be under its direction,

management and control, that is to say -(a) All markets, slaughter house, manure and right soil depots and buying of every description.

Section 109-The Cantonment Board may make rules consistent with this Act to provide for all or any of the following matters, namely:

(a) the conditions on which, property may be acquired by Boards or on which the property vested in a Board may be transferred by sale, mortgage,

lease, exchange or otherwise.

8. A combined reading of the aforesaid, provisions indicates that markets vest in and belong to the Board & the Board can lease the said markets in

accordance with the statutory rules prescribed under III of the Act. Under the Act, markets are Tested in a statutory body and the management of

the said markets is regulated by the said statute itself. In discharging the statutory functions, the Board does not function as the agent Of the

Crown. I cannot, therefore, accept the argument that the Board in leasing out the markets acts on behalf of the Crown. In this view, it is not

necessary to express my opinion on the question whether the market is a "land" within the meaning of S. 2 of the Government Grants Act.

9. Learned Counsel for the Appellant then argues that, though the lease of the stalls was hectic in his favour under a registered document, he could

rely upon the provisions of Section 53A of the Transfer of Property Act. It may be mentioned, at the outset, that both parties argued on the basis

that the transaction there under the Plaintiff was left in enjoyment of the stalls was a lease but learned Counsel for the Respondent contended that

Section 53-A presupposes the existence of a valid contract and that, in the present case, the contract was void inasmuch as the provisions"

of Section 114 of the Cantonments Act were not complied with. The material portion of Section 53-A of the Transfer of Property Act may be

extracted.

Where any person contracts to transfer for consideration any Immovable property by writing signed by him or on his behalf from which the terms

necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken

possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the

contract and has done some act in furtherance of the contract then, notwithstanding that the contract, though required to be registered, has not

been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed there for by the law

for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons

claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly

provided by the terms of the contract.

10. Under this section, the proposed transferee can protect his possession by invoking S. 53-A but cannot assert any active title on the strength of

that possession. A Division Bench of this Court, of which I was a member, considered the scope of the definition of matter in *Yenugu Achayya and*

Another *Vs. Ernaki Venkata Subba Rao and Others*, I observed thus:

Under the terms of the section the transferor is debarred from enforcing against the transferee only rights in respect of the property and this bar

does not depend upon the array of the Parties. The transferee, can resist any attempt on the part, of the transferor to enforce his rights in respect of

property whatever position he may occupy in the field of litigation. In one sense, it is a statutory recognition of the defensive equity. It enables the

transferee to use as a shield against any attempt on the part of the transferor to enforce his rights against the property.

Whether the transferee occupies the position of a Plaintiff or a Defendant, he can resist the transferor's claim against the property. Conversely,

whether the transferor is the Plaintiff or the Defendant, he cannot enforce his rights in respect of the property against the transferee. The utility of

the section or the rights conferred there under should not be made to depend on the maneuvering for positions in a Court of law; otherwise a

powerful transferor can always defeat the salutary provisions of the section by dispossessing the transferee by force and compelling him to go to a

court as Plaintiff.

Doubtless, the right conveyed under the section can be relied upon only as a shield and not as Sword but protection is available to the transferee

Doth as a Plaintiff and as a Defendant so long as he uses it as shield.

11. This judgment is binding on me. If so, it follows that, if the other conditions laid down under the section are satisfied, the Plaintiff can rely upon

the contract as a shield. Me is admittedly in possession and the Defendant is attempting to recover possession from him. Relying upon his

possession under the contract, as a shield, he has filed the suit for no injunction against the Defendant, The aforesaid decision clearly enables him to

do so.

12. But, there is another obstacle in the way of plaintiff. or necessary condition, which enable a plaintiff to invoke the provisions of the section, is that

there should have been a contract to transfer for consideration any immovable property by a writing signed by the transferor in his favour. It

clearly implies that the contract contemplated by the section is a valid contract. If the contract is otherwise valid, Section 53-A protects the

possession of the transferee, notwithstanding the fact, that the contract is not registered. But, if the contract is invalid under any other law, this section

cannot obviously validate that which the law says is invalid.

