

(2013) 09 AP CK 0096

In the Andhra Pradesh High Court

Case No : City Civil Court Appeal No. 227 of 2010

Ahmed Nizamuddin

APPELLANT

Vs

Mohd. Ghaziuddin Hassan and Others

RESPONDENT

Date of Decision : 17-09-2013

Acts Referred:

Citation : (2014) 3 ALD 380 : (2014) 2 ALT 763 : (2014) ALT(Rev) 155

Hon'ble Judges : S.V. Bhatt, J; L. Narasimha Reddy, J

Bench : Division Bench

Advocate : B. Adinarayana Rao, for the Appellant; D. Prakash Reddy for Sri M.R. Harsha, Advocate for the Respondent Nos. 1, 3, 4, 5 and 9 to 11 and G.P. for Appeals (Not Present) for the Respondent Nos. 6 to 8, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—This appeal is filed by the 1st defendant in O.S. No. 347 of 2004 on the file of the IX Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad against the judgment and decree dated 30-08-2010. For the sake of convenience, the parties are referred to as arrayed in the suit. The plaintiffs filed the suit for the relief of, a) declaration that the plaintiffs alone are the owners of the suit schedule property of 830 sq.yards in T.S. No. 1; b) recovery of possession thereof from the defendant No. 1; c) direction to the respondent No. 8 herein (defendant No. 4) to correct the entries in town survey land record, in such a way that the names of Nawab Nazir Yar Jung and those of the plaintiffs are shown in the possession column in respect of land in TSLR No. 1 and Sy. No. 129/70 of Shaikpet Village; and d) mandatory injunction requiring the defendant No. 1 to remove unauthorized and illegal structures put up by him on the said land. Mesne profits were also claimed.

2. The case of the plaintiffs was that late Justice Nazir Yar Jung, Judge of the erstwhile Hyderabad High Court, their ancestor, was granted patta in respect of Ac.8.32 guntas of land in Sy. No. 120/70 of Shaikpet Village, in the year 1920, and that on his death on 06-07-1966, they have succeeded to the property.

According to them, the land in Sy. No. 129/70 was assigned in T.S. Nos. 1, 2 & 3 in block "R" of Ward No. 11 and T.S. Nos. 26, 34 to 42 in Block "P" of the same Ward in the town survey. It was pleaded that the plaintiffs obtained lay out for the land from Municipal Corporation of Hyderabad on 30-12-1964, and that plot No. 1 thereof, which corresponds to T.S. No. 1, was shown as a water body in the lay-out since water stagnated thereon, and unfit for construction. The Municipal Corporation of Hyderabad is said to have issued a notice to them, proposing to construct underground drainage line, up to the length of 100 feet, across the land in T.S. No. 1, promising to pay the compensation.

3. The plaintiffs have also pleaded that an extent of 1350 sq.yards comprised in Plot No. 2, corresponding to T.S. No. 2, was sold to one Ilyas Ahmed Menai and the ownership of the neighbouring plot No. 1, admeasuring 816 sq.yards remaining with them. The 1st defendant is said to have approached them, with a request to permit him to use the land in T.S. No. 1 for the purpose of parking the vehicles, and acceding to the request, permission was accorded through letter dated 12-02-2000. It was alleged that after occupying the land in T.S. No. 1, i.e. the suit schedule property, the 1st defendant constructed a house thereon without their knowledge and permission. It has also been stated that in the town survey land record, the suit schedule property was wrongly shown as Government land, and that the same needs to be corrected.

4. The actual contest of the suit was by the 1st defendant. He stated that from out of the land of Ac.8.32 guntas, the plaintiffs sold 1350 sq.yards to Ilyas Ahmed Menai and that he purchased two bits of 195 sq.yards of each from Ilyas Ahmed Menai. It was also stated that the neighbouring plot of 475 sq.yards in House No. 8-2-618/20/C was purchased by him, from one Mr. Mohd. Rafiq, and that the plaintiffs do not have any claim whatever, over the suit schedule property. He pleaded that he constructed a house over the land of 865 sq.yards purchased from Ilyas Ahmed Menai (390 sq.yards) and Mr. Mohd. Rafiq (475 sq.yards), after obtaining permission from the Municipal Corporation. He has also raised the plea of adverse possession and made a reference to O.S. No. 2453 of 1991, filed by him, against Mohd Rafiq. According to him, Mohd. Rafiq was in possession of part of 475 sq.yards, even by 1991.

