

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

A.S.No.145 of 1998

JUDGMENT:

This appeal is filed against judgment and decree dated 20.08.1997 in OS.No.78 of 1991 passed by the II Additional Subordinate Judge, Ranga Reddy District.

The plaintiff in the suit initially filed the appeal; on his death, his legal representatives are continuing the appeal. Since it is a first appeal, the parties will be referred to as plaintiff and defendant only.

The plaintiff filed the suit claiming that he is the owner and possessor of the land measuring Acs.2.33 guntas and Ac.0.01 guntas respectively in Sy.Nos.57 and 58 of Begumpet Village, Balanagar Hyderabad. It is his case that the land was notified for acquisition initially by the Government for the establishment of Begumpet Airport and that the same was de-notified again. Claiming title to the property, he filed the plaint claiming right over Acs.2.34 guntas with specific boundaries. He also sought a correction in the revenue records wherein according to him; the Aerodrome is wrongly shown as being in possession of Sy.Nos.57 and 58.

The defendant filed a written statement denying the right, title and interest of the plaintiff over the suit schedule

property. The defendant clearly denied the averment that the property was de-notified and was free of the acquisition proceedings. On the contrary, he pleaded that the land acquisition proceedings were completed and the compensation was also paid to the original owner. The defendant also pointed out that the plaintiff did not file any document like title deed etc., to prove his claim to the suit schedule property. They also raised an issue about the valuation of the suit. After the pleadings were filed, four issues were framed:

- 1) Whether the plaintiff is entitled to a declaration relief as prayed?
- 2) Whether the plaintiff is entitled to a relief of injunction as prayed?
- 3) Whether the suit relief is under valued?
- 4) To what relief?

On behalf of the plaintiff, the plaintiff himself was examined as PW.1 and another witness was examined as PW.2, who is the Ex-patwari of Begumpet village. Exs.A1 to A.23 were marked. For the defendant, DW.1 was examined and Exs.B.1 to B.10 were marked. After the trial, the matter was heard and the impugned judgment was passed by which the suit was dismissed. It is this order that is challenged in the appeal.

Heard Sri Venkat Reddy Donthi Reddy, learned counsel for the appellant and Sri E.Madan Mohan Rao, learned counsel for the respondent.

The essential point that arises for consideration in this appeal is issue No.1, namely whether the plaintiff is entitled to a declaration as prayed for. As a corollary to that, the plaintiff will be entitled to an injunction if he proves his possession of the property. The other relief of the correction of revenue records would arise if issue Nos.1 and 2 are proved. The law on the subject is very well settled. But it is being briefly referred to here. As the suit is filed for a declaration of title, the plaintiff will have to prove his case with clear and cogent evidence. The weakness of the defendant's case will not entitle the plaintiff to a decree. The plaintiff should stand or fall on his own strength. Revenue records are also not proof of title. The judgement of the Hon'ble Supreme Court in ***Union of India (UOI) v. Vasavi Co-op. Housing Society Ltd.***¹ is apposite here.

In the case on hand, the plaintiff is relying upon a sale deed of the year 1950. This sale deed which is marked as Ex.A.1 is executed on 07.10.1950 by one Pandit Ramachari. The translated copy of this sale deed is filed as Ex.A.2. The learned counsel for the defendant pointed out that this sale deed Ex.A.1/A.2 is not referred to in the pleadings and is

¹ 2014(2) SCC 269

filed as a document after the suit was filed. Neither the original plaint nor the amended plaint contained any description of this sale deed. Therefore, the learned counsel for the defendant objected to the consideration of this sale deed.

In reply to this, the learned counsel for the appellant/plaintiff argued that basing on the judgment reported in ***Bhagwati Prasad v. Chandramaul***² that even if a plea is not specifically made and both the parties went to trial on an issue the fact that there is no pleading will not dis-entitle any party from relief. He also argued basing on this judgment that when specific matters relating to title are touched upon and evidence has been let in about the same, the fact that a particular plea is not expressly taken is not very material.

This Court notices that Ex.A.1 was marked in the evidence of the plaintiff and there is also cross-examination about the same. Therefore, this Court is proposing to examine the contents and the value to be given to the contents of Ex.A.1.

Ex.A.1 is an unregistered sale deed dated 07.10.1950 for the entire extent of Acs.2.33 guntas in Sy.No.57. It is purportedly executed by one Pandit Ramachari in favour of the plaintiff. The learned counsel for the plaintiff argued that

² 1966 AIR (SC) 735

as the value of the sale deed is less than Rs.100/-, it does not require registration. Admittedly, the sale deed is for Rs.99/- only. Therefore, learned counsel argues that the sale deed is admissible in evidence and it does not require registration.

In reply to this, the learned counsel for the respondent argued that this document is created for the purpose of the suit and it is not referred to in the pleadings. It does not find mention in any of the contemporaneous correspondence including the lawyer's notice issued prior to the suit. Therefore, the learned counsel argues that this is a created document. In addition to this, he points out that the land acquisition compensation was paid to Pandit Ramachari on 16.03.1950 itself for the entire extent of land is Rs.25,693/-. This is evidenced by Ex.B.2. The counsel points out that apart from the fact that the land is acquired, the value of the property as per the land acquisition proceedings is more than Rs.25,000/-. This is visible from Ex.B.2 dated 16.03.1950. Therefore, he contends that to get over the bar of registration, a sale deed for a value of less than Rs.100/- is created and filed.

