

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

C.C.C.A.No.63 of 2005

JUDGMENT:

The unsuccessful plaintiff in the Court below preferred the instant appeal aggrieved by the judgment dated 07.02.2005 in O.S.No.657 of 2001 passed by V Senior Civil Judge, City Civil Court, Hyderabad, whereby and whereunder learned Judge dismissed the plaintiff's suit filed for declaration of title and consequential injunction.

2) The factual matrix of the case is thus:

a) As per the plaintiff, he is the absolute owner and possessor of the property which is an open land in the premises bearing No.6-3-699/13/1 in Sy.No.174 admeasuring 163 sq.yds situated at Panjagutta, Hyderabad having purchased the same under a registered sale deed dt:21.02.1975 for a valid consideration. He claimed that the suit property consisting of tin shed, bathroom and latrine, apart from open land and that he has been in possession and enjoyment of the same since the date of purchase.

b) The plaintiff's further case is that in the year 1985 he demolished the old dilapidated rooms with an intention to construct a pacca house and while he was fencing the suit schedule property, the father of defendants 1 and 2 i.e, B. Narayana, who was residing in an adjacent

property on Northern side of his suit property, tried to interfere with his possession in collusion with one Gulam Hussain Gulabi without any right on the same. As such, he filed a suit for injunction before the IV Additional Judge, City Civil Court, Hyderabad vide O.S.No.548 of 1985 and in the said suit, the father of defendants 1 and 2 filed his written statement admitting that he is not interfering with the possession of plaintiff nor he claimed any right or title over the suit property. However, the said suit was dismissed on technical grounds. Aggrieved thereby, he preferred an appeal vide A.S.No.134 of 1994 before the II Additional Chief Judge, City Civil Court, Hyderabad and by then, since the father of defendants 1 and 2 herein died, the defendants 1 and 2 herein were brought on record as legal representatives. The plaintiff contended that since the suit vide O.S.No.548 of 1985 was filed only for a mere injunction, he withdrew the appeal.

c) The further case of plaintiff is that inspite of the fact that he is in possession and enjoyment of the suit property since the date of purchase i.e, 21.02.1975, the defendants 1 and 2 are trying to induct the defendant No.3 clandestinely into the suit schedule property as the defendant No.3 has been running toddy business beside the suit schedule property. The plaintiff contended that defendants 1 to 3 have no right over the suit schedule property and since the defendants are interfering and in order to remove the cloud over title of the suit schedule

property, he filed the instant suit for declaration of title and consequential perpetual injunction against defendants 1 to 3.

d) The defendant No.3 remained *ex parte*.

e) The defendants 1 and 2 filed their written statement and contended that the plaintiff has his residential address as 6-3-7-9/A/2 in the plaint but in fact his residential address is 6-3-709/A/2 situated at Panjagutta, Hyderabad. They further contended that they are lawful owners and possessors of the suit property. They denied the title and possession of the plaintiff over the suit property and that of the vendor of the plaintiff i.e, D. Satyanarayana. They contended that the land described by the plaintiff as suit property does not exist. The defendants claimed that the boundaries of the suit property shown by plaintiff in fact belongs to the boundaries pertaining to their property i.e, 6-3-709/A/12 and as such if any sale deed executed by D.Satyanarayana, the same is illegal as he did not have title for himself. They denied that their father with the help of Gulam Hussain Gulabi tried to grab the property. The defendants further denied that the suit filed by plaintiff vide O.S.No.548 of 1985 has been dismissed on technical grounds but they contended that the said suit has been dismissed after a thorough enquiry and on merits. The defendants also denied that their father denied

interference in the possession of the plaintiff in the suit property. The defendants denied that they are trying to induct the defendant No.3 into the suit property illegally. They contended that through this suit, the plaintiff is trying to grab the open land belonging to them abetting to their premises bearing No.6-3-709/A/12 by creating false and sham documents and threatened the defendant No.3 who wanted to take the said property on lease. The defendants contended that cause of action mentioned by the plaintiff is imaginary one and hence suit is liable to be dismissed.

