
(2014) 06 AP CK 0016
In the Andhra Pradesh High Court
Case No : C.C.C.A. No. 18 of 1995

K. Mangamma

APPELLANT

Vs

Government of A.P.

RESPONDENT

Date of Decision : 06-06-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2014) 5 ALD 523 : (2014) 6 ALT 605

Hon'ble Judges : M.S.K. Jaiswal, J

Bench : Single Bench

Advocate : P. Raja Sripathi Rao, Advocate for the Appellant

Final Decision : Allowed

Judgement

M.S.K. Jaiswal, J.—The appellants having failed to obtain a decree declaring their ownership over the suit schedule land and recovery of possession filed the appeal. For the purpose of convenience, the parties shall be referred to as they are arrayed in the original suit.

2. Plaintiffs originally filed O.S. No. 60 of 1983 on the file of the IV-Additional Judge, City Civil Court, Hyderabad. Subsequently, it has been re-numbered as O.S. No. 679 of 1985. The suit is in respect of 0.75 cents of land in Sy. No. 166/1, which is shown as Town Survey No. 44/2 in Town Planning Records. Originally, the suit was for declaring the plaintiffs as the lawful owners of the suit schedule property. Alleging that the plaintiffs have been dispossessed subsequent to the suit, the plaint was amended vide orders in I.A. No. 349 of 1983, dated 21-09-1983, further seeking relief of recovery of possession of the suit schedule property. Similarly, the suit, which is originally filed against R. 1/D. 1, was subsequently amended impleading R. 2 and R. 3 as D. 2 and D. 3 vide orders in I.A. No. 67 of 1985, dated 22-04-1986.

3. The case of the plaintiffs, as averred in the plaint, is as under:-

The plaintiffs are the legal heirs and successors of one Kannaganti Subba Rao,

who purchased the suit schedule property under a registered sale deed bearing No. 2014 of 1960, dt. 01.09.1960 on the file of Joint Sub-Registrar, Hyderabad, for a valid consideration of Rs. 40,000/- from its owner. The plaintiffs, being in continuous and lawful possession of the entire area consisting of 2 acres 14 cents, including the suit schedule property, have filed their respective declarations before the Urban Ceiling Authority for property sanctions for construction of houses under Group Housing Schemes. The 1st plaintiff also filed necessary application before the Revenue authorities concerned for mutation, vide file No. D/1435/81, and the same was duly sanctioned by the Tahsildar, Golconda, Hyderabad district. The pahani for the year 1980-81 also shows that the plaintiffs are in possession and occupation of Ac. 2-14 cents of land, including the house property. Thus, the plaintiffs are in legal, valid and in continuous possession from 1960 onwards, and are in occupation and enjoyment of the house property bearing No. 6-3-901, together with 10368.69 sq. yards, situated in Somajiguda, Hyderabad.

It is further alleged that on 20.01.1983, the 1st defendant, along with his staff and some other people came to the suit schedule property, and attempted to demarcate certain areas, purporting to fall in T. No. 44/2 in the concerned town planning survey maps. The same was resisted by the plaintiffs with the help of local people. However, on 25-01-1983, another person, who is stated to be a contractor, came to the suit schedule property to take measurements for the purpose of putting up necessary fencing. The said contractor also informed them that the Defendants authorities are claiming the suit schedule property to be the Government poramboke land, which is not correct. The plaintiffs further submit that the concerned Tahsil is Khairatabad and the Tahsildar, Secunderabad Tahsil has no jurisdiction whatsoever on the land of the plaintiffs.

Hence, the suit for declaration of title and to restore the possession by evicting the defendants/authorities from the portion occupied by them unlawfully on 25.01.1983, and to grant perpetual injunction.

