

(2003) 04 AP CK 0004
In the Andhra Pradesh High Court
Case No : SA No. 516 of 1995

Purushotham Patel and Another	Vs	APPELLANT
Ravula Lakshminarayana and Others		RESPONDENT

Date of Decision : 28-04-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2003) 5 ALD 809 : (2003) 5 ALT 332

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : K.V. Bhanu Prasad, for the Appellant; C. Pornaiah, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The unsuccessful defendants in both the Courts below are the appellants in the present Second Appeal. The substantial question of law raised by Sri K.V. Bhanu Prasad, the learned Counsel representing the appellants is as hereunder:

Whether the plaintiffs have established their title to the plaint schedule property and had established their possession and whether the principle of possession follows title can be extended to the facts of the present case?

Submissions made by Sri K.V. Bhanu Prasad:

2. The learned Counsel Sri K.V. Bhanu Prasad, representing the appellants had made elaborate submissions in a methodical and systematic way taking me through the respective pleadings of the parties, the Issues settled, the findings recorded by the Court of first instance and the findings recorded by the appellate Court. The learned Counsel with all emphasis had contended that both the Courts had totally ignored the evidence available on record and gave a finding that the plaintiffs are in possession of the plaint schedule property. The learned Counsel also had pointed out the boundaries and had maintained that the Courts below had totally erred in recording a finding relating to the very identity of the

property. The learned Counsel had drawn my attention to the reports of the Commissioners and also had pointed out that no objections had been filed to these reports and hence the reasons recorded by both the Courts in not relying upon the reports of the Commissioner are definitely unsustainable. The learned Counsel had taken me through the contents of Exs.A-1 and A-2. While making further submissions, the learned Counsel pointed out that the report of the Commissioner clearly shows that the plaint schedule property is located in S.No. 1298 and it is the case of the plaintiffs that there is no survey number to the plaint schedule property and in view of the same, the relief of declaration of title should have been granted, the reason being that the plaintiffs miserably failed in establishing their title. The learned Counsel also had taken me through the evidence of P.W.1 in detail and had pointed out several discrepancies in the evidence of P.W. 1. The learned Counsel also had pointed out that Exs.A-9 to A-12 in fact do not relate to the plaint schedule property and the findings recorded in this regard definitely are totally unsustainable. The learned Counsel had taken me through the relevant portions of the findings recorded by both the Courts and had commented that definitely these findings can be said to be perverse findings not based on the evidence or at any rate improper appreciation of evidence and hence the plaintiffs are bound to fail and the defendants are bound to succeed since such suit filed by the plaintiffs cannot be decreed at all. Strong reliance was placed on Chandan Mull Indra Kumar v. Chiman Lal Giridhar Das Parekh, AIR 1940 PC 3, Neelakantan and Others Vs. Mallika Begum, , Saraswathi and Another Vs. S. Ganapathy and Another, , State of Rajasthan Vs. Harphool Singh (Dead) Through His L.Rs., , Batakrushna Das v. Natabar Behera, (2000) 9 SCC 29 .

Submissions made by Sri C. Subba Rao:

3. The Counsel representing the respondents/plaintiffs Sri C. Subba Rao, in a soft and systematic way had pointed out that all the questions which are raised and all the aspects which are canvassed by the unsuccessful defendants before this Court are all questions of fact and no question of law is involved, much less, substantial question of law. The learned Counsel also commented that it is not as though that the reports of the Commissioners had not been considered at all and however even otherwise merely because those reports had been considered in a particular way, by that itself it cannot be said that the findings recorded are perverse. The learned Counsel also had pointed out to the concurrent findings which had been recorded by both the Courts below and ultimately had concluded his submissions stating that after taking into consideration all the facts and circumstances, especially in the light of the boundaries, the property had been well identified and this finding relating to the identity of the property definitely is a pure question of fact and hence such finding cannot be disturbed in this Second Appeal and in view of the same, the appellants are bound to fail in the Second Appeal.

