

(2003) 07 KAR CK 0080
In the Karnataka High Court
Case No : W.A. No. 4254 of 2001

Smt. Suguna Rajkumar

APPELLANT

Vs

R. Rajmal and Another

RESPONDENT

Date of Decision : 30-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Karnataka Municipal Corporations Act, 1976 — Section 114 A
Land Acquisition Act, 1894 — Section 5 A
Transfer of Property Act, 1882 — Section 52

Citation : (2005) ILR (Kar) 1583 : (2004) 2 KCCR 191 SN

Hon'ble Judges : S. Abdul Nazeer, J; R.V. Raveendran, J

Bench : Division Bench

Advocate : C.S. Prasanna Kumar and V.K. Bhat, for the Appellant; Paras Jain, Vani and Jagadish for R1 and R. Gunashekar, for R2, for the Respondent

Final Decision : Allowed

Judgement

R.V. Raveendran, J.—The appellant herein purchased property bearing No. 63, Charles Cambell Road, Cox Town, Bangalore (measuring 52" 6"x 80")" under registered Sale Deed 24.5.1985 executed by G B Subramanyam Setty. She was registered as the Khatedar of the said property in the records of the Corporation of City of Bangalore, vide Katha Transfer Endorsement dated 3.8.1997.

2. A sale deed was executed in favour of the first respondent 23.2.1988 by the City Civil Court, Bangalore (in execution of a decree for specific performance passed in O.S.No. 494/1964 against B. Lakshiminarayana Setty) conveying the said property to him. On the basis of the said sale deed, the first respondent applied to the Bangalore City Corporation on 3.1.1989 for registering the Katha in his name. As the katha was not transferred, for nearly six months, the first respondent filed WP No. 21427/1989 seeking a direction to the Corporation to transfer the katha of the said property in his name. A learned Single Judge of this Court by order dated 22.6.1990 allowed the said Writ Petition and directed the Corporation to consider the application of the first respondent for transfer of

katha within two months from the date of receipt of the said order. In pursuance of it, the Corporation considered the request of the first respondent for transfer of katha and after hearing the counsel for first respondent and appellant and recording their Statement, issued the following endorsement dated 22.12.1990:-

"The records produced by both the parties were examined and found that Smt. Suguna Rajkumar has purchased the property through Registered Sale Deed vide No. 268/85-86, dated 10.5.1985 executed by Sri Subramanyam and others and katha has been registered in the name of Smt. Suguna Rajkumar on the basis of the sale deed produced to the office. Subsequently, Sri. Rajmal has purchased the said property through Court vide registered No. 3538/87-88 dated 23.12.1988. This clearly shows that there is a dispute regarding the title over the property. Smt. Suguna Rajkumar's sale deed is earlier to that of Sri. Rajmal. Since the katha has already been made in the name of Smt. Suguna Rajkumar, in the absence of any power to review the orders as per the decision of High Court (and) the matter is in the name of Civil Litigation.

Therefore Sri. Rajmal is hereby informed to approach competent Court and get the dispute settled over the property and produce the judgment and decree in his name for taking further action in the matter."

3. Feeling aggrieved, the first respondent (Rajmal) filed WP No. 8665/1991 for quashing the said endorsement dated 22.10.1990 and seeking a direction to the Corporation to transfer the katha in regard to the said property to his name. Suguna Rajkumar, the appellant herein was the second respondent and Bangalore City Corporation was the first respondent in the said Writ Petition. The said Writ Petition was allowed by the learned Single Judge by order dated 13.6.2001 quashing the endorsement dated 22.12.1990 and directing the Bangalore City Corporation to "make the Khatha" in the name of the first respondent herein. The decision is based on the findings recorded on the three questions formulated by the learned Single Judge in his order. The three points and the findings are extracted below:

Question Finding 1. Whether the sale of the Pr.11. The appellant was put in possession property in favour of Appellant pursuant to the sale deed executed in herein by her vendor who was her favour cannot be accepted in view an auction purchaser in a of the law declared by the Supreme public auction, is hit by Court and under the provisions of Section 52 of Transfer of Section 52 of Transfer of Property Property Act. Act. The Sale transaction in respect of the property in question is void abinitio in law. The first pointed is answered in favour of the Writ Petitioner (second respondent herein).

