



HIGH COURT OF ANDHRA PRADESH
MONDAY ,THE THIRTY FIRST DAY OF JANUARY
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE M.VENKATA RAMANA
SECOND APPEAL NO: 252 OF 2021

Between:

1. Sri R.V. Krishna Rao (died) a
2. Smt. R. Vimala Devi , W/o. Sri Krishna Rao (died)
3. Sri Ravikanti Mihir , S/o. late Sri R.V. Krishna Rao, Aged about 55 years, residing at 77/78, Gangai Amman Koil Street, Vaithikuppam, Pondicherry - 605001.
4. Ms. Ravikanti Jahnavi , D/o. late Sri R.V. Krishna Rao, Aged about 53 years, residing at 77/78, Gangai Amman Koil Street, Vaithikuppam, Pondicherry - 605001.
5. Ms. Ravikanti Vimaura , D/o. late Sri R.V. Krishna Rao, Aged about 48 years, residing at 77/78, Gangai Amman Koil Street, Vaithikuppam, Pondicherry - 605001.
6. Ms. Ravikanti Luminaura Krishna Rao, D/o. late Sri R.V. Krishna Rao, Aged about 42 years, residing at 77/78, Gangai Amman Koil Street, Vaithikuppam, Pondicherry - 605001.
(Appellants 3 to 6 were added as per the Orders in I.A.951/2019, dt. 02.03.2020)

...PETITIONER(S)

AND:

1. Smt. Attili Hymavathi Devi , W/o. Dr. A.R. Subrahmanyam, Hindu, Aged about 43 years, household duties, Previously residing at - Saradamba, Ganjipeta Junction, Visakhapatnam, Presently residing at - C/o. Dr. A. Muraliraj, Plot No.6, Hyma Surajya Residency, Balaji Nagar, Near SBI Zonal Office, Visakhapatnam.

...RESPONDENTS

Counsel for the Petitioner(s): G POORNASRI

Counsel for the Respondents: MOGULURU ISWARYA

The Court made the following: ORDER

**HON'BLE SRI JUSTICE M.VENKATA RAMANA****SECOND APPEAL No. 252 of 2021****JUDGMENT :**

This second appeal is directed against the decree and judgment in A.S.No.142 of 2011 of the Court of the learned IV Additional District Judge, Visakhapatnam dated 16.02.2021.

2. The defendants are the appellants. The 1st appellant is no more. He died during pendency of the suit. The appellants 3 to 6 are the legal representatives of the appellants 1 and 2.

3. Smt. Attili Hymavathi Devi-the respondent laid the suit in O.S.No.206 of 1982 on the file of the Court of the learned I Additional Senior Civil Judge, Visakhapatnam to declare her title to the plaint schedule property and for consequential injunction restraining the appellants 1 and 2 from interfering with her possession and enjoyment of the same. Alternatively, relief of possession was also sought at a later stage during the course of trial in the suit, evicting the appellants 1 and 2 from the plaint schedule property.

4. The property described in the plaint schedule is as follows:

" Vacant site measuring 785.33 sq.yards or 656.364 Sq.mtrs. covered by plot No.14 of the approved lay out in s.No.62/2 in block No.6 of Waltair ward of Visakhapanam Town and bounded as follows:

East : Site covered by plot No.15 of the layout

South : 30 feet road

West : Site covered by Plot No.12 purchased by Sri Prasada Rao and plot No.13

North : Site belonging to the Andhra University

*Measurements: East : 108' or 32.92 mtrs.
South : 65' or 19.81 mtrs.
West : 109' or 32.00 mtrs
North: 65' or 19.81 mtrs."*



It shall be referred to hereinafter as 'the suit site', for convenience.

5. This suit was dismissed by the trial Court by the decree and judgment dated 05.08.2011. A.S.No.142 of 2011 was preferred thereupon, by the respondent, the decree and judgment of the trial Court were reversed.

6. Hence, this second appeal by the Legal Representatives of the original defendants.

7. Smt. Rani Chandramathi Devi and her son Sri Andra Hari Hara Gara Pratapraju, residents of Andra Village, erstwhile Taluq of Salur, Srikakulam District (presently, Vizianagaram District) known as Zamindars of Andra (not Andhra) owned Ac.4-15 cents in S.No.62/2, Block No.6 of Waltair ward of Visakhapatnam. A layout was made out dividing this entire extent into twenty (20) plots. This layout was approved in T.P.No.57 of 1965 and T.P.No.15 of 1969 by the Director of Town Planning, Hyderabad.

8. It was the contention of the respondent at the trial that she purchased the suit site from these original owners, which is in plot No.14 for valuable consideration under a registered sale deed dated 16.08.1969. Her further contention at the trial was that the appellants 1 and 2 attempted to interfere with their possession and enjoyment of the suit site claiming it, to raise a compound wall. She further contended that on account of her long possession and enjoyment of the suit site she also perfected her title to it by adverse possession. Therefore, according to the respondent, she was constrained to lay the suit for the reliefs stated above.



9. The appellants 1 and 2 resisted the claim of the respondent contending that the sale deed in favour of the respondent dated 16.08.1969 is a collusive document obtained to defeat their rights in respect of the property purchased by them under an agreement for sale dated 13.08.1965 from Sri Andra Hari Hara Gara Pratapraju, Zamindar of Andra covering 1000 Sq.yards and that on the default of the vendor to execute a sale deed, she was constrained to lay a suit in O.S.No.431 of 1969 for specific performance. Their further contention was that the above suit was decreed on 29.07.1978 pursuant to which a sale deed was executed in her favour by the Court on 08.03.1982 and that possession of the property covered by this sale deed was delivered through the process of the Court by the Court Amin on 16.07.1982.