5. On behalf of the defendants 2 to 4, a written-statement was filed by defendant No. 3. According to them, the plaintiffs did not issue notice u/s 80 of C.P.C., before filing the suit and accordingly, it is not maintainable. It was stated that the land in T.S. No. 1 of Block and Ward No. 11 of Shaikpet Village belongs to Government and entries are made in the records to the same effect. The relevant gazette, after completion of town survey, was said to have been published on 28-02-1977, and it was pleaded that the relief pleaded for correction of the entry is barred by limitation, since it was filed beyond the period, stipulated under the A.P. Survey and Boundaries Act, 1923 (for short "the Act"). They have put the plaintiffs to strict proof of the claim made by them and pleaded that the suit schedule property was recorded as nala and nobody can claim any rights of

ownership over such land.

6. Through its judgment dated 30-08-2010, the trial Court decreed the suit. Hence, this appeal.

7. Sri B. Adinarayana Rao, learned Senior Counsel for the 1st defendant, submits that the suit filed by the plaintiffs was speculative in nature, and it was not maintainable for more reasons than one. He contends that no effort was made by the plaintiffs to prove that the suit schedule property was part of Ac.8.32 guntas, said to have been assigned to late Justice Nazir Yar Jung. It is urged by him that once the plaintiffs have shown a particular item of property, as water body, in a lay-out, and the same is mentioned as Government land in the revenue records, it is not at all permissible for the plaintiffs to make any claim over it.

8. He contends that the falsity of the claim of the plaintiffs is evident from the fact that even the land of 390 sq.yards purchased from Mr. Ilyas Ahmed Menai, who, in turn purchased it from the plaintiffs, was shown in the suit schedule. Learned Senior Counsel further submits that there is any amount of uncertainty, if not inconsistency, in the boundaries shown for the property, and that none of the facts pleaded in the plaint are proved, as no independent witness was examined. Another contention is that the suit is not maintainable for non-joinder of necessary parties.

9. Sri D. Prakash Reddy, learned Senior Counsel for the plaintiffs, on the other hand, submits that there is no dispute about the fact that late Justice Nazir Yar Jung was assigned Ac.8.32 guntas, way back in the year 1920, and that the plaintiffs have obtained lay-out in respect of the same. He contends that though the land in T.S. No. 1, though was shown as water body at one point of time, it ceased to be so, once an underground pipeline was laid and the plaintiffs alone are entitled to claim that property. He submits that the 1st defendant acknowledged the fact that the plaintiffs have succeeded to Ac.8.32 guntas, and pleadings in O.S. No. 2453 of 1991 vouched for this. He further submits that the mistake, which has crept into the town survey land records was sought to be taken advantage of, by the 1st defendant, and that on being satisfied about the genuinity of the claim of the plaintiffs, the trial Court decreed the suit. Learned Senior Counsel submits that the well-considered judgment and decree passed by the trial Court do not warrant interference.

10. No one had appeared for the defendants 2 to 4.

11. The trial Court framed the following issues for its consideration, on the basis of the pleadings before it:

1) "Whether the plaintiffs are legal heirs of late Justice Nawab Nazir Yar Jung and are the owners of Sy. No. 129/70, Shaikpet Village, admeasuring Ac.8-32 guntas under the patta granted by Nizam and whether T.S. No. 1 suit Schedule extent 816 sq.mts. forms part of patta land as TSLR?

2) Whether defendant No. 1 is aware about grant of patta of Ac.8.32 gts in Sy.

No. 129/70 to Nawab Justice Nazir Yar Jung?

3) Whether Ilyas Ahmed Menai sold the entire property to Bhasheer Khan and his wife in 1992 under two sale deeds bearing H. No. 8-2-618/8 & 9?

4) Whether defendant No. 1 utilized letter of confirmation cum consent letter dated 07.02.2000 and constructed 6 floors complex in suit land?

5) Whether plaintiffs are entitled for mesne profits @ Rs. 50,000/- per month from date of rejoinder?

6) Whether the plaintiffs are entitled for Mandatory Injunction as prayed for?

7) Whether Ilyas Ahmed Menai shown H. No. 8-2-618/8 (part) in sale deed to Aiasha Sultana under D. No. 3616/92 dated 15.06.1992 as contended by defendant No. 1?

8) Whether plaintiffs are entitled to decree as prayed for?

