RITEM NO.101 COURT NO.9 SECTION XIIA

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 149 OF 2001

PATIMALLA KISHORE CHOWDARY & ORS Appellant (s)

VERSUS

CHATRATHI PARVATHAMMA Respondent(s)

(With appln(s) for recalling the court's order and office report))

Date: 11/12/2007 This Appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE A.K. MATHUR
HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s)
Mr. A. Subba Rao,Adv.

For Respondent(s)
Mr. P.S. Narasimha, Adv.
Mr. Somiran, Adv.
Mr. Shekhar G. Devasa, Adv.
Mr. V.G. Pragasam,Adv.

UPON hearing counsel the Court made the following
ORDER

I.A.No. 2 for recalling the Court's Order is disposed of.

The appeal is dismissed in terms of the signed order.

(Sukhbir Paul Kaur) (Neeru Bala Vij)
Court Master Court Master

(Signed Order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.149 OF 2001

PATIMALLA KISHORE CHOWDARY & ORS. Appellant(s)

Versus

CHATRATHI PARVATHAMMA Respondent(s)

ORDER

I.A.No.2 :

This application has been filed on behalf of the respondent for recalling the Court's Order.

Learned Counsel for the appellant has filed an affidavit

stating that the money has been deposited well in time. Learned counsel for the respondent does not press I.A.No. 2 in view of the affidavit filed by learned counsel for the appellant. We do not think it necessary to pass any orders on the I.A.

I.A. No.2 is accordingly, disposed of.

We have heard learned counsel for the parties on the appeal.

This appeal by special leave is directed against the impugned judgment dated 19.8.1999 passed by the High Court of Andhra Pradesh at Hyderabad in Second Appeal No.385 of 1993 whereby the High Court had set aside the order of the first Appellate Court and affirmed the decree of the Trial Court.

The brief facts which are necessary for the disposal of this appeal are that the plaintiff (respondent herein) filed a suit for recovery of the possession of the plaint schedule land from the defendants (appellant herein). The suit was decreed by the First Additional District Munsif, Eluru. On appeal, the Additional District Judge, West Godavari reversed the findings and dismissed the suit.

The plaintiff was the absolute owner of the plaint schedule property having purchased the joint half interest in the plaint schedule house from Sri Patimalla Vengala Rao under a registered sale deed dated 28.4.1978 and also the other joint half interest in the plaint schedule property from the defendants under a registered sale deed dated 17.5.1978 for valuable consideration of Rs.2,500/-. The defendants are members of Joint Hindu family and defendant No.1 is the manager and defendants for the purpose of discharging mortgage debt dated 21.10.1969 in favour of one S. Bullamma and promissory note debt due to Kalagara Ramakrishna Rao and other family expenses, sold their joint half interest in the plaint schedule property to the plaintiff. The defendants received the entire consideration from the plaifntiff. Defendant No.1 requested the plaintiff to permit his family to reside in the plaint schedule house for a period

of one year without rent and the plaifntiff, out of humanitarian consideration, permitted the defendants to reside in the plaint schedule house till 19th May, 1979 without rent on defendant No.1 executing a letter to that effect. The defendants in spite of repeated requests made by the plaintiff, did not vacate the plaint schedule house. Therefore she filed a suit for delivery of the vacant possession of the property. This suit was resisted by the defendants and they denied that the plaintiff was the absolute owner of the plaint schedule property. It was alleged that the plaintiff is their own sister being Velamati Sakuntala. The younger brother of defendant No.1, namely, Vengala Rao is addicted to badvices and that he contracted a mortgage debt on his portion of his undivided share of the plaint schedule property and later informed this defendant to get the same redeemed and take the property. Defendant No.1 discharged the said mortgage debt contracted by Vengala Rao and got mortgage bond endorsed to that effect and took delivery of the same. Defendant No.1 performed a marriage function in his house borrowing a sum of rs.4,500/- from the plaintiff and at that time the plaintiff suspecting that defendant No.1 may not discharge the same, stipulated that the defendant should mortgage both the portions of the plaint schedule

