

(2014) 02 KAR CK 0323

In the Karnataka High Court

Case No : Regular First Appeal No. 699 of 2002

Union of India and Others

APPELLANT

Vs

Azmathulla Mekhri and Another

RESPONDENT

Date of Decision : 17-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 8 Rule 3, 11

Citation : (2014) 2 KarLJ 372

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : N. Devadas, Senior Counsel for Sri S. Kalyan Basavaraj, Assistant Solicitor General of India, Advocate for the Appellant; Udaya Holla, Advocate for the Respondent

Judgement

B.S. Patil, J.—This regular first appeal is filed challenging the judgment and decree dated 6-3-2002 passed by the XVI Additional City Civil and Sessions Judge, Bangalore, decreeing O.S. No. 1357 of 1982 declaring that the plaintiffs-respondents herein were the full and absolute owners of the suit schedule properties and directing the defendants-Union of India and the Authorities of the Defence Department-appellants 1 to 4 herein to hand over the actual physical possession of the suit schedule properties to the plaintiffs, along with costs of the suit. The suit schedule properties consists of Sy. No. 7 measuring 1 acre 21 guntas, Sy. No. 23 measuring 2 acres 4 guntas and Sy. Nos. 32 to 36 admeasuring 3 acres 37 guntas, all situated in K.G. Byadarahalli Village, Kasaba Hobli, Bangalore North Taluk which are now part of Bangalore City.

2. The case of the plaintiffs was that the suit properties were part of "Kayam Gutta" land in Kayam Gutta Village of Byadarahalli. They were originally granted to one Narayanapillai which were later on transferred to one Ramaswamy. The same were subsequently inherited by Yellappa, son of Ramaswamy. According to the plaintiffs, this was recognized by the then Government under "Niroop" dated 26-1-1831 issued by Fouzdar Thimmapparaja Urs to Anil of Krishnarajapur,

whereunder grant of the Village to Narayana Pillai on Kayam Gutta basis was authorised, pursuant to a general order dated 8-12-1929 issued by His Highness the Maharaja of Mysore conferring such authority on the Fouzdar. From Narayana Pillai, one Sri Ramaswamy purchased the lands under a deed of Transfer. Thereafter, in a Court auction one Sri Doddi Suryanarayana Shetty purchased these lands. The said Sri Doddi Suryanarayana Shetty as Jodidar of the Village sold his rights under a sale deed dated 2-1-1936 to one Subedar Michael. The said Sri Subedar Michael, thus became the Jodidar of the Village. During his lifetime, he gave these lands to the plaintiffs during the year 1953 for cultivation on payment of rent in cash. Subedar Michael died in the year 1954. Upon his death, one Anthony Michael became the Jodidar being his only son and legal heir.

3. Plaintiffs further contended that father of the plaintiffs was paying kadayam to the said Sri Subedar Michael and his son. The lands came to be vested in the State as per the provisions of the Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 (for short, "the Act") in terms of the notification issued on 15-9-1956 with effect from 2-10-1956. Plaintiffs and their father filed an application seeking occupancy rights, before the Special Deputy Commissioner for Abolition of Inams, Bangalore. By order dated 13-8-1976, the Deputy Commissioner granted occupancy rights in favour of the plaintiffs.

4. It was urged by the plaintiffs, that defendants, having no manner of right, title and interest in the property were trying to interfere with the possession of the properties attempting to put up temporary structure on the lands. Hence, the plaintiffs were constrained to file the suit.

5. Initially the plaintiffs sought only the relief of permanent injunction. Nearly after 13 years from the date of filing the suit, an amendment was sought seeking the relief of declaration of title and possession of the property. The application for amendment was filed on 14-2-1995 and the same was allowed on 29-5-1995. The plaintiffs sought for possession of the suit properties from the defendants by way of amendment alleging that during the pendency of the suit the defendants had dispossessed the plaintiffs.

6. The 3rd defendant-Military Estates Officer, Bangalore, filed written statement on 9-11-1983 denying the plaint averments. It was contended that as per the Military Land Register, the suit schedule properties were acquired by the Ministry of Defence during the year 1911 at a cost of Rs. 2857.14 annas 8 paise and that the Military Land Register clearly disclosed that the suit schedule properties belonged to the Defence Department. He further asserted that the properties were handed over by the Station Hamildhar, Bangalore, to the Assistant Commandant, Royal Engineer, Bangalore, for using the same as practicing grounds for Pioneer Regiment.

7. It was further contended by the defendants that during the year 1963-1964, four suits had been filed by certain interested parties in respect of the schedule properties seeking declaration of title and for consequential injunction in O.S.

