

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

CCCA No.152 of 1998

JUDGMENT:

This appeal is filed by the plaintiffs in the suit OS No.1186 of 1992 questioning the judgment and decree dated 09.04.1998 passed by the II Additional Judge, City Civil Court, Hyderabad.

2. For the sake of convenience and as this is a first appeal, the parties are referred to as in the suit only i.e., as 'plaintiffs' and 'defendants'.

3. The suit OS No.1186 of 1992 is filed by Rajmohan Singh and 4 others against the District Collector, Hyderabad, the Mandal Revenue Officer, Golconda Mandal and the Commissioner, Municipal Corporation of Hyderabad. The case of the five plaintiffs is that their predecessors-in-title by name Sri Kishan Singh acquired the suit schedule property from Balaram in the year 1961, through a registered sale deed document No.1989 of 1961. The said Kishan Singh was in peaceful possession and enjoyment of the property. As the Government issued a notice claiming that the subject land is the government land, Kishan Singh filed a suit O.S.No.162 of 1963 on the file of the II Assistant Judge, City Civil Court, Hyderabad for declaring that the notices

issued were illegal, ultra vires etc. The suit was decreed holding that his land is 'private land' and not government land. Both the first appeal (AS No.10 of 1965) and the Second Appeal (SA No.218 of 1967) arising therefrom were disposed off confirming the orders of the trial Court. Thereafter, the second plaintiff applied for permission before the third defendant for renovation and construction of the existing building. The permission was refused and the notice refusing the permission was sent on 22.01.1991. The notice was issued by the third defendant on the ground that there is no approved subdivision of the site and also because there is no 'no objection certificate (NOC)' from the second defendant. It is also pleaded that the second defendant acquired a part of the land for road widening and has not paid the compensation. Therefore, the property acquired under the sale deed of 1961 was shown as two plaint schedules. Plaint-B schedule measuring 450 square yards is the land acquired for road widening and the remaining land of 1061 square yards is the land on which the building is situated for which the permissions were rejected. Hence, the suit is filed for a declaration that the rejection of the proposals for improvement of the house is not correct; for a declaration that the NOC from defendants 1 and 2 is

not necessary for development of the property; and for another declaration that the plaintiffs are the owners of the plaint-B schedule property, for recovery of possession of plaint-B schedule or in the alternative payment of compensation of the plaint-B schedule property.

4. For the second defendant, a written statement was filed denying the plaint averments. The first defendant filed a memo adopting the written statement filed by the second defendant. The case of the defendants is that the land in question is government land and that the defendants are not aware of the decree in OS No.162 of 1963 or the subsequent appeals thereon. The defendants pleaded that the house is constructed illegally on the government land by the plaintiffs. They also stated that the suit is barred by limitation and that there is no cause of action etc. They defended their actions and pleaded that the suit must be dismissed.

5. On the basis of the above pleadings, the lower Court framed the following issues for trial:

- i) Whether the suit schedule property is government land?
- ii) Whether this court has jurisdiction to entertain the suit?
- iii) Whether the suit is in time?
- iv) Whether the plaintiffs have cause of action to file the suit?

- v) Whether the suit is properly valued and whether the court fee is paid is correct?
- vi) Whether the plaintiff is entitled to the declarations in respect of the notice dated 22.01.1991 issued by the 3rd defendant in respect of plaint-A schedule property?
- vii) Whether the plaintiffs, as an alternative relief, are entitled to the mandatory injunction prayed for?
- viii) Whether the plaintiffs are entitled to the declaration of their title over the suit 'B' schedule property?
- ix) Whether the plaintiffs are entitled to recover possession of the suit schedule property?
- x) Whether the plaintiffs as an alternative to the above relief, are entitled to compensation amount from the third defendant as prayed for?
- xi) To what relief?

6. The parties went to trial. For the plaintiffs, PWs.1 and 2 were examined and Exs.A1 to A.25 were marked. For the defendants, DW.1 was examined and Exs.B.1 to B.4 were marked. After the trial, the lower Court dismissed the suit. The dismissal of the present suit in the lower Court is essentially on the ground that in Writ Appeal No.509 of 1977 (which is marked as Ex.B.4), a Division Bench of this Court held that the right of the plaintiffs had in O.S.No.162 of 1963 do not survive, in view of the judgment of the said Division Bench in the writ appeal. The suit was dismissed, in view of the findings in Writ Appeal No.509 of 1977 (Ex.B.4).

7. This Court has heard Sri S. Srinivas Rreddy, learned counsel for the appellants/plaintiffs and the Government Pleader for Appeals appearing for the respondents/defendants.

