

(1992) 03 AP CK 0012

Andhra Pradesh High Court

Case No: Civil Revision Petition No. 289 of 1992

Vishwa Shanti Enterprises

APPELLANT

Vs

Premier Refrigeration and
Electricals

RESPONDENT

Date of Decision: March 21, 1992

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, 151
- Transfer of Property Act, 1882 - Section 54

Citation: (1992) 1 ALT 571

Hon'ble Judges: A. Gopal Rao, J

Bench: Single Bench

Advocate: S. Ramachandra Rao, for the Appellant; T.V. Narasimha Murty, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

A. Gopal Rao, J.

Defendant is the petitioner. This revision petition is filed aggrieved by the order passed by the Additional Chief Judge, City Civil Court, Secunderabad in C.M.A.No. 42/91, confirming the order dated 16-8-1991 in I.A.982/91 in O.S.586/1991 passed by the XI Assistant Judge, City Civil Court, Secunderabad, granting mandatory injunction in favour of the respondent-plaintiff, directing the petitioner-herein to remove the lock of the main shutter to the common passage which leads to the cellar portion of shop Nos. 1 and 2, at Sarojini Devi Road, Secunderabad.

2. The facts, in brief, are as follows:

The respondent-herein entered into an agreement on 19-1-1984 with the petitioner-herein to purchase shop Nos. 1 and 2 and also the cellar portion

underneath shop No. 1. When the petitioner-herein failed to execute the sale deed as per the agreement, the respondent filed the suit O.S.76/1987 and the same was decreed. The execution petition, filed for executing the decree in O.S.76/87, is pending. It appears that the petitioner-herein filed C.R.P.3493/ 89 in this Court against the ex-parte decree in O.S.76/87 and the same was also dismissed on 16-2-1990. The petitioner claims that he has filed a SLP in the Supreme Court against the order in C.R.P.3493/89 and the same is still pending. The respondent claims that he was put in possession of shops Nos. 1 and 2 and he is continuing in possession of the same by keeping the materials right from the date of obtaining possession by him, without any interruption. While so, as the petitioner-herein closed the only passage to the cellar on 5-7-1991 by putting a lock thereto in order to harass and cause loss to the respondent, the respondent filed the present suit O.S.42/ 91 praying for mandatory injunction, directing the petitioner to remove the lock of the main shutter to the common passage leading to the cellar portion. He also filed I.A.982/91 seeking the same relief of mandatory injunction, stating that the material which are lying in the cellar could be spoilt if mandatory injunction is not granted, pending disposal of the suit. The petitioner-herein filed a counter and contested the said I.A.982/91, on several grounds.

3. The trial court, after consideration of the entire evidence, allowed I.A.982/91 granting injunction as prayed for. Aggrieved by the same, petitioner-herein filed C.M.A.42/91 on the file of the Additional Chief Judge, City Civil Court, Hyderabad, which was also dismissed on 16-12-1991, confirming the injunction granted by the trial court. Aggrieved by the same, the present revision petition is filed by the petitioner.

4. The only point raised by the petitioner in this revision petition is that the suit for injunction is not maintainable in law as per the provisions of Section 54 of the Transfer of Property Act. In other words, it is his contention that as long as the respondent does not obtain the sale deed in his favour in pursuance of the decree for specific performance, he will not get any right in immovable property and, therefore, he has no right to maintain the suit for injunction.

5. The learned Counsel for the respondent, however, contends that the judgment and decree for specific performance passed on 27-11-1987 in O.S.76/ 87 have become final, as no appeal was filed against the same. It is also contended on behalf of the respondent that, in pursuance of the agreement of sale he was put in possession of the two shops and the cellar portion and he is continuing in possession of the same. It is stated by the respondent that the petitioner cannot take advantage of his own default in not executing the sale deed, pursuant to the decree passed in OS 76/87, and claim that no rights flow to the respondent from the agreement of sale till the sale deed is executed.

6. The point, therefore, that falls for consideration in this revision petition is-whether the injunction granted by both the Courts below is sustainable?

7. A perusal of the clauses in the agreement of sale dated 19-1-1984 will indicate that the possession of shops Nos. 1 and 2 and the two cellars have been handed-over on the same day to the vendee. The schedule of the property attached to the agreement also indicates that the property, which is the subject-matter of sale under that agreement, consists of four items, viz., shop No. 1, shop No. 2, cellar floor underneath shop No. 1 having an extent of 266.35 square feet carpet area and cellar floor underneath shop No. 1, having an extent of 137.20 square feet carpet area.

8. The plaint in O.S.76/87 will also disclose a clause to the following effect:

"Plaintiff is entitled to seek the relief of specific performance of the agreement dated 19-1-1984 and the defendants are bound to convey the said premises in favour of the plaintiff."

The judgment in O.S.76/87 is in the following terms:

"P.W.1 examined Exs.A-1 to A-5 marked. Suit is decreed with costs Plaintiff is directed to deposit the balance of sale consideration in One month from today. Time for specific performance-three months."

9. In the counter filed by the petitioner-herein in I.A.982/91, he has admitted that the petitioner is using the cellar portion since a long time though he claims that he made this access illegally through shop No. 1.

10. Considering from the admissions made by the petitioner in the counter-affidavit and also the material extracted above, I hold that the respondent is in possession of the cellar portion, which is covered under the agreement of sale.

11. Now, the question for decision is-whether the respondent can validly maintain the suit for injunction solely on the basis of the agreement of sale, even before the sale deed is executed in his favour pursuant to that agreement?

12. In *U. Sita Ramaiah v. State Bank of India* 1983 (2) APLJ 312 a Division Bench of this Court, following the decision of the Supreme Court in [Bai Dosabai Vs. Mathurdas Govinddas and Others](#), held that a person in possession of property under an agreement of sale is entitled to enforce the same. It was observed:

"Thus, the aforesaid ruling supports the contention of Sri P.L.N.Sarma that the defendants 4 and 5, who were in possession of the "A" schedule land under an agreement to sell Ex.B.1, are entitled to enforce the same against the plaintiff-Bank, who had acquired a right in the said land by way of equitable mortgage subsequent to the said agreement in favour of defendants 4 and 5 by virtue of the provisions of Section 3, Explanation II read with Section 40 and Section 54 of the Transfer of Property Act."

13. Dealing with Section 54 of the Transfer of Property Act, the Supreme Court in [Bai Dosabai Vs. Mathurdas Govinddas and Others](#), held:

"It is clear from the ultimate para of Section 54 and the ultimate and penultimate paras of Section 40 of the T.P. Act that a contract for the sale of immovable property, though does not, of itself, create any interest in or charge on such property creates an obligation annexed to the ownership of immovable property, not amounting to an interest in the property, but which obligation may be enforced against a transferee with notice of the contract or a gratuitous transferee of the property. Thus, the equitable ownership in property recognised by Equity in England is translated into Indian Law as an obligation annexed to the ownership of property, not amounting to an interest in the property, but an obligation which may be enforced against a transferee with notice or a gratuitous transferee."

14. As stated earlier, there is no dispute that the respondent was put in possession of the cellar portion in pursuance of the agreement of sale. The execution petition filed by the respondent for obtaining the sale deed in pursuance of the agreement of sale pursuant to the decree in O.S.76/87 is pending. Therefore, the respondent can maintain the suit for protecting his possession.

15. For the reasons stated above, I hold that the order of the lower court is correct and does not call for interference in this revision petition. The revision petition fails and is accordingly dismissed. No costs.