f) The defendants submitted that their father i.e, D. Narayana was the owner of house bearing No.6-3-709/A/12 admeasuring 380 sq.yds situated at Panjagutta, Hyderabad and was carrying on milk business and after his death they have inherited the suit property and carrying on the same business in the suit premises having 10ft passage on the east and Buchamma's premises on west and one Anjaiah's house on north and 30ft wide road on south. The defendants contended that the premises bearing No.6-3-699/13/1 which the plaintiff claimed to have purchased under the sale deed is not in existence and stated that even the sale deed of Buchamma executed by Hon'ble IV Asst. Judge, City Civil Court, Hyderabad shows that the father of defendants as the owner of property on the eastern side of Buchamma's house. Thus they prayed to dismiss the suit.

g) Basing on the above pleadings, the trial Court framed the following issues:

- 1) Whether the vendor of the plaintiff's sale deed dt:21.02.1975 was having a marketable title to the suit property?
- 2) Whether the plaintiff is entitled for declaration of title and injunction as prayed for?
- 3) To what relief?

h) The trial Court after full-fledged trial and hearing both sides dismissed the suit filed by the plaintiff holding that the vendor of the plaintiff could not establish that he was the sole legal heir of his deceased father—D.Balaiah to acquire title to the suit property from his father and further, the plaintiff too has not filed any certificate showing that the suit property was mutated in favour of his vendor. The trial Court observed that Exs.A.9 and Ex.A.15—judgments will not help decide that plaintiff's vendor got title because in those suits claims made by some third parties against plaintiff's vendor and his father were dismissed and from those judgments it cannot be contended that right was conferred in favour of vendor of the plaintiff. The trial Court also observed that the plaintiff could not prove his possession over the suit property because the other documents such as Exs.A.2 to A.7 and A.14 will not help his case. Exs.A.2 to A.7 were acquired subsequent to the filing of the suit and Ex.A.14—ration card will not confer any title over the suit premises. The trial Court ultimately

held that the plaintiff failed to establish his title and possession over the suit property and accordingly, dismissed the suit.

Hence, the appeal.

3) It is to be noted that pending appeal, sole appellant—G.Mahadev died and appellants 2 to 5 are brought on record as L.Rs. of the deceased 1st appellant as per this Court Order dt:31.03.2015 in A.S.M.P. No.875 of 2007.

4) Heard arguments of Sri P. Ramchandran, learned counsel for appellants; Sri S.Agastya Sharma, learned counsel for respondents 1 and 2. Though notice to respondent No.3 was served but there is no representation on his behalf.

5) The parties in the appeal are referred as they are arrayed before the trial Court.

6) Fulminating the judgment learned counsel for appellant/ plaintiff submitted the following grounds of appeal in his argument:

a) He argued that the trial Court erred in observing that the plaintiff's vendor failed to establish that he is the sole legal heir of his late father—Balaiah who was the original owner of the suit property and he succeeded the suit property. He vehemently contended that throughout it was not the contention of the defendants that Satyanarayana, the vendor of plaintiff was not legal heir of

his father and he has not succeeded him. On the other hand, their contention is that Ex.A.1—sale deed property and suit schedule property are quite different and plaintiff under the garb of Ex.A.1 is trying to usurp the vacant site of the defendants which is situated in front of their house.

b) Next, the trial Court erroneously held that the plaintiff failed to establish his title and possession over the suit schedule property and that Exs.A.2 to A.7 and A.14 which were acquired subsequent to the filing of the suit will not help his case. He contended that Exs.A.2 to A.7 and A.14 being the public documents can be obtained at any time and their authenticity can be presumed unless rebutted by plausible evidence. He relied upon the decision reported in ***Karewwa vs. Hussensab Khansaheb Wajantri***^[1].

c) Learned counsel contended that the title is concerned, apart from Ex.A.1—sale deed, Exs.A.9 and A.15 judgments confirm the title of the plaintiff's vendor and his father and thereby the plaintiff's also as against which, the defendants could not establish the right title and possession over the suit property by any cogent evidence. He thus prayed to allow the appeal and grant declaration and injunction in his favour.