4. Heard both the Counsel and perused the oral and documentary evidence and

also the findings recorded by both the Courts below.

5. The facts in brief, as narrated by the respective parties, hereinafter referred to as "plaintiffs" and "defendants" for the purpose of convenience, are as hereunder:

6. The plaintiffs pleaded that they are the owners and they had been in possession of the plaint schedule property and they purchased the said property on 28-1-1960 under a registered sale deed from Ahmedi Begum w/o. Syed Bin Mohammed and got delivery of possession from her and ever-since the date of purchase, the plaintiffs had been in possession and enjoyment of the said property as owners thereto and they had obtained permission from the Warangal Municipality for construction also. It was further pleaded that the said Ahmedi Begum had sold one house adjacent to the suit plot and the same was purchased by Koilkar Yadilal, brother-in-law of the plaintiffs. It was further pleaded that they learnt that the defendants who are strangers were making attempts to disturb their possession and in view of the threat of dispossession, the suit was instituted originally for the relief of permanent injunction simpliciter and subsequent thereto by virtue of an order passed in I.A.No. 11157 75, the relief of declaration of title also had been prayed for. It appears from record that the relief of declaration of title had been prayed for in view of the fact that the defendants 2 and 3 had taken a stand that the 2nd defendant is the owner of the suit land and it is part and parcel of S.No. 1298.

7. The 1st defendant filed a written statement pleading that his name is Purushotham Lalji Patel and not Purushotham Patel and he denied all the allegations and had pleaded that Ahmedi Begum had no title to the plaint schedule property. It was further pleaded that the suit land is part and parcel of S.No. 1298 situated at Rangampet, Warangal which, along with adjacent land in S.No. 761 belongs to 3rd defendant. The 3rd defendant's grandmother Karimunnisa Begum got the suit land under Hiba and the 3rd defendant's mother became the absolute owner and possessor of the suit land. The 2nd defendant gifted the suit land along with other land in S.No. 1298 and survey number 761 at Rangampet, Warangal in favour of her granddaughter i.e., mother of the 3rd defendant and ever since the said Hiba, the mother of the 3rd defendant is the absolute owner and possessor of the property. It was farther pleaded that he got a saw mill and timber depot near Mulugu road situated at a distance of 100 to 200 yards away from the suit land. It was further pleaded that he entered into an agreement of sale in respect of the suit land admeasuring 987 sq. metres, equivalent to 1180.66 sq. yards from the mother of the 3rd defendant on or about 11-4-1974. The above said Hiba was oral. The 1st defendant insisted upon the 2nd defendant also joining in the agreement along with her grand-daughter Shamsunnisa Begum (later impleaded as 4th defendant as the legal representative of the 2nd defendant). Shamsunnisa Begum and the 2nd defendant executed an agreement of sale for the suit land in his favour and received Rs. 5000/- from him towards part payment of sale consideration. Before entering into the sale agreement, he enquired regarding the title of the vendor of