4. On behalf of the Government, the 1st defendant viz., Tahasildar, Secunderabad, filed written statement with the following averments:-

The land, admeasuring 3264 sq. mts., falling in Ward No. 88, Block No. B, Town Survey No. 44/2 of Somajiguda village, Secunderabad taluk, is a Government land. The alleged vendor of the sale deed dt. 01.09.1960, had no manner of right, title or interest over the suit land. Therefore, the sale deed is bad in law and not binding on the defendants, as "no person can pass a better title than what he possessed". Further, according to the plaintiffs they have purchased the open land and house bearing H. No. 6-3-901, in Sy. No. 166/1 of Khairatabad village. The suit land in question is situated in Somajiguda village. Hence, there is a mistake in identifying the suit schedule property. Apart from that, there is no mention in the sale deed about the open land and also about the survey number, as claimed by the plaintiffs. Therefore, it is clear that the suit schedule property is totally separate than the House bearing No. 6-3-901. It is further submitted

that in the Town Survey Records of Somajiguda village, the suit land is recorded as Government land, which is in possession of the Government itself. Further, the declaration either before the Urban Land Ceiling Authorities or any authority does not confer any right, title over the suit schedule property in favour of the plaintiffs. The alleged sanction of mutation is based on the wrong information furnished by the plaintiffs, which is bad in law and liable to be cancelled. It is further submitted that in order to prevent illegal encroachments, the defendant-authorities have demarcated the land and fixed the fencing to the extent of the land owned by the Government only, and not in respect of the land bearing Sy. No. 166/1 of Khairatabad village. Hence, the alleged dispossession or interference into the possession of the plaintiffs' land does not arise. The suit is liable to be dismissed for want of mandatory notice under Sec. 80 CPC. It is further alleged that the valuation of the suit schedule property made by the plaintiffs is not correct, and therefore seeks a direction to the plaintiffs to value the suit on the basis of the present market value and to pay the deficit Court fee thereon.

5. On the basis of the above pleadings, the trial Court framed the following issues and additional issues:-

1) Whether the plaint schedule land is in Sy. No. 166/1 of Khairathabad village or it falls in Sy. No. 44/2 of Somajiguda village?

2) Whether the suit is liable to be dismissed as Sec. 80 CPC notice was not given as it is mandatory?

3) Whether the suit property is under valued and whether the Court fee paid is incorrect?

4) Whether the plaintiffs are entitled for declaration of title to the plaint schedule land and for recovery of possession?

5) To what relief?

6. On behalf of the plaintiffs, the 2nd plaintiff examined herself as P.W. 1, her husband as P.W. 2, and one Gulam Mahmood Khan as P.W. 3. They also filed Exs. A. 1 to A. 21. On behalf of the defendants/Government, the Surveyor in the M.R.O. Office is examined as D.W. 1. The Deputy Tahasildar, Secunderabad, is examined as D.W. 2. Exs. B. 1 to B. 8 are marked.

7. Through Judgment, dated 31-08-1989, the learned Judge partly decreed the suit declaring the title of the plaintiffs to land in T.S. No. 44/1 of Khairatabad village, and insofar as the land in Sy. No. 44/2 is concerned, the Court below held that it is the Government land and thereby refused the relief of declaration and also recovery of possession.

8. Aggrieved by the said Judgment and Decree, the plaintiffs preferred the appeal contending that the learned trial Judge erred in dismissing the suit notwithstanding the clinching evidence produced by the plaintiffs. It is further

contended that the land admeasuring 3,264 sq. mtrs. is part of wider extent covered by old Sy. No. 166/1 of Khairatabad village, owned by the appellants and their predecessors-in-interest, and that fencing carried out by the respondents during the pendency of the suit was illegal and without authority of law. The Court has accepted A. 1 as establishing the title of the plaintiffs, but failed to appreciate that the suit schedule land is part of the said sale deed. The Government cannot claim the suit land as the Government property since it is held by a private land owner namely Nawab Asgar Sultan. It is further contended that the so-called survey conducted by the authorities without prior notice to the appellants or their predecessors-in-interest is void and therefore no significance can be attached to the said survey report and the same cannot bind the appellants. The trial Court ought to have seen that the survey conducted without following due procedure, prescribed under the law, can be challenged.

9. Arguments of Sri Raja Sripathi Rao, learned Counsel for the appellants, and the learned Government Pleader for respondents are heard.