7) Per contra, learned counsel for respondents 1 and 2 argued that plaintiff in fact already failed to establish his title and possession over the suit property in the earlier

round of litigation against the father of the defendants 1 and 2 in O.S.No.548 of 1985 which suit was dismissed after full-fledged trial and the plaintiff though filed A.S.No.134 of 1994, has withdrawn the same knowing fully well that he had no case. Though the suit under the present appeal is a comprehensive suit for declaration, plaintiff has not made any efforts to establish the title of his vendor over the suit property so as to be entitled to it as a purchaser. Learned counsel vehemently argued that the suit schedule property covered by Ex.A.1 is not at all in existence on ground and on the other hand, the plaintiff under the garb of Ex.A.1 tried to knock away the vacant site of defendants 1 and 2 which is situated in front of their house. Learned counsel contended that the plaintiff failed to establish the crucial aspects that the property covered by Ex.A.1 was part of the property covered by Ex.A.15 and further the property covered by Ex.A.1 is in existence on ground. None of the documents filed by the plaintiff establish the above crucial aspects and therefore, the trial Court rightly dismissed the suit. Learned counsel argued that though there may be some weakness in defendants' case but the plaintiff being the suitor seeking declaration and injunction, the burden is heavy on the plaintiff to establish his case without depending on the weakness, if any, of the defendants' case. On this point, learned counsel relied upon the decision reported in ***Sajana Granites, Madras and another vs. Manduva Srinivasa***

Rao and others^[2]. Learned counsel contended that the plaintiff miserably failed to prove his case and there are no merits in the appeal and hence the same may be dismissed.

8) In the light of above rival arguments, the point for determination is:

“Whether there are merits in this appeal to allow?”

9 a) **POINT**: Briefly stating, plaintiff’s case is that he purchased the plaint schedule property under Ex.A1— sale deed dated 21.02.1975 from PW3 bearing No.6-3-699/13/1 in Sy.No.164 admeasuring 163 sq. yds. in Punjagutta, Hyderabad which consists of two tin shed rooms with bathroom and latrine and abutting open land. Subsequently in 1985 he demolished the old dilapidated rooms with an intention to construct a Pucca house and was fencing the suit schedule property. The boundaries of the plaint schedule are:

East : 10’ passage
West : House of Narasimha
North : Neighbour plot
South : 30’ road

Then, his case was that when the father of defendants 1 and 2 viz. D.Narayana who is the Northern neighbour of suit schedule property tried to interfere with the suit schedule property in collusion with Gulam Hussain

Gulabi, he filed O.S.No.548 of 1985 for injunction against them and in the said suit Narayana admitted that he was not interfering with the suit property, but the said suit was dismissed on technical ground. Later, the plaintiff filed A.S.No.134 of 1994 and during the pendency of appeal Narayana died and his sons who are defendants 1 and 2 herein were brought on record as LRs. As the Narayana himself admitted to have not interfered with the possession of plaintiff, plaintiff withdrew the appeal. Again in February, 2001 defendants 1 and 2 tried to induct 3rd defendant into suit property and hence he filed the suit under appeal.

b) Whereas the contention of defendants 1 and 2 is that the plaint schedule property covered by Ex.A1—sale deed bearing No. 6-3-699/13/1 in Sy.No.174 is not in existence and the plaintiff in collusion with PW3 created Ex.A1—sale deed with an intention to grab the vacant site of defendants 1 and 2 situated in front of their house i.e. South of their house. Their case is that late Narayana who was their father, was the owner of House bearing No.6-3-709/A/12 having an area of 380 sq. yds. situated at Punjagutta, Hyderabad and he was carrying out milk business. Apart from living in the house in that premises they let out two portions i.e. one room each to two tenants. Their premises is bounded by:

East : 10' passage
West : D.Buchamma's premises

North : House of Anjaiah Goud
South : 30' road

So, precisely their contention is that Ex.A1 mentioned property is not in existence and the plaintiff with the aid of Ex.A1 tries to grab the vacant site situated to the South of defendants' house which is their property.

c) In view of the above rival contentions, when plaintiff schedule boundaries and the boundaries mentioned by the defendants in respect of their premises are superimposed, one can understand that the plaintiff is claiming title in respect of the vacant site situated in between the house of defendants 1 & 2 and 30 feet road situated on its Southern side through Ex.A1. (It may be noted that the Western boundary holder—D.Buchamma is none other than wife of Narsimha). Since plaintiff is the suitor and he claims declaration and injunction, the burden is on him to firstly establish that Ex.A1—sale deed property on ground correlates with the vacant site situate in front of the house of defendants 1 and 2 and that plaintiff has been in possession and enjoyment of the same. He cannot take advantage of weakness of the defendants' case, if any, in this context.