Nos. 82 to 85 of 1963 on the file of the Additional Munsiff, Civil Station, Bangalore. By a common judgment dated 5-4-1965, the Additional Munsiff dismissed the said suits holding that the plaintiffs had failed to prove their title and possession of the suit properties recording a specific finding that the lands had been acquired for the Defence Department. Appeals filed in R.A. Nos. 170 to 173 of 1965 were dismissed on 27-1-1966 holding that the lands had been acquired for the Defence Department, therefore, the previous judgment rendered operate as *res judicata* to the present suit. As regards possession of the properties, it was contended in the written statement that the Defence Department was in possession and the plaintiffs were not at all in possession of the schedule properties. Thus, they sought for dismissal of the suit.

8. In the additional written statement filed on 14-2-2000. It was again asserted that the plaintiffs were not in possession of the properties and they had no title to the suit properties and that it was the defendants who were owners in possession since 1911. They also contended that to the knowledge of the plaintiffs, they have exercised their rights as owners, being in actual possession of the properties continuously since 1911 and as such they had perfected their title by adverse possession.

9. Based on the pleadings on record, the Trial Court framed the following issues:

1. Whether the plaintiffs were in lawful possession of the suit properties on the date of the suit and immediately prior to it?
2. If so, whether the defendants had interfered with the said possession of the suit properties by the plaintiffs?
3. Whether the suit is barred by the principles of *res judicata*?
4. What order or decree?

Additional Issues:

1. Whether the plaintiffs prove that they are the absolute owners of the suit properties?
2. Whether the plaintiffs are entitled for the relief of possession?
3. Whether the defendants prove that they have acquired title by way of adverse possession?

10. In support of their case, the plaintiffs examined the 2nd plaintiff-Fazlulle Mekhri as P.W. 1. Exs. P. 1 to P. 21 were marked. For the defendants, the Sub-Divisional Officer, Defence Estates, Bangalore, was examined as D.W. 1. Exs. D. 1 to D. 5 were produced and marked.

11. On consideration of the oral and documentary evidence, the Trial Court has decreed the suit. It has based its findings on the order passed by the Deputy Commissioner for Inams Abolition produced at Ex. P. 21. It has held that though the defendants were not parties to the said proceedings, they were made aware

of the order-Ex. P. 21 passed in favour of the plaintiffs way back in the year 1982 by making averments in this regard in the plaint. But, the defendants, for reasons best known to them, did not take any action to challenge the said order. Ex. P. 21-order having become final and conclusive would bind the defendants. The Trial Court further proceeded to hold that if Ex. P. 21 was not binding on the defendants, then the converse would hold good as regards the judgments of the Civil Court and the Appellate Court, wherein it was held vide Exs. D. 3 and D. 4 that the suit lands were acquired for the Defence Department, because the plaintiffs were not parties to the said proceedings.

12. The Trial Court observed in paragraph 8 of the judgment that the plaintiffs had produced good number of documents such as Ex. P. 1-sale deed, Ex. P. 2-Mutation Extract, Ex. P. 3-Report of the Special Deputy Commissioner, Exs. P. 4 and P. 5 being the Index of Lands and Record of Rights respectively, Ex. P. 6-Village Map, Ex. P. 7-Akhar Band, Exs. P. 8 to P. 14-Tippani Extracts, Exs. P. 15 to P. 18-Certified Copies of the depositions of plaintiffs, their father and Anthony Michael before the Special Deputy Commissioner for Inams, Ex. P. 19-Kayam Gutta Book containing Rent Receipts issued by Anthony Michael and his father Subedhar Michael from 1953 till 1975-1976 and finally Exs. P. 20 and P. 21 being the copy of the "Niroop" and the copy of the order passed by the Deputy Commissioner granting occupancy rights in favour of the plaintiffs on 13-8-1976. Thereafter, the Trial Court has made brief reference to the documents produced by the defendants namely the Military Land Register and the judgments in O.S. Nos. 82 to 85 of 1963 and R.A. Nos. 170 to 173 of 1965 and the endorsement issued by the Central Record Room, Bangalore, vide Ex. P. 5 stating that the original documents pertaining to acquisition proceedings which were produced before the Civil Court had been destroyed. Thereafter, at the end of paragraph 9 of the judgment, a finding to the following effect is suddenly reached "thus as could be seen from the defence of the defendants, and the oral evidence of D.W. 1, the alleged denials are not specific and clear, as required under Order 8, Rule 3 of Civil Procedure Code, 1908".