10. The points that arise for consideration are as to:-

- 1) Whether the plaintiffs are entitled to be declared as the owners of the suit schedule property and consequently entitled to recover possession thereof.
- 2) Whether the Judgment under appeal is liable to be set aside, modified or varied?

11. POINT No. 1:- The dispute revolves round Ac. 0.75 cents of land situated at Khairatabad area of Hyderabad city. The two plaintiffs are the legal heirs of Kannaganti Subba Rao, who originally purchased the schedule land in Sy. No. 166/1, under registered sale deed Ex. A. 1 bearing No. 2014 of 1960, dated 01-09-1960, from the original owner Asgar Sultan, S/o. Aga Yar Jung, who was the owner of the entire extent of land in Sy. No. 166/1, which admeasuring more than Ac. 7-00. From out of that land, Kannaganti Subba Rao purchased Ac. 2-14 cents under Ex. A. 1. The ownership of Aga Yar Jung, and thereafter Asgar Sultan and thereafter the purchase made by the plaintiffs under registered sale deed is not in dispute. There existed a house in the property purchased by the plaintiffs with door No. 6-3-901. The case of the plaintiffs is that on three sides of the said house, there was vacant land, which they have purchased, and had been in possession and enjoyment ever since 1960 and prior to them, their vendor was in possession. For more than two decades prior to Ex. A. 1, dated 01-09-1960, and for two decades thereafter, the suit land had been owned and possessed by private individuals viz., the vendor of the plaintiffs and thereafter the plaintiffs. At no point of time, that land was classified as Government land. The Revenue Records clearly show that it was private land. Only in 1983, for the first time, the Government claimed title over it and questioned the registered sale deed Ex. A. 1, dated 01-09-1960, as having been executed by person without valid title.

12. In January, 1983, to be precise on 20-01-1983, it is alleged that the first defendant along with his staff came and interfered with the possession of the

plaintiffs over the vacant land towards south of the existing house. Immediately, the plaintiffs filed the suit in hand. They could not, however, obtain the interim orders since the opposite party was the Government. According to the plaintiffs, on 25-01-1983, the men of the Tahasildar, Secunderabad, came and occupied the suit schedule land admeasuring Ac. 0.75 cents and they have fenced it in spite of protest. Thereafter, the plaintiffs got the relief in the suit amended.

13. The case of the defendants is that Aga Yar Jung, no doubt, was the owner of the entire Sy. No. 166/1 and other neighbouring lands. However, the land towards south of the existing house of the plaintiffs is not part of Sy. No. 166/1. According to the Government, in the year 1979, the land was surveyed and subdivisions were made. On behalf of the Government, a written statement is filed by the Tahasildar, Secunderabad, on 13-12-1983. In the said written statement, it is admitted that the suit schedule land was mutated in the name of the plaintiffs by the revenue authorities, but the said mutation is on the basis of misrepresentation. They do not deny that on the date alleged the men of the Government have encircled the suit schedule land by fencing and this, according to the defendants, is intended to avoid encroachments. The written statement is conspicuously silent as to how the Government is claiming the suit schedule land to be the land belonging to the Government. No foundation is laid therein on this material aspect.

