

IN THE HIGH COURT OF KARNATAKA,
CIRCUIT BENCH AT GULBARGA

DATED THIS THE 12TH DAY OF JANUARY 2010

P R E S E N T

THE HON'BLE MR.JUSTICE N.KUMAR

A N D

THE HON'BLE MRS.JUSTICE B.V.NAGARATHNA

R.F.A. NO. 1019/2000

BETWEEN:

THE COMMISSIONER
KARNATAKA HOUSING BOARD
BANGALORE

... APPELLANT

(BY SRI SHIVAKUMAR MALIPATIL, ADV.)


AND:

BASAVARAJ
S/O TAMANNA KONDED
AGED 53 YEARS
R/A NO.10-247,
KONDED GALLI
LOWER LANE, BRAHMAPUR
GULBARGA.

... RESPONDENT

(BY SHIVAPUTRAPA K.BARUDE, ADV.)

R.F.A. IS FILED U/S 96 R/W Or.XLI RULE 1, CPC,
AGAINST THE JUDGMENT AND DECREE DT.15.4.2000
PASSED IN OS.85/95 ON THE FILE OF PRL.CIVIL



JUDGE (SR.DIVN.), GULBARGA, DECREETING THE
SUIT FOR POSSESSION OF LAND OR ITS PRICE.


This appeal coming on for hearing this day,
N.KUMAR J., delivered the following

J U D G M E N T

This is defendant's appeal against the judgment and decree of the trial court which has decreed the suit of the plaintiff for title and possession. For the purpose of convenience, the parties are referred to as they are referred to in the original suit.


2. The subject matter of the suit is land bearing Survey No.111/1Aa measuring 1 acre 12 guntas forming part of No.111/Aa measuring 16 acres 39 guntas situate at Brahmapur village, Gulbarga, bounded on the north and south by tar road and east and west by houses.

3. The case of the plaintiff is, he and his ancestors held land in Survey No.111/1Aa measuring 37 acres 4 guntas of Brahmapur, Gulbarga, of which the suit land is a portion. Out of this total extent, two acres were



acquired for the purpose of gate for M.S.K.Mills,Gulbarga, and an extent of 8 acres 7 guntas was acquired for Harijan Housing Society, Gulbarga, named as Ashoknagar. The mill came in possession of 9 acres 38 guntas of land unauthorisedly as neither the plaintiff nor his ancestor passed any document of title in its favour. But the name of the mill came to be entered in Pahani Patrika to an extent of 11 acres 38 guntas and it is alleged that it has been done in collusion with the village accountant. Thereafter, the mill sold 9 acres 38 guntas to the defendant at the rate of Rs.10,000/- per acre , but the defendant has taken possession of 11 acres 12 guntas instead of 9 acres 38 guntas. It is alleged that the defendant-Karnataka Housing Board is in unlawful possession of 1 acre 12 guntas belonging to the plaintiff.

4. The plaintiff further alleges that his father, Tammanna died in June 1967, and the plaintiff could not comprehend the real state of affairs for a long time.



However, he filed O.S.107/81 against the mill for declaration of ownership, etc. but it came to be dismissed as not maintainable under the provisions of Sick Textiles Undertakings (Nationalization) Act, 1974. Later, he sold a portion of land bearing CTC.1047 (sheet No.83) to one Tahiba Khatun; when she took up construction, the defendant issued a notice to her on 20.1.1993 not to proceed with construction work since it was not measured by the Additional Director of Land Records (ADLR). The land was then got surveyed at the instance of the plaintiff and the defendant and the ADLR submitted a report on 27.9.1994 reporting that the defendant is in possession of 11 acres 10 guntas instead of 9 acres 38 guntas, and hence, the extent of 1 acre 12 guntas in Survey No.111/1Aa of Brahmapur, Gulbarga, is in his unlawful possession. In these circumstances, the plaintiff issued a legal notice to the defendant on 5.12.1994 calling upon it to hand over the excess land or pay its price at the rate of Rs.2,00,000/- per acre. Though the defendant received the notice, it




did not give any reply. Hence, the suit for declaration of ownership and possession of the suit land, in the alternative, a decree for Rs.3,00,000/- being the value of the land.