13. Reliance has been placed on the decision in the case of State of Punjab and Others Vs. Gurdev Singh, with regard to the binding nature of the statutory orders passed by the Competent Authorities even though the defendants were not parties to the order-Ex. P. 21. The judgment in the case of Danappa Revappa Kolli Vs. Gurupadappa Mallappa Pattanashetti, is relied upon regarding Article 113 of the Limitation Act, 1963 for rejecting the plea of adverse possession. Reliance is also placed on the decision reported in the case of Shivananjappa v. Basavaraju and Others 1991(2) Kar. L.J. 256.

14. The Trial Court has not recorded any finding as to when the plaintiffs were dispossessed from the lands in question. It has proceeded to observe in paragraph 14 of the judgment that when once the plaintiffs were able to prove that they were full and absolute owners and were dispossessed during the pendency of the suit, then they were certainly entitled to take back the

possession of the schedule lands from the defendants. It has negated the plea of adverse possession set up by the defendants holding that there were no pleadings as required under Articles 64 and 65 of the Limitation Act, 1963. The plea of res judicata has been rejected holding that as the plaintiffs were not parties to the suits and proceedings at Exs. D. 3 and D. 4, Section 11 of CPC was not applicable to the facts of the case. Thus, the Trial Court has decreed the suit.

15. Sri N. Devdas, learned Senior Counsel appearing along with Kalyan Basavaraj, Assistant Solicitor General of India have urged the following contentions for the appellants:

I. Except Ex. P. 21-order passed by the Deputy Commissioner, there is no other document produced by the plaintiffs evidencing their title to the suit properties. The application before the Deputy Commissioner has been filed u/s 9 of the Inams Abolition Act, thereby misleading the Deputy Commissioner by falsely representing before him that the plaintiffs were the purchasers. The claim before the Deputy Commissioner was not made on the strength of the Kayam Gutta. The Gutta Receipts from 1953 onwards were not produced before the Deputy Commissioner. It is in this background, the Deputy Commissioner has passed the order registering occupancy rights in favour of the plaintiffs treating them as purchasers. He further urges that the plaintiffs herein and Anthony Michael, from whom the plaintiffs claimed title by arraying him as respondent before the Deputy Commissioner, colluded with each other and the order passed by the Deputy Commissioner was the result of this collusion. He has also urged that the Defence Department and the Union of India not being parties to the proceedings before the Deputy Commissioner, the order passed by him was not binding on the defendants/appellants herein.

II. It is urged by Sri Devdass, learned Senior Counsel that as per Ex. P. 1-sale deed, the plaintiffs claimed that one Doddi Suryanarayana Shetty sold the lands to Anthony Michael on 2-1-1936 and it is from the said Anthony Michael that the plaintiffs claimed to have obtained Kayam Gutta of Byadarahalli Village, but significantly in Ex. P. 1, it is mentioned that the lands that were sold in favour of Anthony Michael were those excluding the lands that were acquired by the Government. This, according to Sri Devdass, made it clear that certain lands in Byadarahalli Village had been already acquired and therefore, while selling the lands of Byadarahalli Village, the vendor Doddi Suryanarayana Shetty specifically excluded those lands in the sale deed executed by him on 2-1-1936 in favour of Anthony Michael.

III. The plaintiffs did not produce any document to show how they acquired any interest or right in the land prior to the order passed by the Deputy Commissioner. Ex. P. 19-Kayam Gutta refers to grant of Patta on 1-5-1953 for the Village. This Patta is said to have been renewed for 15 years as per lease-cum-sale deed dated 15-6-1958 executed by Anthony Michael in favour of M.R. Mekhri. No registered document evidencing such transaction either of 1-5-1953 or of 15-6-1958 has been produced. Hence, the plaintiffs failed to prove their

actual possession of the land under the alleged Kayam Gutta or the lease-cum-sale deed. In any event, when there is nothing to show that Michael had become the owner of these properties, question of he creating Kayam Gutta in favour of the plaintiffs will not arise.

IV. That the plaintiffs filed the suit on 6-5-1982 asserting their actual possession of the lands seeking permanent injunction based on the same. However, after lapse of nearly 13 years from the date of suit and on 14-2-1995 they sought for amendment of the plaint alleging that they were dispossessed during the pendency of the suit and therefore, sought the relief of declaration and possession as per the amendment which was permitted on 29-5-1995. But, the amendment did not disclose when exactly plaintiffs were dispossessed and when the cause of action for the relief of possession accrued. No evidence was led even after the amendment to show when the plaintiffs were dispossessed and when exactly the cause of action for seeking the relief of declaration of title and decree for possession accrued to the plaintiffs. Thus, it is urged that the suit for possession and for the declaratory relief were clearly barred by limitation. In this regard, reliance is placed by him on the judgments in the case of Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others, and Muni Lal Vs. The Oriental Fire and General Insurance Company Ltd. and another, .

