

M.S. Murthy and Others Vs. Gold Stone Exports Pvt. Ltd. and Others

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Court : Andhra Pradesh

Decided On : Nov-10-1998

Reported in : 1998(6)ALD817; 1999(1)ALT97

Judge : N.Y. Hanumanthappa and ;V. Rajagopala Reddy, JJ.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151 - Order 21, Rules 97 to 99 and 91 to 101; Andhra Pradesh (Telangana Area) Abolition of Jagirdar Regulation Act, 1958

Appeal No. : OSA No. 10 of 1996 and Batch

Appellant : M.S. Murthy and Others

Respondent : Gold Stone Exports Pvt. Ltd. and Others

Advocate for Def. : Mr. D. Madhava Rao, ;Mr. P. Ramachandra Reddy and ;Mr. P. Venugopal, Advs.

Advocate for Pet/Ap. : Mr. B. Nalini Kumar for Kannabiran, Adv.

Judgement :

ORDER

N.Y. Hanumanthappa, J

1. Allthese appeals are taken up together for disposal and they are disposed of by this Common judgment as the facts and questions of law raised are the same.

2. The genesis of the present proceedings is the suit OS 41 of 1955 filed by one Dildar Unnisa Begum in the City Civil Court, Hyderabad, against various defendants, for a decree of partition of Matruka property of the late Nawab Khurshed Jah Paigah. This Court transferred the suit to the file of this Court itself for trial. The suit on such transfer, was numbered as CS 14 of 1958. The preliminary decree, on the basis of the compromise, was passed on 28-6-1963 and as there was no appeal therefrom, it has become final. In the preliminary decree the subject matter of the present proceedings is item No.38 of Schedule IV of the plaint. Item No.38 corresponding to Sy.No.172 of Hydemagar village of an extent of Ac.196.20 gts., was allotted to plaintiff 2/defendants Nos.27, 50, 51, 52 and 116. In pursuance of the preliminary decree this Court appointed a Commissioner/Receiver for the division of the property in terms of the preliminary decree. M/s. M.S. Cyrus Investments Ltd., purchased 50 shares of the HEH Nizam, who himself was a purchaser of certain shares from the original decree-holder, and thus became defendant-206. Subsequently M/s. M.S. Cyrus Investments Ltd., has assigned its assets in favour of M/s. Gold Stone and others. After the said assignment M/s. Gold Stone Exports and others have signed application Nos.992,993 and 994 of 1995 and IA 15 of 1996 before this Court for the reliefs including of M/s. Gold Stone Exports, recognising the assignment dates and for the delivery of the possession of the property of their share and for mutation of the names of all the applicants. The learned single Judge ordered the above applications on 25-12-1995 and the application for mutation (IA 15 of 1996) was ordered on 30-1-1996. M/s. Gold Stone Exports who have thus become the defendants in the suit have filed EP No.3 of 1996 before the learned District Judge, RR District, seeking delivery of possession. The learned Judge accordingly ordered delivery of possession by an order dated 29-3-1996 and a Bailiff was appointed by the Court, who was alleged to have delivered the possession of the property.

3. The appellants came into the scene at this point of time. They seek to obstruct the execution proceedings regarding delivery of possession. Their case is that the Khurshid Jah Paigah Administration had granted pattas in favour of several cultivators and supplementary Sethwar was also issued, where-under the names of the above pattadars were recorded. Since the supplementary Sethwar has not

been implemented, the lands were erroneously shown as Government lands. Subsequently, however, the supplementary Sethwar was implemented transferring the land in their favour, in the year 1980 and thereafter the pattadars entered into an agreement of sale with the Setwin Employees Housing Co-operative Society and also Sri Satya Sai Co-operative Housing Society Ltd., of which the appellants are the members. Registered sale-deeds were also executed in favour of the appellants to an extent of 85 acres. It is the case of the appellants that there is sufficient evidence to show-the proceedings of the District Collector, Pahanis and the cist receipts establish the feet that the said area has been the property of the two co-operative societies. Pucca houses also have come up in the area and the Kukatpally Municipality also assessed the houses for property tax.

4. Coming to know of the EP filed by the respondents for delivery of possession before the learned District Judge, RR District, some of the appellants filed EA SR Nos.2377 of 1996 in EP 3 of 1996 on 4-6-1996 under Order 21 Rule 97 read with Section 151 of Code of Civil Procedure, resisting the execution. The EA was, however, dismissed on 14-6-1996 as not maintainable as the learned District Judge has taken the view that the execution proceedings were taken up in pursuance of the orders of the High Court and the matter therefore has to be moved before the High Court and no relief could be granted at this level. OSA 10 of 1996 was thereafter filed before this Court challenging the order of the learned single Judge of this Court passed in IANo.994 of 1995, dated 28-12-1995.