10. Further contention of the appellants 1 and 2 at the trial was that plot No.14 claimed by the respondent was not within the boundaries mentioned in the plaint schedule and that the respondent and her husband manipulated the documents to defraud them and other purchasers of these plots. Referring to sale deed of the plot No.6 in favour of husband of the respondent dated 24.07.1969 and also of the sale deed of the respondent dated 16.08.1969 it was also the contention of the appellants 1 and 2 at the trial that they reflected that approved plan for this layout is different from the plan enclosed to the sale deed dated 16.08.1969 and that this sale deed is hit by Section 52 of the Transfer of Property Act. They asserted possession of this land, stating that they started construction digging foundations, to raise a compound wall at which time the husband of the respondent along with others caused obstruction threatening them. Thus, the appellants 1 and 2 contended



that plot No.13 out of the approved layout was delivered to the 2nd appellant through the process of the Court, to which they have right, title and interest.

11. On the pleadings, the trial Court settled the following issues and additional issues:

- "1. *Whether the plaintiff got title and possession over the plaint schedule property?*
2. *Whether the plaint schedule is correct?*
3. *Whether the sale deed dated 16.08.1969 is hit by Section 52 of the Transfer of Property Act in view of the suit in O.S.No.431 of 1969 on the file of the District Munsif Court, Visakhapatnam?*
4. *Whether the plaintiff has got any cause of action against the defendants?*
5. *Whether the suit against the 2nd defendant is not maintainable?*
6. *To what relief?*

Additional issues settled on 30.07.1985:

1. *Whether the plaintiff is entitled to the alternative relief of possession?*
2. *Whether the Court fee is not correct?*

Additional issue settled on 01.07.2010:

1. *Whether the plaintiff perfected her title to the plaint schedule property by adverse possession?"*

12. At the trial, husband of the respondent was examined as P.W.1, scribe of sale deed dated 16.08.1969 (Ex.A1) as P.W.2 and P.W.3 as well as P.W.4 in support of her contention, while relying on Ex.A1 to Ex.A8. The 2nd appellant examined herself as D.W.1, D.W.2 being the Court Amin, who allegedly delivered possession of the plot claimed by her, D.W.3 being a draftsman of Visakhapatnam Urban Development Authority and D.W.4 being the surveyor then attached to Visakhapatnam Municipal



Corporation in support of her contention while relying on Ex.B1 to Ex.B10. Ex.X1 to Ex.X5 were also relied on at the trial by the appellants.

13. On the material and evidence, the trial Court dismissed the suit mainly holding that the respondent failed to establish her title to the suit site on account of the disputed identity and that though she was in possession of the suit site, the relief of permanent injunction being consequential to the main relief of declaration, cannot be granted.

14. In the appeal carried by the respondent, the observations of the trial Court relating to title were reversed holding in favour of the respondent and the claim of possession was also accepted. Thus, the decree for declaration of right and title to the suit site and consequential permanent injunction restraining the appellants from interfering with the alleged possession and enjoyment of the suit site by the respondent were granted.

15. This second appeal was admitted on the following substantial questions of law:

- "1. *Whether the Court below is justified in giving a finding that the appellant therein has proved her possession over the suit schedule property, having held that the executing Court in O.S.No.431 of 1969 has delivered the physical possession of Plot No.13 to the 2nd respondent?*
2. *Whether the Court below is justified in upsetting the findings of the trial court with regard to the title of the appellant therein over the suit schedule property, since it was found that the boundaries shown in Ex.A1-sale deed do not match with the boundaries of plot No.14 as shown in Ex.A2 approved layout?*
3. *Whether the Court below is justified in ignoring the legal effect of the decree and judgment in O.S.No.431 of 1969 and the delivery of possession of the subject plot to the 2nd respondent in E.P.proceedings in E.P.No.510 of 1979 vide Ex.X1 to X3?*
4. *Whether the court below is justified in failing to see that there are no issues relating to the title and possession of the 2nd respondent, framed by the trial Court, and hence the findings*



given on those aspects are unsustainable and cannot upset the title and possession obtained by her by virtue of the decree and judgment in O.S.No.431 of 1969?"

16. Sri Vedula Srinivas, learned senior counsel for Ms. G.Poorna Sri, learned counsel for the appellants and Sri C.V.Mohan Reddy, learned senior counsel for Ms. Moguluru Iswarya, learned counsel for the respondent, addressed arguments.

17. The suit was decreed earlier, against which A.S.No.1220 of 1998 was preferred on the file of this Court when was at Hyderabad. A.S.No.1220 of 1998 was allowed setting aside the decree and judgment of the trial Court on 20.08.2008 remanding the case, permitting the parties to adduce further evidence, amending the pleadings and directing the trial Court to reconsider the matter afresh.

18. The trial Court followed these directions and permitted the parties to lead further evidence and amend the pleadings. The trial Court decided the matter on all the issues afresh.