Pr.12. The sale made by appellant's vendor in favour of appellant is void abinitio.

2. Whether the katha of the Pr.13 The purchase by the vendor of property made in favour of the appellant was hit by Section 52 of Appellant herein by the Transfer of Property act and therefore Bangalore City Corporation on the sale (in

favour of vendor of the basis of the sale deed appellant) is void. executed by the vendor of the appellant, is legal and valid.

3. Whether the impugned Pr.12 (In issuing the endorsement dated order (endorsement dated 22.12.1990), the Commissioner 22.12.1990) issued by the Bangalore City Corporation failed to Bangalore City Corporation exercise his jurisdiction property. The suffers from error of law or the reasons given in the endorsement are findings are erroneous, which contrary to law, court documents and warrants interference in documents relied on by the Writ exercise of power of judicial Petitioner (first respondent herein). review under Article 227 of the The direction issued by the Bangalore Corporation of India. City Corporation to the Writ Petitioner (first respondent) to approach Civil Court is contrary to laws laid down by the Supreme Court and bad in law.

As a consequence of the said findings the learned Single Judge felt that three was no need to "remand" the matter to the Bangalore City Corporation; and it was a proper and fit case for exercise of power under Article 226 and 227 of the Constitution of India "for the reason that the grounds enumerated u/s 114A of the Karnataka Municipal Corporation act are attracted."

4. Feeling aggrieved the Kathadar of the property (appellant herein who was the second respondent in the Writ Petition) has filed this appeal. On the contentions raised, the following points arise for consideration;

i) Whether the learned Single Judge was justified in examining seriously disputed questions of title in a Writ Proceeding and recording findings that:

a) the sale in favour of appellant's vendor is void-abinitio in view of Section 52 of the Transfer of Property Act and consequently, the sale in favour of appellant is also void; and

b) the sale in favour of first respondent herein (Writ Petitioner) was valid

ii) Where both the parties claim to be in possession of a property in pursuance of sale deeds executed in their favour, whether the High Court in exercise of power under Articles 226 and 227 while considering the validity of an endorsement relating to Katha Transfer, issued by the Municipal Corporation, hold that possession one of the parties cannot be recognized or accepted, as the sale deed under which title is claimed is void-abinitio.

iii) Whether the learned Single Judge was justified in recording a finding that the second respondent got katha transferred in her favour by misrepresentation and therefore there was a ground for exercise of powers u/s 114A of the Karnataka Municipal Corporation Act, 1976, and consequently, power under Articles 226 and 227 of the Constitution can be exercised to decide the matter on the grounds mentioned in Section 114A.

iv) Whether the learned Single Judge was justified in quashing the endorsement dated 22.12.1990 issued by the Corporation of City of Bangalore and directing

the first respondent to transfer the Katha in regard to the property in favour of the first respondent herein.

Re.Point No. (i) and (ii):-

5. A brief reference to the respective claim for title in regard to the property in question is necessary, to decide these points.

6. According to the appellant, the property originally belonging to one B. Lakshminarayana Setty. In November, 1960, M/s. G.B. Subramanyam & Bros filed O.S.No. 317/1960 on the file of the sub-Ordinate Judge, Bangalore City (renumbered as O.S.No. 936/ 1965, on the file of the I Munsiff, Bangalore City) against B. Lakshminarayana Setty; and in that suit, the plaintiff obtained an attachment before judgment over the said property on 23.11.1960. The said suit was decreed on 12.9.1966 for payment of Rs. 4881.80 with interest and costs. The decree holder (G B Subramanyam & Bros) levied execution which was transferred to the file of the Munsiff, Civil Station, Bangalore and numbered as Ex.Case No. 355/1967 for recovery of decretal amount. In the said execution proceedings the attached property was sold in a public auction on 4.6.1968 and the decree holder G B Subramanyam & Bros. was the Auction Purchaser and a Sale Certificate was issued to the Decree holder on 14.4.1976 in pursuance of the said auction sale. Having regard to Section 65 of CPC, the title of the Auction purchaser related back to the date of auction sale i.e. 4.6.1968. The said G B Subramanyam & Bros, filed Ex.No. 10840/1984 and obtained possession of the said property on 30.7.1984. In the meanwhile katha had been transferred to the name of the Auction purchaser on 26.9.1980 on the basis of the sale Certificate. G B Subramanyam & Bros. who thus became the absolute owner of the property sold the said property to the appellant (Suguma Rajkumar) under registered sale deed dated 24.5.1985. In pursuance of the said sale, katha of the property was transferred to her name on 3.8.1987 in the records of the Bangalore City Corporation. Thus Appellant became the sole and absolute owner in possession of the said property and she demolished the old building and put up a new building after obtaining the licence and sanctioned plan from the City Corporation.