5. Appeals OSA Nos. 11 and 20 of 1996 are filed against the orders passed in IA 994 of 1995; OSA 18 of 1996 and OSA SR 9380 of 1996 are filed against the order in IA 15 of 1996; OSA SR 9378 and 9379 of 1996 are filed against IA 65 of 1983, passed by Sri P. Kama Rao, J., as he then was, dated 12-8-1983 filed by certain plaintiffs and defendants in the suit seeking mutation of their names in the revenue records.

6. These appeals have been heard and disposed of by a Division Bench of this Court in its judgment dated 6-11-1996. Assailing the judgment, the respondents in OSAs 10, 11, 18 and 20 of 1996 approached the Supreme Court and the Supreme Court, by its orders dated 14-8-1997, set aside the order of this Court and

remanded the matter. The order of the Supreme Court reads as follows:

ORDER

Civil Appeal Nos. 5610-5611 of 1997

(Arising out of SLP Nos.4162-1163 of 1997)

Leave granted.

The appellants are aggrieved by a direction given by the High Court while disposing of the appeal. The High Court directed the respondent herein to make an application under Order 21, Rule 99 CPC before the Execution Court. The contention of Mr. R.F. Nariman, learned senior Counsel is that this direction should not have been given because such application would be barred by limitation. On behalf of the respondents it has been contended that the appellants were only in symbolic possession as recorded in the judgment and the physical possession was with them. Therefore, their contention is that an application under Order 21, Rule 99 CPC will not be out of tune. Mr. Nariman has further contended that if the respondents are in possession, then no application can be made under Order 21, Rule 99 CPC.

We do not propose to decide this question at this stage. It has been stated that an order of injunction of status quo as to possession has been passed by the District Judge on April 31, 1997. We dispose of these appeals by directing both the parties to approach the Executing Court and the Executing Court will decide the question of maintainability of the application under Order 21, Rule 99 CPC and also the question of limitation uninfluenced by any direction given by the High Court. The appeals are finally disposed of as above. No order as to costs.

Civil Appeal No. 5609 of 1997

(Arising out of SLP No.23706 of 1996)

Leave granted.

Having heard the parties we are of the view that the order under appeal should be set aside and remanded to the High Court. The High Court will go into all the questions raised by the appellants including the question of limitation of any application made in execution proceeding and also the question of jurisdiction of the District Judge, as raised by Mr. Harish N. Salve, learned senior Counsel. The third point that has been taken by Mr. Salve is that pursuant to the direction of the Court, possession may have already been given to the respondents. If this has happened the possession will be maintained as on the date of the judgment i.e., 6th November, 1996. The High Court will proceed on that basis and decide the case afresh. We make it clear that if the respondents were in actual physical possession on the date of the order of the High Court, this order will not have the effect of depriving them of the same. The High Court will go into all these questions and finally decide the controversies as it thinks proper and in accordance with law. No order as to costs.

Civil Appeal Nos. 5612-5614 of 1997

(Arising out of SLP Nos.8787-8789 of 1997)

Leave granted.

Nobody appears for the appellants. The appeal is disposed of in terms of the order passed in CANo.... of 1997 (arising out of SLP No.23706 of 1996).'

Thus, the appeals are now placed before us for disposal.

7. The learned senior Counsel for the appellants Sri Kannabiran, vehemently argued that the land situated in Sy.No.S 172/11,172/ 13 and 172/14 of Hydernagar village was the Patta land of the vendors of appellants and not of erstwhile Jagirdar and it was therefore not that subject-matter of partition in the suit, the pattadars became absolute owners in view of the grant of pattas in their favour much prior to the Andhra Pradesh (Telangana Area) Abolition of Jagirdar Regulation Act, 1958 (for short 'the Act') and their names have been recorded in the supplementary Sethwar, which has been subsequently implemented by the Government. The appellants, having purchased the lands, have become absolute

