

(2013) 08 KAR CK 0225

In the Karnataka High Court

Case No : Regular First Appeal No. 1218 of 2010

The University of Agricultural Sciences, G.K.V.K.

APPELLANT

Vs

Smt. Saroja Gupta

RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 23 Rule 1, 11
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4

Citation : (2014) 1 KarLJ 242

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : H.N. Shashidhara, for Kesvy and Company, for the Appellant; G.L. Vishwanath, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—This is a defendant's appeal. The parties are referred to by their rank before the trial court. The case of the plaintiff was that he was the absolute owner of the land described in the schedule to the plaint, being the southern half of Block no. 9 in Survey no. 4 measuring 2 acres and 20 guntas, Jakkur Plantation, Yelahanka Hobli, Bangalore North Taluk. The same was said to have been purchased under a sale deed dated 1.3.1982, from one K. Rangappa.

After such purchase, the mutation in respect of the schedule property was made out in her name. The Record of Rights and Index of lands also stood in the name of the plaintiff.

In June 1993, it is said that there was interference with the plaintiffs possession of the property by the servants of the defendant, the University of Agricultural Sciences, an educational institution functioning under the State Government of Karnataka. In spite of a legal notice to the defendant, the interference with agricultural operations continued and hence, a civil suit in OS 10660/1993 was said to have been filed in the City Civil Court, Bangalore, against the defendant

for permanent injunction, restraining the defendant and its men from interfering with the plaintiffs enjoyment of the land. The suit was said to have been contested by the defendant. The defendant claimed that the suit property had been compulsorily acquired by the State for its benefit. The suit was ultimately dismissed by a judgment dated 19.9.1998. The court held that the identity of the property was not proved. The plaintiff had filed an appeal to this court in RFA 42/1999. The plaintiff however, chose to withdraw the same and even the suit itself, which was permitted by this court. This court had granted leave. Consequently, a fresh suit for declaration of title and consequential reliefs was filed.

The plaintiff had elaborated on the details of the suit property in the comprehensive suit that was filed. Jakkur Plantation was said to comprise 42 acres and 31 guntas and was formed out of lands bearing Survey no. 57 measuring 17 acres 7 guntas, Survey No. 61 measuring 25 acres and 8 guntas and Sy. no. 105 measuring 16 guntas of Allalasandra, Yelahanka Hobli, Bangalore North Taluk. The total extent was renumbered as Re-survey no. 4.

It transpires that the State Government had earlier granted a total extent of 35 acres 12 guntas of land in Re-survey no. 4, at an upset price to various persons who had lost their land due to submergence under the waters of the Thippagondanahalli Reservoir. The lands so granted were said to be comprised in 10 blocks. The southern most block adjacent to Byatarayanapura was block no. 10 measuring 20 acres, to its north was Block no. 9 measuring 5 acres, which was granted to K. Rangappa. The suit property was in Block no. 9.

The government is said to have granted Block no. 9 to Rangappa on 15.5.1957. He had obtained a saguvalli chit, or permission to cultivate, on 4.6.1959 from the Tahsildar. Rangappa had sold the southern half of Block no. 9 comprising 2 acres and 20 guntas to Puttaiah and Mariyappa, under a sale deed dated 4.6.1959. He had then repurchased the same from the sons of Puttaiah and Mariyappa under a sale deed dated 18.2.1980. The plaintiff in turn, had purchased the same under a sale deed dated 1.3.1982.

The original grantee of Block no. 10 was said to be one Lingappa. 19 acres of land out of the total extent of 20 acres in this Block was said to have been acquired by the State government in proceedings bearing no. LAC 1986/72-73, for the benefit of the defendant. Lingappa in the mean while had sold portions of the land to various persons. The following persons were said to be claiming an interest therein:

Kalappa B - 14 acres,

B.M. Narayanappa - 1 acre 35 guntas,

Doddamuniyappa and Muniraju - 1 acre 23 guntas and

Beerappa and Doddamma - 1 acre 22 guntas.

The Award pursuant to the acquisition proceedings is dated 27.8.1974. A notification under 16(2) of the Land Acquisition Act, 1894 (Hereinafter referred to as the "LA" Act, for brevity) declared that the Estate Officer of the defendant had taken possession of the land on 12.5.1969.