V. Ex. D. 1-Military Land Register is an official document maintained in the usual course of business containing the list of lands belonging to the Military including those that were acquired during the year 1911. This document, being a public document, which is marked without any objection, clearly disclosed that the suit lands were acquired for the Military during the year 1911 and their possession was taken over on 20-11-1911. This clear defence taken by the defendants is wrongly ignored by the Court below stating that the denials of the defendant and the case put forward by it were vague.

VI. That Ex. D. 3-judgment dated 27-1-1966 passed in R.A. Nos. 170 to 173 of 1965 pertained to the very lands in respect whereof the relief of declaration of title was sought by certain persons claiming title under Anthony Michael from whom the present plaintiffs also claimed title in respect of the very land. In the said judgment, it is held that these lands had been acquired by the Government for the Military. These findings, having attained finality, the plaintiffs cannot now seek another finding at their instance against the same defendant namely the Defence Department that the lands were not acquired, but were owned and possessed by the plaintiffs by virtue of the occupancy granted in 1976. The judgment in R.A. Nos. 170 to 173 of 1965 is dated 27-1-1966 wherein it is held that these lands had been acquired, whereas the order passed by the Deputy Commissioner is in the year 1976, nearly after a decade.

VII. As per Section 3 of the Inams Abolition Act the consequence of vesting of the land is that the Gutta of the land has to be paid to the State and not to the Inamdar and therefore, on and from the date of vesting (in terms of the notification dated 15-9-1956 with effect from 2-10-1956) even if the plaintiffs

claim that they were inducted as tenants by Anthony Michael, they should have paid the Gutta to the State and not to the Inamdar. Therefore, the Gutta Receipts produced did not have any presumptive value.

VIII. He has lastly urged that wherever the dispute pertains to Government lands and a claim is laid on the Government land, the approach of the Court in deciding the claim of a private party for declaration of title over the Government land has to be different and distinct. In this connection, he has placed reliance on the judgment of the Apex Court in the case of R. Hanumaiah and Another Vs. Secretary to Government of Karnataka, Revenue Department and Others, .

16. Sri Udaya Holla, learned Senior Counsel appearing for the respondents has urged the following contentions:

I. That the relief of declaration of title and delivery of possession sought by the plaintiffs by way of amendment of the pleadings is not barred by limitation. No such plea was taken in the additional written statement filed and at any rate, amendment once allowed will relate back to the date of institution of the suit. He has also urged that the plaintiff has received the costs after the amendment. Hence, this ground cannot be urged by the appellants. Reliance is placed on the following judgment in this regard:

(i) Siddalingamma and Another Vs. Mamtha Shenoy, ;

(ii) Sampath Kumar Vs. Ayyakannu and Another, ,

(iii) Vimal Chand Ghevarchand Jain and Others Vs. Ramakant Eknath Jajoo, .

II. That the order passed by the Deputy Commissioner for Inams Abolition vide Ex. P. 21 binds the appellants. He urges that, even if such an order is void, it has to be declared void by a Competent Court. Reliance is placed on the following judgments in this connection:

(i) Krishnadevi Malchand Kamathia and Others Vs. Bombay Environmental Action Group and Others, ;

(ii) Sultan Sadik Vs. Sanjay Raj Subba and Others, .

III. That Exs. D. 1 and D. 1(a)-Military Land Registers are the documents of the defendants themselves. The defendant cannot be permitted to rely on these documents which have originated from them.

IV. Mr. Holla further contends that litigation between two individuals cannot bind the present respondents. Therefore, Ex. P. 3 and the finding of fact of acquisition of the lands recorded by the Civil Court to which the plaintiffs were not parties cannot bind them. Therefore, the fact of acquisition of the suit lands has to be proved by the defendants independently.

17. Learned Counsel Mr. G.S. Bhat, who has appeared for the 1st respondent has placed strong reliance on the judgments in the case of P. Ramaiah Setty (dead) by L.Rs and Others v. R. Nanjundaiah (dead) by L.Rs and Others 2007(1) Kar.

L.J. 547 : 2006(6) AIR Kar. R. 204 and Anjanappa Vs. Byrappa, , to contend that once the order passed by the Special Deputy Commissioner under the Inams Abolition Act has attained finality, the said order cannot be re-agitated before the Civil Court and the same cannot be cancelled or modified by the Civil Court.

18. In the light of the respective contentions urged by the learned Counsel for the parties, the following points arise for consideration in this appeal:

(i) Whether the order passed by the Deputy Commissioner for Inams Abolition granting occupancy rights in favour of the plaintiffs in respect of the suit lands binds the defendant in the facts and circumstances of the case, though they were not parties to the same and whether the said order establishes the title of the plaintiffs over the suit schedule property?