7. Rajmal (Writ Petitioner) admitted that B. Lakshminarayana Setty was the original owner of the property. According to first respondent, on 28.6.1961, B. Lakshminarayana Setty entered in to registered agreement of sale agreeing to sell the said property to him for a consideration of Rs. 25,000/- and received an advance of Rs. 8,000/-. The said B. Lakshminarayana Setty refused to perform the contract by executing the sale deed. Therefore the first respondent filed O.S.No. 494/1964 on the file of the Civil Judge, Bangalore City on 16.12.1964 against B. Lakshminarayana Setty for specific performance and the said suit was decreed on 4.2.1966. In pursuance of the decree for Specific Performance, the first respondent deposited the balance consideration of Rs. 17,000/- in Court on 24.2.1966. Feeling aggrieved by the decree for Specific Performance. B. Lakshminarayana Setty filed MFA No. 233/1967 and that appeal was dismissed by this Court, by judgment and decree dated 13.2.1970. After the dismissal of

the said appeal, the first respondent levied execution on 14.4.1970 in Ex.No. 56/1970 for execution of a sale deed. Before the first respondent could get any relief in the execution proceeding, a suit for partition was filed by the members of the family of B. Lakshminarayana Setty in O.S.No. 37/1973. In that suit further proceedings in the Ex.Case No. 56/1970 were stayed and therefore Ex.56/1970 was closed on 11.12.1970. Subsequently the said suit for partition was renumbered as O.S.No. 436/1980 on the file of the City Civil Court, Bangalore. That suit was dismissed for non-prosecution and the Miscellaneous Petition filed by the plaintiff therein to set aside the dismissal, was also dismissed on 10.2.1989. An appeal was filed against the said order in Misc. Petition, in MFA No. 1067/1989 and this Court dismissed that appeal on 15.11.1993. As a consequence, the stay in regard to the execution proceedings stood vacated. In the meanwhile Rajmal filed a fresh Execution Petition in Ex.46/1987 and in the said proceedings, a sale deed dated 23.2.1988 was executed in favour of Rajmal, by the Executing Court on 23.2.1988 and the said deed was duly registered. The appellant herein filed an application under Order 21 Rule 58 CPC in Ex.46/1987 which was dismissed as premature and not maintainable on 23.5.1988. Rajmal filed Mis. Case No. 10134/1990 for delivery of possession in pursuance of the sale in his favour and in the said proceedings, possession of the property was delivered to him on 25.10.1990. The Rajmal became the absolute owner in possession of the said property.

8. But, appellant contends that actual possession was not delivered to Rajmal on 25.10.1990. According to appellant, the Bailiff submitted a report on 16.10.1990 about the obstruction by Appellant's Attorney Holder and about a building under construction by appellant. Appellant also claims that she filed two applications on 25.10.1990 in Misc. Case No. 10134/1990. The first was for impleading her as a respondent under Order 1 Rule 10 CPC. The second was u/s 151 CPC contending that she continued to be in possession and physical delivery was not given to Rajmal by removing her obstruction or by dispossessing her. The said application for impleading was allowed and the second application was pending. At that stage, Rajmal died on 3.4.1992. His LRs did not come on record. As a consequence Misc. Case 10134/1990 was treated as abated.

