A THE STATE OF A.P. & ORS.

v.

M/S. STAR BONE MILL & FERTILISER CO.

(Civil Appeal No. 6690 of 2004)

B FEBRUARY 21, 2013

[DR. B.S. CHAUHAN AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.]

Property Law – Ownership and title – Suit filed by C *respondent in 1974 on basis of registered sale deed dated 11-11-1959 for declaration of title – Trial court decreed the suit, holding that appellant-Government was not the owner of the suit property, and that the respondent had a better title over it – Order upheld by High Court – On appeal, held: The Courts* D *below erred in ignoring the revenue record, particularly, the documents showing that the Government was the absolute owner of the suit property since at least 1920 – Unless M/s A (the vendor of respondent) had valid title, the respondent could not claim any relief whatsoever from court – There was* E *clear admission by respondent in its letter dated 22-5-1970 to the Chief Minister of the State to the effect that it had been cheated by M/s. A which had no title over the suit property, and had executed sale deed in favour of respondent by way of misrepresentation – Documents on record established that* F *M/s A was merely a lessee of the appellant-Government – Sale deed relied upon by the respondent thus invalid and inoperative – Suit filed by respondent accordingly dismissed – Maxims – Nemo dat quid non habet and Nemo plus juris tribuit quam ipse habet.*

G *Evidence Act, 1872 – s.90 – Purpose of – Held: Is to do away with strict rules, as regards requirement of proof, which are enforced in the case of private documents, by giving rise to a presumption of genuineness, in respect of certain documents that have reached a certain age – The period is*

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to be reckoned backward from the date of the offering of the document, and not any subsequent date, i.e., the date of decision of suit or appeal – Deeds and documents – Ancient documents – Admissibility of.

Evidence Act, 1872 – s.110 – Presumption of title as a result of possession – Held: Can arise only where facts disclose that no title vests in any party.

On 21.5.1943, a lease deed had been executed by the appellant-Government in respect of the land in question in favour of M/s 'A'. The appellant-Government asked M/s 'A' to vacate the land. However, M/s. 'A' remained in possession. On 11.11.1959, the partners of M/s. 'A' executed a sale deed in favour of the respondent for money consideration. The respondent filed a petition seeking permanent lease of the land in his favour whereupon an order was passed by the Ministry for recovery of arrears of rent. The respondent then wrote a letter to the Chief Minister of the State, stating that he had been cheated by M/s. A as it had executed a sale deed in his favour, even though it had no title, and a very high rate of rent was fixed by the department, which should be reduced. The application/petition was rejected. The respondent filed a Writ Petition. The High Court disposed of the writ petition, asking the respondent to approach the appropriate forum, or to make a representation to the State Government. The appellants then served notice upon the respondent under Section 7 of the Land Encroachment Act. The matter was adjudicated under Section 6 of the Land Encroachment Act, and the respondent was directed to vacate the suit land. The respondent filed another Writ Petition before the High Court, however, the same was dismissed, after giving liberty to the respondent to approach the civil court.

The respondent thereafter filed suit for declaration of title and for injunction, restraining the appellants from

A evicting the respondent from the property in dispute. The City Civil Court decreed the suit, holding that the Government was not the owner of the suit land, and that the respondent/plaintiff had a better title over it. Aggrieved, the appellants preferred appeal before the B High Court, which was dismissed.

In the instant appeal, the appellants *inter alia* contended that the courts below misdirected themselves and did not determine the issue as regards, whether the vendor of the respondent had any title over the suit C property which was necessary to determine the validity of the sale deed in favour of the respondent; and that the courts below erred in applying the provisions of Section 90 of the Evidence Act, 1872.