19. The substantial questions of law to consider now relate the right, title and interest claimed by the respondent to the suit site and if burden of proof in respect thereof was discharged by the respondent properly and effectively. They also require to consider the approach of the trial Court as well as the appellate Court to consider the defence set up by the appellants basing on the prior agreement for sale whereupon O.S.No.431 of 1969 was filed by the 2nd appellant against the common vendor of these parties. In that process, it is further required to consider effect of the decree executed by the deceased appellants 1 and 2



obtaining sale deed for plot No.13 and obtaining possession of the same through the process of the Court.

20. The specific case of the respondent at the trial was that the suit site was purchased by her from Sri Andra Hari Hara Gara Pratapraju under Ex.A1 dated 16.08.1969 for valuable consideration and that she was put in possession of the suit site by virtue of this sale by the vendor.

21. Ex.A1 sale deed (Ex.A7 and Ex.B7 are its registration extracts) in favour of the respondent specifically referred that the suit site was sold to the respondent by the owner bearing plot No.14 and which was part of layout approved by Director of Country and Town Planning, Hyderabad. Specific measurements are also set out in Ex.A1 of this plot apart from the boundaries. Therefore, according to the respondent, the site sold under Ex.A1 of such description was put in her possession by the erstwhile owner. Ex.A2 is the plan appended to Ex.A1 sale deed that furnishes the location of plot No.14 as if it is part of approved layout referred to above.

22. It is not in dispute that the husband of the respondent, namely P.W.1 purchased plot No.6 in the same layout under the original of Ex.B1 dated 24.07.1969. Ex.B1 is a photostat copy of the sale deed which P.W.1 admitted in cross-examination on behalf of the appellants. (Ex.B6 is another photo copy of Ex.B1 sale deed). The property sold under the original of Ex.B1 is also covered by the same layout referred to in Ex.A1. A plan is annexed to this sale deed, which is also part of Ex.B1. This plan depicts a different situation of these plots. Particularly plot No.12 is shown therein as an undivided extent followed by other plots contiguously extending from west to east by plots 13 to 18. Whereas the plan annexed



to Ex.A1, which the respondent claimed as a copy of the approved layout plan shows that the plot No.12 shown in the plan annexed to Ex.B1 is divided into two, that were allotted separate plot Nos.12 and 13, followed by other plots in the same alignment from west to east.

23. Ex.A6 is copy of another sale deed dated 20.03.1970 of a third party executed by the same vendor. The plan annexed to it referring to the very same layout stated in Ex.A1 and Ex.B1, indicated location of the plots as is found in the plan annexed to Ex.A1. Thus, it shows Plot Nos.12 and 13 being two halves constituting plot No.12 in the plan annexed to Ex.B1, followed contiguously by plot Nos.14 to 18.

24. Sri Vedula Srinivas, learned counsel for the appellants, contended that the burden is on the respondent in the suit of this nature where relief of declaration is sought to establish her claim and case in tune with the pleadings set up in the plaint followed by evidence at the trial without relying on the weakness if any in the case set up by the appellants.

25. In support of this contention, Sri Vedula Srinivas, learned senior counsel, relied on ***Union of India (UOI) and others vs. Vasavi Co-op. Housing Society Limited and others***¹. In paras 14 and 15 of this ruling, referring to the earlier decisions of Hon'ble Supreme Court, it is stated:

14. This Court in ***Moran Mar Basselios Catholicos v. Thukalan Paulo Avira*** [AIR 1959 SC 31] observed that "in a suit for declaration if the plaintiffs are to succeed they must do so on the strength of their own title." In ***Nagar Palika, Jind v. Jagat Singh*** [(1995) 3 SCC 426] this Court held as under:

¹. AIR 2014 SC 937 = (2014)2 SCC 269



"The onus to prove title to the property in question was on the plaintiff-respondent. ... In a suit for ejectment based on title it was incumbent on the part of the court of appeal first to record a finding on the claim of title to the suit land made on behalf of the plaintiff. The court is bound to enquire or investigate that question first before going into any other question that may arise in a suit."

15. *The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against (sic them), in the absence of establishment of the plaintiff's own title, the plaintiff must be non-suited."*

26. One of the decisions relied on for the respondent echoes similar proposition in ***Poona Ram vs. Moti Ram (Dead) through Legal Representatives and others***². In para-19 of this decision, it is stated:

"19. The plaintiff has to prove his case to the satisfaction of the Court. He cannot succeed on the weakness of the case of the defendant..."

27. It being the settled proposition of law, the specific case set by the respondent at the trial should be established by her by means of positive proof without relying on the material and case set up by the appellants, who are the defendants in the suit. The respondent should either stand or fall basing on the pleadings as well as evidence thus.

28. It is the contention of Sri C.V.Mohan Reddy, learned senior counsel for the respondent that sale of the site under Ex.A1 is not a disputed fact and therefore, there has been transfer of title to a site, the description of which is found in Ex.A1. Learned senior counsel further contended that having regard to the specific boundaries within which this site is located, variance in plot numbers has no bearing.

². (2019) 11 Supreme Court Cases 309



29. Sri C.V.Mohan Reddy, learned senior counsel for the respondent further contended that both the Courts below considered the site in dispute being in plot No.14 covering 785¼ sq.yards and in case of any mistake in plotting, when there is no law prohibiting sale of such plots, there cannot be any contention against the claim of the respondent, who had transfer of title in her favour. Even if the division of plot No.12 that existed earlier into two is considered, it did not disentitle the respondent to claim ownership of the suit site nor will it annul Ex.A1 sale deed. It is also contended that the Court cannot arrive at any inference that such sale under Ex.A1 is void on the ground that it is not with reference to a plot being a part of the layout approved by Director of Town & Country Planning.