Additional Issue:

Whether the Civil Court has no jurisdiction and the Special Court of Land Grabbing (Prohibition) Act, 1982 alone has got jurisdiction?

12. On behalf of the plaintiffs, the 5th plaintiff deposed as the sole witness. Incidentally, she was the G.P.A. holder of plaintiffs 1 to 4. She filed Exs.A-1 to A-24. The 1st defendant deposed as DW-1, the 3rd defendant, as DW-2, and one Mr. U. Raghuram Sharma, as DW-3. He filed the documents marked as Exs.B-1 to B-21. Almost all the issues were answered in favour of the plaintiffs and the suit was decreed.

13. In view of the extensive submissions made by the learned Senior Counsel, the following points arise for consideration in this appeal:

1) Whether the plaintiffs proved their title in respect of the suit schedule property;

2) Whether the plaintiffs were entitled to a decree for correction of the entries in the town survey land records; and

3) Whether the plaintiffs are entitled to a decree for eviction of the defendants from the suit schedule property.

Point Nos. 1 & 2:

14. To prove that late Justice Nazir Yar Jung was granted patta over an extent of Ac.8.32 guntas of land, the plaintiffs filed Ex.A-1. Ex.A-2 is the plan enclosed. Since there are no rival contenders for this Ac.8.32 guntas of land, it can be assumed that the plaintiffs proved the factum of grant of patta. The dispute in the suit is not about the entire land, but it is only in respect of 830 sq.yards.

15. The plaintiffs filed Ex.A-3, said to be a sanctioned lay-out. However, the

corresponding proceedings are not available and the plots shown therein are in triangular and other irregular shapes. It appears that the lay-out was obtained mostly with a view to divide the land into bits, than to indicate the plots, which can be straightaway used for any purpose. Even according to the plaintiffs, a portion of the land was shown as tank/water body. They never claimed any right of ownership over the land covered by water.

16. On the other hand, they treated it, as having vested in the Government. After the town survey was effected, the water spread area was assigned T.S. No. 1, Block No. R of Ward No. 11. The relevant portion of the plaint in respect of the land in T.S. No. 1 reads:

The plaintiffs submit that due to low lying and water stagnation in Plot No. T.S. No. 1, no construction could be made & not shown as a plot in the plan (Ex.A-3), but shown as a water body.

17. In the revenue records also, it was shown as vested in the Government. The neighbouring plot, which was assigned T.S. No. 2, admeasuring 1350 sq.yards, was sold by the plaintiffs to one, Mr. Ilyas Ahmed Menai, through a sale deed dated 06-07-1970, marked as Ex.A-6.

18. According to the plaintiffs, the land in T.S. No. 1 ceased to be water body, on account of the construction of an underground drainage line, and thereby, it has become fit for construction and other uses. It is in this context, that they claimed ownership and change of classification, in relation to that piece of land.

19. The entries in the revenue records, by themselves, do not confer ownership, nor do they take away the rights of the parties. They can only reflect a situation, which is otherwise in existence. In case any error is committed in the course of the general revenue survey or the town survey, the remedies are provided for under the Act. The town survey in respect of the lands in question has taken place more than half a century ago. At no point of time, the plaintiffs have raised any objection as to the accuracy of the town survey in respect of the land owned by them. Section 14 of the Act prescribes three years time for filing a suit, for correction of errors of survey in respect of any land. It is only in the year 2004, that the plaintiffs filed the suit, claiming ownership and for correction of entries. It was clearly barred by limitation. The trial Court did not address this issue. However, the obligation placed upon a Court, u/s 3 of the Limitation Act, cannot be ignored, even if the defendants did not raise any objection in this behalf.

20. What was assigned to the grand-father of the plaintiffs was a Government land. It is almost in the form of a grant or assignment. The water body was existing, by the time the land was assigned. The plaintiffs and their predecessors in title recognized not only the existence thereof, but also the ownership of the Government, over it. Obviously for that reason application for lay-out was submitted, specifically excluding the water body, whether called as a tank or a lake, and it was not shown as any plot. The revenue or town survey records also depicted that the water body vested in the Government.

21. The only reason for the plaintiffs to claim rights over that part of the land, which is shown as water body is that the water is not stagnating it, on account of construction of an underground drainage canal. Even if that is true, the legal position does not change. The mere fact that water is not stagnant on any part of the land, which is classified as tank; does not give rise to any permission, much less conclusion as to change of its character. If such a contention is accepted, vast number of tanks would cease to vest in the Government, once the water therein is totally used or they become dried up, particularly in summer. The contention of the plaintiffs on this basis can not at all be accepted.