D Allowing the appeal, the Court

HELD:1.1. Section 90 of the Evidence Act is based on the legal maxims : *Nemo dat quid non habet* (no one gives what he has not got); and *Nemo plus juris tribuit* E *quam ipse habet* (no one can bestow or grant a greater right, or a better title than he has himself). This section does away with the strict rules, as regards requirement of proof, which are enforced in the case of private documents, by giving rise to a presumption of genuineness, in respect of certain documents that have F reached a certain age. The period is to be reckoned backward from the date of the offering of the document, and not any subsequent date, i.e., the date of decision of suit or appeal. Thus, the said section deals with the admissibility of ancient documents, dispensing with proof G as would be required, in the usual course of events in usual manner. [Para 7] [405-C-F]

1.2. The High Court erred in holding that the sale deed dated 11.11.1959, must be considered in light of the H provisions of Section 90 of the Evidence Act, instead of

the period mentioned therein, thereby treating the appeal as a continuation of the suit. Therefore, the period of 30 years mentioned therein, has been calculated from 1959, till the date of the decision of the appeal, i.e. 22.3.2004. This view itself is impermissible and perverse, and cannot be accepted. [Para 6] [404-H; 405-A-B]

2.1. In the instant case, there has been a clear admission by the respondent/plaintiff in its letter dated 22.5.1970 (Ex.B-39), to the effect that it had been cheated by M/s. A who had no title over the suit land, and sale deed dated 11.11.1959, had thus been executed in favour of the respondent/plaintiff by way of misrepresentation. The said application was rejected vide order dated 18.12.1970. While filing the writ petition, the respondent/ plaintiff did not raise the issue of title of the Forest Department, infact, the dispute was limited only to the extent of the amount of rent, and its case remained the same even in the second writ petition, when it was evicted under the Encroachment Act. The trial court framed various issues, and without giving any weightage to the documents filed by appellant/defendant, decided the case in favour of the respondent/plaintiff, with total disregard to any legal requirements. The courts below have erred in ignoring the revenue record, particularly, the documents showing that the Government was the absolute owner of the suit land since at least 1920. [Para 8] [405-F-H; 406-A-B]

2.2. No person can claim a title better than he himself possess. In the instant case, unless it is shown that M/s. A had valid title, the respondent/plaintiff could not claim any relief whatsoever from court. [Para 9] [406-C]

3. The principle enshrined in Section 110 of the Evidence Act, is based on public policy with the object of preventing persons from committing breach of peace by taking law into their own hands, however good their

A title over the land in question may be. It is for this purpose, that the provisions of Section 6 of the Specific Relief Act, 1963, Section 145 of Code of Criminal Procedure, 1973, and Sections 154 and 158 of Indian Penal Code, 1860, were enacted. All the afore-said B provisions have the same object. The said presumption is read under Section 114 of the Evidence Act, and applies only in a case where there is either no proof, or very little proof of ownership on either side. The maxim "possession follows title" is applicable in cases where C proof of actual possession cannot reasonably be expected, for instance, in the case of waste lands, or where nothing is known about possession one-way or another. Presumption of title as a result of possession, can arise only where facts disclose that no title vests in any party. A person must establish that he has continued D possession of the suit property, while the other side claiming title, must make out a case of trespass/ encroachment etc. Where the apparent title is with the plaintiffs, it is incumbent upon the defendant, that in order to displace this claim of apparent title and to E establish beneficial title in himself, he must establish by way of satisfactory evidence, circumstances that favour his version. Even, a revenue record is not a document of title. It merely raises a presumption in regard to possession. Presumption of possession and/or F continuity thereof, both forward and backward, can also be raised under Section 110 of the Evidence Act. [Para 13] [407-B-E, F-H; 408-A]

Gurunath Manohar Pavaskar & Ors. v. Nagesh Siddappa G *Navalgund & Ors.* AIR 2008 SC 901: 2007 (13) SCR 77; *Nair Service Society Ltd. v. K.C. Alexander & Ors. & Ors.* AIR 1968 SC 1165: 1968 SCR 163 and *Chief Conservator of Forests, Govt. of A.P. v. Collector & Ors.* AIR 2003 SC 1805: 2003 (2) SCR 180 – relied on.