30. P.W.1-the husband of the respondent admitted that the site purchased by him under the original of Ex.B1 is the part of the same approved layout. This sale was on 24.07.1969, about 22 days prior to the sale of the plot claimed by the respondent under Ex.A1. The difference in the plans depicting the layout annexed to these two sale deeds is distinct and discernible. The description of the plots in the plans annexed to these sale deeds as rightly pointed out by Sri Vedula Srinivas, learned senior counsel for the appellants, indicated that there has been marked difference, in depicting location of these plots in this layout.

31. Since the plan annexed to Ex.B1 is admitted being a part of the approved layout, if there was any variation in location of these plots later and if approved by the concerned Government agency like Director of Town and country planning, necessary evidence should have been lead at the trial by the respondent. No evidence to that effect from the



respondent is on record. Thus, the location of the plots in the layout depicted in the plan annexed to Ex.A1, is established being an unapproved layout. There is no evidence on record as to when plot No.12 depicted in the plan of Ex.B1 stood divided into plots 12 and 13, as shown in the plan annexed to Ex.A1.

32. Plot No.13 hitherto appeared in the plan annexed to Ex.B1 is thus shown as plot No.14 in the plan annexed to Ex.A1. Thus, Identity of the property is in serious dispute and it should necessarily be considered as rightly observed by the trial Court.

33. It has to be noted that the boundaries on the north and south of these plots are common with a road on the south and the compound wall of Andhra University College of Engineering on the north. The difference is with reference to the boundaries on the east and west.

34. The respondent should have examined her vendor or his representatives like legal heirs to explain this discrepancy at the trial. Neither any of them nor the attestors to Ex.A1 were examined at the trial. P.W.2-the scribe of Ex.A1 examined, did not clarify this intriguing situation with reference to location of the plots in the plans annexed to Ex.A1 as well as Ex.B1. Both P.W.1 and P.W.2 tried to gloss over, stating that they did not find difference in location of these plots in these plans.

35. P.W.2 deposed that he had scribed about 16 sale deeds, for the plots sold in this layout. In these circumstances, the best possible evidence is from the vendor of these plots and failure to examine him, is a serious fatal omission in the proof offered by the respondent.



36. Mere proof of execution of Ex.A1 in favour of the respondent to convey site thereunder is not sufficient when its identity is not proved. This requirement is more pronounced when the plan attached to Ex.A1 sale deed is not the approved plan by the Government authorities.

37. There is evidence from the appellants upon examining D.W.3-architectural drafts man in Visakhapatnam Urban Development Authority. The 2nd appellant had addressed a letter to Visakhapatnam Urban Development Authority requiring clarification as to authenticity of the plan annexed to Ex.A1. The copy of this plan forwarded by her is Ex.B9 along with the letter. Visakhapatnam Urban Development Authority informed her that Ex.B9 is not the correct plan relating to this layout which was later given T.P.No.13 of 1977, relatable to T.P.No.15 of 1969.

38. Despite searching cross-examination of D.W.3 on behalf of the respondent, no material was elicited to discredit his testimony. D.W.3 deposed that Ex.B10 which is the authenticated plan of this layout shows that plot No.19 was divided into 18-A and 18-B and that plot Nos.12,13 and 14 were not changed. Thus, the contiguous nature of plots 12 to 14 and thereafter as shown in the plan annexed to Ex.B1 stood established. Later division of plot No.19 as stated above according to D.W.3 was authorised and authenticated. When it was a situation pointing out approval of the plan at a later stage, a circumstance is made out for the respondent to explain in respect of division of the plot as a part of approved layout at later stage, namely plot No.12 as plot Nos.12 and 13, replacing plot no.13 appearing in the plan annexed to Ex.B1, as Plot No.14 in the plan annexed to Ex.A1. She failed to establish this fact.



39. Significant to note that there is no pleading in the plaint to explain this discrepancy of location of the plots in this layout. P.W.1 at the trial asserted that they are concerned to plot No.14 alone and that his wife, namely the respondent has nothing to do with plot No.13. As seen from the judgment of the trial Court, it was in the written arguments of the respondent, nature of layout mentioned in the plan Ex.A2, of Ex.A1 sale deed was referred to. No amount of contentions can be accepted, when foundation is not laid in pleadings or in evidence.

40. The contention of the appellants is that plot No.13 of this layout was delivered through process of Court in E.P.No.510 of 1979 in O.S.No.431 of 1969 on 16.07.1982 to the 2nd appellant. O.S.No.431 of 1969 was filed for the relief of specific performance against Sri Andra Hari Hara Gara Pratapraju by the 2nd appellant. Relief sought in the suit was for executing a sale deed relating to plot Nos.15 and 16 with reference to 1000 sq.yards she had purchased under an agreement for sale from the erstwhile owner. This suit was decreed on 29.07.1978 (Ex.A5 is the decree copy) directing execution of the sale deed in favour of the 2nd appellant for plot No.16 out of this layout.

41. However, in E.P.No.510 of 1979 in execution of the said decree, Ex.B2 sale deed was executed for plot No.13 of this layout. Pursuant to this sale deed, as per orders of the learned IV Additional District Munsif, Visakhapatnam, as seen from Ex.X1-delivery warrant, this plot No.13 was delivered to the 2nd appellant. The return of D.W.2, who was then Amin in the District Court, Visakhapatnam in this respect, is based on Ex.B2 sale deed. This return of the Amin did not reflect the total extent of the land of 1000 Sq.yards was delivered to the 2nd appellant.