8. The essential point that therefore falls for consideration is whether the lower Court was right in dismissing the suit in view of the decision of the High Court marked as Ex B 4?

9. The learned counsel for the appellants drew the attention of this Court to the impugned judgment and pointed out that the judgment proper starts at paragraph-7. From paras-7 to 11, there is a discussion about the evidence of PW.1 and DW.1. From para-12 onwards, the lower Court proceeded to consider the judgment passed in Writ Appeal No.509 of 1977 (Ex.B.4). The same was discussed till para-16 and in para-17. Issues 1 to 10 were held against the plaintiffs. The learned counsel pointed out that therefore, the judgment of the lower Court suffers from serious infirmities and also suffers from non-appreciation of the facts. He pointed out that the essential point in the present appeal is about the identity of the appellant in Writ Appeal No.509 of 1977. According to the plaintiffs, one Kishan Singh, son of Kalu Ram pursued the suit OS No.162 of

1963 and the two subsequent appeals thereon. Another Kishan Singh, son of Ramachander pursued the Writ Appeal No.509 of 1977. It is the submission of the learned counsel for the appellants that the lower Court did not notice this fundamental difference. He drew the attention of this Court to the grounds of appeal filed by him and clearly pointed out that in appeal grounds 4 to 9, he drew the distinction between two streams of cases; in one stream is the case filed by Kishan Singh, son of Kalu Ram (which is the plaintiffs branch) with its related appeals and the second stream of cases are filed by another Kishan Singh, son of Ramachander, which culminated in the Writ Appeal No.509 of 1977 (Ex.B.4). The learned counsel pointed out that the other evidence is not really considered at all by the lower Court. The point therefore for consideration is whether the lower Court was right in rejecting the plaintiffs claim in this suit on the basis of Ex.B.4-order in Writ Appeal No.509 of 1977?

10. The learned counsel for the appellants pointed out that Ex.A.17 is the copy of the judgment and decree passed in OS No.162 of 1963, which suit is filed by the plaintiffs' predecessors-in-title. He also pointed out that in the said suit the description of the plaintiff is shown as

Kishan Singh, son of Kaloo Ram, Age: 70 years. He drew the attention of this Court to the second appeal. The second appeal also shows that the same Kishan Singh pursued the appeal. He then drew the attention of this Court to Ex.B.4-judgment of the Division Bench of this Court in Writ Appeal No.509 of 1977. This Writ Appeal arises out of the judgment passed in Writ Petition No.4250 of 1975. The learned counsel also highlighted the cause title and pointed out that in WPMP No.229 of 1979, the name of Ramachander is shown as 'died', represented by L.R., Kishan Singh. The learned counsel also drew the attention of this Court to IA No.1 of 2016, which is an Interlocutory Application bearing original CCCA MP No.538 of 2016 (filed to receive certified copies of certain documents) wherein he filed a copy of the writ petition in WP No.4250 of 1975. Petitioner No.1 is Sri Ramachander, s/o. Chunnilal who died and is represented by petitioner No.3. Ex.A.27 is the certified copy of the order issued by this Court in WP No.4250 of 1975. It clearly shows in W.P.No.4250 of 1975 Kishan Singh-petitioner No.3 is impleaded as legal representative of Ramachander. The learned counsel also drew the attention of this Court that the certified copy of the judgment in LGC No.170 of 1997, dated 28.12.2005,

wherein the State succeeded before the A.P. Land Grabbing Court and all the respondents in that case except respondents 12 to 14 were directed to be evicted. Respondents 13 and 14 are the plaintiffs in the suit OS No.1186 of 1992. This application which is filed to receive these documents is considered separately.

11. It is the submission of the learned counsel for the appellants/plaintiffs that the judgment in Writ Appeal No.509 of 1977, proceeded on the wrong assumption that Kishan Singh, son of Kaloo Ram pursued the writ appeal, whereas the said appeal was actually pursued by Kishan Singh, son of Ramachander. Therefore, he argued that the lower Court committed a fundamental error in relying on this judgment in the impugned order. He also pointed out that the title of the plaintiffs was confirmed against the State itself in Exs.A.17 to A.20. Ex.A.17 is the copy of the judgment and decree in OS No.162 of 1963 passed on 01.07.1964. The plaintiff's case in the said suit is that he purchased 1511 square yards of land, through a sale deed dated 18.12.1961. The plaintiff's title was upheld in the suit and the suit was decreed with costs. The same was confirmed in the first appeal AS No.10 of 1965 under Ex.A.18 and also confirmed by this Court in the second

appeal SA No.218 of 1967 under Ex.A.20. These were ignored by the lower Court as per the learned counsel.

