

(1956) 12 AP CK 0001

Andhra Pradesh High Court

Case No: Second Appeal No. 277/2 of 1954 in A.S. No. 14/4 of 1952-53

Akram Men

APPELLANT

Vs

Secunderabad Municipal
Corporation

RESPONDENT

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 purport-ed to do so the resolution could not legally create any such interest as no document, complying with the provisions of the Kegiefrej ion .v. of or the Cantonments Act was executed, in he; tavern The Plaintiff sought to get by objections raised toy the Defendant by bleeding that" the grant was a Crown grant and that his possession was protected under S. avert of !h > Transfer of Property Act.

5. Both the Courts held aghast the plain-tiff'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 gym's and, therefore the provisions of the Trans-fa- 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 eh Property Act, 1882, contained shall apply or he 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 be ha hi of the Government to or favour of any person whomsoever; but, every such grant finenisl"er 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, Marie by On aw, or on behalf of the Crown. Assume; that the foresaid resolution could be construed to be a giant Of the stalls made in favour of, Appellant, obviously it was not a grant mafia the Crown. Can it be said that, it was a grant .rococo on behalf of the Crown? If is said that Cantonment Board in making the gran1; 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 tile nature hereinafter in this section specified which has been aeauhvh or provided or is maintained by a Board shall vein in and belong to that Board, and shall be usher 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 life-The Contra Over" rainy may make rules consistent with this Act to provide for all or any of the following lyiatferr, namely:

(a) the conditions on which, property may be acquired by Boards or on which the property vested in a Board may be transient! by sale, mortgage, lease, exchange or otherwise.

8. A combined reading of the aforesaid, provisions indicates that markets vest in 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 vested 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 therefor by the law for the time being in force, the transferor or any person claiming through 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 a 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 person 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 necessarily implies that the contract contemplated by the section is a valid contract. If the contract is otherwise valid, Section 53-A protects the oppression of the transferee, notwithstanding the fact, that the contract is not registered. But, if the contract is invalid under any other law, this section obviously cannot 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 otherwise invalid. 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 attested by a notary public. The other partner took possession and worked the mine for three years, but the Judicial Committee held that the partner in possession could not avail himself of the doctrine of part performance as the agreement was void. There under he secured possession, contravened the provisions of

the Ceylon Ordinance.

So too, contracts infringing the provision" (if S. 28 of the Legal Franchise Act, 1912 of the Indian Companies Act and Section (i) (a) of the Transfer of Property Act were not a bar. 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 the 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 on 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