property i.e. undivided halves belonging to defendant No.1 and his brother Vengala Rao. As the plaintiff happened to be his own sister, he accepted for the same and promised that he would discharge the debt with interest and get the deed cancelled, or else the deed must be treated as sale as is known in these parts. The plaintiff got two deeds drafted and the defendant took rs.2,500/- only from the plaintiff and he along with his brother signed both the deeds. It is alleged that after some time there was some dispute between the parties and then mediators intervened and defendant No.1 and the plaintiff agreed to refer the dispute to some mediators and accordingly, defendant No.1 and the plaintiff executed a muchilka on 9th July, 1982 in favour of the mediators to settle the

dispute regarding the plaint schedule property and the debt. Thus, on mediation plaintiff agreed and asked defendant No.1 to keep the stamps and registration fee ready within one month. When defendant No.1 made the money ready, the elder sister of plaintiff, who bore grudge against defendant No.1 prevailed on the plaintiff and made her refuse to reconvey the property to defendant No.1 and on the other hand made the plaintiff to file this suit with all false allegations at her cost.

It is alleged that some mediation took place and an award was given as Exhibit B-1 and B-2 and in

pursuance of that, a sum of Rs.7,100/- was given to the plaintiff and endorsement was obtained. On the basis of these pleadings about twelve issues were framed.

The Trial Court after going through the Award came to the conclusion that defendant has failed to prove Exhibit B-1 and B-2. The Trial Court further concluded that since B-1 and B-2 i.e. the so called agreement for going to mediators and the Award was not believed by the Trial Court. Therefore, the issues which were framed were decided in favour of the plaintiff.

Aggrieved against this, the defendant filed an appeal before the first Appellate Court and the first Appellate Court reversed the findings of the Trial Court. Aggrieved against this order, the Second Appeal was filed before the High Court by the plaintiff where he succeeded.

Mr. A. Subba Rao, learned counsel for the appellant submitted that in view of Exhibit B-1 and B-2 that the plaintiff respondent herein having agreed for mediation and award being their in pursuance of Rs.7,100/- having been paid, it is not open for the High Court to reverse the findings and this award should be implemented. The plaintiff should have been asked to execute the reconveyance deed after accepting a sum of Rs.7,100/-. As against this, learned counsel for the respondent submitted that since the finding of fact has

been held in his favour that the so called Exhibits B-1 and B-2 were

never executed and that having not proved, the plaintiff is entitled to the possession in view of the sale which has been duly registered and that is not disputed that the property in question was purchased by the plaintiff. Therefore, she is entitled to get the possession of the property in question.

We have considered the rival submissions of both the parties. The question before us is about the sanctity of the so called agreement for mediation and the award given therein. So far as that award B-1 and B-2 are concerned, that might be true or might not be true. If it is expected to be true, on that basis no decree can be passed unless that award is made the Rule of the Court. It is admitted that so far the award in question has not been made a Rule of the Court, therefore, it cannot be enforced against the plaintiff. But the fact remains that the registered sale deed which has been accepted by all of them for the property in question was the sale for a consideration and that sale has been registered. The plaintiff is entitled to recover the property in question on account of the valid sale deed executed by the defendant. It is very difficult to lawfully enforce the so called B-1 and B-2 as it has not been made Rule of the

Court. Unless a decree is passed the award cannot be executed as there is nothing to show that the award has been made a Rule of the Court.

Consequently, we are of the view that the view taken by the High Court is correct. We do not find any merit in this appeal. The same is accordingly, dismissed.

No order as to costs.

We do not express any opinion with regard to the validity of the award. Therefore, if any suit is filed for enforcement of the award, any observation made by this Court will not come in his way.

.....J.
(A.K.MATHUR)

.....J.
(MARKANDEY KATJU)

New Delhi,
December 11, 2007.