12. The learned counsel for the appellants pointed out that the respondent No.3 took over the possession of the property highhandedly for road widening and despite correspondence, did not pay any compensation. This is the reason why the plaint schedule is divided into A and B schedules. A-schedule is the land and the house measuring 1061 square yards and B- schedule is the land and the house measuring 450 square yards, which is wrongfully acquired by the third defendant. The total of both these extents is 1511 square yards, which is transferred to the plaintiffs' predecessors-in-title under Exs.A.13 and A.14 sale deeds. For all these reasons, he therefore prays for reversal of the lower court order.

13. In reply thereto, the learned Government Pleader for Appeals argued that the judgment and decree passed by the lower Court are correct; that the legal representatives of Kishan Singh and the appellants are only confusing the Court and that the judgment and decree passed in Writ Appeal No.509 of 1977 is valid and correct and that in view of the same, the present plaintiffs do not have any subsisting rights. He drew the attention of this Court to the findings at various places in

the judgment wherein the Division Bench held that the Government is in possession of the property and that therefore, the plaintiff has no right over the same. He also pointed out that even in page-61 of the writ appeal judgment, liberty was given to all the parties to move the Civil Court for adjudication of the title subject to the subsequent events which have been accepted by the petitioners viz., the occupation of the land by the Hyderabad Municipal Corporation. The learned Government Pleader for Appeals also pointed out that the judgment of the lower Court is a reasoned judgment and that this Court cannot upset the same. He prays for dismissal of the appeal.

14. This Court on an examination of the submissions and all the documents which both the learned counsel drew the attention of this Court notices that by Exs.A.17, A.18 and A.20, the title of Kishan Singh, son of Kaloo Ram, aged 70 years was confirmed by the Courts of competent jurisdiction. The State of Andhra Pradesh is a defendant in this suit. The subsequent appeals filed by the State were also negatived. Therefore, title of the plaintiffs' predecessors-in-interest was upheld. The said finding is binding on the State.

15. The present suit OS No.1186 of 1992 is filed by the plaintiffs, who traced their title through Kishan Singh, s/o. Kaloo Ram. He is relying on Ex.A.17 – A.20 orders, wherein the title of Kishan Singh, son of Kaloo Ram was upheld. The cause title of the orders passed in Writ Appeal No.509 of 1977 (Ex.B.4) clearly shows that Kishan Singh in the said writ appeal is the son of Ramachander. The cause title in Ex.B.4 and also the cause title in WAMP No.229 of 1979 mentions the party as “Ramachander (died) by L.R., Kishan Singh.”

16. As noticed earlier, the appellants have also filed additional documents which are certified copies of judgment orders, along with IA No.1 of 2016. The cause title of the WP No.4250 of 1975, out of which W.A.N.509 of 1977 arose shows that Ramachander, s/o. Chunnilal has died and in his place, his legal representative-Kishan Singh has been impleaded. The certified copy of the writ petition is filed as Ex.A.26 and the copy of the orders in the writ petition are filed as Ex.A.27. The orders in the case LGC No.170 of 1997 are filed as Ex.A.28. Under Order 41 Rule 27 (1)(b) CPC, this Court has the power to take additional evidence, if the Court requires any document to be produced or for any substantial cause. The interest of justice requires that this Court peruses

the cause title of the original proceeding in Writ Petition No.4250 of 1975, since the copy of the order in writ appeal filed by the respondents as Ex.B.4 is not very legible. A separate order is therefore passed allowing the said application as the documents are necessary for the purpose of deciding this appeal. The certified copies filed are taken on record as additional evidence. The documents are marked as Ex.A.26, A.27 and A.28.

17. Ex.A.27 and A.28 clearly show that Kishan Singh in WP No.4250 of 1975 is the legal representative of Ramachander. The documents filed clearly show that Kishan Singh, son of Kaloo Ram did not in any way pursue the case relating to Ex.B.4-copy of judgment in W.A.No.509 of 1977. The lower Court which relied heavily on Ex.B.4 failed to notice the difference between the plaintiffs' predecessor-Kishan Singh, s/o. Kaloo Ram and the petitioner (in WP No.4250 of 1975 and the party in WA No.509 of 1977) namely Kishan Singh, s/o. Ramachander. Therefore, this Court is of the opinion that the lower Court committed an error in passing the impugned judgment by solely relying on Ex.B.4. The title of the plaintiffs and their predecessors-in-interest has been upheld by a Court of competent jurisdiction and

confirmed by this Court in the second appeal also. Exs.A.17 to A.20 are testimony to this.

