

CORPORATION OF CITY OF BANGALORE

v.

ZULEKHA BI & ORS.

(Civil Appeal No. 1299 of 2002)

MARCH 24, 2008

(DR. ARIJIT PASAYAT, P. SATHASIVAM AND
AFTAB ALAM, JJ.)

Code of Civil Procedure, 1908; s.96:

Right, title and interest over suit property – Claim of, by appelland and respondent No.1 – Onus to prove – Held: Plaintiff has to prove the title – The conclusion arrived at by the High Court, that it is for the Corporation to prove the title, not sustainable – No tax paid receipt produced by respondent No.1 to substantiate her claims for title over the property – Acknowledgment issued by the authority for having received an application from respondent No.1, by no stretch of imagination, could be considered to be a document proving title over the property – Since the first appeal was disposed of in casual manner, the matter remitted to High Court for consideration afresh – Directions issued.

One 'R' allegedly sold his share in the joint family property to respondent No.1- plaintiff. When she was raising construction, defendant prevented her from raising construction and interfered with the peaceful possession of the property by her. Respondent No.1 filed a title suit, which was dismissed by the trial Court. Appeal filed thereagainst by respondent No.1 was allowed by Single Judge of the High Court. Hence the present appeals.

Allowing the appeals, the Court

HELD: 1.1 There are several infirmities in the High Court's judgment. The High Court in Para 10 of the

A judgment concluded that since the appellant was claiming title in respect of suit property, it was for the Corporation to prove the title by production of document in their possession. This conclusion is not sustainable because it is the plaintiff who has to prove her title. (Para – 7)
B [330-A, B]

1.2 It has been rightly pointed out by the counsel for the appellant that there was no Khata extract or tax paid receipt produced by the plaintiff to substantiate her claim for title over the property. (Para – 8) [330-B, C]

C 1.3 The High Court referred to Exh.P6 which was an acknowledgment purported to have been issued from the office of the Revenue Officer. The High Court concluded that the same established that the plaintiff's vendor had got title over the property. The conclusion is clearly without
D any foundation in law. The Single Judge of the High Court himself noted that Exh. P6 is the acknowledgment issued for having received application from plaintiff by the Corporation on 24.4.1981 and the same was returned on
E 15.6.1981 requiring the plaintiff to submit further information and to show the spot to the Revenue Inspector and to produce the plan. By no stretch of imagination same can be considered to be a document proving title over the property. The fallacies in the conclusions of Single Judge of the High Court are too
F numerous to be referred to in detail. (Paras – 9 & 10) [330-C, D, E, F]

2. Since the First Appeal has been disposed of in the most casual manner, the impugned judgment is set aside and the matter is remitted to the High Court for a fresh
G consideration in accordance with law. (Para – 11) [330-F, G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1299 of 2002.

From the final Judgment and Order dated 02.12.1999 of the
H High Court of Karnataka at Bangalore in R.F.A. No. 430 of 1994.

WITH

Civil Appeal No. 1300 of 2002.

Vikas Rojipura, F.C. Vidya Sagar, A.T.M. Sampath, T.S. Shanthy, V. Balaji and Legi for the Appellant.

B.V. Deepak (for M/s. T.T.K. Deepak & Co.) for the Respondents.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in these appeals is to the order passed by a learned Single Judge of the Karnataka High Court allowing the First Appeal filed under Section 96 of the Code of Civil Procedure, 1908 (in short the 'CPC'). The respondent No.1 was the plaintiff and was appellant before the High Court. The case set out in the plaint is as follows:

2. The plaintiff is the absolute owner of the suit schedule property, having purchased it from M.N. Rudrappa under registered sale deed dated 9-2-1981 and is in possession of it since that date. The schedule property is the joint family of the plaintiff's vendor and the suit property fell to the share of the plaintiff's vendor's family who are not alive, plaintiff's vendor became a co-parcener and in that capacity he sold the suit property to plaintiff on 9-2-1981, and the khata is not changed to his name. Now, the plaintiff, with an intention to erect compound around the suit property has stocked stone slabs, but defendants 2 and 3 at the instance of the first defendant are trying to prevent the plaintiff from entering in to the schedule property and erecting stone slabs and on 20-11-1982, defendants 2 and 3 with gundas tried to trespass into the suit schedule property and interfered in the peaceful possession and enjoyment of the property by plaintiff, trying to remove the stone slabs stocked therein and this was resisted by the plaintiff and well wishers. It is the contention of plaintiff that, he being the absolute owner and in possession of the suit property has got prima facie case.