14. The suit being one for declaration of title and recovery of possession, initially burden is cast upon the plaintiffs to show their title and possession. Execution of Ex. A. 1, the registered sale deed, dated 01-09-1960, is not disputed. In the said sale deed - Ex. A. 1, it is specifically mentioned that K. Subba Rao has purchased the house bearing No. 6-3-901 together with open site, in all admeasuring Ac. 2-14 cents, which is equivalent to about 8,960 Sq. Mtrs. Therefore, the title of the plaintiffs is not in dispute. With regard to the possession, the plaintiffs have produced Exs. A. 3 to A. 18, which are all the tax demand notices and the tax receipts in respect of the land admeasuring Ac. 2-14 cents in Sy. No. 166/1. They are all the documents, which clearly show that the revenue department had been raising the demand of property tax, against the original owner, in respect of the land in Sy. No. 166/1. In Ex. A. 4, dated 06-09-44 F, Aga Yar Jung requested the Tahasildar that as at present he is possessing Ac. 9-04 guntas of land and therefore the demand for Ac. 13-00 of land is not correct and requested for making proper measurements of the land. Under Ex. A. 5, which is dated Behman 1346F, the Tahasildar informed Aga Yar Jung that as per the statement of jamabandi, for the year 1945 F., a sum of Rs. 144-8-0 was payable, out of which only 70-0-0 have been received and that Rs. 44-8-0 is still due. The Tahasildar informed the occupant that if the tax is to be reduced, he has to obtain the orders from the concerned authorities. Similar are the other documents, which have been marked. The relevant document, however, is Ex. B. 5. Since, the fact that the property was mutated in the name of the plaintiffs is not denied, the said mutation orders have been marked on behalf of the defendants. Ex. B. 5 is of the year 1981 i.e., two years prior to the institution of

the suit and the alleged dispossession of the plaintiffs from the suit schedule land. It is issued by the Tahasildar of Golconda and signed on 28-04-1981. It clearly records that out of an extent of Ac. 07-16 cents in Sy. No. 166/1, K. Subba Rao has purchased Ac. 2-14 cents under registered sale deed Ex. A. 1 and after due enquiry, the mutation of the said property was effected in the name of the plaintiffs. The mutation was effected on the basis of the report submitted by the Revenue Inspector, Khairatabad, on 18-03-1981. Even though, a feeble attempt is made on behalf of the defendants to say that the said mutation was effected by the Government on the basis of the false information given by the plaintiffs, absolutely nothing is produced on record to substantiate the said contention. Ex. B. 5 mutation was effected based upon the registered sale deed of the year 1960 and after conducting due enquiry by the Revenue Inspector. What kind of misinformation or misrepresentation was made by the plaintiffs in obtaining the said mutation is not explained. Once an extent of Ac. 2-14 cents of land has been mutated in the name of the plaintiffs, which is based upon the title and possession of the plaintiffs for more than 21 years prior thereto, the title of the plaintiffs has to be taken as established. The Government cannot turn round and say that the mutation based upon the registered sale deed Ex. A. 1 of the year 1960 effected 21 years thereafter was based on any misrepresentation, without any record.

15. The controversy started after the land was surveyed in the year 1979. According to the Government, the lands in Khairatabad and Somajiguda were surveyed and the land in Sy. No. 227 of Khairatabad village was in all admeasuring Ac. 113. In the survey conducted in 1326F., the said large extent of land was sub-divided into 40 subdivisions. Even after that it is the case of the Government that some patches of lands were left over and that gap of land has been given Sy. Nos. 44/1 and 44/2. It is admitted by the Government that Sy. No. 44/1, admeasuring 5,696 Sq. Mtrs., is the property of the plaintiffs whereas the land admeasuring 3,200 Sq. Mtrs., in Sy. No. 44/2 is the Government land. This contention of the defendants, on the face of it, appears to be incorrect. Admittedly, the plaintiffs are the owners and possessors of a total extent of Ac. 2-14 cents and if what the defendants contend now is believed, they will be left only with the property of 5,696 Sq. Mtrs., which will be just about Ac. 1.20 guntas. The remaining Ac. 0-75 cents of land has been given the number as 44/2. This is being claimed by the Government. The plaintiffs have purchased Ac. 2-14 cents of land for a valid consideration under Ex. A. 1 from the original owner, which is not disputed. They are entitled to own and possess Ac. 2-14 cents and nothing less or more. If the contention of the Government is accepted, they are entitled to only 5,696 Sq. Mtrs., and the remaining 3,200 Sq. Mtrs., belongs to the Government. Such a contention is being raised for the first time after the survey, which was conducted from 1979 to 1982. Even in Ex. B. 5, issued in March, 1981, the Revenue Department, accepted the ownership of the plaintiffs to an extent of Ac. 2-14 cents and thereafter they cannot be heard saying that the plaintiffs are entitled to only Sy. No. 44/1 admeasuring 5696 Sq.