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4.1. The courts below have failed to appreciate that mere acceptance of municipal tax or agricultural tax by a person, cannot stop the State from challenging ownership of the land, as there may not be estoppel against the statute. Nor can such a presumption arise in case of grant of loan by a bank upon it hypothecating the property. [Para 14] [408-B]

4.2. The trial court has recorded a finding to the effect that the name of one Raja Ram was shown as Pattadar in respect of the land in dispute and the respondent/ plaintiff is in possession, and therefore, the burden of proof was shifted on the government to establish that the suit land belonged to it. However, the respondent/plaintiff could not furnish any explanation as to who was this Raja Ram, Pattadar and how respondent/plaintiff was concerned with it. Moreover, in absence of his impleadment by the respondent/plaintiff such a finding could not have been recorded. [Para 15] [408-C-D]

4.3. The courts below erred in holding, that revenue records confer title, for the reason that they merely show possession of a person. The courts below further failed to appreciate that the sale deed dated 11.11.1959 was invalid and inoperative, as the documents on record established that the vendor was merely a lessee of the Government. The suit filed by the respondent/plaintiff is therefore dismissed. [Paras 16, 17] [408-E-F, G]

Case Law Reference:

2007 (13) SCR 77	**relied on**	**Para 10**
1968 SCR 163	**relied on**	**Para 11**
2003 (2) SCR 180	**relied on**	**Para 12**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6690 of 2004.

A From the Judgment & Order dated 22.03.2004 of the High Court of Judicature of Andhra Pradesh at Hyderabad in City Civil Court Appeal No. 72 of 1989.

Amrendra Saran, C.K. Sucharita, Rumi Chanda for the Appellants.

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D. Rama Krishna Reddy, Asha Gopalan Nair, for the Respondent.

The Judgment of the Court was delivered by

C **DR. B.S. CHAUHAN, J.** 1. This appeal has been preferred against the impugned judgment and order dated 22.3.2004, passed by the High Court of Judicature of Andhra Pradesh at Hyderabad in City Civil Court Appeal No. 72 of 1989, by way of which the Civil Suit filed by the respondent against the D appellants, claiming title over the suit land in dispute, has been upheld.

2. The facts and circumstances giving rise to this appeal are:

E A. One Shri M.A. Samad, Assistant Engineer, City Improvement Board, Hyderabad, alongwith his associate, converted the land in dispute measuring 3.525 acres i.e. 17061 sq. yards, in favour of the Forest Department in 1920.

F B. The suit land was given on lease on 21.5.1943 to M/s. A. Allauddin & Sons for a fixed time period, incorporating the terms and conditions, that the lessee would not be entitled to extend the existing building in any way, or to erect any structure on the land leased. The lessee was also prohibited from G transferring the suit land by any means.

C. The said M/s. A. Allauddin & Sons, a proprietory concern, sent a letter dated 29.9.1945 in response to the eviction notice, informing the appellants that it was not possible for it to remove the factory established on the suit land, and thus,

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the said lessee asked the appellants to put up the said property for rent. The said firm then sent a letter dated 1.5.1951, offering rent of Rs.600/- per annum.

D. The appellants vide letter dated 20.12.1954, informed M/s. A. Allauddin & Sons to vacate the site within a period of one month, or else be evicted in accordance with law, and in that case it would also be liable to pay damages. In spite of receiving such a letter, the said lessee/tenant remained in possession of the suit premises, and continued to pay rent, as is evident from the letter dated 15.8.1956. The appellants, however, vide letter dated 21.2.1958, asked the said lessee/ tenant M/s. A. Allauddin & Sons, yet again, to vacate the suit land.

E. Instead of vacating the suit land, M/s. A. Allauddin & Sons executed a lease deed dated 24.2.1958, and got it registered on 6.4.1958, in favour of Syed Jehangir Ahmed and others (Partners of the respondent firm, M/s Star Bone Mill and Fertiliser Co.), for a period of two years. During the subsistence of the said sub-lease, the partners of the firm M/s. A. Allauddin & Sons, executed a sale deed on 11.11.1959 in favour of the respondent, for a consideration of Rs.45,000/-. The said sale deed was also registered, and possession was handed over to the respondent.