9. The appellant further contends that the application dated 3.1.1989 filed by Rajmal before the Corporation of City of Bangalore for transfer of katha to his name was not granted. Rajmal filed WP No. 21417/1989 in that behalf and the said Writ Petition was disposed of on 22.6.1990 with a direction to the Bangalore City Corporation to consider Rajmal's application for transfer of katha within two months from the date of the said order. The Bangalore City Corporation considered Rajmal's application and issued an endorsement dated 22.12.1990 directing him to approach the competent court and get the dispute settled. Accordingly, Rajmal filed two suits:(i) OS No. 6747/1990 against the appellant for cancellation of the registered sale deed dated 24.5.1985 in favour of Appellant; and (ii) OS No. 10924/1990 for a permanent injunction against appellant's Attorney holder. Both suits were dismissed as having abated on

27.5.1992 and 21.1.1992 as the LRs of the deceased Rajmal did not come on record. An earlier suit filed by Rajmal against B. Lakshminarayana Setty in OS No. 5797/1988 for permanent injunction was also dismissed as having abated on 2.3.1993. The said dismissal attained finality. The appellant contends that she had filed OS No. 10178/1988 on the file of the City Civil Court, Bangalore against Rajmal, B Lakshminarayana Setty and G.B. Subramanyam & Bros. for a deceleration that she is the sole and absolute owner of the said property; that on the death of Rajmal, she brought his LRs on record by amending the plaint on 11.1.1994; and that on 21.12.1994 she withdrew the said suit as all suits filed by Rajmal had been dismissed as abated and her possession was not disturbed and that she has constructed a building worth several lakhs in the schedule property.

10. On the other hand first respondent (LR of Rajmal) contends that Rajmal having obtained possession through Court and that possession not having been disturbed, Rajmal continued in possession. It is not however, denied the appellant has constructed the existing new Building.

11. Thus there is a serious dispute not only in regard to title, but also in regard to possession of the property. We have two parallel claims. The appellant claims title to the property under a sale certificate issued by the Court in pursuance of a Court sale of the property. First respondent claim title in pursuance of the sale deed executed by the Court in specific performance of an agreement of sale. As the appellant and first respondent were rival claimants to the property and they traced title through a sale certificate issued by a Court and a sale deed executed by the Court, the Bangalore City Corporation held that there is a serious dispute regarding the title to the property and as the sale deed of appellant was earlier and of the katha was already registered in her name, the transfer of katha to the name of the appellant could not be altered unless there was a decision and direction by a Civil Court.

12. The appellant contends that the sale in her favour is valid and consequently, the subsequent sale in favour of Rajmal is not valid. Appellant contends that her predecessor in title G.B. Subramanyam & Brothers purchased the property in a Court auction held on 4.6.1968 in pursuance of an attachment before judgment made as long back as on 23.11.1960 even prior to the agreement of sale alleged to have been executed in favour of Rajmal; that though the auction sale took place during the pendency of the suit for specific performance filed by Rajmal in O.S.No. 494/ 1964, as the sale was in pursuance of attachment before judgment which was effected prior to the Agreement of sale and prior to the suit for specific performance, neither the pendency of the suit for specific performance nor the decision in such suit affected the validity of the Court auction sale in favour of her predecessor G.B. Subramanyam & Brothers. It is submitted that attachments have the effect of preventing private alienations to the prejudice of the claims enforceable under the attachments; and therefore even though attachment may not confer any title or change, it enables the attaching creditor

to proceed even against an alienated property in the hands of the alienee and realise the decree; and that therefore the auction sale in pursuance of the attachment was valid and binding on B. Lakshminarayana Setty as also Rajmal. It is contended that the sale deed in favour G.B. Subramanyam & Brothers was a valid sale and as transferee from G.B. Subramanyam & Brothers, she also has valid title and possession. It is contended relying on several decision that where a property is transferred during the pendency of suit wherein the title is directly in question, the transfer is not void but voidable and therefore Rajmal's contention that the sale deed is void-abinitio cannot be accepted. It is pointed out that what is voidable cannot be considered as void-abinitio. It is also contended that the suits filed by Rajmal questioning the sale in favour of Appellant having abated, the matter attained finality and therefore could not be re-agitated in a Writ proceedings relating to a collateral matter (transfer of katha).

