

Amrutha Estates Vs. Emerald Apartment Owners Association and anr.

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Court : Andhra Pradesh

Decided On : Nov-22-2006

Reported in : 2007(3)ALD112; 2007(4)ALT294

Judge : L. Narasimha Reddy, J.

Acts : Andhra Pradesh Apartments (Promotion Construction and Ownership) Act, 1987; Evidence Act; Code of Civil Procedure (CPC) - Sections 96; Multi Storied Building Regulations - Regulation 18

Appeal No. : Second Appeal No. 1236 of 2006

Appellant : Amrutha Estates

Respondent : Emerald Apartment Owners Association and anr.

Advocate for Def. : T.P. Acharya, Adv.

Advocate for Pet/Ap. : K. Raghuveer Reddy, Adv.

Disposition : Appeal allowed

Judgement :

L. Narasimha Reddy, J.

1. The first defendant in O.S. No. 1698 of 1995, on the file of the learned IV Junior Civil Judge, City Civil Court, Hyderabad, filed this Second Appeal, aggrieved by

the judgment, dated 31.08.2006, in A.S. No. 443 of 2000, rendered by the Court of XIV Additional Chief Judge, City Civil Court, Hyderabad.

2. The first respondent, who is an association of owners of one of the blocks, constructed by the appellant-Company, filed the suit. It is stated that the appellant constructed Emerald Delux Apartments at Amrutha Hills, Punjagutta, Hyderabad, with an independent area, earmarked for children's play in front of the entrance of the complex, on the northern side, separating two other complexes. It was alleged that the appellant was attempting to bring about construction on the area, referred to above, and sought for the relief of perpetual injunction, to restrain the appellant or anyone claiming through it, from interfering with its possession, over the said area. The details of the activities, attributed to the appellant, were furnished.

3. The appellant filed written statement, denying the allegations. It was pleaded inter alia that the three blocks, by name, Sapphire, Emerald and Topaz, are contiguous to each other and that the first respondent does not have any exclusive right over any particular area, much less, the one described in the suit schedule.

4. Through its judgment, dated 07.11.2000, the trial Court dismissed the suit. Aggrieved thereby, the first respondent filed A.S. No. 443 of 2000 in the Court of XIV Additional Chief Judge, City Civil Court (Fast Track Court), at Hyderabad. The appeal was allowed on 31.08.2006, and consequently, the suit was decreed.

5. Sri K.Raghuveer Reddy, the learned Counsel for the appellant submits that the trial Court had undertaken extensive discussion, with reference to the oral and documentary evidence, the contentions of the parties and ultimately, recorded a finding to the effect that the suit schedule property is not meant to be exclusively used by the occupants of one of the blocks and that the residents of the other two blocks or their associations, if any, ought to have been joined as parties, and that the lower appellate Court reversed the findings, without any basis. He further contends that except using some harsh and unwarranted language against the trial Court, the appellate Court did not indicate, as to how the findings recorded by the trial Court suffer from any legal or factual infirmity.

6. Sri T.P.Acharya, the learned Counsel for the first respondent, on the other hand, submits that the lower appellate Court took into account, the factual aspects and the provisions of the A.P. Apartments (Promotion Construction and Ownership) Act, 1987 into account and decreed the suit. He submits that reference was also made to the proceedings before this Court and certain other decided cases and that no interference is warranted, with the judgment of the lower appellate Court.

7. Since the suit was filed for the relief of injunction simplicitor, the trial Court framed only one issue, touching upon the same. To prove its case, the first respondent examined P.W.1 and filed Exs.A.1 to A.11. On behalf of the appellant, D.W.1 was examined and Exs.B.1 to B.5 were filed.

8. After noting the contentions of the parties, the trial Court split the solitary issue into two points, for the sake of convenience viz., a) whether the first respondent was a registered association; and b) whether the association has a right and possession over the suit schedule property. It held both the points against the first respondent. The lower appellate Court framed two points for its consideration as under:

1. Was any tot lot area provided for the three blocks and if so where?
2. Whether the suit is bad for non joinder of the owner for the flats in blocks opaz and Sapphire?
3. What is the possession of the 1st defendant vis--vis suit land and adjoining and?

It allowed the appeal.