F. The respondent herein filed a petition in 1964 before the Minister for Agriculture & Forest, seeking permanent lease of the suit premises in his favour. On 26.4.1967, an order was passed by the Ministry of Agriculure & Forest in respect of recovery of arrears of rent as regards the said land. The respondent vide letter dated 7.5.1969, offered higher rent to the appellants for the suit land.

G. On 22.5.1970, the respondent wrote a letter to the Chief Minister of Andhra Pradesh (Ex.B-39), stating that he had been cheated by M/s. A. Allauddin & Sons, as it had executed a sale deed in his favour, even though it had no title, and a very high

A rate of rent was fixed by the department, which should be reduced and till the matter is finally decided, a rent of Rs. 569/- per month should be accepted. The said application/ petition was rejected by the Assistant Secretary to the Government, Food & Agriculture Department, vide letter dated
B 18.12.1970.

H. Aggrieved, the respondent filed Writ Petition No. 187 of 1971 wherein an interim order dated 12.1.1971 was passed, to the effect that the recovery of rent for the period prior to 26.4.1969 would be made at the rate of Rs.568/- per month
C instead of Rs.1279/- per month. Subsequent to 26.4.1969, rent would be recovered at the rate of Rs.1279/- per month. In case, arrears are not paid by the respondent, he would be vacated from the suit land.

D I. In view of the interim order of the High Court, the appellants issued a demand notice for a sum of Rs.45,484.62 paise. However, vide order dated 19.10.1971, the High Court directed the respondent to deposit a sum of Rs.30,000/-, in eight monthly installments. The said writ petition was disposed
E of vide order dated 18.2.1972, asking the respondent to approach the appropriate forum to establish his rights over the suit land, or to make a representation to the State Government for this purpose.

F J. The appellants served notice dated 8.4.1974, upon the respondent under Section 7 of the Land Encroachment Act, and the respondent submitted a reply to the said show cause notice on 24.6.1974. The matter was adjudicated and decided on 21.8.1974, under Section 6 of the Land Encroachment Act, and the respondent was directed to vacate the suit land.
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K. The respondent filed Writ Petition No. 5222 of 1974 before the High Court, however, the same was dismissed, after giving liberty to the respondent to approach the civil court. Thus, the respondent filed Original Suit No. 582 of 1974 for
H declaration of title and for injunction, restraining the appellants

from evicting the said respondent/plaintiff from the property in dispute. A

The appellants contested the suit by filing a written statement, and on the basis of the pleadings therein, a large number of issues were framed, including whether M/s. A. Allauddin & Sons was actually the owner and possessor of the suit land; and whether it could transfer the suit land to the respondent/plaintiff, vide registered sale deed dated 11.11.1959. B

L. The City Civil Court, vide judgment and decree dated 25.4.1989 decreed the suit, holding that the Government was not the owner of the suit land, and that the respondent/plaintiff had a better title over it. Thus, he was entitled for declaration of title, and injunction as sought by him. C

M. Aggrieved, the appellants preferred City Civil Court Appeal No. 72 of 1989 before the High Court, challenging the said judgment and decree dated 25.4.1989, which was dismissed vide judgment and decree dated 22.3.2004, affirming the judgment and decree of the trial court. D E

Hence, this appeal.

3. Shri Amarendra Sharan, learned senior counsel appearing on behalf of the appellants, has submitted that the courts below misdirected themselves and did not determine the issue as regards, whether the vendor of the respondent/plaintiff had any title over the suit property. The same is necessary to determine the validity of the sale deed in favour of the respondent/plaintiff. The issue before the trial court was not whether the Government was the owner of the said land or not. No such issue framed either. Moreover, such an issue could not be framed in view of the admission made by the respondent/ plaintiff itself, as it had been paying rent regularly to the Government, and the same was admitted by it, by way of filing an application before the Government stating, that M/s. A. F G H

