

(2009) 01 KAR CK 0007

In the Karnataka High Court

Case No : Regular First Appeal No. 1097 of 2006

State and Others

APPELLANT

Vs

Syed Ali Ahmed Hussaini and Others

RESPONDENT

Date of Decision : 29-01-2009

Acts Referred:

Limitation Act, 1963 — Section 64, 65

Citation : (2011) 5 KarLJ 590 : (2011) 1 KCCR 351

Hon'ble Judges : K.N. Keshavanarayana, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : S.S. Kumman, Additional Government Advocate, for the Appellant;
Appa Rao, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—This appeal u/s 96 of the CPC is by the Defendants in OS No. 22 of 2001 which was on the file of the Court of the Civil Judge (Senior Division) at Basavakalyan in a suit filed by the Plaintiff's for the following reliefs,

(a) the Plaintiff's be declared as owners and possessors of land by Sy. No. 510 measuring Ac 6.10 Gts., situated at proper Humnabad abutting to the N.H. No. 9.

(b) in case of not declaring and restoring the possession to the Plaintiff's, then the Defendants be directed to pay the compensation of the entire area, by acquiring the same at the prevalent market value.

(c) if otherwise, the Defendants be perpetually restrained not to interfere and trespass into the peaceful possession of the Plaintiff's over the area under their possession, apart from the notified area, in land Sy. No. 510 of Humnabad; and

(d) any other relief to which the Plaintiff's are legally and equitably entitled to, may also be awarded.

which came to be decreed in terms of the judgment and decree dated 7.7.2005 and to get over such judgment and decree.

2. The Plaintiff's had pleaded that they are all Sons of one Syed Hyder Hussaini and are owners and possessors of land in Sy. No. 510 measuring an extent of 6 acres 10 guntas and they had inherited the property from their father who had died intestate, had developed the same and were joint owners and possessors of the said land.

3. It was also pleaded that the land is an inam land and patta rights were registered in the name of their father in the year 1975 and ever since the land is declared as patta land.

4. It was the further case of the Plaintiff's that the State Government had initiated acquisition proceedings under the Land Acquisition Act for acquiring the extent of one acre of land in this survey number, but nevertheless had taken possession of an extent of 4 acres 34 guntas and the Plaintiff's were in possession of only the remaining extent of 1 acre 16 guntas of land and as the land though very fertile being located near the National Highway No. 9, the Plaintiff were using the extent of 1 acre 16 guntas for grazing the cattle.

5. It was also pleaded that in the extent of land in possession of the Government i.e., 4 acre 34 guntas, the Government had constructed the buildings and structures on some part of it and in the remaining area the vehicles of the visitors were being parked; that the Defendants had put a barbed fencing surrounding the land in their possession recently in the year 2000 and because of this development, the Plaintiff's had filed the suit for relief as indicated above. The barbed fencing put up by Defendants was pleaded as cause of action for filing the suit.

6. The Plaintiff's further pleaded that with the movement of the Government vehicles increasing in the area and many important persons coming to the place and with the increasing number of vehicles accompanying them, it had created inconvenience to the Plaintiff's which had resulted in the Plaintiff's being unable to grow any crop and were only left with grass for grazing the cattle; that the Government should either acquire the area and compensate the Plaintiff's or give up possession of the land in excess of the land acquired by them; that in view of this development, the Plaintiff had got issued legal notice to the Government which was responded only by the Chief Executive Officer of the Zilla Panchayat and they had indicated that the Zilla Panchayat having not acquired any land nor put up any construction such as Dak bungalow, it is not within the purview of the Zilla Panchayat to either give up possession or to compensate the Plaintiff's.

7. It is pleaded that the Defendants-State and its officials had no right to squat on a private property without adequately compensating the owners of the land; that the Government which is bound to protect interest of the individuals and their property cannot by itself create trouble and hardship; that the action of the Government was not fair etc.

8. It was also pleaded that the notice issued u/s 80 of the CPC did not elicit any

response and therefore the Plaintiff's were constrained to file the suit; that the cause of action arose on 8.12.2000 when the Chief Executive Officer of the Zilla Panchayat issued reply and accordingly sought for the relief.