However, a second acquisition was resorted to in respect of lands in Block no. 10 to an extent of 4 acres. The preliminary and final notifications are said to contain the names of several persons, whose names had appeared in the first acquisition. The award in the second acquisition was passed on 18.1.1980. It was claimed that none of the persons notified had any claim or interest in land in Block no. 9. However it was mentioned in the award that 1 acre and 20 guntas of land belonging to K. Rangappa was acquired.

It was asserted that K. Rangappa had no subsisting interest in this portion during the second acquisition proceedings commencing with the issuance of a Preliminary Notification dated 3.2.1979 and culminating with the Award dated 18.1.1980. K. Rangappa had sold 2 acres 20 guntas (Southern half in Block No. 9) to Puttaiah and Mariyappa on 4.6.1959 and repurchased the same on 18.2.1980 and thereafter sold it to the plaintiff on 1.3.1982. None of the predecessors in title of the plaintiff, who were the owners at the relevant time were notified or impleaded in the acquisition proceedings. At the relevant time, Puttaiah and Mariyappa were shown as the owners of the southern half of Block no. 9, and Nagaiah Pai was the owner of the northern half of Block No. 9 having purchased it on 30.5.1969. Their names are not found in the relevant notifications nor were they notified in the acquisitions according to the prescribed procedure in respect of the plaint schedule land (that is, the southern half of Block no. 9 in Survey No. 4 measuring 2 acres 20 guntas) belonging to the plaintiff. The said acquisitions have not divested plaintiffs title to the plaint schedule land. The defendant has not acquired valid title to any portion thereof. The suit property was not the subject matter of acquisition.

Even though the defendant is said to be disputing the plaintiff's claim only to the extent of 1 acre and 20 guntas, the plaintiff had by way of abundant caution brought the suit in respect of the entire extent purchased by her, 2 acres and 20 guntas.

2. The defendant had entered appearance and contested the suit. The defendant had denied the claim of the plaintiff. It was stated that the State government had acquired several parcels of forest land in the vicinity of the suit property for the benefit of the defendant. In order to ensure that an extent of 40 acres formed a compact block, apart from the 19 acres of land acquired in Block no. 10, a further extent of 4 acres was also acquired in the year 1980. According to the defendant the following were the persons who were notified of the acquisition proceedings in respect of 19 acres in the year 1974:

And in so far as 4 acres of land was concerned, the following were the persons notified:

It was hence denied that the acquisition proceedings did not conform to procedure and that owners of lands had been deprived of their property unlawfully.

It was also claimed that the suit was barred by *res judicata* and was not maintainable.

3. On the basis of the above pleadings, the court below had framed the following issues:

1. Whether the plaintiff proves that she is the absolute owner of the schedule property
2. Whether the plaintiff is entitled to declaration sought for?
3. Whether the plaintiff is entitled to delivery of possession of the schedule property?
4. What decree or order?

The trial court answered the issues in favour of the plaintiff. The defendant has challenged the findings in this appeal.

4. The learned counsel for the appellant contends that the admitted circumstance of an earlier suit filed by the respondent, in O.S. No. 10660/1993 had been dismissed and the fact that a specific issue as to whether the defendant had established that the suit property had been lawfully acquired, having been answered in the affirmative, could not be ignored by the trial court, in the later suit brought on the very same cause of action on identical pleadings.

On the other hand, the trial court having entertained the suit in the face of the plaintiff having admittedly purchased the property, after the same had vested in the State, was an error of jurisdiction. No civil suit would lie in respect of such land, since it would amount to entertaining a challenge to the acquisition proceedings itself, which is impermissible.

It is asserted and emphasized that the extent of land acquired in favour of the appellant was 4 acres in Block No. 9 in Sy. No. 4 of Jakkur plantation. It is contended that the boundaries which are shown in the notifications under Sections 4(1) and 6(1) of the LA Act are clearly of the suit schedule property and hence, the plaintiff could not have obtained any title to the property after the acquisition proceedings had attained finality.