D.W.4, who was the Town Surveyor then attached to Visakhapatnam Urban Development Authority was associated with this process of delivery of the plot No.13, and who had located basing on the boundary stones and survey points. He also attested Ex.X2-delivery receipt issued by the 2nd appellant therefor.

42. Contentions are advanced on behalf of the respondent questioning the manner of laying the suit in O.S.No.431 of 1969 by the 2nd appellant against the original owner initially without furnishing any boundaries of its subject matter in the plaint, leading to its rejection and effort by the 2nd appellant later to get this suit restored furnishing schedule to the plaint upon filing I.A.No.712 of 1969. Reference is also made to decree in O.S.No.431 of 1969, certified copy of which is Ex.A5, where relief was granted with reference to plot No.16.

43. Ex.A8-a copy of the approved layout depicted location of these plots in the same layout as in the plan annexed to Ex.B1. Referring to this anomalous situation, Sri C.V.Mohan Reddy, learned senior counsel for the appellants, strenuously contended that the relief sought in this suit was different, while the decree therein confined to a specific plot, namely plot No.16 and reference to plot No.13 in Ex.B2 sale deed (original of which is Ex.X5) are offering such circumstances raising any amount of suspicion about their nature. Learned senior counsel further contended that delivery as sought to be established of this plot No.13 through Ex.X1 to Ex.X3 cannot be believed or accepted.

44. Contending that the Executing Court has no power to go beyond the decree, which is explicit from the manner by which the alleged



delivery of the property was recorded in favour of the 2nd appellant in E.P.No.510 of 1979 in O.S.No.431 of 1969 and that they are void and non-est in the eye of law, Sri C.V.Mohan Reddy, learned senior counsel, placed reliance on ***Rameshwar Dass Gupta v. State of U.P. and another***³. In para-4 of this ruling it is stated:

"It is a well-settled legal position that an executing court cannot travel beyond the order or decree under execution. It gets jurisdiction only to execute the order in accordance with the procedure laid down under Order 21 CPC....."

45. Another decision relied on in the same context is ***S.Bhaskaran v. Sebastian (Dead) by Legal Representatives and others***⁴. In this ruling, in a dispute between Decree Holder and Judgment Debtor when a question came up for consideration in terms of Section 47 CPC, in the given facts and circumstances it was observed that the question of fact which was considered at the trial cannot be permitted to be reopened in the execution petition, when the decree in question attained finality.

46. Sri Vedula Srinivas, learned senior counsel for the appellants, contended with equal vehemence that the claim of the appellants is based on the proceedings in a properly constituted civil suit and when there is proof that plot No.13 in this layout was delivered to the 2nd appellant, the evidence on record cannot be brushed aside easily.

47. It is also contended by Sri Vedula Srinivas, learned senior counsel, that in a suit of this nature when the burden of proof is squarely on the respondent, the evidence let-in on behalf of the appellants cannot

³. (1996) 5 Supreme Court Cases 728

⁴. (2019)9 SCC 161



be the subject matter of any comment when there is no challenge to the proceedings at appropriate stage, particularly when the decree in O.S.No.431 of 1969 became final. Sri Vedula Srinivas, learned senior counsel, further contended that the sale deed covered by Ex.B2 executed through the process of Court is not questioned nor sought to be set aside and therefore it is not open for the respondent to raise such criticism in respect thereof.

48. The respondent is not a party to the execution proceedings relied on by the appellants. She has no right to question the proceedings therein now in this matter collaterally. Particularly in the absence of any challenge by her to Ex.B2 sale deed executed by the Executing Court in favour of the 2nd appellant, she cannot lay a claim or agitate this question relating to nature of execution proceedings or question their legality. Great weight has to be attached to the proceedings of a court. Unless there is material upon specific challenge by a party directly affected, within the frame work provided by Code of Civil Procedure in terms of Order-21, nature of the proceedings in an execution petition are not open for consideration. Regularity of these proceedings is presumed, unless effectively rebutted. As rightly pointed out by Sri Vedula Srinivas, learned senior counsel for the appellants, the trial Court unnecessarily strained itself in this context and when it is not open to investigate this question. When the suit is for title and consequent relief, these questions could not have been adverted to in ignorance of requirement of burden of proof, being on the respondent (the plaintiff) drawing such inferences or conclusions by the trial Court, as is seen in this case. Therefore, the contentions on behalf of the respondent in this context should fail.



49. Referring to the finding recorded by both the Courts below in this respect, it is also contended by Sri Vedula Srinivas, learned senior counsel, that both the Courts grossly erred in doing so. Absence of issues in respect thereof is pointed out by Sri Vedula Srinivas, learned senior counsel, while commenting upon the findings recorded by the learned trial Judge thereon and also learned appellate Judge similarly.

50. When the identity of the plot covered by Ex.A1 is not ambiguous, Sri C.V.Mohan Reddy, learned senior counsel, contended that basing on the decree as well as execution proceedings relied on by the appellants, it is not known or clear as to what was delivered, either plot No.13 or 14. Thus, learned senior counsel contended that in the circumstances it is not correct to state that the respondent relied on the weakness in the defence than offering positive proof to support her claim.