13. On the other hand, Rajmal contended that Section 52 of Transfer of Property Act made any transaction during the pendency of the suit sub-servant to the result in the pending litigation. Therefore during the pendency of a suit in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit so as to affect the rights of any other party to the suit under any decree which may be made therein, except under the authority of the Court. It was contended that the permission of the Court where the specific performance suit was pending was not obtained before the auction sale and therefore the auction sale in favour of the appellant's predecessor G.B. Subramanyam and Brothers was hit by the doctrine of lis pendens u/s 52 of the Transfer of Property Act. Reliance was placed on the following observations of the Supreme Court in Kedar Nath Lal and Another Vs. Ganesh Ram and Others, to contend that sale certificate in favour of appellant's vendor was void ab-initio, as it is hit by the doctrine of his pendens:

"Attachments of property is only effective in preventing alienation, but it is not intended to create any title to the property. On the other hand, Section 52 (of TP Act) places a complete embargo on the transfer of immovable property, right to which is directly and specifically in question in a pending litigation. Therefore the attachment was ineffective against the doctrine (of lis pendens)."

On the other hand, relying on several decisions including Ramjidas Vs. Laxmi Kumar and Others, and Smt. Ram Peary and Others Vs. Gauri and Others, the appellant contends that transfer pending litigation is voidable and not void. We do not want to delve deeper into this aspect. As noticed above, the dispute in this case, has given rise to not only a question as to who has a valid title, but also several other aspects like limitation, res judicata, estoppel, waiver and acquiescence. Each and every one of these principles is sufficient to affect the decision one way or the other. We refrain from examining these complicated questions of facts and law relating to title in these proceedings. By way of an example, we may refer to the suit filed by appellant filed OS 10178 of 1988

against the first respondent for declaration of title in regard to the said property. The said suit was withdrawn on 21.12.1994 with liberty to file a fresh suit on the same cause of action. But, the appellant did not file any suit. The question is what is the effect of withdrawal of the said suit? On the other hand, the first respondent filed a suit in OS No. 6747 of 1990 against the appellant to cancel the sale certificate dated 24.2.1976, issued in favour of appellant's predecessor-in-title, and to cancel the sale deed executed by G.S. Subramanyam and his brothers in favour of the appellant and to cancel all other documents in regard to the suit property and seeking a direction to the appellant to deliver said documents for the purpose of cancellation. The suit was dismissed as having abated when the first respondent died in a road accident in March, 1992 and his legal representatives did not choose to come on record. What is the effect of such an abatement? These and similar questions will rightly arise for consideration and decided only in a suit.

14. We have referred to the above factual background and contentions not with an intention to decide the issues but only to consider whether seriously disputed questions of title involving complex questions of fact and law can be decided in a writ proceedings. If our answer to Point No. 1 and 2 is in the affirmative, then, of-course, we will have to examine and decide the matter on merits. But the basic question is whether in a writ proceeding challenging an order of the Municipal Corporation (directing an applicant for Katha Transfer to approach the civil court for decision regarding title) the High Court can embark upon an enquiry into question of title relating to immovable property and record findings thereon and consequently direct that Katha should be registered on the basis of such finding regarding title.

15. A Constitution Bench of the Supreme Court in the case of Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes, explained the nature of jurisdiction exercised under Article 226. It held:

"The jurisdiction of the High Court under Article 226 is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restriction expressly provided in the Article. But the exercise of the jurisdiction is discretionary, it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self imposed limitations - Resort to that jurisdiction is not intended as the alternative remedy for relief which may be obtained in a suit or other mode prescribed by the statute... the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce by which the writ is claimed."

16. In State of Rajasthan Vs. Bhawani Singh and others, the Supreme Court held as follows:

"We are of the opinion that the Writ Petition was misconceived in so far as it asked for, in effect; a declaration of writ petitioner's title to the said plot. It is

evidence from the facts stated hereinabove that the title of the writ petitioner is very much in dispute. Disputed question relating to title cannot be satisfactorily gone into or adjudicated in a Writ Petition."