It is contended that the trial court had failed to address a preliminary objection as regards the suit being barred by *res judicata*.

Further, that the trial court had also failed to consider that the suit was barred by limitation. The land in question had been acquired in the year 1980, whereas the plaintiff claimed to have purchased the property in the year 1982.

It is also contended that the appellant was precluded from filing the second suit.

The earlier suit in O.S. No. 10660/1993 having been dismissed and the same having been challenged in appeal before this court in RFA 42/1999 and the appellant having chosen to withdraw the appeal and the suit as well, unconditionally, without seeking leave of this court to file a fresh suit in respect of the same subject matter, the second suit was clearly barred under Order XXIII Rule 1 of the Code of Civil Procedure, 1908 (Hereinafter referred to as "CPC", for brevity).

While admitting that the suit property is not indicated by its survey number and neither are the names of the khathedars or anubhavdars shown in the preliminary notification or the final notification, the property is defined there in with reference to its boundaries and it is hence contended that the same would be sufficient to validate the acquisition proceedings in respect of the same. In any event the plaintiff can only question the efficacy or otherwise of the acquisition proceedings in appropriate writ proceedings and the same cannot be the subject matter of a civil suit.

The learned counsel places reliance on the following authorities, in support of the contention that a civil suit was not maintainable in respect of land that was the subject matter of acquisition.

1. The Commissioner, Bangalore Development Authority and Another Vs. Brijesh Reddy and Another,
2. The Chairman, The State Government Employees Shikshana Sangha vs. Hanumantasa Tulajansa Pawar by his LRs and Others, Judgment in R.S.A. No. 2363/2006 passed by the High Court of Karnataka, Circuit Bench of Dharwad dated 1.3.2013,
3. K. Rangaswamy Vs. State of Karnataka and others,
4. Bhoje Gowda @ Shivananjegowda & Another vs. State of Karnataka & Others, 1987 (2) Kar. L.J. 133,
5. Smt. P. Venkatalakshamma and Others Vs. The Special Land Acquisition Officer, Bangalore and Others, and
6. West Bengal Housing Board Vs. Brijendra Prasad Gupta and others,

5. The learned counsel for the respondent, on the other hand, would contend that in so far as the contention that the finding in the earlier suit for bare injunction was a bar to the second suit, it is pointed out,

i) That an earlier suit for bare injunction cannot constitute res judicata in a subsequent suit filed for declaration of title. And further the suit withdrawn at an appellate stage with due permission of the court - all proceedings taken therein including the judgment passed by the trial court are wiped out. For the above propositions, reliance is placed on Basamma and Others Vs. Devamma and Another, and K. Sivaramaiah Vs. Rukmani Ammal, Further, the reason for withdrawal of the suit was on account of the fact that the finding of the trial court

in the earlier suit was invited because of the lack of particulars as to the proper identification and location of the suit property. Secondly, though there was only a threat of dispossession at the time the suit was filed, during the pendency of the same before the trial court the defendant having constructed a compound wall enclosing the plaintiff's property along with its property, thereby denying access to the same by the plaintiff, the suit relief was redundant and it was in this background that the appeal as well as the suit itself stood withdrawn. The fresh suit filed was a comprehensive suit for declaration of title which did not stand divested, as the suit property was never the subject matter of the acquisition proceedings.

ii) The appellant seeking to contend for the first time in appeal, that the suit tantamounts to one laying a challenge to the acquisition is neither pleaded in the written statement nor put to the plaintiff in cross-examination nor raised as a ground in appeal. In any event, this disputed question of fact has been addressed by the trial court and answered in favour of the plaintiff and in the face of such a finding, the jurisdiction of the civil court is not taken away.

In so far as the contention that the suit was barred by *res judicata*, the learned counsel would submit that to establish the same it was necessary for the respondent to have produced the pleadings in the earlier suit and demonstrated that the ingredients of Section 11 CPC were satisfied. On the other hand it is evident on the face of it that the issues in the two suits were not the same and the reliefs claimed were not the same.