51. The trial Court elaborately discussed the claim of the respondent referring to the ambiguous nature of proof in locating the site which she claimed that she purchased under Ex.A1 and held that the identity of the suit site as such, was not established. Enormous exercise was undertaken by the trial Court in this context referring to the sale deeds relied on by the parties as well as different plans, which are discussed supra.

52. As seen from the judgment of the appellate Court, the findings relating to purchase of the suit site under Ex.A1 basing on the factors that presented discrepancy in the identity of the site purchased thereunder are not properly discussed. The appellate Court held that the evidence of P.W.1 to P.W.4 proved that the respondent was put in possession of the



property stating that it was plot No.14. The strain of the appellate Court was more with reference to possession of the suit site claimed by the respondent.

53. As rightly contended by Sri Vedula Srinivas, learned senior counsel for the appellants, the appellate Court being last Court of fact did not bestow required attention, with reference to right, title and interest claimed by the respondent by virtue of Ex.A1 sale deed and if there is proof of transfer of title pursuant thereto. Nor is there any discussion or reasons assigned establishing the identity of the suit site specifically being in plot No.14 of the approved layout. Except a bare reference that from the pleadings and evidence, it is clear that both the plaintiffs and the 2nd defendant claimed the same property i.e. the plaint schedule property irrespective of the numbers of the plots (para 11.4 of the appellate court judgment), there is no discussion worth the name in this judgment of the appellate Court.

54. In respect of possession of the suit site claimed by the respondent, the trial Court considered the recitals in Ex.A1 as the prime source to establish that the suit site was delivered to the respondent under Ex.A1. When the findings of the trial Court are with reference to disputed identity of the property covered by Ex.A1 sale deed, it is rather beyond comprehension as to how delivery of possession of this site could be construed in favour of the respondent. More so, when the respondent sought for relief of possession of this site, as an alternative remedy.

55. The evidence on record though P.W.1 and his son P.W.3 is that a compound wall was raised by the respondent in or about May, 1970.



Reliance is also sought to be placed on the testimony of P.W.4- a neighbour to this property in this respect to support them. However, the version so presented is not supported by pleadings in the plaint. On the other hand, the averments in the plaint make out that the site in dispute was a piece of vacant land and where the 1st appellant had tried to raise a foundation for erecting a compound wall by carting necessary material. It was the source to give raise to cause of action for the respondent to file this suit as per the plaint pleadings.

56. Evidence on record is that this site has been let-out to Varun Motors, an automobile dealer at Visakhapatnam for running its garage to store auto rickshaws, upon constructing a compound wall and a shed. It is also in the evidence on record from the respondent that watchman or care taker was arranged for this property.

57. These are all the improvements that went-on with reference to this property in dispute after the case was remanded to the trial Court by this Court in A.S.No.1220 of 1998 by the judgment dated 20.08.2008. P.W.3 admitted this fact. Evidence of D.W.2, namely the 2nd defendant is also to this effect.

58. When such improvements are of the period during pendency of the suit, they cannot have any bearing, to support the claim of the respondent. What is required to establish, as rightly contended by Sri Vedula Srinivas, learned senior counsel for the appellants, is the status of the property on the date of filing the suit. This suit was filed in the year 1982 and there is no evidence on record to establish that the respondent was in effective possession and enjoyment of this plot in dispute by then.



59. Referring to nature of possession of this site in dispute as settled possession in law supporting the findings of both the Courts below reliance is placed **Poona Ram v. Moti Ram** referred to above and **Smt. Askari Begum and others v. Md. Ayaz Khan and others**⁵, a judgment of High Court of A.P. and well known judgment of Hon'ble Supreme Court in **Rame Gowda (Dead) by L.Rs. v. M.Varadappa Naidu (dead) by L.Rs. and another**⁶.

60. Reasons are assigned supra rejecting this claim of possession of the respondent of the disputed site and also the finding recorded by both the Courts below. Law explained in these rulings is beyond controversy. But they did not offer assistance to the respondent, in the present facts and circumstances of this case.

61. The findings of both the Courts are in support of the possession of this plot claimed by the respondent, which Sri C.V.Mohan Reddy, learned senior counsel, pointed out as concurrent findings on facts, with which this Court cannot interfere in the second appeal. In view of nature of consideration and determination of this question relating to possession basing on the material which apparently is not relevant, it is manifest that both the Courts below grossly went wrong in appreciation of evidence in this context. They are vitiated. When the requirement of law in this regard, is overlooked or ignored by the Courts below, this Court in terms of Section 100 CPC cannot remain an idle onlooker or bystander. Necessarily this Court has to interfere with such findings, being ordained and duty bound, to correct appropriately.

⁵. 2011 SCC OnLine AP 552

⁶.(2004) 1 SCC 769



62. In view of the nature of the judgment of the appellate Court, Sri Vedula Srinivas, learned senior counsel for the appellants, contended that the matter be remanded to the appellate Court to reconsider the matter and in this process pointed out the nature of points for determination settled by the appellate Court. It is also contended by Sri Vedula Srinivas, learned senior counsel for the appellants, that the manner of consideration by the appellate Court is not in consonance with either Order-41, Rule-31 CPC or Section 96 CPC. Reference is made to ***C.Venkata Swamy vs. H.N.Shivanna (D) by L.R.and others***⁷. In para 11 of this ruling, it is stated as under:

"11. It is a settled principle of law that a right to file first appeal against the decree under Section 96 of the Code is a valuable legal right of the litigant. The jurisdiction of the first appellate court while hearing the first appeal is very wide like that of the trial court and it is open to the appellant to attack all findings of fact or/and of law in first appeal. It is the duty of the first appellate court to appreciate the entire evidence and arrive at its own independent conclusion, for reasons assigned, either of affirmance or difference."