9. The Assistant Executive Engineer, Public Works Department Division, Humnabad who was in administration of the inspection bungalow, travellers bungalow and other structures - the third Defendant in the suit filed the written statement on behalf of the Defendants. While all plaint averments were denied, the title traced by the Plaintiff was also disputed and the Plaintiff's were put to strict proof of the same. While the proceedings for acquisition of an extent of one acre in Sy. No. 510 was admitted, it was pleaded that the remaining extent of land in this survey number was already in the possession of the Government and it is not as though it is taken possession of under the acquisition notification. It was pleaded that in the extent which was already in possession of the Government, there were existing Government buildings and structures for the past more than 200 years and even during the rule of the Nizam.

10. It was averred that for the extent of one acre acquired from the owners of the land in Sy. No. 510 under the notification, compensation had already been paid and with regard to the balance extent of land it was pleaded that the lands were already in possession and enjoyment of the Government for the past more than 200 years and there was no question of restoring the land or granting any other reliefs to the Plaintiff's.

11. The averment that an extent of 4 acres 32 guntas of land had been left for grazing of cattle of the Plaintiff's was denied as not true and correct. It was pleaded that Sy. No. 510 measuring an extent of 6 acres 10 guntas is surrounding Sy. No. 509; that the travellers' bungalow i.e., inspection bungalow was constructed in the year 1790 by the Nizam Government and the entire land in Sy. No. 509 was used for inspection bungalow ever since the year 1790.

12. It was further pleaded that even if the revenue records indicated some part of the land was in possession of the Plaintiff's which was not true reflection of the state of affairs; that the possession was with the Government for the past more than 200 years and neither the Plaintiff's nor their ancestors were in possession of the land. It was further pleaded that the Government was using the land ever since independence and prior to that it was Nizam Government which was in possession of the land and the land was being used for the purpose of inspection bungalow as the land appurtenant to the inspection bungalow was used for parking vehicles coming to the inspection bungalow; that the Government having used and enjoyed this land for the past more than 50 years since independence and prior to that it was Nizam Government for the past more than 200 years, the Government was the owner and possessor of the land even by adverse possession and therefore there was no question of initiating any further acquisition proceedings to acquire the land which was already in possession and enjoyment of the Government.

13. It was also pleaded that the Plaintiff's had neither title nor had proved the same in respect of the subject land and mere revenue entry does not either create or confer ownership rights in favour of the Plaintiff's in respect of the property and therefore it was prayed that the suit of the Plaintiff's be dismissed with costs.

14. In the light of such pleadings, the Trial Court formulated the following issues:

1. Whether the Plaintiff's prove that, they are the owners and possessors of the suit land Sy. No. 510 measuring 6 acres 10 guntas situated at Humnabad?
2. Whether the Plaintiff's further prove that the Defendants have acquired some portion of land and paid compensations to the Plaintiff's?
3. Whether the Plaintiff's further proves that the Defendants are interfered in the peaceful possession and enjoyment of the suit land?
4. Whether the Defendants prove that the suit land was in possession since 50 years at the time of Nizam till today the Defendants are using the same for parking of vehicles?
5. Whether the Defendants prove that they are in adverse possession of the suit land, with the knowledge of the Plaintiff's?
6. What orders/decrees?

15. Parties went to trial on such issues. On behalf of the Plaintiff one Syed All Abbas Hussaini was examined as PW-1, Exhibit Nos. P1 to P16 comprising of copies of the record of rights -- Exhibit.P1 and Exhibit.P2, copy of a gazette notification No. RD/82/AQI/76 dated 16.12.1976 -declaration u/s 6 of the Land Acquisition Act marked as Exhibit.P3, copy of the Award Notice under Sections 9 and 10 of the Land Acquisition Act marked as Exhibit. P4, patta receipt book issued by the village accountant marked as Exhibit. P5, revenue receipts marked as Exhibit Nos. P6 to P10, receipt dated 12.1.1968 for having paid premium amount of Rs. 48.25/- to the Government for recognizing the Plaintiff as cultivators and possessors of the land as Exhibit P11, receipt dated 5.10.1968 for remitting this amount at the treasury of the State Bank of Hyderabad marked as Exhibit.P12, reply by the Chief Executive Officer, Zilla Panchayat, Bidar marked as Exhibit.P13, copy of the legal notice dated 30.11.2000 issued to the Deputy Commissioner, Bidar on behalf of the Plaintiff's as Exhibit.P14, copy of the sketch marked as Exhibit.P15 and khata for the year 2002-03 showing the name of the Government marked as Exhibit.P16.

