

(2014) 08 AP CK 0060

Andhra Pradesh High Court

Case No: C.C.C.A. No. 7 of 2013

Syed Mahmood Hussain

APPELLANT

Vs

G. Manoharlal

RESPONDENT

Date of Decision: Aug. 21, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 101, Order 21 Rule 58, Order 21 Rule 97, Order 21 Rule 98

Citation: (2015) 1 ALD 191 : (2015) 2 ALT 134

Hon'ble Judges: C.V. Nagarjuna Reddy, J

Bench: Single Bench

Advocate: Vedula Venkataramana, Senior Counsel for S. Sridhar, Advocate for the Appellant; P. Shiv Kumar, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

C.V. Nagarjuna Reddy, J.

This appeal arises out of order dated 12-10-2012 in E.A. No. 140 of 2012 in E.A. No. 393 of 2012 in E.P. No. 85 of 2011 in O.S. No. 318 of 2008 on the file of the learned III Senior Civil Judge, City Civil Court, Secunderabad.

2. Respondent No. 1 filed the above mentioned suit against respondent No. 2 for eviction, recovery of possession, mesne profits and other reliefs. By Judgment and decree dated 9-2-2011, a preliminary decree was passed by the lower Court. The said Judgment and decree has become final. The appellant herein filed E.A. No. 393 of 2012 under Order XXI Rules 58 and 97 r/w. Rule 101 of the Code of Civil Procedure, 1908 (for short "the Code"). It is the pleaded case of the appellant that the petition schedule property originally belonged to one Mohd. Ghouse Khan and the same was given by way of gift (oral Hiba) on 19-7-1960 in favour of his two children namely, Mohd. Yousuf and Mohd. Abdul Samad Khan; and that subsequently the said Abdul Samad Khan executed a registered sale deed in favour

of the appellant. In the said E.A. respondent No. 1-decree holder filed E.A. No. 140 of 2012 to reject the said claim petition. The lower Court by order dated 12-10-2012 allowed E.A. 140 of 2012 and rejected E.A. No. 393 of 2012.

3. I have heard Sri Vedula Venkataramana, the learned Senior Counsel, for the appellant and Sri P. Shiv Kumar, learned Counsel for respondent No. 1.

4. A perusal of the order of the lower Court would show that it has mainly dealt with E.A. No. 140 of 2012 filed by respondent No. 1-Decree holder and rendered a finding in his favour with regard to his title. However, nowhere in the order, the lower Court has dealt with the merits of the claim of respondent No. 1-Decree Holder that he is the owner of the property. It is trite that a third party claiming to be in possession of the suit property in respect of which a decree is passed is also entitled to approach the executing court by way of a claim petition under Order XXI Rule 97 of the Code. All questions raised under the claim petition have to be determined under Rule 101 and an order of adjudication shall be passed under Rule 98 after such determination and not by a separate suit. Under Rule 103, such an order shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree. From the scheme of these provisions, it is evident that a claim petition has to be treated as a suit unless the Court is satisfied that the same is a frivolous one which does not require recording of evidence. Ordinarily, the executing Court adjudicating such claim petitions has to record evidence based on which it shall dispose of the claim petitions.

5. From the facts noted hereinbefore, it is clear that the executing Court has concentrated more on the right of respondent No. 1-Decree holder than the merits of the claim of the appellant/claim-petitioner. Surprisingly, no evidence, either oral or documentary, has been let in by either party. In my opinion, the approach of the lower Court is not sound and the procedure followed by it is not in consonance with the provisions of Order XXI Rules 97, 98 and 101 of the Code.

6. For the above mentioned reasons, the order under appeal is set-aside. The lower Court is directed to record oral evidence and allow the parties to file documentary evidence, if the parties choose to adduce such evidence, and dispose of E.A. No. 393 2012 within three months from the date of receipt of this order.

7. The appeal is allowed to the extent indicated above.

8. As a sequel to the disposal of the appeal, CCCAMP No. 23 of 2013 filed for interim relief is disposed of as infructuous.