It is further contended that the plaintiff has been deprived of possession of the suit property during the pendency of the suit and appeal. The withdrawal of those proceedings as the relief claimed therein having become redundant and the fresh suit filed, *inter alia*, for the relief of recovery of possession could not be said to be barred either on the ground of limitation or for want of leave of the court.

6. In the light of the above contentions and on a perusal of the record, the points that would arise for consideration by this court are the following:

- a) Whether the civil court had the jurisdiction to entertain the suit in the light of the claim by the defendant that the suit schedule property was acquired for the benefit of the defendant, by the State and had been put in possession thereof.
- b) Whether the trial court was justified in its finding that the suit schedule property was never the subject matter of the acquisition proceedings referred to.
- c) Whether the suit was otherwise barred.
- d) Whether the plaintiff had established her entitlement to the suit reliefs.

7. On the first point for consideration, the law is well settled that a civil suit is not maintainable and no injunctive relief can be granted with respect to property that is subject to proceedings under the Land Acquisition Act, 1894 (hereinafter

referred to as the "LA Act", for brevity) and such other legislation providing for compulsory acquisition by the State. Especially if the property in question has been delivered to the beneficiary. The LA Act has been held to be a complete Code in itself and is meant to serve a public purpose and by necessary implication the power of the civil court to take cognizance of a case u/s 9 of the CPC stands excluded, and a civil court would have no jurisdiction to go into the question of the validity or legality of the acquisition proceedings, except by the High Court in a proceeding under Article 226 of the Constitution. (See: State of Bihar Vs. Dhirendra Kumar and others, , State of Punjab and Others Vs. Sadhu Ram, , Commissioner, Bangalore Development Authority Vs. K.S. Narayan, , State of Punjab Vs. Amarjit Singh and Another, The Commissioner, Bangalore Development Authority and Another Vs. Brijesh Reddy and Another,

However, it is to be noticed that in all the above referred decisions wherein, the consistent view as above is expressed, it was not in dispute that the land or property in question was subject matter of acquisition proceedings, inspite of which a claim was sought to be set up, on one or the other ground, notwithstanding the acquisition proceedings having culminated in the property vesting with the State.

The plaintiff in the present case has, however, primarily contended that the suit schedule property was never the subject matter of acquisition proceedings and had sought to demonstrate this on the face of it, with reference to the notifications issued u/s 4(1) and Section 6 of the LA Act. In that, the land does not find mention in the said notifications with reference to its Survey number. There is no reference to the holder of the land at the relevant point of time, with reference to the Record of Rights or the Index of lands.

In the case of Commissioner, Bangalore Development Authority Vs. K.S. Narayan, the plaintiffs appeal had been allowed by the High Court proceeding on the assumption that the property in question had been purchased by the plaintiff in the year 1964 and that the notice issued u/s 17 of the Bangalore Development Authority Act, 1976, in the year 1984, was without reference to the plaintiff. The apex court however, found that there was an error committed by the High Court as to the date of purchase of the property by the plaintiff. Even according to the plaint averment he had purchased the property in the year 1985, one year after the notification u/s 17. The apex court while noticing the view taken by the High Court has held thus:

13. It may be pointed out that the trial court dismissed the suit relying upon the decision of this Court in Laxmi Chand and others Vs. Gram Panchayat, Kararia and others, The High Court distinguished the aforesaid decision by observing as under:-

The ratio would be applicable when only the person aggrieved is covered by the notification directly or as nominee. However, when a person is not covered by the notification and without reference to him any notification issued would not be

binding and in such a situation it would not prevent the aggrieved person from approaching the civil court. It is a salutary principle that the decree rendered in a civil proceeding binds the parties to the proceedings and the persons claiming through them. This principle would equally apply to the proceedings under the Land Acquisition Act.