16. On behalf of the Defendants, the Assistant Executive Engineer -- PWD Office, Humnabad was examined as DW. 1 but no documentary evidence was produced.

17. The learned Trial Judge purporting to appreciate such oral and documentary evidence answered issues 1 to 3 in the affirmative and in favour of the Plaintiff's and issues 4 and 5 in the negative and against the Defendants and accordingly partly decreed the suit with costs as the Plaintiff's were declared as owner and

possessors of the suit land and directed the first Defendant to restore the possession to the Plaintiff's, otherwise directed the Defendants to acquire the remaining lands and pay compensation to the Plaintiff's as per the market value and the Defendants were perpetually restrained not to interfere and trespass into the peaceful possession over the suit property by the Plaintiff's.

18. It is aggrieved by this judgment and decree, the present appeal by the Defendants.

19. The Defendants - Appellants have, inter alia, urged that the civil suit for declaring the validity of acquisition proceedings is not maintainable; that the suit cannot be maintained for issue of any directions to any authority of public body to pay compensation and therefore the judgment and decree passed by the learned Trial Judge is not only suffering from want of jurisdiction and illegalities but also contrary to the statutory provisions; that the revenue entries showed the name of the Government in Col. No. 12(2) of record of rights; that the suit was barred by limitation and the learned Judge of the Trial Court not bestowing his attention to the aspect of limitation has vitiated the Judgment; that the suit was bad for want of notice u/s 80 of the Code of Civil Procedure; that the Defendants had contended that the lands bearing Sy. Nos. 509 and 510 are the lands wherein the inspection bungalow, travellers bungalow and ancient buildings of the Government and its departments are located for the past more than 200 years and the Government of Karnataka being in occupation of the said property, there was no way of the learned Trial Judge to have disbelieved this overwhelming evidence to decree the suit; that while the entire area was occupied by the travellers' bungalow and inspection bungalow constructed even in the year 1790 and during the regime of Nizam, the Government of Karnataka being in possession of the very same properties for the past about fifty years, there was no way of such evidence being disbelieved by the Trial Court to arrive at a different conclusion to decree the suit; that the Trial Court committed an error in decreeing the suit for declaration in favour of the Plaintiff's when the Plaintiff's had not established title to the property by any supporting material regarding title and have therefore prayed for setting aside the judgment and decree and to dismiss the suit.

20. The Plaintiff - Respondents had been notified and they are represented by Counsel Sri. Appa Rao. Sri. Kumman, learned Additional Government Advocate appears for the Appellant - State and its officers.

21. We have heard learned Counsel for the parties and perused the impugned Judgment, considered the submissions and grounds urged in the appeal and examined the record of the case.

22. The main submission of Sri. Kumman, learned Additional Government Advocate is that when the Plaintiff had virtually conceded possession of the property to be with the Defendants for the past more than 200 years and had not satisfactorily proved their title to the property, there was no way of the Trial

Court decreeing the suit for title and consequential reliefs; that the suit should have been dismissed in limine.

23. It is submitted that when once the Plaintiff are not able to make good their title and have virtually conceded possession of the land with the Defendants for the past more than 200 years, the question of the Trial Court decreeing the suit either for recovery of possession or for issue of directions to compensate the Plaintiff's by acquiring the land does not arise and therefore the judgment and decree should be set aside.

24. Reliance is placed on the judgment of the Supreme Court in the case of S.P. Subramanya Shetty and others Vs. Karnataka State of Road Transport Corporation and others, .

25. On the other hand, Sri. Appa Rao, learned Counsel appearing for the Plaintiff - Respondents would very vehemently urge that the very fact that the Government had notified an extent of one acre of land for acquisition in Sy. No. 510 indicates that the Plaintiff's are the owners of this survey number; that while the Government acquired one acre, it has no right to take possession of more than this extent and at any rate the Government could not have occupied an extent of 4 acres 34 guntas of land by acquiring one acre of land; that on the very acquisition notification, the suit of the Plaintiff's both for declaration and recovery of possession and compensation was fully justified and the Trial Court has rightly decreed the suit and appeal should be dismissed.