owners. It is also contended that they have been residing in the pucca houses constructed by them, since their purchase and therefore the decree passed by this Court in CS 14 of 1958 has no effect on their rights in the property. The learned Counsel appearing for the respondents refuted the arguments of the learned senior Counsel for the appellant. It is contended that the appellants are not third parties to the decree as they are claiming their right from the Jagir Administrator and Government of Andhra Pradesh, who are very much the defendants in the suit and hence they appellants are bound by the decree which has become final. The applications filed before the learned District Judge as well as the above appeals are therefore not maintainable. It is also contended that the applications filed before the District Judge are barred by limitation as the petitions under Order 21 Rules 97 to 99 CPC are filed beyond 30 days from the date of dispossession, dated 17-4-1996. The jurisdiction of the District Judge to entertain any application questioning the delivery of possession is also assailed on the ground that the delivery of possession having been ordered by this Court and the District Judge being merely implementing the order, the District Judge cannot decide the applications. The orders of the learned single Judge are perfectly valid and no grounds are shown how they are vitiated. On all these grounds it was contended that the appeals are liable to be dismissed.

8. The subject-matter of the present proceedings is item No.38 of Schedule-IV of the plaint, which is corresponding to Sy.No. 172 of Hydernagar village, which is of an extent of Ac. 196.20 gts. As seen supra, a preliminary decree was passed directing partition in CS 14 of 1958. M/s. Cyrus Investments Ltd., purchased 50 shares (Ac.98.10 gts) from some of the defendants/decreed-holders, in the above suit and assigned the same in favour of the respondents M/s. Gold Stone and others. This is how the respondents came into the picture. As stated supra, Gold Stone and others filed applications IA 992 and 994 of 1995 and 15 of 1996 before this Court. In the above IAs learned single Judge of this Court passed an order dated 28-12-1995. IA 992 of 1995 is an application filed to recognise the rights of the petitioners therein, the respondents herein. As the Counsel for the petitioners and the respondents had no objection, the application was allowed. IA No.994 of 1995 is an application by respondents herein for delivery of possession of the half the share as stated supra, by issue of warrant of possession executable by the

District Court, RR District. Again a consent order was passed allowing the application. IA 15 of 1996 was filed to substitute the names of the petitioners/respondents in the place of defendants Nos. 157 and 206 and to mutate the names of the petitioners/respondents in an extent of Ac.98.10 gts. The application was accordingly ordered. Thus, the respondents acquired all the rights of the vendors/decreed-holders in respect of Ac.98.10 gts., in the suit land. As already stated supra, some of the appellants obstructed the execution proceedings taken by the respondents. The application filed by them ended in dismissal, on the ground that the District Judge had no jurisdiction to entertain the same as he has been merely implementing the order of the learned Judge of this Court.

9. All the appellants, however, raise common grounds, though they do not stand in the same footing; inasmuch as the appellants in OSA 10 of 1996 alone filed the application under Order 21, Rule 97 read with Section 151 CPC.

10. The appellants seek to set up an independent title. They claim to have purchased the property in question from the pattadars, who became absolute owners by virtue of the grant of pattas in their favour, in 1947, by Paigah Committee prior to the Act. It is, therefore, their case that this land could not have been subjected to partition in the suit. They place reliance upon Sethwar, the letter written by the District Collector to the RDO on 3-9-1975, the letter of the District Collector to the Secretary to Government, Municipal Administration, dated 15-10-1992, the agreement of sale in their favour by the pattadars, the payment of the property taxes, telephone bills, etc., to show their possession and enjoyment of the property as absolute owners. The Sethwar, however, refers to the pattas alleged to have been issued to the vendors of the appellants. The pattas were not, however, filed in the Court. In the letter dated 3-9-1975 written by the District Collector to the RDO, it was stated that the patta lands held by cultivators were not subject to takeover by the Government as they were not patta lands of Paigah. An enquiry was, therefore, sought to be conducted to correct the revenue records, to determine the patta rights of all the cultivators. The grant of pattas was also referred to in the letter dated 15-10-1992 written by the District Collector to the Secretary to Government. It was also mentioned in the same letter that the same was not implemented, hence the lands continued to remain as Government lands.

upto 1977-78 and in view of the then Advocate-General's opinion to regularise the title to the land in Sy.No. 172/1 to 25, the transfer of pattas in favour of the petitioners were directed to be effected, thus implementing the supplementary Sethwar. Accordingly, the pattas were transferred in the names of the original cultivators in 1977-78. Subsequent to the above transfer, the appellants contended that they purchased the property and constructed the houses and started residing therein. To provide evidence to prove the purchase and actual possession, several documents are filed including registered sale-deeds, tax receipts, telephone bills, photographs, etc.