17. In *Mohan Pandey and Another Vs. Smt. Usha Rani Rajgaria and Others*, the Supreme Court considered the question whether the jurisdiction of the High Court under Article 226 can be invoked for enforcement of a private right to immovable property claimed by and against a private individual. It was contended the first respondent therein (who had succeeded before the High Court) that the Writ Petition was maintainable as a direction had also been sought against Delhi Administration to pass appropriate order against the Appellants. The Supreme Court held:

"There is no doubt that the dispute is between two private persons with respect to an immovable property It has repeatedly been held by this Court as also by various High Court that a regular suit is the appropriate remedy for settlement of disputes relating to property rights between private persons and that the remedy under Article 226 of the Constitution shall not be available except where violation of some statutory duty on the part of the statutory authority is alleged. And in such a case, the Court will issue appropriate direction to the authority concerned. If the real grievance of the Respondent is against the initiation of criminal proceedings, and the orders passed and steps taken thereon, she must avail of the remedy under the general law including the Criminal Procedure Code. The High Court cannot allow the constitutional jurisdiction to be used for deciding disputes for which remedies under the general law, Civil or Criminal are available. It is not intended to replace the ordinary remedies by way of a suit or application available to a litigant. The jurisdiction is special or extra- ordinary should not be exercised casually or lightly. We therefore hold that the High Court was in error in issuing the impugned order against the appellants.."

18. In *N.T. Abraham Vs. State of Kerala and Others*, the Supreme Court observed that if a dispute between the parties is of civil nature, it has to be adjudicated under Civil Law by an appropriate forum and such disputes cannot be decided under Article 226 of the Constitution.

19. In *DWARAKA PRASAD AGARWAL v. B.D. AGARWAL*, (Civil Ap. No. 4782-83/1996, decided on 7.7.2003), the Supreme Court observed thus:

"A writ Petition is filed in public law remedy. The High Court while exercising a power of judicial review is concerned with illegality, irrationality and procedural impropriety of an order passed by the State or a statutory authority. Remedy under Article 226 of the Constitution of India cannot be invoked for resolution of a private law dispute as contra-distinguished from a dispute involving public law character. It is also well settled that a writ remedy is not available for resolution of a property or title dispute."

(emphasis supplied)

20. We may also refer to the following passage from Durgadas Basu's Shorter Constitution of India (13th Edition Page 810) :

"Where the fundamental rights are not affected; One of the grounds against exercise of the discretion, in such cases, would be that the right claimed by the petitioner is not capable of being established in a summary proceedings under Article 226 because it requires a detailed examination of the evidence as may be had in a suit. The object of Article 226 is the enforcement and not the establishment of a right or title. A petition under Article 226 cannot be converted into a suit. In case of highly disputed question of fact for decision, civil suit should be the appropriate action..."

21. The Supreme Court has however, recognised the distinction between the cases where fundamental rights are affected and cases where fundamental rights are not affected. Where any fundamental right has been infringed, the High Court exercising power under Article 226 may not reject the Writ Petition merely on the ground that it involves determination of disputed question of fact. There are several instances where when infringement of fundamental right has been established, disputed questions of fact have been examined and decided on the basis of material on record. But they are exceptions to the rule.

22. The following well settled principles emerge from the aforesaid decisions:

(i) Writ Petition is a public law remedy and cannot be invoked for resolution of private law disputes. Therefore, a Writ Petition is not maintainable for resolution of a property dispute or for declaration of title.

(ii) Where there is an alternative effective and efficacious remedy available under law, the High Court will not exercise its jurisdiction under Article 226. But, rule of such exclusion is a rule of discretion and where the matter involves enforcement of fundamental right or failure to follow principles of natural justice discretion may be exercised to entertain petition under Article 226.

(iii) A Writ Petition is not intended to replace ordinary remedies by way of suit or application. Where an alternative remedy was available, a petitioner cannot allow that remedy to be time -barred or allow it to be dismissed and then apply under Article 226 contending that he has no other remedy.

(iv) A Writ Petition is not an appropriate remedy where the matter requires determination of disputed questions of fact involving elaborate examination of evidence. But, where fundamental rights are infringed, Writ Petition may, in appropriate cases, be entertained, even if the matter involves determination of disputed questions of fact.

23. The first respondent relied on a series of decisions of contend that the questions of title be gone into in a Writ Petition M/s. Hyderabad Commercial Vs. India Bank and others, ; Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, ; Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, ; Tata

Engineering and Locomotive Company Ltd. Vs. Assistant Commissioner of Commercial Taxes and Another, ; and Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others, .