A 3. The respondent No. 2 was the defendant No. 2 and his stand was as follows:

B Plaintiff is not the owner of the scheduled property and that, neither plaintiff nor his vendor Rudrappa had any manner of right, title and interest over the schedule property. It is denied that the plaintiff's vendor had the property under the partition deed dated 26-01-1946 as alleged. Defendant has pleaded ignorance with regard to the application of plaintiff dated 24-04-1980 to change khata. It is denied that the plaintiff has stocked stone slabs to erect compound with the schedule property, with the help of goondas. It is contended that, the plaint schedule is mis-leading and the sale deed produced does not disclose any number of the property and there is no existence of such property as described in the plaint. It, is the specific case of second defendant that the vast vacant land belongs to D the Corporation and he had applied to the Corporation for lease of the land and after obtaining sanction of the Government, Corporation granted lease of Plot No. 15 measuring 226.6 Sq Yards in Siddaiah Road bounded on the East by Corporation land granted to third defendant, West by land granted to M.A. E Krishnamurthy, North by Corporation Road and South by Corporation Plot No. 14 and he has complied with all terms and conditions of the lease. It is contended that, when he tried to enclose the property with stone slabs, husband of the plaintiff F Kustaq Ahmed obstructed the work and threatened to remove the slabs under imaginary rights, that there is no cause of action for the suit and she prayed for dismissal of the suit with costs.

G 4. Similarly the third defendant and the 4th defendant also filed written statement contending that plaintiff was not the owner of the suit land and had no right, title and interest. The following issues were framed by the trial court.

- H 1. Whether plaintiff proves that suit property belongs to M.N. Rudrappa and that she has deprived title to it by the sale deed executed by him?
2. Whether plaintiff is in lawful possession of suit

property?

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3. Whether the suit has been property valued?
4. Whether 4th defendant is not a necessary party to this suit?
5. Whether the plaintiff is entitled to relief of declaration and injunction prayed?
6. To what reliefs are parties entitled?

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5. Ultimately the suit was dismissed by the trial Court and as noted above First Appeal was filed by the respondent No.1.

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6. It appears that the High Court referred to the various stands, it was concluded that the documents produced by the appellant did not prove its title. The ultimate conclusions were as follows:

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"The documents referred to above are definitely not prove the title of the Corporation. Therefore, the above documents are rejected as not valid for want of clarify and the property mentioned therein has not been identified at all. The Corporation as a mighty Public Body after all would have produced the register of property or the present plan after the Municipal Corporation Act has come into force. Not aa single attempt has been made by the Corporation to prove the title if they are really entitled to claim. It is unfortunate that by the negligence of the Corporation, the Courts are not able to find out whether the property claimed by the plaintiff is a public property or private property of the other persons under whom, the property is claimed to be purchased by the plaintiff. Therefore, I have no hesitation to .reject the evidence of Corporation the 1st respondent herein as neither useful for the Corporation nor useful to the case. The mere facts that the Corporation leased out that the property to defendants-2 and 3, it is seen ipso-facto prove that they are having got the title to the property, no proof is forthcoming in respect thereof."

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A 7. There are several infirmities in the High Court's judgment and a few need to be highlighted. The High Court in para 10 concluded that since the appellant was claiming title in respect of suit property, it was for the Corporation to prove the title by production of document in their possession. This
B conclusion is not sustainable because it is the plaintiff who has to prove her title. It is to be noted that the Corporation referred to various documents i.e. Exh. D1 to D9 to prove that the Corporation was the owner of the property.

C 8. It has been rightly pointed out by learned counsel for the appellant that there was no Khata extract or tax paid receipt produced by the plaintiff to substantiate her claim for title over the property.

D 9. Further the High Court referred to Exh. P6 which was an acknowledgment purported to have been issued from the office of the Assistant Revenue Officer, Bangalore City. The High Court concluded that the same established that the plaintiff's- vendor had got title over the property.

E 10. The conclusion is clearly without any foundation in law. It is to be noted that the learned Single Judge himself noted that Exh. P6 is the acknowledgment issued for having received application from plaintiff by the Corporation on 24.4.1981 and the same was returned on 15.6.1981 requiring the plaintiff to submit further information and to show the spot to the Revenue Inspector and to produce the plan. By no stretch of imagination
F same can be considered to be a document proving title over the property. The fallacies in the conclusions of learned Single Judge are too numerous to be referred to in detail.

G 11. Since the First Appeal has been disposed of in the most casual manner, we deem it appropriate to set aside the impugned judgment and remit the matter to the High Court for a fresh consideration in accordance with law.

12. The appeals are allowed but without any order as to costs.

H S.K.S.

Appeals allowed.