10) In ***Sajana Granites***'s case (2 supra) cited by learned counsel for respondents a Division Bench of this High court relying on Supreme Court judgment in ***M.M.B.Catholics v. M.P.Athanasius***^[3] has observed

thus:

“In this case since appellants are seeking declaration of their title to the suit property they have to establish their title; and cannot expect relief on the basis of the weakness of the case of respondents 1 and 2, or on the basis that the evidence adduced by respondents 1 and 2 does not establish their title to the suit property.”

So in the light of precedential jurisprudence, it has to be seen what is the evidence placed by the plaintiff to discharge his burden.

a) Plaintiff mainly relies on Ex.A1—sale deed dated 21.02.1975. PW3 executed the sale deed in favour of plaintiff. So far as source of title is concerned, the vendor stated that he is the absolute owner of 18,000 sq. yds. in Sy.No.174 situated at Punjagutta which was obtained by a decree bearing No.5/1 of 1951 on the file of II Additional Judge, City Civil Court, Hyderabad. He further mentioned, out of the above extent about 10,000 sq. yds. was in occupation of hut dwellers in different parcels and they have instituted suits—O.S.Nos.25 of 1968 and 155 of 1970 on the file of VI Additional Judge, City Civil Court, Hyderabad for declaration, injunction etc. and the plaintiff was also in occupation of House bearing No.6-3-699/13/1 in an extent of 163 sq. yds. While so, in order to have peace with the members of the hut dwellers association, the vendor of plaintiff agreed to sell away the

portions of the land in occupation of dwellers to them and in that context he sold the house bearing No.6-3-699/13/1 in an extent of 163 sq. yds. to the plaintiff. The boundaries of Ex.A1—sale deed are the present plaintiff schedule boundaries. So, primarily the plaintiff claims title through Ex.A1—sale deed.

b) However, in view of contention of defendants that the house bearing No.6-3-699/13/1 with 163 sq. yards as shown in Ex.A1 is not in existence on ground and plaintiff in collusion with PW3 created Ex.A1 to grab their site in front of their house covered by premises bearing No.6-3-709/A/12, the burden is heavy on the plaintiff to establish that the property covered by Ex.A1 is in fact in existence on ground. Precisely he has to get the suit property localized on ground with reference to Ex.A1—sale deed to establish its physical existence. He has not made any efforts before the trial Court or in this appeal to get appoint a commissioner to localize Ex.A1—property. On the other hand, he placed much dependence on Exs.A9 and A15—judgments. Ex.A15 would show the father of plaintiff's vendor—D.Balaiah filed suit—O.S.No.5/1 of 1951 seeking declaration of title to land measuring 5 Bigas and 37 Dira situated in Punjagutta and such suit was decreed in his favour as he was heir of late D.Narasimhlu and that he was entitled to possession of land in Sy.No.174 in 5.37 Bigas along with six Malgies and one house. PW3 in Ex.A1 claims that land covered by Ex.A15 is in an extent

of 18,000 sq. yds. and out of which 10,000 sq. yds were in occupation of Hut Dwellers including plaintiff and he sold the part of land in occupation of those dwellers.

c) It is true that a conjoint reading of Ex.A15 and Ex.A1 would show as if PW3's father got 5.37 Bigas of land through Ex.A15. However, as rightly pointed out by the trial Court, it is not known whether PW3 was the lone successor of his father or there were any co-sharers. Even assuming for a moment that PW3 was the lone successor and hence he was competent to execute Ex.A1—sale deed, the main controversy is not whether he succeeded property in Sy.No.174 from his father but about the physical existence of property covered by Ex.A1 on ground. Exs.A1 and Ex.A15 and for that matter Ex.A9 are not clinching on this issue because out of huge extent of 18,000/- sq. yds. plaintiff allegedly purchased 163 sq. yds. covered by premises No.6-3-699/13/1. Unless the plaintiff establishes that Ex.A1 co-relates with the suit property on ground, he cannot be entitled to a declaration. It must be said that the plaintiff failed to discharge that burden to deserve for declaratory relief.