Mtrs., and the remaining 2,364 Sq. Mtrs., of land which has been sub-divided as 44/2 is the Government land.

16. On behalf of the defendants, D.Ws. 1 and 2 are examined. Their evidence is material for determining the controversy. D.W. 1 is the Surveyor in the MRO Office of Secunderabad and D.W. 2 is the Deputy Tahasildar in the Office of the Tahasildar/M.R.O., Secunderabad. D.W. 1 in his chief-examination deposed that Sy. No. 166 comprises of about Ac. 12-00 or Ac. 13-00, whereas Sy. No. 227 consists of ac. 113-00 and odd. He further deposed that in 1326F., Sy. No. 227 was sub-divided into 1 to 4 survey numbers. He further deposed that there was some un-surveyed patches in the same survey number and in the year 1979, the said gaps of lands were given numbers as 44/1 and 44/2. He further deposed that Ex. B. 1 is the certified extract of the Town Survey Land Register for T.S. No. 44/2. Ex. B. 2 is the sketch which shows the extent of house in Sy. No. 44/1 and the disputed land is shown as 44/2. D.W. 1 admits that the total area including the house site of the plaintiff is 5,696 Sq. Mtrs. Adjacent to that, there is land in Sy. No. 44/2, which admeasures about 3,200 Sq. Mtrs. During the cross-examination, D.W. 1 admits that Ex. B. 2, the sketch, was prepared on 18-07-1987, which is nearly four years after the institution of the suit. D.W. 1 claims that the land in Sy. No. 44/2 was no man's land before the Town Survey.

17. D.W. 2 in his evidence deposed that as per the pahanies Ex. B. 3 and Ex. B. 4, Sy. No. 166/1 stands in the name of Aga Yar Jung and the total extent of Sy. No. 166/1 is more than Ac. 7-00. He further admits that in the year 1981, an extent of Ac. 2-14 guntas, out of it was mutated in the name of the plaintiffs. He further admits that the mutation was effected on the basis of registered sale deed, dated 01-09-1960. He further admits that the total extent of the land in Sy. No. 44/1 is 5696 Sq. Mtrs., whereas Sy. No. 44/2 is admeasuring 3264 Sq.Mtrs.

18. What is noticed from the evidence of two official witnesses is that they are not denying the fact that the plaintiffs are the owners and possessors of total extent of Ac. 2-14 cents of land in Sy. No. 166/1. When the lands were surveyed in 1980-81, the land that is left to the plaintiffs is 5,696 Sq. Mtrs., which is less than Ac. 1-20 guntas. The remaining vacant land, which was towards south of the house of the plaintiffs, has been given Sy. No. 44/2 and it is admeasuring 3,264 Sq. Mtrs., and that land is being claimed by the Government. If this is true, where is the remaining land of the plaintiffs, which is purchased as long back as on 01-09-1960 under registered sale deed and the same has also been accepted by the revenue authorities. The claim of the defendants that the vacant land towards south of the house of the plaintiffs was no man's land is palpably false. If the total of two survey numbers - 44/1 and 44/2 is added, it comes to 8960 Sq. Mtrs. Admittedly, the plaintiffs have purchased a total extent of Ac. 2-14 cents, which comes to that extent.

19. The defendants claim to have surveyed the land from 1979 to 1982. Even by then, the names of the plaintiffs have been reflected in the pahanies and revenue

records as owners of the land in Sy. No. 166/1, which was a large extent of land. When survey was being conducted, no individual notices were served on the persons, who were in possession of the property. D.W. 2 admits that he do not know whether a notice to individual party was served prior to demarcation and sub-division, and that prior to 1983, the Government had no right or interest in the suit land. When the revenue records clearly show that the land being surveyed is the private individual land and such entries are being made for decades prior to the survey, without serving any notices on the occupants of the land demarcation unilaterally made cannot be said to be a proper survey. By publishing a gazette notification, if the survey is conducted, without any knowledge or notice to the persons in actual occupation of the land as per Revenue records, the same cannot be taken as validly made.