the suit land from various persons and during the said enquiry he also met the plaintiff, his brother-in-law K. Yadilal who is running Sanai Bar adjacent to the suit land. They have confirmed the title of the vendors and assured him that he can purchase the suit land after satisfying himself. The 1st defendant accordingly entered into an agreement of sale and paid the sale consideration at the rate of Rs. 22/- per sq. yard and paid Rs. 5000/- in part towards sale consideration and obtained sale agreement from the mother of the 3rd defendant and the 2nd defendant. The 1st defendant is a bona fide purchaser for value without notice of the plaintiffs alleged claims. In fact, the 3rd defendant's mother had earlier sold two or three plots of land to various persons adjoining the suit land. The plaintiffs are neither the owners of the suit land nor are they in possession of the same. So the suit for injunction is not maintainable against the real owners. The 3rd defendant got the entire land comprising S.No. 1298 surveyed by one surveyor Sri Dilip Singh and got the demarcation of boundaries of the land made. The survey revealed that not only the suit land is in S.No. 1298, but also a large part of Sanai Bar Hotel is in S.No. 1298 and in any view of the matter, the plaintiffs' interest and claim over the suit property and the sale by Ahmedi Begum is not legal. The plaintiffs with dishonest intention to cause wrongful loss to the 1st defendant had filed the false suit against the 1st defendant with a view to disqualify the sale transaction entered by the 1st defendant with the mother of the 3rd defendant in respect of the suit land and it is only to blackmail him. It was further pleaded that the suit is not maintainable and it is liable to be dismissed. The plaintiffs are entitled to discretionary relief of injunction and hence they are not entitled to injunction sought for. It was further pleaded that there is documentary evidence to show that S.No. 1298 is the absolute property of the 2nd defendant and it was also denied by the plaintiffs that the 2nd defendant is not the owner of S.No. 1298. It was further contended that the suit was grossly under valued and the market value of the suit property is Rs. 22/- per sq. yard and the same comes to Rs. 26,000/-.

8. Defendants 2 and 3 filed a written statement denying all the allegations including the sale deed dated 28-1-1960. It was further pleaded that Ahmedi Begum is a total stranger to the suit land and absolutely she had no right to sell the suit land in favour of the plaintiffs under any deed nor Ahmedi Begum was in possession of the property at any point of time. Defendants 2 and 3 denied the genuineness of the sale of Ahmedi Begum in favour of plaintiffs and pleaded that the plaintiffs are in knowledge of the 2nd defendant's title. It was further pleaded by them that Ravulu Veeraiah known as Shivaji Veeraiah is the father of the 1st plaintiff and purchased as many as four plots from the 2nd defendant out of her land comprised in S.No. 761 and the other survey numbers made as plots, and sales had been effected under registered sale deeds. It was further pleaded that the said survey numbers which are contiguous, constitute one unit of land and it was originally gifted away by the 2nd defendant's late father Mohd. Yaseen to the 2nd defendant. The 2nd defendant held the land and enjoyed the same as exclusive owner thereof for about 50 years and in the process he sold

away a large portion of the said land. However, about five years ago, the 2nd defendant made a gift of the remaining land of her in the said survey number to her grand-daughter Shamsunnisa Begum whom she brought up from her infancy as her foster mother performed her marriage and kept her and her husband and children with her. Ever since Shamsunnisa Begum is in possession of the land. It was also pleaded that after the aforesaid Hiba effected in the year 1970, she sold away two plots under registered sale deeds to Kona Ranga Rao, Sambaiah and R. Venkataram Narsaiah out of the land gifted to her. It was further contended by them that the remaining land in her possession is the suit land. It was further pleaded that Yadi Lal had constructed a building adjacent to the East of the suit land and illegally encroached upon the 2nd defendant's land comprising a part of the aforesaid survey number and raised the suit construction which is Sanai Bar taking the advantage of the 2nd defendant's absence when she was at Khammam. The 3rd defendant is taking separate steps. It was further pleaded that the land in S.No. 1298 will extend in the Eastern direction beyond the suit land and specifically includes Sanai Bar building. S.No. 761 is situated to the West of S.No. 1298. It was further pleaded that as the suit land is in undisputable possession and enjoyment of Shamsunnisa Begum for the last five years, any document executed by Ahmedi Begum transferring title does not hold good against Shamsunnisa Begum and such sale is incompetent, ineffective and void against the 2nd defendant and her grand-daughter. The plaintiffs are not the owners of the suit land. The collusion with the 1st defendant is denied. The 2nd defendant is a widow aged 90 years and she is ailing with blood pressure and bad health and the 3rd defendant is a student and they have no intention to occupy the suit property and the allegation that these defendants are trying to dispossess the plaintiffs is a sheer invention of the plaintiffs. The plaintiffs have no locus standi and the suit is to be dismissed in limini. It was further pleaded that Shamsunnisa Begum had received Rs. 5000/-towards advance sale consideration from the 1st defendant. The suit value is under valued and the Court fee is incorrect. The suit property is to be valued at Rs. 25/- to Rs. 30/- per sq.yard being situated on the main road. It was also pleaded that the suit is speculative in nature in order to defraud the real owner, Shamsunnisa Begum, It was further pleaded that to take undue advantage over the building adjacent to the suit land, the plaintiffs wrongfully opened a door in the Western boundary overlooking the suit land. The plaintiffs had fenced some Sandhi trees and tried to show some act of possession. The boundary pillars and fencing were got erected long ago by the 2nd defendant when she held S.Nos. 1298 and 761 as the owner and they stood pillars on the boundary of the suit land.