63. Referring to ***Santosh Hazari v. Purushottam Tiwari (deceased) by L.Rs.***⁸, ***Madhukar and others v. Sangram and others***⁹, ***H.K.N.Swami v. Irshad Basith***¹⁰, ***Jagannath v. Arulappa and another***¹¹, ***B.V.Nagesh and another v. H.V.Sreenivasa Murthy***¹², ***State Bank of India and another v. Emmons International Limited and another***¹³, observations are recorded in this ruling in this context.

⁷. AIR 2017 SC 5604 = (2018) 1 SCC 604

⁸. (2001) 3 SCC 179

⁹. (2001) 4 SCC 756

¹⁰. (2005) 10 SCC 243

¹¹. (2005) 12 SCC 303

¹². (2010) 13 SCC 530

¹³. (2011) 12 SCC 174



64. Sri Vedula Srinivas further referred to ***S.Nazeer Ahmed vs. State of Mysore and others***¹⁴, where the effect of Order-41, Rules 22 and 23 CPC is discussed. The appellants have opportunity to challenge the findings recorded against them by the trial Court regarding possession of the disputed plot in the second appeal. The reason is that the questions relating to this dispute either relating to title or possession are open for consideration, since the appellate Court reversed the findings of the trial Court in relation to title. As seen from the judgment of the appellate Court there is no indication, that finding relating to possession recorded by the trial Court was questioned then in terms of Order-41, Rule-22 CPC by the appellants. Yet, the appellants did have an opportunity now in this second appeal to canvass against such findings more particularly in view of highly improper way of considering such question by both the Courts below.

65. Sri C.V.Mohan Reddy, learned senior counsel for the respondent, fairly brought to the notice of this Court, the plight of the parties to this second appeal stating that the appellants have been fighting out this litigation for more than five decades and that the respondent has been in the same fray for almost four decades. Thus, the learned senior counsel contended that the remand of this matter is not appropriate. In this process, learned senior counsel brought to the notice of this Court the effect of Section 103 CPC whereby this Court is entitled to consider all the questions relevant for the adjudication including on facts, when material is available on record.

¹⁴. AIR 2007 SC 989= (2007)11 SCC 75



66. Section 103 CPC reads as follows:

"103. Power of High Court to determine issues of fact.—In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal,—

(a) which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower Appellate Court, or

(b) which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred to in Section 100."

67. Sri C.V.Mohan Reddy, learned senior counsel, in support of his contention in this regard relied on **Narayan Sitaramji Badwaik (Dead) through L.Rs. v. Bisaram and others**¹⁵. Explaining the scope of Section 103 CPC in this ruling in para-11, it is stated:

"11. A bare perusal of this section clearly indicates that it provides for the High Court to decide an issue of fact, provided there is sufficient evidence on record before it, in two circumstances. First, when an issue necessary for the disposal of the appeal has not been determined by the lower Appellate Court or by both the Courts below. And second, when an issue of fact has been wrongly determined by the Court(s) below by virtue of the decision on the question of law under Section 100 of the Code of Civil Procedure. This Court, in the case of *Municipal Committee, Hoshiarpur v. Punjab State Electricity Board*, (2010) 13 SCC 216, held as follows:

"26. Thus, it is evident that Section 103 CPC is not an exception to Section 100 CPC nor is it meant to supplant it, rather it is to serve the same purpose. Even while pressing Section 103 CPC in service, the High Court has to record a finding that it had to exercise such power, because it found that finding(s) of fact recorded by the court(s) below stood vitiated because of perversity. More so, such power can be exercised only in exceptional circumstances and with circumspection, where the core question involved in the case has not been decided by the court(s) below.

27. There is no prohibition on entertaining a second appeal even on a question of fact provided the court is satisfied that the findings of fact recorded by the courts below stood vitiated by non-consideration of relevant evidence or by showing an erroneous approach to the matter i.e. that the findings of fact are found to be perverse. But the High Court cannot interfere with the concurrent findings of fact in a routine and casual

¹⁵. 2021 SCC OnLine SC 319



manner by substituting its subjective satisfaction in place of that of the lower courts. (Vide *Jagdish Singh v. Natthu Singh* [(1992) 1 SCC 647]; *Karnataka Board of Wakf v. Anjuman-E-Ismail Madris-Un-Niswan* [(1999) 6 SCC 343] and *Dinesh Kumar v. Yusuf Ali* [(2010) 12 SCC 740].)

28. If a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then the finding is rendered infirm in the eye of the law. If the findings of the Court are based on no evidence or evidence which is thoroughly unreliable or evidence that suffers from the vice of procedural irregularity or the findings are such that no reasonable person would have arrived at those findings, then the findings may be said to be perverse. Further if the findings are either ipse dixit of the Court or based on conjecture and surmises, the judgment suffers from the additional infirmity of non-application of mind and thus, stands vitiated. (Vide *Bharatha Matha v. R. Vijaya Renganathan* [(2010) 11 SCC 483]”

68. Further reliance is placed in the same context on ***Bhagwan Sharma v. Bani Ghosh (Smt)***¹⁶, ***D.R.Rathna Murthy v. Ramappa***¹⁷, ***Leela Soni and others v. Rajesh Goyal and others***¹⁸ and ***K.N.Nagarajappa and others vs. H.Narasimha Reddy***¹⁹.