26. It is also submitted that the State which is the protector of life and property of the citizens and is bound to do so cannot violate any law in a high handed manner nor in any illegal way take away the land belonging to the private citizens; that the dispossession of the land in the ownership of any citizen without following due process of law is illegal; that it was not open to the State to set up any title by way of adverse possession; that the deprivation of the Plaintiff's" property without adequately compensating the Plaintiff was unconstitutional, violative of Article 300A of the Constitution of India and if the High Court can issue a writ of mandamus for such purpose under Article 226 of the Constitution of India, a suit is equally tenable for the same purpose and therefore urges for dismissal of the appeal and in this regard places reliance on the decision of the Supreme Court in the case of State of U.P. and Ors. v. Manohar" reported in 2006 (2) LACC 100.

27. We have bestowed our anxious consideration to the submissions at the Bar and also perused the record in some detail.

28. The suit of the Plaintiff's was for declaration that they are the owners of land in Sy. No. 510 in all measuring 6 acres 10 guntas located at Humnabad and for consequential compensation for this land or for restoration of possession. A suit of this nature technically to be suit for recovery of possession based on title will be tenable if the Plaintiff's makes, good the title to the land and is filed within the period of limitation in terms of Article 65 of the schedule to the Limitation

Act, 1963.

29. The suit will be within time if the suit is brought within twelve years from the accrual of cause of action i.e., 12 years from the day from which the possession of the Defendants become adverse to the Plaintiff's. A suit for recovery of possession is one covered under Article 65 of the schedule to the Limitation Act, 1963 and has to be filed within twelve years from the date of such adverse possession.

30. In the present situation, if the Plaintiff's should have been successful in making good their title, the Trial Court is definitely justified in granting consequential reliefs based on title. On a perusal of the pleadings of the parties, evidence led on behalf of the parties, we find that the Plaintiff's have not made good their title to the property by any cogent and reliable material to prove the title. The plaint pleadings are inconsistent. While in one breadth, the Plaintiff's concede that the subject lands were being used as part of inspection bungalow, travellers' bungalow and other Government offices even from Nizam period and for the past more than 200 years, on the other hand, also plead that they had been in possession of an extent of 6 acre 10 guntas in Sy. No. 510 and that out of this an extent of 4 acres 34 guntas of land went out of their possession only during the year 1975-76 when the Government In the guise of acquiring one acre of land took possession of 4 acres 34 guntas.

31. It is true that there are some entries in the revenue records showing the name of the Plaintiff's. But a mere entry in the revenue record is not proof of title and at best it can be proof of possession and that too because of rebuttable presumption under the Karnataka Land Revenue Act, 1964.

32. While the Plaintiff's claim that the land was an inam land and patta rights were confirmed in the name of their father in the year 1975, the evidence sought to be placed and relied upon to support this plea in the form of Exhibit.P5 - patta receipt book and Exhibits.P11 & P12 - demand for payment of special premium under the provisions of the Hyderabad Abolition of Inams (Compensation Bond) Rules, 1966 and the Hyderabad Abolition of Inams Act, 1955 (for short "the Act") does not necessarily support this plea as under Exhibits P11 & P12 while reference is made to the provisions of Sections 4 and 10 of the Act, the notice is dated 12.1.1968 and the challan payment is dated 5.10.1968. The plea is that the land was re-granted in the name of the Plaintiff's father in the year 1975. The plea and the so-called supporting material are at variance and it is of no avail to support the plea.

33. But more importantly the re-grant order itself is not produced to claim title. We notice on a perusal of the provisions of Sections 4 and 10 of the Act that an Inamdardar cannot claim any registration of occupancy in his favour in respect of the land upon which had been erected buildings not owned by the inamdardar i.e. in respect of land not In the possession of the inamdardar.

34. In the instant case, it is not in dispute that the Government Inspection

Bungalow and other Government buildings are in existence on the land in question for the past more than 200 years and if so such an inamdar does not even get a right for registration of occupancy u/s 4 of the Act. There is no evidence to support the plea that father of the Plaintiff's got such ownership rights in the year 1975.