9. On the strength of the respective pleadings of the parties in O.S.No. 247/74 on the file of Principal District Munsif, Warangal, several Issues were settled, the evidence of P.W.1 to P.W.5 and D.W.1 to D.W.4 was recorded and also the documentary evidence Exs.A-1 to A-12, Exs.B-1 to B-27 and Exs.C-1 and C-2 also were marked. On appreciation of the oral and documentary evidence available on record and after discussing the factual aspects in detail, the Court of

first instance had arrived at the conclusion that the plaintiffs are bound to succeed and accordingly decreed the suit with costs and aggrieved by the same, Purushotham Patel and Shamsunnisa Begum, defendants 1 and 4, preferred A.S.No. 20/90 on the file of District Judge, Warangal and the learned District Judge by the judgment and decree dated 17-7-1995 had confirmed all the findings recorded by the Court of first instance and dismissed the Appeal after making Ex.A-13 - certified copy of the sale deed executed by Mohd. Abdul Gafoor and Mohd. Abdul Aziz in favour of Ahmedi Begum with plan, which had been marked as Exs.A-5 and A-8 without plan, and aggrieved by the same, the present Second Appeal is filed.

10. As can be seen from the cause title, Shamsunnisa Begum, the 4th defendant died, and Purushotham Patel, the 1st defendant in the suit alone is prosecuting the present litigation. Respondents 1 and 2 in the Second Appeal are the plaintiffs in the suit. The main grievance ventilated by the surviving appellant in the present Second Appeal is that the case of the plaintiffs is not clear because no survey number is mentioned and the specific stand taken by them is that it is not in S.No. 1298, but the report of Commissioner clearly shows that the plaint schedule property falls within S.No. 1298 and hence the case of the plaintiffs should have been disbelieved. No doubt, a serious attempt was made to dispute the very identity of the property. It is no doubt true that the survey number is not mentioned in the registered sale, deed marked as Ex.A-1, which is dated 28-1-1960, executed by Ahmedi Begum in favour of Ravula Laxminarayana. This Ravula Laxminarayana was examined as P.W.1 and P.W.1 had explained in detail the case as pleaded by them in the plaint. The stand taken by the defendants while opposing this claim of the plaintiffs is that the 1st defendant had purchased the property from the 2nd defendant under an agreement of sale dated 11-4-1974, marked as Ex.B-1, and subsequent thereto obtained a registered sale deed Ex.B-2 from the 4th defendant who is the legal representative of the 2nd defendant after the death of the 2nd defendant in pursuance of Ex.B-1. Thus the stand taken by the appellant/1st defendant is that the 2nd defendant was the original owner of the suit property and the adjoining property and she sold the adjoining property to several people including the father of the 1st plaintiff and all these properties constitute one unit which originally belonged to the 2nd defendant and she got it under a Hiba, but later she gifted the suit land along with other lands in favour of the 4th defendant who is her grand-daughter and the mother of the 2nd defendant and ever since the gift the 4th defendant became the absolute owner of the property and thus the 4th defendant executed Ex.B-2 registered sale deed dated 6-11-1978 in favour of the 1st defendant and thus he became the absolute owner of the suit property. Apart from the evidence of P.W.1, P.W.2 to P.W.5 were examined and Exs.A-1 to A-13 were marked. The vendor Ahmedi Begum was examined as P.W.5 who had purchased this property from Mohd. Aziz and his brother on 13th Isfandar, 1358 F (1949) under a registered sale deed marked as Ex.A-13 -equivalent to Exs.A-2, A-5 and A-8, with a plan attached to it and the boundaries mentioned in Ex.A-13 are:

East - land of Nisar Ahmed Saheb

West - vacant land of Mohd. Jaffar Saheb

North - P.W.D. road

Sought - River of Bhadri Tank

The evidence of P.W.1 to P.W.5 and also Exs.A-1 to A-12 in detail had been discussed by the Court of first instance and the same had been well explained and the said findings also had been confirmed after detailed discussion by the appellate Court. The learned appellate Judge in fact was conscious of the fact of the absence of survey number in Ex.A-1 and in all wisdom, for the purpose of establishing the identity of the property, the boundaries had been taken into consideration and as a question of fact the Courts below had arrived at a conclusion that the plaint schedule property and the property covered by Ex.A-1 is one and the same and thus the plaintiffs had established title to the plaint schedule property and they have been in possession of the said property also. No doubt some variance between pleadings and proof had been pointed out relating to certain constructions and the findings recorded thereto. But, in the light of the detailed discussion, I do not think that this discrepancy in any way will alter the case or tilt the balance in favour of the appellant. When a finding relating to the identity of the property taking into consideration the boundaries had been recorded by both the Courts below on appreciation of both oral and documentary evidence available on record, in my considered opinion, it being a finding relating to a question of fact, the same cannot be disturbed in a Second Appeal unless such a finding is based on no evidence or the finding is in any way perverse or based on only surmises and conjectures. I had given my anxious consideration to the findings recorded by both the Courts in this regard and I do not see any reason to arrive at a conclusion that the said findings are either perverse or based on only surmises and conjectures since the evidence available on record had been well appreciated by both the Courts below.

11. A serious grievance had been made that a finding had been recorded in relation to the documents which are not concerned with the plaint schedule property, but which are in relation to the adjacent property. Even if this contention is to be accepted, apart from the tax receipts, there is ample material available on record to establish both title and possession of the plaintiffs in relation to the plaint schedule property. Even coming to the reports of the Commissioners, it is not the case of the appellant that there was non-consideration, but there was improper consideration. It is needless to say that after both the parties had adduced the evidence, the burden of proof may not be so relevant. Even otherwise, I am satisfied that in the light of the evidence of P.W.1 to P.W.5 and also the documentary evidence Exs.A-1 to A-13, it is clear that the plaintiffs were able to establish their title and also their possession in relation to the plaint schedule property. The appellate Court while dealing with the report of Commissioner had observed:

"The lower Court has dealt with the Commissioner's report in para 21 of its judgment. The lower Court says that the Commissioner has inspected the suit land in S.Nos. 1298 and 761, that he located the survey number with the alleged Teapon said to have been handed over by defendant No. 2's Advocate, that there is a direction from Court to take the help of M.C. Inspector to locate the land and even if there is no direction he sought to have taken the permission from the Court to take the assistance of M.C. Inspector and the relevant records from the District Survey and Land Records. He is of the view that he should have taken an authenticated copy from the Government records instead of relying upon the copy supplied D2's Advocate. He is also of the view that measurements taken on the basis of the said copy cannot be taken as correct and they cannot be accepted. It is observed that the suit land was located with the help of a map along with the patwari, that patwari's signature is not taken nor any panchanama was conducted. It is further observed that the Commissioner reported that in the first instance S.No. 1298 was located with the help of existing boundary stones, that the suit land is part of S.No. 1298 and on the Eastern side of S.No. 1298 there is open site of S.No. 723. He concluded that the report is not supported by any authenticated Teapon and relevant records, that the measurements were not taken with the help of an expert like M.C. Inspector, that admittedly the advocate is not technically trained in conducting surveys, that the Commissioner has acted against the purpose of warrant and acted beyond the authority by relying on the document."