13. The Judicial Committee in *Arsecularatne v. Perera* AIR 1923 PC 2711 LIR held, that the doctrine of part performance can not avail a person if

the contract is other than a valid one. There, the agreement of partnership provided that the capitalist partner would give over a lease of a mine to be

worked by the partnership. The agreement was invalid as it was not cited by a notary public. The other partner took possession and worked the

mine for three years. The Judicial Committee held that the partner in possession could not avail himself of the doctrine of part performance as

the agreement. Thereafter he secured possession, contravened the provisions of the Ceylon Ordinance.

So too, contracts infringing the provision" (if S. 28 of the Legal Fractions; 212 of the Indian Companies Act and Section (i) (a) of the Transfer

of Property Act were not allowed by the Courts to sustain the plea of part performance. Assuming that, the resolution embodies the terms of the

contract between the Plaintiff and the Cantonment Board, the resolution did not comply with the provisions of K. 114 of Cantonment Act. Section

114 (1) says:

Every contract made by or on behalf of a Board the value or amount of which exceeds Rs. 50 shall be in writing and every such contract shall be

signed by two members, of whom the President or the Vice-President shall, be one, and be countersigned by the Executive Officer and be sealed

with the common seal of the Board.

14. u/s 115 of the A. if any contract is executed by or on behalf of a Board otherwise than in conformity with the provisions of this Chapter, it

shall not be binding on the Board. A contract, therefore, entered into by or on behalf of the Board must be signed by two members of whom the

President or the Vice-President would be one and it should be countersigned by the Executive Officer and sealed with the common seal of the

Board and if the said conditions are not complied with, the contract is not binding on the Board. In the present case, no such contract was entered

into by the Board with the Plaintiff.

Learned Counsel suggests that the Court should presume that all the necessary formalities have been complied with. The Defendant in the written

statement clearly stated that the contract was not legally enforceable, and if really there was any such contract executed in compliance with the

provisions of S. 114 of the Cantonments Act, the Plaintiff would have produced it, or, at least would have taken steps to have a copy of the same

filed by the Cantonment Board,

15. Learned Counsel made another attempt to escape the legal consequences of the non-compliance with the provisions of Section 114 by

contending that Chapter VI should be confined to contracts of property other than Immovable property. He argues that Sections 108 to 111 of

Chapter VI deals with Immovable property and, therefore, the succeeding; Chapter VI" dealing with contracts must be confined only to contracts

of property other than Immovable property. The scope of Chapter VI is not confined to Immovable property alone.

The general heading of the Chapter is ""Cantonment fund and Property."" Sections of it and 107 provide for the formation of a Cantonment fund and

for its custody. Section 108, whose marginal note is "property", vests in the Board the various properties, moveable and immovable, mentioned

therein and confers on the Board the power of management and control. Section 109 enjoins a the Board a duty to apply its fund and property for

the purposes mentioned in the Act.

Section 110 evolves a machinery for the acquisition of Immovable property for the Board. Section 111 enables the Government to make rules to

provide for all or any of the conditions on which property may be acquired by the Board and. in regard lo any other matter relating to cantonment

fund and property in respect of which no provision is made in the Act. It is, therefore, clear that Chapter VI does not purport to provide Cur

contracts in respect of Immovable property.

They are general provisions dealing with the constitution, custody, vesting and management of both moveable and Immovable properties vested in

the Board. The manner of executing contracts is specially provided for by Chapter VII. The general heading of Chapter VII is ""contracts"" and the

provisions of that chapter apply equally to moveable and Immovable properties. I cannot, therefore, hold that the contract of lease in respect, of

Immovable property is excluded from the operation of Chapter VII.

As the requirements of Section 114 were not complied with in the case of the present lease, the contract was not binding on the Cantonment

Board and, therefore, the provisions of Section 53-A of the Transfer of Property Act could not be invoked by the Plaintiff.

16. In the result, the decree of the lower Court is confirmed. The appeal fails and is dismissed with Costs. No