11. Learned Counsel for the respondents submitted that this Court having held in the preliminary decree that the entire Sy.No.172 being Matruka property and the Government had no title to the property, the Government cannot validly grant pattas in favour of the appellant's vendors as the Government has no title to the property. It is also contended that as this Court having held in the preliminary decree that by virtue of Farman dated 17-1-1959 the Paigah Committee could not have granted pattas in favour of the appellant's vendors as the sante was prohibited by late HEH Nizam and also by virtue of the abolition of Jagirs the property was liable to be partitioned. It is further contended that as the petitioners are claiming title only through the parties in the suit, the Paigah Committee and the Government being defendants in the suit, they are not third parties to the decree to invoke Order 21, Rules 97 to 101 CPC.

12. We are, therefore, first, called upon to decide the question as to the maintainability of the applications filed by the appellants under Order 21, Rule 91 to 101 CPC. Under Order 21, Rules 97 to 99 CPC, only the strangers to the decree are entitled to obstruct the execution of the decree, if their possession was threatened. As contended by the learned Counsel for the appellants, the appellants who are in possession, are also entitled to protect their possession pending enquiry into the matter under Order 21, Rules 97 to 99 CPC. The main objection that was taken is that the appellants being not third parties to the decree, cannot obstruct the execution of the decree. It is not disputed that unless the appellants are third parties to the decree, they cannot maintain their applications. On this area there is no controversy. Though it is alleged that the appellants'

vendors were granted pattas by Paigah Administration, the pattas are not seen the light of the day so far. Admittedly, the alleged patta lands were not in the possession of the cultivators for whatever the reason may be, it may be that the sethwar was not implemented; it was admittedly implemented in 1978. In pursuance of the District Collector's letter to the Government steps were taken to implement the sethwar and thereafter the pattas were transferred to the cultivators. Only thereafter the revenue records were also corrected and the mutation of names was effected. But it must be noted, as seen above, that in OS 14 of 1958 the entire land in Sy.No.172 was claimed as Matruka property of Paigah and this Court held in the preliminary decree passed in 1963 that Sy.No. 172 was Matruka property and that the Government was not entitled to takeover the same. As per the decree the Court directed to partition the property among the parties to the suit. The Paigah Administration and the Government were parties to the suit. The source of the claim appears to none other than the defendants in the suit. We are not very much concerned, at this stage, about the validity of the pattas granted in favour of the appellants' vendors in view of the Farman issue by late HEH Nizam, or the evidentiary value of several documents filed to show the feet of enjoyment of the property by the appellants as absolute owners viz., the revenue records, Sethwar etc. We are presently not dealing with the validity of their title. As the question of maintainability of the application is to be decided, they should be of little consequence. Even taking the case of the appellants as true, and taking into consideration the admitted facts, it becomes clearly evident that the appellants' claim is traced only through the defendants in the suit and the claim relates to the decretal property. The petitioners cannot, therefore, contend that they are strangers or third parties to the decree.

13. Learned Counsel for the appellants places reliance upon the decisions in Smt. Tahera Sayeed v. M. Shanmugam, : AIR 1987 AP206 , Babulal v. Raj Kumar, : [1996]2SCR763 , and Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal, : [1997]1SCR463 , for the proposition that third party to the decree could protect his right, title or interest before he is actually dispossessed from immovable property, by filing an application under Order 21, Rule 97 CPC; he is entitled to get his claim adjudicated even prior to losing possession to the decree-holder; hence dismissal of the application on the ground that the objector was not dispossessed,

was illegal. It is, however, seen that in all these cases it was not disputed that the objector was asserting his own independent right to property and as a stranger and third party to the decree, the applicant, admittedly, was not bound by the decree. Admittedly, in the present case there is no controversy as to this proposition. The only question that was debated was whether in fact the applicants were third parties to the decree and are not bound by the decree. The Supreme Court in *Brahmdeo Chaudhary's case* (supra), while considering the question whether a third party to the decree could have to wait till after he lost the possession to the decree holder before he seeks intervention of the Court, held that such a view was unsustainable. The Court categorically found that he could agitate his grievance and claim for adjudication of this independent right, title and interest in the decretal property, even after losing possession as per Order 21 Rule 99 CPC. In this case as well as in the other cases, the applications were, admittedly, third parties to the decree and are not bound by the decree. We have taken the view on the admitted facts, that the appellants are claiming their title through the defendants in the suit and are not asserting an independent title. As held in *J.P. Shankar Singh v. Pacha Bee*, 1985 (2) ALT 428, a transferee from the defendant in a suit pending a decree, cannot claim independent rights. The reliance placed by the learned Counsel for the appellants upon the mutation proceedings in the revenue records in favour of the appellants, is of no consequence. The decision in *State of U.P. v. Amar Singh and others*, : AIR 1997 SC1534 , is an authority to the proposition that correction in revenue records by way of mutation does not confer any title to the landlord.