A Allauddin & Sons had cheated it by executing a sale deed in its favour, without any authority/title. It thus, requested the Government to execute a lease deed/rent deed in its favour. It was not its case, that in its earlier two writ petitions filed by it, it had acquired title over the land validly, or that M/s. A. B Allauddin & Sons etc., had any title over the said suit land. The lease deed executed by the Government in favour of M/s. A. Allauddin & Sons, dated 21.5.1943 must be considered in light of the provisions of Section 90 of the Evidence Act, 1872 (hereinafter referred to as the 'Evidence Act'), and not the sale C deed dated 11.11.1959, as the suit was filed in 1974, just after a period of 15 years of sale, and not 30 years. The courts below have erred in applying the provisions of Section 90 of the Evidence Act. The findings of fact recorded by the courts below are perverse, being based on no evidence and have been D recorded by a misapplication of the law. Thus, the appeal deserves to be allowed.

4. On the contrary, Shri D. Rama Krishna Reddy, learned counsel appearing on behalf of the respondent, has opposed the appeal, contending that the findings of fact recorded by the E courts below, do not warrant interference by this Court. It is evident from the revenue records that possession is *prima facie* evidence of ownership, and that the same is by itself, a limited title, which is good except to the true owner. The admission and receipt of tax constitutes admission of F ownership, and the entries in the revenue record must hence, be presumed to be correct. In the revenue record, one Raja Ram has been shown to be the owner of the land, the Forest Department cannot claim any title or interest therein. The said appeal lacks merit, and is liable to be dismissed.

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5. We have considered the rival submissions made by the learned counsel for the parties and perused the records.

6. Admittedly, the High Court erred in holding that the sale deed dated 11.11.1959, must be considered in light of the H provisions of Section 90 of the Evidence Act, instead of the

period mentioned therein, thereby treating the appeal as a continuation of the suit. Therefore, the period of 30 years mentioned therein, has been calculated from 1959, till the date of the decision of the appeal, i.e. 22.3.2004. This view itself is impermissible and perverse, and cannot be accepted. The courts below have not given any reason, whatsoever, for the said lease deed to be treated as having been executed on 21.5.1943, under Section 90 of the Evidence Act and, thus, for believing that the land belonging to the Forest Department, which had in turn, given it to M/s. A. Allauddin & Sons on lease.

7. Section 90 of the Evidence Act is based on the legal maxims : *Nemo dat quid non habet* (no one gives what he has not got); and *Nemo plus juris tribuit quam ipse habet* (no one can bestow or grant a greater right, or a better title than he has himself).

This section does away with the strict rules, as regards requirement of proof, which are enforced in the case of private documents, by giving rise to a presumption of genuineness, in respect of certain documents that have reached a certain age. The period is to be reckoned backward from the date of the offering of the document, and not any subsequent date, i.e., the date of decision of suit or appeal. Thus, the said section deals with the admissibility of ancient documents, dispensing with proof as would be required, in the usual course of events in usual manner.

8. There has been a clear admission by the respondent/plaintiff in its letter dated 22.5.1970 (Ex.B-39), to the effect that it had been cheated by M/s. A. Allauddin & Sons, who had no title over the suit land, and sale deed dated 11.11.1959, had thus been executed in favour of the respondent/plaintiff by way of misrepresentation. The said application was rejected vide order dated 18.12.1970. While filing the writ petition, the respondent/plaintiff did not raise the issue of title of the Forest Department, infact, the dispute was limited only to the extent of the amount of rent, and its case remained the same even in

A the second writ petition, when it was evicted under the Encroachment Act. The trial court framed various issues, and without giving any weightage to the documents filed by appellant/defendant, decided the case in favour of the respondent/plaintiff, with total disregard to any legal B requirements. The courts below have erred in ignoring the revenue record, particularly, the documents showing that the Government was the absolute owner of the suit land since at least 1920.

C 9. No person can claim a title better than he himself possess. In the instant case, unless it is shown that M/s. A. Allauddin & Sons had valid title, the respondent/plaintiff could not claim any relief whatsoever from court.