23.1 HYDERABAD COMMERCIALS related to an unauthorised transfer by a Nationalised Bank (Statutory Body) of huge amount from the account of one customer to another. The High Court had directed the appellant to file a suit on the ground that the matter involved disputed question of fact. The Supreme Court on perusal of the records, found that the case did not involved any disputed questions of fact and that on the admitted facts, the appellant was entitled to the relief. The Supreme Court interfered on the ground that the respondent - bank being an instrumentality of the state., was under a legal obligation to function honestly and pay the amount standing to the credit of the customer and the action of the Bank was detrimental to the public interest and if such action is allowed to stand, the very credibility of Bank will be lost in the eyes of the public. Therefore, the said decision is of no assistance.

23.2. CENTUARY SPINNING relating to failure of a statutory authority (Municipality) to act in accordance with its promise. The Ulhasnagar Municipality agreed to exempt the Appellant Company from payment of octroi for a period of 7 years. But subsequently in violation of its promise, it levied octroi. When the appellant approached the High Court, it dismissed the petition in limine. On appeal, the Supreme Court held that as the appellant was aggrieved by the action of the statutory authority, which was unlawful, highhandedness and arbitrary, the petition had to be entertained. In that context, the Supreme Court also observed that even if a question of fact is raised, the High Court will not be justified in requiring the party to seek the relief by way of a lengthy dilatory and expensive process of civil suit against a public body, particularly as the question of fact raised were simple and elementary. Thus, this decision is also inapplicable to the case on hand.

23.3. In DWARAKA NATH's case, the Supreme Court observed that Article 226 confers a wide power on the High Court to reach injustice whenever it is found, and High Courts are enabled to mould the reliefs to meet the peculiar and complicated requirements of the country to issuing directions or orders other than prerogative writs. This decision does not in any way support the contention that disputed questions of title between two private individuals can be decided in a writ proceedings.

23.4. In TELCO, the Assessing Authority under the Sales Tax Law did not allow the exemption (in respect of certain sales) sought by the Assessee. The order was challenged by the Assessee on the ground that no opportunity was given it to put forth its contention. The Writ Petition was dismissed on the ground that the Assessee had not exhausted the remedies provided under the Sales Tax Act. The Supreme Court interfered on the following reasoning:-

"The power and jurisdiction of the High Court under Article 226 of the

Constitution has been the subject of exposition from this Court. That it is extraordinary and to be used sparingly goes without saying. In spite of the very wide terms in which this jurisdiction is conferred, the High Courts have rightly recognised certain limitations on this power. The jurisdiction is not appellate and it is obvious that it cannot be a substitute for the ordinary remedies at law. Nor is its exercise desirable if facts have to be found on evidence. The High Court, therefore, leaves the party aggrieved to take recourse to the remedies available under the ordinary law if they are equally efficacious and declines to assume jurisdiction to enable such remedies to be by-passed. To these there are certain exceptions. One such exception is where action is being taken under an invalid law or arbitrarily without the sanction of law. In such a case, the High Court may interfere to avoid hardship to a party which will be unavoidable if the quick and more efficacious remedy envisaged by Article 226 were not allowed to be invoked."

The said decision in fact supports the stand of the appellant rather than that of the first respondent. The said decision nowhere laid down a proposition that a disputed question of title can be decided in a Writ proceedings.

23.5. In *GUNWANT KAUR*, the Supreme Court no doubt observed that disputed questions of fact can be determined in proceedings initiated under Article 226 and 227. In that case the owner of a land challenged acquisition of his land inter alia on the ground that he was denied the statutory right to object to the proposed acquisition u/s 5A of Land Acquisition Act and on the ground that there was no proper demarcation or identification of the land to be acquired. The Writ Petition was dismissed in limine on the ground that disputed questions of fact cannot be determined in a writ proceedings. While reversing the said decision and remanding the matter to the High Court, the Supreme Court observed thus:

"The High Court observed that they will not determine disputed questions of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considerations of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a Writ Petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made, dispute sought to be agitated or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ

jurisdiction, or for analogous reasons.

From the averments made in the petition filed by the appellants it is clear that in proof of a large number of allegations the appellants relied upon documentary evidence and the only matter in respect of which conflict of facts may possibly arise related to the due publication of the notification u/s 4 by the Collector.

In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine questions of fact, even if they are in dispute, and the present, in our judgment, is a case in which in the interests of both the parties the High Court should have entertain the petition and called for an affidavit in reply from the respondents, and should have proceeded to try the petition instead of relegating the appellants to a separate suit."