22. At any rate, the plaintiffs did not demonstrate that the suit schedule property is part of the land assigned to their grand-father, under Ex.A-1. The deposition of the lone witness, PW-1, is not at all of any help in this regard. He ought to have examined the persons, who were acquainted with the matter, or at least obtained certificates of ownership from the revenue authorities. The change of entries in the survey records can only be a sequel to the recognition of ownership, either by a Court of law or by an authority vested with the power under any enactment.

23. Viewed from any angle, we find that the plaintiffs failed to prove the title in respect of the suit schedule property and they are not entitled to a decree for correction in the entries in survey records.

Point No. 3:

24. Once the plaintiffs are found to have failed to establish their title, they do not hold any right to seek recovery of possession of the land from the defendant No. 1. Even otherwise, the plaintiffs are not consistent in their claim, vis-a-vis the 1st defendant. At one stage, they have stated that the suit schedule property was leased to the 1st defendant under Ex.B-14, dated 12-02-2000. A perusal of that document discloses that the 5th plaintiff had given consent to the 1st defendant to use the part of private nala situated behind plot No. 8-2-618, Road No. 11, Banjara Hills, which is said to have become dry, and which is not in her control and possession. A sum of Rs. 25,000/- is said to have been received towards consideration. The last paragraph of the said letter/deed, reads;

The said Ahmed Nizamuddin; is hereby exclusively permitted to use the said strip of land only for parking without causing any loss or damage to me and he is also permitted to put up such temporary structure as he deems fit and proper legally and lawfully

That Ahmed Nizamuddin is also permitted to use the said land situated at Southern side of Ahmed Nizamuddin's plot H. No. 8-2-618/9 upto Tank and he shall be entitled and permitted to remove illegal and unauthorized structures on back of the Ahmed Nizamuddin land bearing part of M.C.H.Sy. No. 129/70/2.

25. In case what is granted under Ex.B-14 is lease, the method of recovery of possession is different. The provision of the Transfer of Property Act would govern the situation. If, on the other hand, it is only a permission accorded to

the defendants, to clear the nala and to remove the encroachments, it notifies that the suit schedule property was not under the possession of the plaintiffs, before the 1st defendant was granted any rights over it.

26. The plaintiffs did not dispute the execution of Ex.B-14. They were under obligation to explain the circumstances under which, it came to be executed and the purport thereof. Not a single person connected with that was examined. The silence or inaction on the part of the plaintiffs about the confusion, or uncertainty as to whether what is said to have been granted by them to the 1st defendant was lease or permission, has, in fact demonstrated the fragility of their case or claim.

27. Either the plaintiffs were not aware as to the persons who have encroached the property by the time permission or lease was granted in favour of the 1st defendant, or even if were aware of them, they permitted the 1st defendant to remove such encroachments. It is only when the 1st defendant acted as their agent for removal of encroachments, that they can derive the benefit of the acts of their agent. If at all anything, Ex.B-14 would only manifest the uncertainty, lack of clarity and above all, the absence of possession of the property with the plaintiffs.

28. The suit schedule property comprised of two bits. One part of it was purchased by the 1st defendant from a transferee of the plaintiffs themselves, i.e. Ilyas Ahmed Menai. The second part, admeasuring 475 sq.yards was purchased by him from a different person, by name, Mohd. Rafiq, under sale deed dated 30-11-1993, marked as Ex.B-4. An attempt was made to show that the said Rafiq has acknowledged the rights of the plaintiffs over the suit schedule property and that it was not open to him to convey any title in favour of the 1st defendant. Even if that is true, a valid and perfect adjudication in this behalf could have taken place, if only the plaintiffs impleaded the legal heirs of Ilyas Ahmed Menai and Mohd. Rafiq. If for any reason the plaintiffs omitted to implead them while filing the suit, at least when the 1st defendant pleaded that he acquired the property from those two persons, it was obligatory on the part of the plaintiffs to implead them. This became essential because the suit happens to be the one for declaration of title and recovery of possession. Though this aspect was not dealt with by the trial Court, in detail, it would certainly tell upon the scope and nature of adjudication.

29. In view of the findings recorded above, we allow the appeal and set aside the decree and judgment passed by the trial Court.

30. The miscellaneous petitions filed in this appeal shall also stand disposed of. There shall be no order as to costs.