10. In *Gurunath Manohar Pavaskar & Ors. v. Nagesh* D *Siddappa Navalgund & Ors.*, AIR 2008 SC 901, this Court held as under:-

> *"A revenue record is not a document of title. It merely raises a presumption in regard to possession. Presumption of possession and/or continuity thereof both* E *forward and backward can also be raised under Section 110 of the Evidence Act."*

11. In *Nair Service Society Ltd. v. K.C. Alexander & Ors. & Ors.*, AIR 1968 SC 1165, dealing with the provisions of F Section 110 of the Evidence Act, this Court held as under:-

> *"Possession may prima facie raise a presumption of title no one can deny but this presumption can hardly arise when the facts are known. When the facts disclose no title* G *in either party, possession alone decides."*

12. In *Chief Conservator of Forests, Govt. of A.P. v. Collector & Ors.*, AIR 2003 SC 1805, this Court held that :

> *"Presumption, which is rebuttable, is attracted when the*

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possession is prima facie lawful and when the contesting party has no title."

13. The principle enshrined in Section 110 of the Evidence Act, is based on public policy with the object of preventing persons from committing breach of peace by taking law into their own hands, however good their title over the land in question may be. It is for this purpose, that the provisions of Section 6 of the Specific Relief Act, 1963, Section 145 of Code of Criminal Procedure, 1973, and Sections 154 and 158 of Indian Penal Code, 1860, were enacted. All the afore-said provisions have the same object. The said presumption is read under Section 114 of the Evidence Act, and applies only in a case where there is either no proof, or very little proof of ownership on either side. The maxim "possession follows title" is applicable in cases where proof of actual possession cannot reasonably be expected, for instance, in the case of waste lands, or where nothing is known about possession one-way or another. Presumption of title as a result of possession, can arise only where facts disclose that no title vests in any party. Possession of the plaintiff is not *prima facie* wrongful, and title of the plaintiff is not proved. It certainly does not mean that because a man has title over some land, he is necessarily in possession of it. It infact means, that if at any time a man with title was in possession of the said property, the law allows the presumption that such possession was in continuation of the title vested in him. A person must establish that he has continued possession of the suit property, while the other side claiming title, must make out a case of trespass/encroachment etc. Where the apparent title is with the plaintiffs, it is incumbent upon the defendant, that in order to displace this claim of apparent title and to establish beneficial title in himself, he must establish by way of satisfactory evidence, circumstances that favour his version. Even, a revenue record is not a document of title. It merely raises a presumption in regard to possession. Presumption of possession and/or continuity thereof, both

A forward and backward, can also be raised under Section 110 of the Evidence Act.

14. The courts below have failed to appreciate that mere acceptance of municipal tax or agricultural tax by a person, cannot stop the State from challenging ownership of the land, as there may not be estoppel against the statute. Nor can such a presumption arise in case of grant of loan by a bank upon it hypothecating the property.

15. The trial court has recorded a finding to the effect that the name of one Raja Ram was shown as Pattadar in respect of the land in dispute and the respondent/plaintiff is in possession. Therefore, the burden of proof was shifted on the government to establish that the suit land belonged to it. Learned counsel for the respondent/plaintiff could not furnish any explanation before us as to who was this Raja Ram, Pattadar and how respondent/plaintiff was concerned with it. Moreover, in absence of his impleadment by the respondent/ plaintiff such a finding could not have been recorded.

16. The courts below erred in holding, that revenue records confer title, for the reason that they merely show possession of a person. The courts below further failed to appreciate that the sale deed dated 11.11.1959 was invalid and inoperative, as the documents on record established that the vendor was merely a lessee of the Government.

17. In view of the above, we are of the considered opinion that findings of fact recorded by the courts below are perverse and liable to be set aside. The appeal succeeds and is allowed. The judgments of the courts below are hereby set aside. The suit filed by the respondent/plaintiff is dismissed.

B.B.B. Appeal allowed.