Here again, what arose for consideration is not a civil dispute regarding title between private individuals, but validity of an acquisition under Land Acquisition Act.

23.6. Thus none of the decisions support of the proposition of law canvassed by the first respondent.

24. It follows therefore that no Writ Petition can be entertained to decide disputes regarding title or disputed questions relating to title to immovable properties, between private individuals. Nor can the High Court in exercise of Writ Jurisdiction grant declaratory reliefs declaring that a sale deed in favour of a party is void - ab-initio or that a sale deed in favour of another party is valid and binding. Nor can the High Court, without permitting parties to lead evidence and without reference to actual physical possession, declare that a particular person is in possession. Title is a mixed question of law and fact. Physical possession is a question of fact. Possession can be either de facto or de jure. In regard to vacant land, normally the possession is determined with reference to the doctrine "possession follows title". Therefore, a decision on the factum of possession will have to be rendered by deciding as to actual physical possession or by deciding the title as the case may be. The High Court cannot, in a writ proceedings, inferentially hold that a party does not have possession by declaring that his title deed is not valid, if he is in physical possession. Hence, points, (i) and (ii) are answered in the negative.

RE:POINT (iii):

25. The learned Single Judge has held that the appellant got the khata transferred in her favour by misrepresentation and that is a ground for exercise of power under Article 226/227 of the Constitution, on the analogy of Section 114A of the Karnataka Municipal Corporations Act, 1976. Misrepresentation, in this context, is defined in Section 18 of the Indian Contract Act, as a positive assertion, in a manner not warranted by the information of the person making it,

of that which is not true, though he believes it to be true.

26. As noticed above, the appellant is claiming title with reference to a sale certificate issued by a Court in favour of his vendor. Similarly, first respondent has been claiming a title with reference to a sale deed executed in execution of a decree. Admittedly, when the appellant approached the Bangalore City Corporation for transfer of khata in her favour, the first respondent was yet to get a title deed. If the appellant, on the basis of a sale deed executed in her favour by the holder of sale certificate from the Court, seek transfer of khata, it cannot, by any stretch of imagination, be called as a misrepresentation. In the absence of any of the ingredients of a misrepresentation, the observation of the learned Single Judge that he could interfere in the matter by exercising the power under Article 226, on the analogy of power exercisable u/s 114A of the Municipal Corporations Act, is without any basis.

RE: POINT (iv):

27. Admittedly, the appellant's name had been entered as khatedar in the records of the Bangalore City Corporation, in pursuance of sale deed executed in her favour by the holder of Sale Certificate issued by the Court. First respondent requested the Bangalore City Corporation to enter his name on the basis of a sale deed executed by the Court, in pursuance of a decree for specific performance. The Commissioner found that there was a very serious civil dispute in regard to the title. Disputed questions of title could not be decided by the revenue authorities in mutation proceedings. Therefore, the City Corporation was justified in issuing an endorsement to the first respondent advising him to obtain an appropriate order from the competent civil court, before his application for transfer of katha could be considered.

Conclusion:

28. We, therefore, allow this appeal and set aside the order of the learned single Judge dated 13.6.2001 in WP No. 8665 of 1991 and dismiss the said Writ Petition. As a consequence, endorsement dated 22.12.1990 issued by the Assistant Revenue Officer, Bharathinagar Range, Bangalore City Corporation, stands. We make it clear that nothing stated by us in this judgment shall be construed as expression of any opinion on the issue of title of either appellant or first respondent and if and when either party approaches the civil Court, subject to maintainability of such suit and limitation etc., the civil Court will decide the matter in accordance with law, independently, with reference to the materials placed before it. Parties to bear their respective costs.

Immediately on completion of dictation allowing the appeal, the learned Counsel for the first respondent made an oral application for issue of certificate under Article 134A(b). We find that the case does not involve any substantial question of law as to the interpretation of the Constitution of India or a substantial question of law of general importance which needs to be decided by the Supreme Court. The issue involved in the writ Petition is whether the jurisdiction under

Article 226 can be exercised to decide a complicated question of title between two private individuals where no fundamental right is involved. The legal position in regard to the said issue is clear having regard to a series of decisions of the Supreme Court. Therefore the certificate sought is rejected.