(ii) Whether the defendants have proved that the suit lands were acquired for the benefit of the Defence Department during the year 1911 and were excluded from the sale deed executed vide Ex. P. 1 dated 2-1-1936?

(iii) Whether the relief of declaration of title and delivery of possession sought by way of amendment as per the application dated 14-2-1995 which was permitted by amendment of the plaint on 29-5-1995 was barred by time?

19. Point No. 1.--Ex. P. 21 dated 13-8-1976 is the order passed by the Deputy Commissioner for Inams Abolition granting occupancy rights in respect of the suit lands in favour of the plaintiffs. It is contended by the Counsel for the appellant that this order is void and not binding on the defendants/appellants herein, as they were not parties to the same and as the same has been obtained by the plaintiffs in collusion with their vendor by misrepresenting the facts. It is also urged by him that the said lands were not at all available for grant of occupancy, as the same had been acquired way back in the year 1911 for the purpose of the Defence Department.

20. It is no doubt well-established that a void order or an invalid order is required to be challenged and got quashed by instituting necessary proceedings. The above judgments relied on by the Counsel for the respondents in the cases of Krishnadevi Malchand Kamathia and Sultan Sadik, support this position. But, in the instant case, the respondents were not made parties to the proceedings before the Deputy Commissioner for Inams Abolition. The Deputy Commissioner has proceeded solely on the basis of the wrong assertion made on facts that the plaintiffs were the owners being the purchasers of the suit property from Anthony Michael. This misrepresentation of facts has not been either resisted or corrected by Anthony Michael who was arrayed as sole respondent. On the other hand, Anthony Michael admits the said position and allows the plaintiffs to wrongly get the occupancy rights without any enquiry or order in that regard.

21. The application filed before the Deputy Commissioner by the plaintiffs shows that they have claimed occupancy rights as owners u/s 9 of the Act. The respondent-Anthony Michael, though aware of the fact that plaintiffs were not

owners, has admitted the claim made by the plaintiffs. Other private individuals who had claimed rights over the very lands by filing Civil Suits suffered judgment from the Civil Court wherein it was held that the lands were acquired for the Defence Department. The Military Land Register clearly disclosed that the lands were acquired for the defence and were the lands of the Military. In none of the revenue records the names of the plaintiffs or that of Anthony Michael had been entered. In such circumstances, the allegations made by the defendants that the order passed by the Deputy Commissioner was the result of misrepresentation by the plaintiffs and the same was obtained by the plaintiffs in collusion with Anthony Michael is highly probable. It cannot, therefore, be said that such an order passed by the Deputy Commissioner will bind the Defence Department which has shown to the satisfaction of this Court that the suit lands had been acquired way back in the year 1911 and its possession had been handed over to the Defence Department. Hence, the arguments of Sri Udaya Holla that mere mistake in mentioning Section 9 in the application instead of mentioning Section 5 will not render the order of the Deputy Commissioner illegal cannot be accepted. Reliance placed on the judgments in the case of *Vikram Singh Junior High School Vs. The District Magistrate (Fin and Rev) and Others*, and *Kedar Shashikant Deshpande Vs. Bhor Municipal Council and Others etc. etc.*, , contending that mere mistake in mentioning the correct provision in the application filed before the Deputy Commissioner does not render the order illegal is of no assistance to the petitioner in the facts of the present case. Similarly, the argument that a void order would bind the parties unless it is set aside has no application to the present case wherein the plaintiffs have obtained the order from the Deputy Commissioner by deliberately misrepresenting the facts and by misleading the Deputy Commissioner in active collusion with Anthony Michael by keeping the real owners, the Defence Department in dark and behind their back.

22. In the case of *A.V. Papayya Sastry and Others Vs. Government of A.P. and Others*, , it is held that order obtained by playing fraud on the Court, Tribunal or Authority, is a nullity and non est in the eye of law. The Apex Court, in the said case, has observed that the principle of finality of litigation cannot be stretched to the extent of an absurdity that it can be utilised as an engine of oppression by dishonest and fraudulent litigations. Dealing with the meaning of fraud, the Apex Court has stated in the said decision that fraud is an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud, one gains at the loss of another. Even the most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam.

23. In the instant case, as already adverted to above, though the property was not the subject-matter of sale by its original owner Suryanarayana Shetty to Michael, and although the same was acquired as back as in the year 1911 and the original owner had received compensation delivering possession of the same

to the Collector, suppressing all these materials and without impleading the Defence Department as party respondent in the proceedings before the Deputy Commissioner, conferment of occupancy is obtained behind the back of the real owner. In fact, by the time the Deputy Commissioner passed the order, the suits filed by some private individuals claiming title to the very suit properties under the very vendor through whom the plaintiffs herein claimed title had been dismissed and the appeals filed against the said decrees were confirmed as is evident from Exs. D. 3 and D. 4.

