

Mir Zaheer Mohammed Khan Vs Legend Estates Private Limited

Court: Andhra Pradesh High Court

Date of Decision: Sept. 1, 2014

Citation: (2014) 6 ALD 390 : (2014) 6 ALD(Cri) 390 : (2015) 1 ALT 199

Hon'ble Judges: L.N. Reddy, J

Bench: Single Bench

Advocate: S. Ashok Anand Kumar, Advocate for the Appellant; Kishore Rai, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

The respondent filed O.S. No. 1597 of 2008 in the Court of V Junior Civil Judge, City Civil Court, Hyderabad,

against the petitioner for the relief of perpetual injunction in respect of the suit schedule property. In the plaint, the respondent has traced its rights

vis-à-vis the property, to certain proceedings in O.S. No. 199/1 of 1952.

2. The petitioner filed I.A. No. 1298 of 2008, under Rule 128 of Civil Rules of Practice, with a prayer to call for the entire record in E.P. No. 37

of 1961 on the file of the Court of the Additional Chief Judge, City Civil Court, Hyderabad, together with the letter dated 09-02-2010 addressed

by the II Additional Chief Judge, City Civil Court, Hyderabad, to the learned Chief Judge, City Civil Court, Hyderabad. The I.A. was opposed by

the respondent by raising several objections. The trial Court allowed the I.A. through order dated 07-05-2010, directing that the entire record in

O.S. No. 199/1 of 1952 and E.P. No. 37 of 1961 be sent for. The C.R.P. No. 2452 of 2010 filed by the respondent, challenging the order in the

I.A., was dismissed by this Court on 18-06-2010.

3. The I.A. was re-numbered as 175 of 2012. It was being called, for reporting compliance. The respondent stated that it submitted an application

before the II Additional Chief Judge, City Civil Court, Hyderabad, with a request to issue certified copies of plaint and written statement, in O.S.

No. 199/1 of 1952, vide C.A. No. 14496 of 2010 and the documents relating to E.P. No. 37 of 1961, vide C.A. No. 14495 of 2010, but the

applications were returned with an endorsement that the records are not available in the record section. The petitioner pleaded that the respondent

did not comply with the directions issued by the trial Court, and the endorsement made on the CAs discloses that the suit and EP are non-existent.

After perusing the CAs and hearing the arguments of the parties, the trial Court passed an order dated 11-07-2012, taking the view that the order

dated 07-05-2010 stood complied with. The said order is challenged in this revision.

4. Heard Sri S. Ashok Anand Kumar, learned counsel for the petitioner and Sri Kishore Rai, learned counsel for the respondent.

5. The suit was filed for the relief of injunction-simpliciter. It is for the respondent to prove his possession. Title becomes secondary in suits of that

nature. Even in a suit for declaration of title, it is for the plaintiff to choose the nature of evidence, to be adduced before the Court. The defendant

would always have a right, not only to adduce evidence, on his behalf, but also point out the deficiencies in the evidence of the plaintiff. If the

plaintiff failed to place a crucial document, pertaining to his case, in the evidence, the defendant can insist on the Court to draw the corresponding

inference. Beyond that, he cannot compel the plaintiff to file any documents. In such a case, a situation would arise, where the defendant would

decide the nature of evidence, to be adduced by the plaintiff.

6. Whatever may have been the circumstances under which, the IA was allowed on 07-05-2010, the respondent did make an effort to make the

relevant documents before the Court. However, the copy application submitted by it, before the Court of II Additional Chief Judge, City Civil

Court, Hyderabad, were returned with certain endorsement. The applications together with endorsement were placed before the trial Court.

Further, it is not a party to the suit at all. Taking all these circumstances into account, the trial Court treated that there is compliance on the part of

the respondent. It is not known as to what detriment the petitioner has suffered, on account of such an order. If the respondent cannot succeed in

the suit, without filing the documents, named by the petitioner, and if the respondent failed to file such documents, the one, who rejoices, is the

petitioner herein, since he gets an opportunity to convince the Court, to draw adverse inference.

7. The C.R.P. is therefore, dismissed. The miscellaneous petition filed in this C.R.P. shall also stand disposed of.

8. There shall be no order as to costs.