69. Reference is also made on behalf of the respondent to ***Thangamuthu and others v. Sridevi Venkidasamy and others***²⁰, ***Kishori Mohan Sinha v. Kumaresh Saha and others***²¹ and ***Sushila v. Ram Singh***²² as to scope and ambit of Section 103 CPC.

70. In ***D.R.Rathna Murthy vs. Ramappa***, in relation to powers of High Court under Section 100 CPC, observing that the High Court can

¹⁶. 1993 Supp (3) SCC 497

¹⁷. (2011) 1 SCC 158

¹⁸. (2001) 7 SCC 494

¹⁹. 2021 SCC OnLine Sc 694

²⁰. 2015-5-L.W.37

²¹. 2019 SCC OnLine Cal 2016

²². 2010 SCC OnLine Del 2856



interfere with the findings on fact even in second appeal, in para-9 it is thus stated:

"9. Undoubtedly, the High Court can interfere with the findings of fact even in the second appeal, provided the findings recorded by the courts below are found to be perverse i.e. not being based on the evidence or contrary to the evidence on record or reasoning is based on surmises and misreading of the evidence on record or where the core issue is not decided. There is no absolute bar on the reappraisal of evidence in those proceedings, however, such a course is permissible in exceptional circumstances. (Vide Rajappa Hanamantha Ranoji v. Mahadev Channabasappa [(2000) 6 SCC 120 : AIR 2000 SC 2108], Hafazat Hussain v. Abdul Majeed [(2001) 7 SCC 189] and Bharatha Matha v. R. Vijaya Renganathan [(2010) 11 SCC 483].)"

71. Therefore, when material in on record is sufficient, this Court in second appeal in exercise of powers under Section 103 CPC, determine an issue necessary for its disposal that has not been properly determined by the lower appellate Court including the trial Court. Thus, the law laid down, by the Apex Court explaining the import of Section 103 CPC, when applied to the facts and circumstances of this case, as rightly contended by Sri C.V.Mohan Reddy, learned senior counsel, enables this Court to reconsider all the issues in controversy including on facts. The nature of judgment in the appeal devoid of discussion relating to title claimed by the respondent and highly irregular and improper appreciation of evidence on record relating to possession by both the Courts below, which are on the verge of perversity are impelling this Court to consider the fact situation once again, in exercise of its power under Section 103 CPC.

72. Sri Vedula Srinivas, learned senior counsel for the appellants, referring to ***Bhagwan Sharma vs. Bani Ghosh*** and ***K.N.Nagarajappa and others vs. H.Narasimha Reddy*** contended in this context that further elaboration by him is necessary basing on the material on record and if this Court intends to invoke section 103 CPC.



73. There is sufficient material to determine all the issues concerned to this matter. Sri Vedula Srinivas, learned senior counsel for the appellants and Sri C.V.Mohan Reddy, learned senior counsel for the respondent, made their submissions with sufficient elaboration, basing on fact situation as well as law. When all these parameters required to consider in terms of Section 103 CPC are seen and available, this Court cannot remain idle and cannot afford to take solace remanding the matter to the appellate Court for fresh consideration. Particularly remanding this matter to the appellate Court in my considered opinion is rather doing injustice to the parties who have been under the stress of this litigation for decades together.

74. It is apposite to consider the observations of Hon'ble Supreme Court in this regard speaking through Sri M.Jagannadha Rao, J, in ***Ashwinkumar K. Patel v. Upendra J.Patel and others***²³. These observations in para-8 are:

"8. In our view, the High Court should not ordinarily remand a case under Order 41 Rule 23 CPC to the lower court merely because it considered that the reasoning of the lower court in some respects was wrong. Such remand orders lead to unnecessary delays and cause prejudice to the parties to the case. When the material was available before the High Court, it should have itself decided the appeal one way or the other...."

75. The trial Court held that Section 52 of the Transfer of Property Act is not applicable to the transaction covered by Ex.A1 with reference to the claim of the 2nd appellant in O.S.No.431 of 1969 and also held the question of adverse possession set up by the respondent when she instituted the suit based on title allegedly acquired from the original

²³. (1999) 3 SCC 161



owner. These questions are not canvassed in this second appeal by the parties.

76. Offshoot of the discussion in this second appeal now is that the findings recorded by the appellate Court in respect of title claimed by the respondent to the suit site and findings recorded by both the Courts below relating to its possession require interference. Consequently, this second appeal has to be allowed.

77. In the result, the second appeal is allowed, setting aside the decree and judgment in A.S.No.142 of 2011, dated 16.02.2021 of the Court of the learned IV Additional District Judge, Visakhapatnam. Consequently, the decree of the trial Court in O.S.No.206 of 1982, dated 05.08.2011 dismissing the suit is upheld and restored. In the circumstances, the parties are directed to bear their own costs throughout.

As a sequel, pending miscellaneous petitions, if any, stand closed. Interim Orders, if any, stand vacated.

JUSTICE M.VENKATA RAMANA

Dt: 31.01.2022
RR



HON'BLE SRI JUSTICE M.VENKATA RAMANA

SECOND APPEAL No.252 of 2021

Dt: 31.01.2022

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