5. After service of summons, defendant entered appearance and filed written statement. It denied that the suit property measures 1 acre 12 guntas of Survey No.111/1Aa measuring 16 acres 39 guntas of Brahmapur, Gulbarga, that plaintiff and his ancestors owned 37 acres 4 guntas of which the suit land is a portion; it was pleaded that Surey Nos.111 and 114 of Brahmapur measured 33 acres 38 guntas . While admitting that the mill is in possession of 9 acres 38 guntas and another 2 acres for the gate, the defendant denied that the plaintiffs or his ancestors did not pass any document in its favour; mutation entries are all made legally and in accordance with law; the mill sold 9.38 acres to this defendant and this defendant took possession of the land. Hence, there is no question of



defendant being in unlawful possession of excess land as alleged by the plaintiff. Since the plaintiff lost the case against the mill in the civil court, he has filed this false suit to make wrongful gain. In fact, the mill is not made a party and hence, the suit is liable to be dismissed for non-joinder of necessary party; it is denied that the plaintiff sold a portion of land Bering CTC.1047 to Tahiba Khatun and that when she took up construction, this defendant issued a notice to her on 20.1.1993; it is also denied that the land was surveyed at the instance of the plaintiff and this defendant, that ADLR has never surveyed the suit land and that the defendant has colluded with him; it is contended the report of ADLR is not correct. The extent of 2 acres for the purpose of gate is still lying with the mill and there is no question of defendant being in excess possession of 1 acre 12 guntas. The suit is barred by limitation and there is no cause of action. Hence, the defendant prayed for dismissal of the suit.



6. On the aforesaid pleadings, the trial court framed the following 6 issues:

(1) Whether the plaintiff proves that he is the owner of the suit land measuring 1 acre, 12 guntas n survey no.111/1Aa?

(2) Whether the plaintiff is entitled for possession of the same from the defendant?

(3) Whether plaintiff proves that alternatively he is entitled for the price of the land amounting to Rs.3,00,000/- ?

(4) Whether the suit is bad for non-joinder of necessary parties?

(5) Whether the suit is barred by limitation?

(6) What decree or order parties are entitled to?

7. The plaintiff in order to substantiate his claim, examined himself as PW1 and one Basavaraj, s/o Nanasab, as PW2 and produced 27 documents marked as Exs.P1 to P27. On behalf of the defendant, one Mallanna, official of K.H.B., was examined as DW1 and 4 documents were marked as Exs.D1 to D4. The trial


court on appreciation of the aforesaid oral and documentary evidence on record held, title of the plaintiff over the suit land is not in dispute, the report submitted by ADLR shows the defendant is in unlawful possession of land to the extent of 1 acre 12 guntas which belongs to the plaintiff, the suit is not bad for non-joinder of necessary parties and is also not barred by limitation, and therefore, decreed the suit of the plaintiff as prayed for. Aggrieved by the said judgment and decree, the defendant has preferred this appeal.

8. Learned counsel for the appellant, assailing the impugned judgment and decree, contended the suit is one for declaration of title and possession; except producing 4 documents i.e. record of rights, plaintiff has not produced any document of title, though it is specifically denied in the written statement; without properly assessing these aspects, the trial court has proceeded on the assumption that there is no dispute regarding title and has granted the relief sought for. He



further contended, ADLR report is not binding on this defendant; defendant is in possession of only 9 acres 38 guntas apart from 2 acres where gate is constructed and the finding of the trial court that the defendant is in unlawful possession of 1 acre 12 guntas is without any basis. The facts disclose that in the year 1969, the mill came in possession of 11 acres 38 guntas and the plaintiff's suit for possession is clearly barred by time. In these circumstances, he contended the judgment and decree of the trial court is erroneous and requires to be set aside.

9. Per contra, learned counsel for the respondent submitted that after a portion of the land was sold to the mill, it illegally got mutated entries in the revenue records showing possession of 11 acres 38 guntas instead of 9 acres 38 guntas; when ADLR report shows the defendant who later purchased an extent of 9 acres 38 guntas from the mill, is in possession of 1 acre 12 guntas of excess land than what it had purchased, a



case of unlawful possession by the defendant is established and the plaintiff being the owner, is entitled to get back possession or the value of the land. Hence, he submitted no case is made out for interference in this appeal.