18. In view of this conclusion, this Court holds as follows:

Issue No.1- it is held that the suit schedule property is not government land. Issue No.2, it is held that the Court has jurisdiction to entertain the suit. Issue No.3, it is held that the suit is within time and nothing contrary was pointed out. The suit was filed in 1992 questioning the rejection of the notices which are issued in 1991 and the suit is within time. Issue No.4, it is held that the plaintiffs have cause of action to file the suit. Issue No.5, the suit is properly valued and the court fee paid is correct. Issue No.6, the plaintiffs are entitled to a declaration in respect of notice dated 22.01.1991. Therefore, the defendants are directed to consider the application of the plaintiffs without insisting on the subdivision of the property as the land is not a government land.

Issues 8 and 9 are held against the plaintiffs as plaint-B schedule was already been taken over by the Government for road widening and has been in possession and enjoyment of the Government since long.

A direction for recovery of possession cannot be given due to the passage of time.

19. Issue No.10 is however held in favour of the plaintiffs but the plaintiffs are entitled to the alternative relief of compensation from the third defendant for the 450 square yards occupied by the third defendant/third respondent. At this stage of the matter, this Court notices that there is clear pleading in paragraphs 10, 11 and 12 of the plaint that the land was acquired by the third defendant and that no compensation was paid. It is clear from the facts that a notice was issued demanding the compensation. As per the valuation paragraph, the compensation claimed is at Rs.1,000/- per square yard and the claim is valued at Rs.4,50,000/-. The court fee is paid thereon. There is no clear denial in the written statement of the facts mentioned above or in the valuation paragraph. The defendants did not deny that the claim of Rs.4,50,000/- as not correct. In addition, PW.1 also deposed about the compensation payable. He clearly deposed in his evidence that the alternative prayer is made for recovery of Rs.4,50,000/- for the plaint schedule property. He also deposed that at the time of taking of the land, the value of the plaint-B schedule property is Rs.1,000/- per square yard. There is no

cross-examination on this aspect of the matter. Even in the cross-examination, the witness asserts that the value of the suit land was Rs.1,000/- per square yard. PW.2 was also examined on this aspect. He deposed that the value of the land is Rs.2,000/- per square yard. He relies on Ex.A.23-valuation certificate issued on 04.11.1995 by the Sub-Registrar, Golconda. Although the value is shown as Rs.2,000/-, PW.2 admits that they have claimed at Rs.1,000/- per square yard. This Court again notices that there is no serious or effective cross-examination on the issue of value of the property. In the plaint also, the claim is limited to Rs.1,000/- per square yard or Rs.4,50,000/-.

20. Considering the time that has elapsed in the hearing/the disposal of the case and also the fact that there is a ready estimate of the value already available, this Court is of the opinion that the available material is enough for pronouncement of the final order under Order 41 Rule 33 CPC. Therefore, the valuation of the land acquired is taken as Rs.1,000/- per square yard and total value of the land is fixed at Rs.4,50,000/-. As per the plaint also, the land was acquired 2½ years prior to the date of the plaint. There is no clear denial of the same. Therefore, the year 1991 is the cut off date

adopted as per the lawyer's notice dated 19.01.1991. The third defendant is directed to pay compensation of Rs.4,50,000/- with interest at 18% per annum from 01.01.1991 till the date of payment of the amount.

21. If this payment was made in 1991, the plaintiffs could have invested the money and the same would have multiplied. Even if the value of the land is taken as on date, it would have far far more than Rs.1,000/- per square yard with interest. Therefore, viewing the matter a proper perspective, interest at 18% per annum is awarded. If the procedure under the provisions of the Land Acquisition Act, 1894 was followed, interest would have been payable under Section 28/34 of the Act along with solatium, market value etc. Similar is the case under Section 30 and Section 80 of the new Act. Therefore, as the prescribed rates of interest which are in the range of 9% to 15% do not really do justice, the rate of 18% is adopted in the interest of equity. The third defendant is directed to pay the said compensation of Rs.4,50,000/- along with interest @18% per annum from 01.01.1991 till the date of actual payment to the plaintiffs/appellants.

22. With these observations, the appeal is allowed. The judgment and decree dated 09.04.1998 passed by

the II Additional Judge, City Civil Court, Hyderabad are set aside. In the circumstances of the case, there shall be no order as to costs.

23. Miscellaneous petitions, if any, pending in this appeal, shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 30.08.2018

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