This Court in the facts and circumstances holds that the suspicious circumstances surrounding Ex.A1 are not explained. The plaintiff who is asserting title to the property would have relied on the sale deed if the same was executed

in his favour both in his lawyers notice and the plaint also. The fact that it was not relied upon casts a doubt about it. When the defendants are asserting rights to the property if the sale deed was there, the normal course of human conduct will be to repel the defendants' case on the basis of the title deed. The same was admittedly not done. The value of the property purportedly conveyed in the sale deed is Rs.100/- when the documents show that the compensation paid is far above the said value of Rs.100/-.

In addition, the case of the plaintiff rests on the fact that the land bearing Sy.Nos.57 and 58 measuring Acs.2.34 cents was notified for acquisition and latter the same is de-notified also. It is pertinent to note that this property measuring Acs.2.34 cents is supposedly situated in Sy.Nos.57 and 58 of Begumpet Village. The plaintiff filed Exs.A.23 to show that the land was de-notified. In reply to this, the learned counsel for the respondent pointed out that the plaintiff has not filed the complete notification/gazette publication. This Court notices that Ex.A.23 deals with Begumpet, Tokatta, Bholakpur, Rasulpura, Ferozguda and Fathenagar Villages. It does not specifically mention the land in Sy.Nos.57 and 58 of Begumpet Village. This notification Ex.A.23 is an extract filed by the plaintiff dated 09.12.1952. The defendants, on the other hand, have filed Ex.B.3 copy of the gazette, which is the entire notification for all the villages referred to above. The notification dated 09.12.1952

contains a statement showing the lands for which proceedings are discontinued (column.5). The lands which are discontinued from land acquisition proceedings in Begumpet are 59/1, 67/2, 67/3 67/4, 67/5, 67/8 and 65. The lands covered by Sy.Nos.57 and 58 are not in the lands that are proposed to be de-notified. Respondents also filed Ex.B.2 which is the copy of the judgement of the Collector, Land Acquisition, Hyderabad District. It shows that an order was passed on 16.03.1950 determining the compensation for the land acquired from Pandit Ramachari. According to this order, Rs.25,624/- was awarded along with interest to Pandit Ramachari. This document shows that the land acquisition proceedings are commenced and concluded. Thus the theory of the plaintiff that the land was de-notified is not correct.

Coming to the oral evidence, apart from PW.1, one more witness was examined who was the Ex-patwari of Begumpet village. He was examined to prove the signature of Pandit Ramachari on the sale deed. Apart from this, there is no oral evidence to show the so-called possession and enjoyment of the plaintiff. The plaintiffs land revenue receipts in this case start from the year 1976. No documentary proof is filed to show the so-called possession and enjoyment of the land from 1950 onwards. The pleading is to the effect that the plaintiff was in possession of the property for more than 45 years prior to the suit. No

documentary evidence is filed to prove the possession and enjoyment of the plaintiff from the suit schedule property. The revenue records even if correct are not proof of title.

This Court is also of the opinion that Ex.A.1 sale deed is not a valid document and it is created for the purpose of the suit. The fact that property which is acquired for more than Rs.25,000/- is shown to be sold for Rs.100/- exposes the falsity of the plaintiff's claim. In addition, if the land has been acquired under the provisions of the Land Acquisition Act, it passes on to the Acquiring Authority free from all encumbrances. Therefore, even if Ex.A.1 is held to be a valid document, this Court is of the opinion that Pandit Ramachari did not have any title whatsoever to convey to the plaintiff.

Hence, for all these reasons, this Court is of the opinion that Ex.A.1 is not a valid document and that the same is created for the purpose of this litigation. Issue No.1 is therefore decided against the plaintiff/appellant.

As far as the issue of possession is concerned, this Court has already noticed that from 1950 onwards, the alleged possession is not proved. The documents filed by the plaintiff himself which are from 1976 only show that the "Aerodrome" is in possession and enjoyment of the property. It is for this reason that the plaintiff is seeking a correction of the revenue entries as can be seen in the prayer in the

plaint. However, no documentary evidence or oral evidence is introduced to show that the Government made a mistake and wrongfully entered the name of the Aerodrome in the revenue records. No protest was also made by the plaintiff about the alleged wrong entries prior to the suit. The documents filed by the respondent namely Exs.B.4 to B.10 which are the pahanis clearly show the possession of the Aerodrome for the land covered by Sy.Nos.57 and 58. These documents commence from the period from 1985-86. Therefore, the plaintiff's case that the land was notified and de-notified or that the plaintiff is in a possession of the property is not proved at all.

The so-called erroneous incorporation by the Mandal Revenue Officer in Coloumn.11 of the pahanis is not proved. The counsel for the defendant also pointed out that in the pleading the plaintiff has averred that he had filed a petition before the Collector for rectification of the revenue records also. No such documentary evidence is filed to prove that a wrong entry was made in the pahanis and that the plaintiff took steps to correct the same. Hence, this Court is of the opinion that the appellant is also not entitled to the third prayer sought; issue No.3 for correction of the records. This issue is also held against the plaintiff.

In view of the findings on all the three issues, which are mentioned above, this Court is of the opinion that the

plaintiff has not at all proved his case. Neither the documentary nor the oral evidence supports the case of the appellant/plaintiff.

This Court finds no merits in the appeal and accordingly the same is dismissed. No order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S.SOMAYAJULU, J

Date: 13.08.2018

KLP