14. In our opinion the view taken by the High Court is wholly erroneous. It is not the case of the plaintiffs that the plaint scheduled property is not covered by the notification issued u/s 17 of the Act. As a matter of fact, there is no dispute that the land regarding which the suits have been filed is covered by the notification. The main ground on which the suits have been filed is that the notice as required by subsection (5) of Section 17 of the Act was not served upon the plaintiffs. The plaintiffs are claiming title to the property and are seeking the relief of possession on the ground that the notification has been rendered invalid on account of non service of notice upon them under sub-section (5) of Section 17 of the Act. The plaintiffs are clearly assailing the validity of the acquisition proceedings. It is not their case that the plaint scheduled property is outside the purview of the land regarding which the notification u/s 17 had been issued. The ground for assailing the notification, namely, that notice under sub-section (5) of Section 17 of the Act was not served upon the plaintiffs and its effect could only be examined in a writ petition filed under Article 226 of the Constitution before the High Court and not by the civil court. The judgments and decrees passed by the High Court are, therefore, clearly illegal and have to be set aside.

(Emphasis supplied)

It would be clear from the above observation that if the land in question was not the subject matter of the acquisition proceedings, the civil court would have jurisdiction. But if the very fact, as to whether or not the land is, or is not, covered under the acquisition proceedings is under dispute, it may have to be tried as a preliminary issue - which would be crucial to decide the jurisdiction of the court. If it is found that the subject property was not part of the acquired land, the civil court would have jurisdiction. This analogy has been applied in respect of legislation that contained express provisions barring the jurisdiction of the civil courts. In the case of *Hafiz Washi Ahmad Vs. Kutubuddin and Others*, the apex court was concerned with evacuee property covered under the provisions of the Administration of Evacuee Property Act, 1950 (Repealed). Section 28 and Section 46 of the said Act read as follows:

28. Finality of orders under this Chapter.-- Save as otherwise expressly provided in this Chapter, every order made by the Custodian - General, Custodian, Additional Custodian, authorized Deputy Custodian, Deputy Custodian or Assistant Custodian shall be final and shall not be called in question in any Court by way of appeal or revision or in any original suit, application or execution proceeding.

Jurisdiction of Civil Courts barred in certain matters.-- Save as otherwise

expressly provided in this Act, no Civil or Revenue Court shall have jurisdiction--

(a) to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not evacuee property; or

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(c) to question the legality of any action taken by the Custodian-General or the Custodian under this Act; or

(d) in respect of any matter which the Custodian-General or the Custodian is empowered by or under this Act to determine.

Dealing with the question of maintainability of a suit in the face of the above provisions, the apex court has pronounced thus:

ORDER

1. This appeal by special leave arises from the judgment of the High Court of Patna made on 7-11-1974 in C.R. No. 300 of 1974. The appellant filed the suit for injunction restraining the respondents from interdicting with his possession and enjoyment of portion of the property bearing plot No. 1323 and the structure standing thereon. The appellant claimed that though the plot No. 1499 bounded with Khata No. 246 in Touzi No. 3274 was declared as evacuee property, the house in respect of which the appellant claimed is situated in a part of Khata No. 263 in Plot No. 1499 and the same Touzi number, belongs to him. The learned Munsif had taken the view that it is required to have an adjudication at the trial of the suit whether the property bearing Khata No. 263, though situated in Plot No. 1499 of the same Touzi No. 3274 was his exclusive property or was not vested in the custodian of the evacuee property. The objection raised by the respondents was rejected. In the revision, the High Court has taken the view that by operation of Sections 28 and 46 of the Administration of the Evacuee Property Act, 1950, the lands and the buildings stood vested in the custodian of the evacuee Property and, therefore, the suit is not maintainable. When the matter had come up before this Court before grant of leave; the counsel were heard and it was stated that the house or structure on plot No. 1499 was only a portion and there was no claim that it was evacuee property in respect of portion of plot No. 1323 or any structure thereon. Therefore, this Court granted leave concerning the question of dispossession in respect of Plot No. 1499.

2. In view of the fact that the appellant has claimed exclusive title in respect of the property in dispute, the Court is required to go into the question whether or not it is the part of the land which was declared as evacuee property and stood vested in the Custodian of the evacuee property or is the appellant's exclusive property on the basis of the alleged gift said to have been given to the appellant. This is a question of fact to be adjudicated at the trial of the suit before considering whether the land vested in the Custodian of the evacuee property. If the learned District Munsif would find that the suit property is the evacuee property necessarily it stands vested in the Custodian of the evacuee property

and thereby the civil suit is not maintainable. On the other hand, if the finding would be that it is not part of the evacuee property, necessarily the injunction as claimed is to be considered whether or not to be granted. All facts require to be investigated at the trial.