24. The military land registers recorded the name of the Defence Department in respect of these lands. All these important facts are suppressed and a false assertion is made before the Deputy Commissioner by the plaintiff stating that they were the purchasers of the lands from Antony Michael. This conduct on their part is to deceive and defeat the rights of the Defence Department over the suit lands in collusion with Antony Michael. Therefore, the order passed by the Deputy Commissioner under such circumstances, which is the result of fraud and collusion has no legal sanctity and is non est. Accordingly, Point No. 1 is answered in the negative and in favour of the defendant-appellants.

25. Point No. 2.--The original Register which is known as "Military Land Register" is produced by the defendants and is marked in evidence. It clearly discloses that the lands in question are the lands of the Military having been duly acquired. It is a public document maintained in the usual course of affairs. The same is not objected while marking. It is clearly recorded in Exs. D. 1 and D. 1(a) that the suit lands were acquired in the year 1911 and compensation for the acquisition had been paid whereupon the Defence Department was put in possession. These documents cannot be brushed aside on the ground that Exs. D. 1 and D. 1(a) are the registers maintained by the Defence Department itself. As long as it is a document that is maintained by Public Authority in the usual course of its business, its evidentiary value cannot be doubted. The relevant entries in Ex. D. 1(a) with regard to the suit land state as under:

Sy. Nos. 7, 8, 23 and 30 to 37 acquired in Byadarahalli for field works ground. Details of acquisition not known.

Sy. Nos. 7, 8, 23 and 30 to 37 were acquired in 1911 and were: taken over by the A.C.R.E., Bangalore on 20-11-1911. Total cost of acquisition Rs. 2,857-14-8 vide Letter No. 3558-0-38, dated 17-9-1938 from the Collector, C and M Station, Bangalore, (page 530 of L/27). This was formally a Cholera Camp (1870).....

26. These details contained in the public document make it very clear that the suit lands were acquired way back in the year 1911. In addition to the Military Register produced as Exs. D. 1 and D. 1(a), the defendants have produced Ex. D. 3-judgment dated 27-1-1966 in R.A. Nos. 170 to 173 of 1965. The said judgment arose out of O.S. Nos. 82 to 85 of 1963 filed by certain private individuals against the defendant-Union of India in respect of the very suit lands, particularly, Sy. Nos. 7, 32, 33 and 35 which are also the suit schedule lands in

these suits. Plaintiffs therein sought for declaration of their title over the suit properties and for permanent injunction. The defendant-Union of India contended by producing several documents that the suit properties had been acquired from its original owner for the Military in 1911 and since then all the properties which formed the subject-matter of the four suits were in possession of the department. The Trial Court dismissed the suit holding that the plaintiffs had failed to establish their title.

27. In the appeals preferred, the Appellate Court while dismissing the Appeals has recorded findings holding that the plaintiffs therein had claimed title to the land under the original owner one Anthony Michael and the said Anthony Michael himself purchased the properties from his vendor who had stated in the sale deed that he was selling his interest in the Kayam Gutta Village excluding the lands acquired by the Government and the lands that had already been sold by the vendor and his father Doddi Appayyanna Shetty to others. Thus, the Appellate Judge found that it was clear from the sale deed that the vendor of Anthony Michael never purported to sell the properties which had already been acquired by the Government. In the instant case also, Ex. P. 1 is the sale deed under which Doddi Venkataramana Shetty sold the property to Anthony Michael on 2-1-1936. The properties sold are described as Kayam Gutta Village of Byadarahalli, excluding the lands acquired by the Government and the lands which were already sold by the vendor. It is thus clear that in the sale deed of the year 1936, reference is made to the acquisition made of the lands which were part of Byadarahalli Inam Village.

(emphasis supplied)

28. It is relevant to notice here that the Union of India had produced certain documents relating to the acquisition of lands in favour of the Government i.e. the Defence Department in the said suit. In paragraph 8 of the judgment-Ex. D. 3, the Appellate Judge has observed that "there was abundant evidence on record to show that the suit properties had been acquired for the Union of India by the Land Acquisition Officer of the Civil Station, Bangalore, in 1911". Reference is made to a letter written by Doddi Appayyanna Shetty, father of the vendor wherein he has stated that he did not have any intention to resist the acquisition proceedings, but would be satisfied if the compensation amount was paid. This letter is produced in the said suit as Ex. D. 1(c). Ex. D. 2 evidenced handing over of possession of the acquired property to the Military Department by the Collector of C and M Station, Bangalore. The judgment shows that Ex. D. 2 contained a recital of the fact of handing over possession to A.C.R.E., Bangalore, on 22-2-1911. The Appellate Judge has also referred that there were other documents of the lands pertaining to land acquisition proceedings which were marked in the suit to indicate that there were land acquisition proceedings, wherein the award had been passed and payment of compensation was made to Doddi Appayyanna Setty and therefore, there could be very little doubt about the fact that the suit properties had been acquired in 1911. These observations are

found in paragraph 9 of the judgment-Ex. D. 3.