14. The decisions cited by the learned Counsel for the appellants are of no assistance. The petitioners, claiming their title/right through the parties to the decree, are bound by the decree. They are therefore not strangers or third parties to the decree. Their applications are, therefore liable to be dismissed, in limine, as not maintainable.

15. It is significant to notice that all the appeals are filed assailing the correctness of the order of the learned Judges of this Court. In fact, the appellants in the appeals, other than OSA 10 of 1996, have not filed any application before the learned District Judge under Order 21 CPC questioning the execution

proceedings. It is therefore, necessary to consider about the correctness of the learned single Judges' orders. In IA Nos.992 to 995 of 1996, filed by the respondents, my learned brother G. Bikshapathy, J., passed the order allowing the applications as stated supra. The applications are not opposed by the appellants and consent orders are passed. The order passed by P. Rama Rao, J., as he then was, in IA 65 of 1983, is also a consent order. The appellants are not parties in the said applications. Those applications were filed by the respondents, who purchased the rights of the decree-holders seeking delivery of possession in accordance with the decree in the suit. Learned Judges, while passing the consent orders, have done so in accordance with the decree. Nothing is brought out to show that the above orders are illegal, warranting interference by us. We do not therefore see any ground for holding that the orders are invalid.

16. The next question that was urged before us is about the jurisdiction of the District Judge to entertain the application under Order 21 Rules 91 to 101 CPC. This question would arise only if it was held that the applications are maintainable under law. It should be noticed that as the decree was passed by the High Court, the executing Court is the High Court itself. In the instant case, the respondents filed application before the learned single Judge and pursuant to the order passed by the learned single Judge directing delivery of possession in favour of the respondents herein, the respondents herein filed EP 3 of 1996 before the District Judge, RR District. The District Judge issued warrant to the Bailiff implementing the order of the High Court. Thus, the District Judge was merely implementing the order of the High Court. The District Judge is not executing a decree passed by him. He cannot, therefore, entertain any application obstructing the execution of the decree passed by the High Court. Hence, these applications could only be filed before the executing Court, i.e, the High Court. The District Judge, thus, has no jurisdiction to entertain any application by the appellants with regard to execution of the decree passed by the High Court.

17. The next question that arises for consideration is regarding limitation: The period of limitation to file an application under Order 21 Rule 97 CPC is thirty days from the date of dispossession. Admittedly, the applications were filed on 4-6-1996. It is contended by the learned Counsel for the respondents that as the Bailiff

delivered the possession on 17-4-1996, the applications are filed beyond thirty days and they are therefore liable to be dismissed in limini. It should be noticed that the appellants claimed that they are in actual possession and enjoyment of the property. In support of the same they seek to show several photographs of pucca houses which are said to be constructed in the land in question. Hence, it is contended that the so-called delivery on 17-4-1996 by the Bailiff is a farse. It is also contended that unless they are physically dispossessed and so long as the appellants are in possession of the property, the limitation will not run.

18. It is true that as per the report of the Bailiff dated 19-4-1996 the property was delivered to the respondents on 17-4-1996. In view of the serious dispute raised by the appellants about the alleged dispossession and as there is no sufficient material before this Court to reach any conclusion as to the correctness or otherwise of either the delivery on 17-4-1996 or as to the continued possession of the property by the appellants, we do not propose to give any finding on this aspect. It will be proper to leave this for the learned District Judge to make an enquiry and give a finding as to the actual date of delivery of possession and actual extents of property, if delivered. But, it must be noted that the question of limitation would not be relevant in view of the finding given supra regarding maintainability of the application.

19. In view of the above finding, we do not think it necessary to go into the decision in *Balwant Narayan Bhagde v. M.D, Bhagwat and others*, : AIR 1975 SC1767 , cited by the learned Counsel for the appellants.

20. In view of the foregoing discussion and the findings given, all the above appeals are liable to be dismissed. They are accordingly dismissed. In the circumstances, no order as to costs.