20. The only basis on which the Government is claiming title over the disputed land is the entries in the town survey land record. Neither any oral nor documentary evidence is produced to show that prior to survey the land vested in the Government.

21. In Hyderabad Potteries Private Limited Vs. Collector, Hyderabad District and another, , this Court in para. 21 held as under:-

"A bare reading of scheme of the A.P. Survey and Boundaries Act, 1923 would make it clear that the survey made under the said Act is mainly intended for the purpose of identification of the lands and fixation of boundaries. There is no provision under the Act intending to make any detail enquiries with regard to the right, title and interest of the persons in the lands. It is neither the object nor the scheme of the said Act. There is no presumption that every entry made in the TSLR shall be presumed to be true until contrary is proved as in the case of entries made in the record of rights under the provisions of A.P. Record of rights in Land Act, 1971. It is not a record of right. There is no such provision in the Andhra Pradesh Survey and Boundaries Act, 1923."

This Court further held that an entry in TSLR cannot be the conclusive proof of title or lack of it.

22. The above Judgment of this Court is carried in Appeal to the Supreme Court and by the Judgment reported in State of A.P. Vs. Hyderabad Potteries Pvt. Ltd. and Another, , the Supreme Court confirmed the Judgment of this Court.

23. The Government is claiming the land in Sy. No. 44/2 admeasuring about 0.75 cents on the ground that it was a gap area in the un-surveyed land as per the old survey records and therefore since it is nobody's land, it has to be taken as the land of the Government. Excepting for that, there is absolutely no document in support of the Government. What is noticed is that by treating the suit land as the gap area and giving it as a sub-division 44/2, the Government intends to deny or deprive the legitimate right and title of the plaintiffs over Ac. 2-14 guntas or 10,368 Sq. Yds. of land, which they have purchased under registered sale deed, dated 01-09-960. Simply because some land is lying vacant, the

authorities of the Government cannot be heard saying that it is no man's land or that it is the gap area in between the old survey.

24. To sum up the above discussion, it can be said that it is not denied that the plaintiffs have purchased Ac. 2-14 cents of land in Sy. No. 166/1, they had been in continuous possession and enjoyment thereof right from 1960 till 1983 and they have been paying the land revenue. The revenue authorities have also mutated the said extent of land in favour of the plaintiffs. That means, the plaintiffs are entitled to possess and enjoy Ac. 2-14 cents = 10,368 Sq. Yds. If the two survey Nos. 44/1 and 44/2 is added up, it comes to 8960 Sq. Mtrs. If the contention of the Government is accepted, the plaintiffs will be left with 5,696 Sq. Mtrs. only, which will not be Ac. 2-14 cents = 10,368 Sq. Yds. The total of two sub-divided survey numbers comes to Ac. 2-14 cents. The Government without properly conducting survey after due notice cannot arbitrarily say that the land which is lying vacant and which is part of the registered sale deed in favour of the plaintiffs is no man's land and hence it is Government land. It is not denied that the Government has fenced the land in Sy. No. 44/2 only after the suit was filed. In view of the above, the plaintiffs are entitled to the relief as prayed for. The Judgment and Decree under appeal partly granting the relief to the plaintiffs in respect of Ac. 44/1 and denying the same in respect of 44/2 cannot be sustained. Even at the cost of repetition, it may be stated that as per the decree, the trial Court has recognized the right of plaintiffs only to an extent of 5,696 Sq. Mtrs., in Sy. No. 44/1 and denied the right of plaintiffs over an extent of about 3,264 Sq. Mtrs., in Sy. No. 44/2. This is clearly contrary to the original title of the plaintiffs emanating from Ex. A. 1, as per which the land purchased was 10,368 Sq. Yds. = 8,66.00 Sq. Mtrs. The point is accordingly answered.

25. Point No. 2: In the result, the appeal is allowed and the suit of the plaintiffs is decreed as prayed for but in the circumstances of the case, without costs.