35. The only claim to title pleaded is in paragraph-2 of the plaint apart from the assertion that the Plaintiff's are the owners of the land since the period of their ancestors. Neither assertion is established to grant declaration of title in favour of the Plaintiff's.

36. In this background, consequential relief of directing the Government to acquire the land and grant compensation to the Plaintiff's while is definitely hit by ratio of ruling of the Supreme Court in S.P. Subramanya Shetty's case supra, the judgment relied upon by Sri Appa Rao, learned Counsel for the Plaintiff's - Respondents does not further the case of the Plaintiff's as the ratio of the decision will be applicable only when any land in the ownership of a private person is taken over by the Government in an arbitrary and illegal manner and not following due procedure for acquisition. Even the material in the nature of acquisition notification for one acre of land does not further the case of the Plaintiff's as a Notification issued for acquisition of one acre of land can in no way lead to the inference that the Plaintiff's are the owners of any other extent of land not referred to in the Notification. While it is not known as to under what circumstances, the Government chose to acquire one acre of land and compensate the owners, it is not very proper in this appeal to go into that aspect, as the question does not call for examination as the Plaintiff's have already received compensation for the extent of one acre which was acquired under this notification in the year 1975-76.

37. With the possession of the subject land with the Government and Government constructions such as inspection bungalow, travellers' bungalow and other Government offices being in the subject land and being used for such purpose for the past more than 25 years prior to the filing of the suit being conceded by the Plaintiff's, even a suit for recovery of possession not based on title is also hit by the law of limitation in terms of Article 64 of the Schedule to the Limitation Act, 1963.

38. We say that a suit for recovery of possession is also barred by limitation for the reason that we find it difficult to believe the cause of action pleaded in the suit to be of the year 2000 when the Defendants put up a barbed wire fence obstructing or interfering with the possession and enjoyment of the land by the Plaintiff's to be true.

39. We say so for the reason that even the evidence of PW2 shows that what was done in the year 2000 was only that the old compound wall was demolished and a new compound wall put up therein. The evidence goes to show that there was no barbed fence which was sought to be put up for the first time, but a

compound wall which was already in existence and which had become old and dilapidated was renovated. On the other hand, the plea is that if on the Government acquiring an extent of one acre of land in a notification issued under the provisions of Land Acquisition Act, they took possession of 4 acres 36 guntas of land. If that is so, admittedly, the plea that the Plaintiff's were deprived of and dispossessed of this extent of land even during the year 1976 and a suit laid in the year 2000 is definitely barred by limitation.

40. We are rather surprised that the learned Judge of the Trial Court has simply glossed over these varying aspects of plea and evidence, prior to decreeing the suit. One cannot help noticing that the attempt of the Plaintiff's was to seek compensation or repossession of the land which were not proved to be either in their ownership or possession for the past over 200 years. In such a situation, there was need for deeper scrutiny into the nature of material placed before the Court, while disposing of the suit to grant relief to the Plaintiff's. The more improbable the case of the Plaintiff's, the deeper should be the scrutiny by Court of the pleading and the evidence placed before the Court.

41. We are unable to accept the reasoning or logic given by the learned Trial Judge to decree the suit for title and for granting any consequential reliefs based on title. The arguments of Sri. Appa Rao, learned Counsel for the Plaintiff's that the Government cannot set up plea of adverse possession is not very material to the purpose of the Plaintiff's proving their title and a mere plea in this regard in the written statement does not necessarily confer title on the Plaintiff's. The Plaintiff's are required to prove their title and in respect of subject land which is admittedly in possession and enjoyment of the Government for the purpose of inspection bungalow, travellers' bungalow and other Government offices ever since 200 years or more and the present Government having inherited legacy from the Nizam Government it can never be said that the Government had any intention to deprive any person of any land in their ownership but the existing state of affairs have merely been continued. No overt act of deprivation of any property can be attributed to the Defendants.

42. In the result, we allow this appeal, set aside the judgment and decree passed by the Trial Court and dismiss the suit.

43. Parties left to bear their own costs throughout.