29. It is thus clear that the defendant-Union of India had produced documents pertaining to the acquisition of the lands in the batch of suits which culminated in the judgment in R.A. Nos. 170 to 173 of 1965 produced at Ex. D. 3. The defendants have produced Ex. D. 5-copy of the application filed before the Additional Munsiff, Civil Station, Bangalore, in O.S. Nos. 82 to 85 of 1963 seeking issue of certified copies of Exs. D. 1 to D. 5(f) produced and marked in the said suits so as to enable them to produce the same in the present suit. The endorsement issued by the Court which is marked at Ex. D. 4(a) reveals that this application was rejected on the ground that the original file was destroyed on 28-6-1978.

30. It is thus clear that the defendants-appellants had produced the relevant documents evidencing acquisition of the very lands in the suit filed by some of the private individuals seeking declaration of their title alleging that they had acquired title, by tracing the same to Anthony Michael who in turn had acquired the same from Doddi Suryanarayana Shetty. By referring to the said documents produced, the Civil Court held that the lands had been acquired and at the time when the land was sold to Anthony Michael, the acquired lands had been excluded and therefore, the plaintiffs therein could not have derived any title to the said lands.

31. The defendant-Union of India/Defence Department was unable to produce these documents in this suit because the original records were destroyed. There is already a finding about the acquisition of the lands in the judgment rendered by the Civil Court. If the findings referring to the acquisition proceedings as recorded by the Civil Court are examined in the light of Exs. D. 1 and D. 1(a) produced in the present suit wherein also mention regarding the acquisition of land during the year 1911 has been made, the inescapable conclusion would be that the suit schedule lands were acquired in the year 1911 and the Defence Department has taken possession of the same and that even while effecting alienation of the land of Byadarahalli Inam Village, the original owner Doddi Suryanarayana Shetty had excluded the acquired lands for which specific mention is made in Ex. P. 1-sale deed itself. Therefore, regardless of whether the judgment in Ex. D. 3 in the earlier suit amounts to *res judicata*, the fact that the lands in question were acquired for the defence in the year 1911 is established from the evidence on record and Ex. D. 3-judgment is a proof to show that all the relevant documents regarding the acquisition of these lands had been produced in the earlier batch of cases filed against the Union of India. Ex. P. 4(a) evidences that those documents produced by the Union Government were destroyed and hence could not be furnished to the defendants. Thus, the material on record clearly establishes that the suit lands were acquired for the defence in 1911. Accordingly, Point No. 2 is answered in the affirmative and in favour of the defendants.

32. Point No. 3.--The suit was originally filed on 6-5-1982 seeking a decree of

permanent injunction. Nearly after a lapse of 13 years from the date of filing the suit, an application for amendment was filed on 14-2-1995 seeking declaration of title and for possession of the property. This application was resisted, but the amendment was allowed on 29-5-1995. It was alleged by way of amendment that during the pendency of the suit, the defendants had dispossessed the plaintiffs. The amendment of the plaint does not disclose any material with regard to the date on which the plaintiffs were dispossessed and what action was taken by the plaintiffs either by way of lodging a police complaint or by making any grievance in this regard before this Court by filing an interlocutory application.

33. The case of the defendants as pleaded in the written statement filed on 9-11-1983 is, that it is the defendants who were in possession of the properties as the suit properties had been acquired by the Government for the purpose of the Defence Department. After the amendment of the plaint, the plaintiffs have not led any evidence. Therefore, there is absolutely no evidence to substantiate and prove the assertion that the plaintiffs were dispossessed during the pendency of the suit. The Trial Court has not recorded any finding as to when the plaintiffs were dispossessed from the lands in question. In fact, no such finding can be recorded because there is no material in this regard. However, it has proceeded to observe that as the plaintiffs were able to prove that they were full and absolute owners and were dispossessed during the pendency of the suit, they were entitled to take back the possession of the suit lands from the defendants. This finding, therefore, is without any basis and is unsustainable. Unless the plaintiffs establish that they were indeed dispossessed during the pendency of the suit by taking up specific plea in this regard and by leading evidence, the relief of possession sought by them could not have been granted.