Further, findings had been recorded that the 1st defendant had not filed any document to show that the suit property stands in the name of the 2nd defendant and Ex.B-1 marked is of only 14 days prior to the filing of the suit and Exs.B-3 to B-12 are subsequent to the date of the suit Exs.B-13 to B-19 relating to O.S.No. 18/66 also would not throw any light. At the best, they show that some property belonging to the family of the 2nd defendant is in S.Nos. 1298 and 761 and they do not show that it is the suit property. It is also significant and pertinent to note that even Ex.B-1 does not say that the property is in S.No. 1298, and Ex.B-2 which was obtained subsequent to the institution of the suit had specified S.No. 761. Even if the documentary evidence apart from the oral evidence placed by the appellant is thoroughly scrutinized, I am satisfied that the appellant had not established the title of the vendors and hence the findings recorded by the Courts below in this regard cannot be said to be either perverse or unsustainable. In fact, the appellate Court had stated at paragraph 63 as hereunder:

"In the end, it may be stated that apart from the question whether the suit property is situated in S.No. 1298 or S.No. 761 I am of the opinion that the evidence adduced on behalf of the plaintiffs shows that P.W.5 and her vendors had title to the suit property and this can be stated definitely by correlating the documents filed by the plaintiffs to the suit property on the basis of fixed boundaries of the suit property. As already stated on three sides there are fixed boundaries so far as the suit property is concerned. They are as follows:

North :PWD Road

South : River of Bhadri Tank

East: Sanai Bar building and the appurtenant site

North and South boundaries are indisputable. The Eastern boundary so far as the suit property is concerned, can also be said to be indisputable, because even the defendants admit the Sanai Bar building. They would only say that it was encroached upon by P.W.2 and steps are being taken for its recovery. But that threatened action never materialized. Further the earlier documents filed refer to the existence of this building even during the time of P.W.5's vendor and their father. So there cannot be any mistake in locating the suit property with regard to these fixed boundaries and that makes any investigation into the survey number in which the suit property is situated superfluous and redundant. Further, even the legal position is when there is a conflict between survey numbers and boundaries, it is the boundaries that prevail, but not survey numbers. In this case there is doubt and ambiguity with regard to boundaries rather than survey numbers. On that basis, if the matter is decided, the documentary evidence filed on behalf of the plaintiffs/respondents shows that it relates to the suit property and that plaintiffs and their predecessors-in-title have title to and possession of the suit property. As rightly found by the lower Court, I am also of the opinion that the evidence of P.W.1 to P.W.5 and the documentary evidence filed on behalf of the plaintiffs establish that the plaintiffs have title to and possession of the suit property and that the evidence of the defendants does not in any way militate against this conclusion".

12. In view of the elaborate submissions made, I had given my anxious consideration to the findings recorded by both the Courts below and I am thoroughly satisfied that the said findings had been recorded after consideration of both the oral and documentary evidence available on record and hence such findings need not be disturbed. No doubt, the learned Counsel had placed reliance on the decisions referred supra for the purpose of convincing the Court relating to the value to be attached to the report of the Commissioner and also the limitations and parameters of exercise of powers while dealing with Second Appeal where concurrent findings had been recorded by both the Courts below. There cannot be any dispute in relation to the propositions of law which had been laid down in the said decisions. But however, in the light of the findings recorded by me that concurrent findings recorded by both the Courts below had been recorded well on appreciation of both oral and documentary evidence, I do not see any reason to interfere with the said findings which are well considered findings in my opinion, and especially in the view of the fact that these are all findings relating no questions of fact only and inasmuch as no substantial question of law arises for consideration in the present Second Appeal, the Second Appeal is bound to fail and accordingly the same is dismissed, with costs.