9. An appeal under Section 96 of C.P.C. is almost the continuation of a suit. The appellate Court is entitled to analyze the facts and the evidence, as though it is hearing the suit, for the first time. However, being the final Court, on facts, the appellate Court is required to be careful, not only in stating the facts, but also in forming an opinion as to whether anything has gone wrong, in the adjudication of the suit by the trial Court. The fact, that the appellate Court is free to reverse the finding on facts, cannot enable it, to resort to such an exercise, unless there exists

a valid basis. Even where an appellate Court finds that the conclusions arrived at by the trial Court are not satisfactory or are opposed to settled principles of law, proper care and caution is required to be exhibited, in expressing the opinion. Use of derogatory language or expressions, which connote disrespect to the Judge, who decided the suit, must be avoided, at all costs. In fact, such a course is opposed to the very process of adjudication. It must always be kept in mind that a subordinate Court is as competent and independent to take its view on the matter, as is the appellate Court. If a situation warrants expression of displeasure about the manner, in which the matter was adjudicated, the message can certainly be conveyed, by using language, which accords with the dignity of the institution of Judiciary.

10. In the instant case, it appears that the appellate Court was not satisfied with the findings recorded by the trial court. It was open to it, to reverse the findings. However, it is noticed that the expression of opinion was not on the expected and respectful lines. For example, while answering point No. 1, the learned Judge extracted Regulation 18 of Multi Storied Building Regulations and made a brief reference to the plea of the appellants. The next sentence reads as under:

The Junior Civil Judge, who does not appear to be having any common sense observes that tot lot area is not shown in cross section or typical floor area of each floor in the main building.

The mere fact that the expression 'tot lot area' was understood differently by the trial Court, on the one hand, and the appellate Court, on the other, hardly constitutes any basis, for making such derogatory observations. The matter did not stop here. Before concluding the discussion on the point, the lower appellate Court made the following observation:

The trial Court exhibited ignorance of knowledge of elementary principles of law and Evidence act when he observed that that the plaintiff did not produce sanctioned plan, which is in the custody of the defendants.

11. This Court is shocked and surprised to note that the learned appellate Judge had chosen to be so discourteous and uncharitable towards an Officer in the

hierarchy of the institution. The process of interpretation of provisions and their application to the relevant facts has never been static or uniform. It is not uncommon that even on the same facts, views differ, and thereby, application of principles and provisions of law, also vary. It is a matter of common knowledge that the result of a case may change at various levels in the hierarchy. Factors, such as, presentation of the matter effectively, interpretation placed on the provisions from time to time, contribute for such variation. The learned appellate Judge proceeded as though there is a firm and unequivocal connotation, which is almost universal, and pitied the learned trial Judge for not being aware of it.

12. Absence of restraint in the adjudicatory process has its own dangerous consequences. The prejudice nurtured by the Judge is likely to cloud the wisdom and would not stop till it is manifested, even at the cost of compromising with the appreciation of other aspects. In such event, the focus would be on searching the occasion to denigrate a Judge and the examination of the matter on merits is prone to become secondary. Time and again, the Supreme Court held that even where an occasion arises for expression of total dissatisfaction about the manner, in which the subordinate Court has decided the matter, the superior Court must maintain utmost restraint in expressing its displeasure. A note of caution was sounded by Justice H.R.Khanna, a legendary figure in the Indian Judiciary, in Judiciary in India and Judicial Process (Tagore Law Lectures) at page No. 49, as under:

We must bear in mind that institutions sometimes come to be identified with those manning the institutions. Care has to be taken to see that the denunciation of those manning the institutions is not couched in such language as to damage and bring into disrepute the institution itself. Even at the best of times judges live in a vulnerable state. It would be unfortunate if fellow judges take advantage of that vulnerability with a view to discredit others of the tribe without realizing that in the process they discredit the institution of the judiciary.

13. From the facts, referred to above, it is evident that the learned appellate Judge failed to maintain restraint and manifested his prejudice, about the findings recorded by the trial Court. Such an approach is totally unwarranted and it cannot

be said that it did not reflect on the merits of the matter. This Court is certain and sure that if the learned Judge, who made the said observations, were to have read them in a cool and composed mind, he would certainly feel that he ought not to have made such remarks.

14. Having been convinced that the appellate Court did not examine the matter in a dispassionate manner, this Court is of the view that the matter needs to be reconsidered, irrespective of the correctness or otherwise of the findings recorded by it.

15. The Second Appeal is accordingly allowed and the matter is remanded to the lower appellate Court for fresh consideration and disposal, in accordance with law. There shall be no order as to costs.

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