10. In the light of the aforesaid facts and rival contentions, the points that arise for our consideration in this appeal are:

- a) Whether the trial court was justified in declaring the title of the plaintiff over the suit land in the absence of title deeds?
- b) When there is no privity of contract between the plaintiff and defendant and if the defendant has taken possession of 11 acres 38 guntas instead of 9 acres 38 guntas, whether the plaintiff is entitled to possession of 1 acre 12 guntas, i.e. suit land, from the defendant?
- c) Whether the suit is in time?

POINT NO.(1):


11. The suit is one for declaration of title. The plaintiff and his ancestors claim to be owners of Survey No.111/1Aa measuring 37 acres 4 guntas which is categorically denied in the written statement. The

plaintiff in order to succeed in a suit of this nature, has to prove his title to the suit land. Except producing Exs.P1 to P4, record of rights standing in the name of his ancestors, the plaintiff has not set out in the plaint nor in evidence the mode of acquisition of title to that property by his ancestors. It is settled law that record of rights is not a document of title, it only shows, at the most, possession of the plaintiff over the property. Basically, it shows who is the cultivator and from whom land revenue is to be collected by the State. Merely on the basis of entries in the revenue records, a decree for declaration of title cannot be granted. Unfortunately, the trial court has proceeded on the assumption that title to the suit land is not in dispute, when the defendant has specifically denied plaintiff's title, and has granted declaration. The said finding is clearly erroneous.

POINT NO.(2):

12. The material on record discloses an extent of 2 acres was acquired by the mill by way of compulsory


acquisition. Similarly, 8 acres 7 guntas was acquired for forming a layout for depressed class people where presently Ashoknagar is situated. The plaintiff has not produced the notification showing the exact extent which is the subject matter of notification and in the absence of such documents, it is not possible to proceed on the assumption that 2 acres was acquired by the mill apart from 8.07 acres for the said layout. The plaintiff's main grouse is, wrongful mutation entries are made in the name of the mill and he had to file the suit and without challenging the acquisition, as the mill was declared sick, the suit came to be dismissed on the ground that the suit was not maintainable. The records produced by the defendant show the mill sold 9 acres 389 guntas to K.H.B. which was handed over. If the plaintiff has lost title to the extent of 11 acres 38 guntas as far back as in the year 1969 and it was in possession of the mill, merely because only 9 acres 38 guntas were purchased by the defendant from the mill out of 11 acres 38 guntas, plaintiff does not get cause of action to



claim land which is in excess than what the defendant has purchased. In other words, there is no privity of contract between the plaintiff and defendant. The defendant did not get possession from the plaintiff; it took possession from the mill under a registered sale deed. Unless the plaintiff shows his title to the suit land which is admittedly not in his possession, he is not entitled to possession. In a suit for recovery of possession based o title, the plaintiff is not entitled for the relief sought for.

POINT NO.(3):

13. The material on record discloses the plaintiff appears to have lost possession of the suit land in 1969 and the suit filed in 1995 after ADLR submitted a report that the defendant is in possession of excess land to the extent of 1 acre 12 guntas, is barred by time, as more than 12 years have lapsed from the time plaintiff lost possession. Unfortunately, the trial court has very casually dealt with the matter and proceeds on the



assumption that only in 1994, the plaintiff came to know about it and hence the suit is in time. The said finding requires to be set aside. We are of the considered view that the trial court committed a serious error in not properly appreciating the facts and the oral and documentary evidence before it. Probably he was carried away by the report of ADLR (Ex.P9) which is the foundation for the suit, and erred in granting the decree. Therefore, the judgment and decree of the trial court suffers from serious illegality, infirmity contrary to legal evidence on record and requires to be set aside.

14. In the result, we pass the following order:

This regular first appeal is allowed. The judgment of the trial court is set aside. The suit of the plaintiff is dismissed. Parties to bear their own costs.

Sd/-
JUDGE

vgh*

Sd/-
JUDGE