34. The defendant-Union of India has taken a specific plea in the written statement that the suit lands were acquired and the Defence Department was in possession. It denied the right, title and interest and the alleged possession of the plaintiff. The written statement was filed on 9-11-1983. The title of the plaintiff over the suit schedule property was denied. The defendant asserted the title in the Defence Department and as also the possession. Therefore, cause of action to sue for declaration of title arose on 9-11-1983. The suit ought to have been filed within three years from the said date as per Article 58 of the Limitation Act, 1963 to seek the relief of declaration.

35. Even as regards the relief of possession, unless the plaintiffs established their assertion that they were dispossessed during the pendency of the suit and in the wake of my findings that the suit lands had been acquired in the year 1911 and the possession of the lands had been taken by the Defence Department, the reliefs of declaration of title and possession sought by way of amendment of the plaint on 14-2-1995 about 13 years after the filing of the suit were barred by time. The Trial Court ought not to have allowed such an amendment which was barred by time. As per Article 64 of the Limitation Act, 1963, the suit for

possession ought to have been filed within 12 years from the date of dispossession. Therefore, the contention of Mr. Holla that the amendment of the plaint once allowed will relate back to the date of filing of the suit cannot be accepted in the facts of the present case.

36. In the case of Siddalingamma, in the eviction petition filed, the health condition of the land lady and the fact of her children residing with her had not been pleaded. Nevertheless evidence had been allowed to be let in. An application under Order 6, Rule 17 of the Civil Procedure Code, 1908 was moved and the deficiency in the pleadings stood removed. On the basis of the doctrine of relation back which generally governs amendment of pleadings, the Apex Court held that the amendment would be deemed to have been filed originally and the evidence shall have to be appreciated in the light of the amended averments. Thus, no question of bar of limitation arose in this case with regard to amended pleadings. Hence, this case will not help the respondents.

37. Similarly, in the case of Sampath Kumar, the question that arose for decision was whether it was permissible to convert through amendment a suit for permanent injunction into a suit for declaration of title and for recovery of possession. In the opinion of the Trial Court, it was open to the plaintiff to file a fresh suit and that is why the prayer for amendment had been rejected by the Trial Court and also by the Revisional Court. In paragraph 11 of this judgment, the Apex Court made it clear by observing as under:

.....However, the defendant is right in submitting that if he has already perfected his title by way of adverse possession then the right so accrued should not be allowed to be defeated by permitting an amendment and seeking a new relief which would relate back to the date of the suit and thereby depriving the defendant of the advantage accrued to him by lapse of time, by excluding a period of about 11 years in calculating the period of prescriptive title claimed to have been earned by the defendant. The interest of the defendant can be protected by directing that so far as the reliefs of declaration of title and recovery of possession, now sought for, are concerned the prayer in that regard shall be deemed to have been made on the date on which the application for amendment has been filed.

38. It is thus clear from this judgment that if the new plea is barred by time, the Court has to make it clear that such plea shall be deemed to have been made on the date on which the application for amendment has been filed.

39. The third decision relied upon by the respondents in the case of Vimal Chand Ghevarchand Jain, does not lay down that such time barred claims introduced by way of amendment shall be deemed to take effect from the date of suit and that the aggrieved party cannot make a grievance against such an amendment while filing an appeal against the judgment.

40. If such a question of bar of limitation is urged before the Appellate Court contending that doctrine of relation back shall not be made applicable to

entertain time barred claims, the Appellate Court is required to examine the same. In fact, in Vimal Chand's case, at paragraph 24 of the Apex Court has qualified the application of the doctrine of relation back by stating as under:

It is true that when a pleading is amended, it, subject to just exceptions, takes effect from the date when the original case is filed.

41. In the same way, in the judgment of the Mysore High Court in the case of M.L. Shankaranarayana Rao v. Corporation of the City of Bangalore 1973(2) Mys. L.J. 486, it is laid down that while allowing the amendment, the Court has to consider whether the plaintiff's claim in respect of the amended relief would be barred. The Court has not held in this case that even though the claim was barred, as amendment had been allowed, it has to be deemed to have been sought while filing the original suit.

42. As rightly contended by Mr. Devdas, in the case of Revajeetu Builders and Developers, in paragraph 63, the Apex Court has laid down as under:

As a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

43. It is not necessary to refer to the other judgments on the issue as the law is well-summed up in the aforesaid two judgments.

44. In the result, Point No. 3 is answered holding that the suit for declaration of title and for possession sought by way of amendment was barred by time. Hence, this appeal is allowed. The impugned judgment and decree is set aside. The suit of the plaintiffs is dismissed. Parties shall bear their respective costs.