3. We think that the trial Court was right in its direction. The appeal is accordingly allowed. The order of the High Court stands set aside and that of the trial Court stands confirmed. It is made clear that we have not expressed any opinion on merits. The issue is at large. The matter is remitted to the trial Court. As the suit is pending for over two decades, the trial Court is directed to dispose of the suit within a period of six months from the date of the receipt of this order. No costs.

(Emphasis supplied)

In the present case on hand the court below, though has not proceeded to satisfy itself in the first instance, that the suit property was not subject matter of acquisition proceedings, it has arrived at a finding in this regard albeit, after a full fledged trial. This should have been scrupulously avoided. In every such suit the trial court should at the threshold satisfy itself (prima facie if there is unquestionable material produced) that the suit property was not covered under the acquisition proceedings, and arrive at a finding (if there is any doubt on this aspect) before proceeding to adjudicate the matter further, as its very jurisdiction to try the suit hinges on that finding.

As regards the second point for consideration, the dispute was with regard to whether or not the suit property was subject matter of acquisition proceedings that were said to have been initiated in the year 1979 in respect of 4 acres of land in addition to 19 acres of land that was the subject matter of acquisition proceedings initiated in the year 1974, for the benefit of the defendant. The findings of the trial court that the suit property was not the subject matter of acquisition proceedings is to be found at paragraphs 19 to 22 of the judgment of the trial court. The trial court has been compelled to proceed only on the basis of documents produced by the plaintiff.

Significantly, the defendant did not choose to produce any material whatsoever on record. This court had, even at the stage of the hearing of this appeal repeatedly called upon the defendant to place the relevant material pertaining to the acquisition proceedings on record, to no avail.

From the records available, it is seen that the suit property was purchased by Puttaiah and Mariyappa from Rangappa under a sale deed dated 4.6.1959. Their names were reflected in the revenue records as on the date the lands were notified for acquisition. Rangappa had re-purchased the same under a sale deed dated 18.2.1980, the plaintiff had purchased the same from Rangappa as on 1.3.1982.

In the notification issued u/s 6 of the LA Act, dated 9.3.1978, an extent of 4

acres of land in Survey no. 4 of Jakkur Plantation belonging to B.M. Narayanappa, Dodda Muniyappa, Beerappa and Dodda Doddamma was indicated. Neither the names of Puttaiah, Mariyappa or Rangappa was forthcoming. This on the face of it indicated that the suit property was not the subject matter of acquisition. Reliance, however, is sought to be placed on the reference to the name of Rangappa in the copy of the award dated 18.1.1980, as against an extent of land measuring 1 acre 20 guntas. It is to be noticed that Rangappa was not the owner of the land as on that day. He had re-purchased the land only as on 18.2.1980, from Puttaiah and Mariyappa. Apart from the above glaring circumstance, the trial court has also drawn attention to the deposition of DW-1 the witness on behalf of the defendant - whose evidence clearly supported the case of the plaintiff. It cannot be said that the trial court has committed any error in arriving at its finding that the suit property was not subject matter of the acquisition proceedings.

In so far as the third point for consideration is concerned, the plaintiff had chosen to withdraw the earlier suit filed in the first instance, for the relief of bare injunction, at the stage of appeal, the plaintiff did not choose to seek leave of the court to file a fresh suit. There was a bar to a fresh suit on the same cause of action. However, as the plaintiff had been denied possession by the construction of a compound wall by the defendant, encompassing the suit property along with the defendant's property and thereby depriving the plaintiff of access to the property, the suit for bare injunction was redundant. The subsequent suit for the comprehensive reliefs of declaration, possession and consequential reliefs gave rise to other issues far wider in scope than were the subject matter of the earlier suit. Hence it could not be said that the suit was barred either u/s 11 CPC, or under Order II Rule 2 or even under Order XXIII Rule 1 CPC.

In the light of the above, it may be safely said that the plaintiff had certainly established her case and was entitled to the reliefs prayed for. The appeal is accordingly dismissed. No order as to costs.