

Ayub Kamal

Vs

Narayan Bhavannai (Dead) By Lrs

Civil Appeal No. 5024 of 1991

(Smt. M. S. Fathima Beevi, B. P. Jeevan Reddy JJ)

18.12.1991

JUDGMENT

B. P. JEEVAN REDDY, J.

1. Leave granted.

2. Heard counsel for both the parties.

3. The petitioner-appellant herein was the defendant in O.S. No. 118 of 1968 on the file of the Third Additional Judge, City Civil Court, Hyderabad at Secunderabad. The suit was instituted by the respondent herein for permanent injunction restraining the defendant and his agents etc. from interfering with the possession and enjoyment of the suit land "bearing No. 7 measuring 3 acres 15 guntas and numbered by the Municipal Corporation as premises No. 8-2-120/102 situated at Road No. 3, Jubilee Hills, Hyderabad, specified in the sketch annexed to the plaint".

4. The suit was decreed on March 20, 1971 as prayed for. Clause 1 of the decree prepared by the trial court reads as follows :

"That there shall be permanent injunction restraining the defendant, his agents, servants, employees, workmen and all persons claiming through him from interfering with the plaintiff's possession and enjoyment of the suit land bearing No. 7 measuring 3 acres 15 guntas and numbered by the Municipal Corporations premises No. 8-2-120/102 situated at Road No. 3, Jubilee Hills, Hyderabad and specified in the sketch annexed to the plaintiff."

5. The appellant-defendant preferred an appeal before the High Court of Andhra Pradesh against the decree of the trial court, which was numbered as C.C.C.A. No. 94 of 1972. The appeal was disposed of by a learned Single Judge on March 31, 1975 with a certain modification. The decree prepared on the basis of the judgment reads as follows :

"This Court in modification of the decree of the lower court doth order and decree as follows :

(1) The following words 'excluding the triangular cone added in pencil admeasuring sixteen guntas only and which is said to be overlapping in survey No. 144 in Ex. B-19' be added at the end of clause No. 1 of the decree of the lower court.

(2) That save as aforesaid, the decree for the lower court be hereby is confirmed....."

6. After the disposal of the appeal by the High Court as stated above, the plaintiff-respondent filed E.P. No. 45 of 1975 for delivery of possession of plot No. 7 bearing 8-2-120/102. The decree was executed and possession was delivered to the plaintiff. The defendant thereupon filed Execution Application No. 38 of 1976 for re-delivery on the ground that in a decree granting permanent injunction, question of delivery of possession does not arise. His further contention was that the bailiff had in the course of the said delivery delivered possession of a piece of land forming part of survey No. 144 situated at Road No. 2, Banjara Hills, Hyderabad to the plaintiff, which he could not do. The executing court thereupon directed re-delivery of possession to the defendant-appellant. The said order was questioned by the plaintiff in C.R.P. No. 1535 of 1982 in the High Court, but without success. Accordingly, the portion of survey No. 144 was delivered to the defendant-appellant. But, as the learned Single Judge of the High Court has pointed out, the matter did not rest there. The plaintiff-respondent filed E.A. No. 15 of 1983 to deliver possession of plot No. 7 forming part of survey No. 151/4 and bearing municipal No. 8-2-120/102 admeasuring 3 acres 15 guntas land situated at Banjara Hills stating that in the course of re-delivery proceedings the defendant had taken possession of the entire suit land belonging to the plaintiff. The matter was gone into in detail by the executing court which found that defendant did indeed taken possession of not only 16 guntas of land, which he claimed in survey No. 144, but also the entire 2 acres 39 guntas of land belonging to the plaintiff as per the decree of the High Court. Accordingly, the executing court allowed the plaintiff's application and directed the defendant to re-deliver the possession of the property forming the part of survey No. 151/4 admeasuring 3 acres 15 guntas except the triangular portion admeasuring 16 guntas which was said to be overlapping survey No. 144. It is against the said order that the defendant approached the High Court by way of revision petition which has been dismissed by the learned Single Judge and which order is now the subject matter of this appeal.

7. The learned Single Judge referred to the finding of the executing court that

"as a fact that the defendant came into possession of not only 16 guntas of land but also the entire extent of 3 acres 39(15) guntas after considering the documentary evidence on record,"

and further that

"the said finding which is based on a consideration of evidence and record cannot be interfered with in revision. The learned Judge was correct in directing the re-delivery of the land which the defendant came into possession by virtue of the process of the court though he is not entitled to."

8. In that view of the matter, the learned Single Judge declined to go into the submission of the defendant's counsel that the executing court went beyond its power in ordering delivery of possession of land pursuant to a decree for permanent injunction.

9. A copy of the plan Ex. B-19, referred to in the decree of the High Court, has been placed before us by the appellant. We have perused the same. It shows the position "as per village plan" and "as per spot" separately. As per village plan, survey No. 151/4 and survey No. 144 are adjacent to each other. However, according to situation "as per spot", plot No. 7 (said to represent survey No. 151/4) juts into survey No. 144. The jutting portion is in the nature of a triangle. This triangular portion is shown in pencil as is referred to in the decree of the High Court. Mr K. Madhava Reddy, learned counsel for the plaintiff-respondent stated before us that the plaintiff has no claim and does not put forward any claim with respect to the said triangular portion. Mr H. S. Gururaja Rao, learned

counsel for the defendant-appellant not only says that the said triangular portion belongs to defendant-appellant but that the entire survey No. 144 belongs to the defendant. In these proceedings, however, it is not necessary for us to go into any other question except the one relating to the triangular portion admeasuring 16 guntas shown in pencil and which is jutting into survey No. 144 as per Ex. B-19 in the portion shown as "as per spot". The decrees of the court below too do not deal with survey No. 144.

10. It is, thus, clear that there is really no controversy about the said triangular portion. The said triangular portion shall be in possession of and shall be treated as the property of the defendant-appellant and the plaintiff shall have no claim thereto. Similarly, the defendant shall have no claim with respect to the rest of the plot No. 7 of an extent of 2 acres 39 guntas - said to be comprised in survey No. 151/4, and which has been decreed in plaintiff's favour by the High Court.

11. In this view of the matter, there is no occasion for interfering with the order of the learned Single Judge. The appeal is accordingly, dismissed with the above clarifications.

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