11) Then, coming to possession of the suit property, the plaintiff placed much reliance on Exs.A2 to A7 and A14. I am afraid these documents also will not advance the cause of plaintiff.

a) Exs.A2 and A3 are purporting to be the tax receipts

issued by Municipal Corporation of Hyderabad for the period 2002-2003 and 2003-2004. These two tax receipts relate to the period subsequent to the filing of the suit and hence they cannot be given much weight. Plaintiff claims to have purchased the suit property in 1975 and suit was filed in the year 2001. He has not produced any tax receipts for the premises bearing No.6-3-699/13/1 Punjagutta for the interregnum period. He has also not produced any record showing that the property was mutated in his name after purchase. Thus, the stray tax receipts pertaining to the post—suit period will not create title or possession in his favour.

b) Then, Exs.A4 to A7 are the encumbrance certificates obtained by plaintiff in respect of the premises bearing No. 6-3-699/13/1 which stands in his name and these exhibits showed '*nil*' encumbrance. Learned counsel for respondents/defendants questioned the authenticity of Exs.A4 to A7 on the contention that for the same property the ECs, were obtained from different Sub-Registrars which is quite unusual. Of course, learned counsel for appellant/plaintiff explained that with the passage of time the same property was covered by different Sub-Registrars and hence ECs. were obtained from different Sub-Registrar offices. It may be true but that is not the issue. The point is whether Exs.A4 to A7 confer any title and possession which is germane for discussion. Since the premises bearing No.6-3-699/13/1 was in the

name of plaintiff under Ex.A1, when applied by him for ECs., respective Sub-Registrars might have issued ECs. An EC will not confer any title in respect of any property which underwent registration. It only tells whether any encumbrances are created over the said property or not. So Exs.A4 to A7 will not clinch title or possession of the plaintiff.

c) In this context, the decision in **Karewwa's** case (1 supra) cited by the plaintiff will not help his case. In that decision it was held that the entries in the revenue records are presumed to be correct and such presumption has to be rebutted by leading evidence. There is no dispute with regard to said presumption. However, the issue here is even if the correctness of Exs.A4 to A7 is presumed, they will not render any assistance to plaintiff.

d) Then, Ex.A14—ration card issued in the name of plaintiff also will not much help because it relates to his house property covered by a different premises No.6-3-699/6A.

e) Then, coming to oral evidence of PWs.1 and 2 who are the sons of plaintiff, they no doubt deposed in terms of Ex.A1. PW3 is the vendor of plaintiff and his evidence is of no use to establish the existence of property under Ex.A1 on ground. Then, PW4 is said to be one of the attestors of Ex.A1. His evidence like PW3 will help only to

the extent of plaintiff's purchasing property under Ex.A1 and it will not establish its existence on ground.

f) Sofaras Ex.A12 is concerned, it is the judgment in O.S.No.548 of 1985 which was filed by plaintiff against the father of defendants 1 and 2 and another seeking perpetual injunction in respect of house bearing No.6-3-699/13/1 i.e. present suit property. The first defendant in that suit while making it clear that his house and plaintiff's house are at a distance of 1½ furlongs, contended that plaintiff under the garb of said suit wants to claim open land of the defendant which he has no right. In that suit the Court found plaintiff could not establish his possession and enjoyment of the suit property and dismissed the suit. The appeal filed by the plaintiff was withdrawn by him of course after the death of first defendant.

g) Be that it may, even in the instant suit also, the plaintiff has not been successful to first of all establish the existence of property covered by Ex.A1 on ground to lay any claim over it. If he established the same, then the onus will be shifted to defendants 1 and 2 as to how they are entitled to vacant site lying in front of their house but the plaintiff failed to establish his case. It is true that though DW1 in his evidence claimed that one Ramchandra Reddy under whom himself and his father worked gave the land covered by suit property, he has

not produced any document to that effect. The defendants could produce Ex.B8, B12 and B14 to establish their possession and enjoyment. Even if there is some weakness in the title of defendants over the suit property, the plaintiff cannot take advantage of it because, as stated earlier, as per law he has to stand or fall on the strength of his own case. The trial Court rightly rejected the plaintiff's suit and I find no merits in this appeal.

12) In the result, this CCCA is dismissed by confirming the judgment of the trial Court in O.S.No.657 of 2001. No costs in the appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 28.10.2015

scs/Murthy

[\[1\]](#) AIR 2002 Supreme Court 504

[\[2\]](#) 2002 (1) ALT 466 (D.B)

[\[3\]](#) AIR 1954 SC 526