

SRI Y.P. SUDHANVA REDDY & ORS.

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v.

THE CHAIRMAN AND MANAGING DIRECTOR,
KARNATAKA MILK FEDERATION ETC.

(Civil Appeal Nos. 4412-4413 of 2018)

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APRIL 25, 2018

[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Possession – Appellants’ father had filed a suit for permanent injunction against the respondent in relation to the suit land, which was dismissed by the trial Court – After death of their father, appellants again filed a suit against the respondent, which was again dismissed by the trial Court as being barred by limitation but held the appellants to be owner of the suit land – Aggrieved appellants filed appeal before the High Court – Respondents also filed before the High Court a cross objection u/Or.41, r.22 of CPC and an application u/Or.41, r.27 of CPC alongwith copy of notification vide which the State had acquired the suit land, which was allegedly later allotted to the respondent – High Court dismissed the appeal filed by the appellants and allowed the application u/Or. 41, r.27 and cross objection u/Or.41, r.22 filed by the respondent – Propriety of – On appeal, held: Proper – After issuance of the notifications under the Land acquisition Act and initiation of acquisition proceedings by the State which culminated in passing of the award as far back as in the year 1941, the appellants’ predecessor-in-title (their father) ceased to be owner of the suit land and lost all his rights to hold the suit land and claim possession – All ownership rights of the appellants’ predecessor-in-title in the suit land stood vested in the State once the acquisition proceedings were completed under the Act – Documents filed by the respondent fully establish that neither the appellants’ predecessor and nor the appellants had any subsisting prima facie title in their favour over the suit land on the date of filing the two suits – Insofar application u/Or.41,r.27 is concerned, the first Appellate Court has jurisdiction u/Or. 41, r.27 to allow the parties to file additional evidence, if such documents are required to decide the suit/appeal provided satisfactory explanation is given as to why the documents could not be filed in

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A *the suit and why they are filed in appeal – The respondent, in instant case, did give the explanation, which rightly found acceptance to the High Court – Code of Civil Procedure, 1908 – Or. 41, r.22 and r.27 – Land Acquisition Act, 1894 – ss.4 and 6.*

Dismissing the appeals, the Court

B **HELD: 1. After issuance of the notifications under the Land Acquisition Act, 1894 and initiation of acquisition proceedings by the State which culminated in passing of the award as far back as in the year 1941, the appellants’ predecessor-in-title ceased to be the owner of the suit land and lost all his rights to hold the suit land and claim possession over it. [Para 21] [858-E]**

C **2.1 Neither the predecessor-in-title of the appellants and nor the appellants had any subsisting right, title and interest in the suit land on and after 1941 consequent upon issuance of the notifications by the State under the Act. The reason was that all the ownership rights of the appellants’ predecessor-in-title in the suit land stood vested in the State once the acquisition proceedings were completed under the Act. The appellants’ only right was to either challenge the land acquisition proceedings as being against the provisions of Act or to claim compensation payable under the Act in relation to the suit land under Section 11 of the Act followed by reference proceedings under Section 18 of the Act and lastly, in appeal before the High Court for its re-determination. [Para 23] [858-G-H; 859-A-B]**

D **2.2 The appellants failed to file any document in rebuttal to the documents filed by the respondent in appeal by way of additional evidence with a view to show that the notifications issued under the Act for acquiring the suit land, which were relied on by the respondent in appeal, were either withdrawn or set aside or not given effect to. Such fact, alone would have enabled the appellants to claim and assert their right of ownership over the suit land. Such was, however, not the case of the appellants. [Para 24] [859-C-D]**

E **3. The appellants contended that there was non-compliance of the provisions of Order 41 Rule 27 of CPC and hence the application filed by the respondent ought not to have been allowed by the High Court. The contention of appellants is devoid of any**

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merit. In the first place, the documents sought to be filed by the respondent, namely, notifications issued under the Act were relevant and also necessary for deciding the rights of the parties involved in the suit/appeal. Second, these documents did not require any proof being public documents in nature. Third, the respondent had already made reference of these documents and laid foundation in the pleadings and lastly, the first Appellate Court has jurisdiction under Order 41 Rule 27 to allow the parties to file additional evidence, if such documents are required to decide the suit/appeal provided satisfactory explanation is given as to why the documents could not be filed in the suit and why they are filed in appeal. The respondent, in this case, did give the explanation, which rightly found acceptance to the High Court. [Paras 27 and 28] [859-F-H; 860-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4412-4413 of 2018.

From the Judgment and Order dated 16.12.2014 of the High Court of Karnataka at Bengaluru in Regular First Appeal No. 2096 of 2012 c/w Regular First Appeal Crob. No. 27 of 2013.

Sanjay R. Hegde, Sr. Adv., Anil Kumar Mishra-I, Pranjal Kishore, Ankit Dhawan, Sandeep Puggal, Advs. for the Appellants.

S.S. Naganand, Sr. Adv., Raghavendra S. Srivatsa, Venkita Subramoniam T. R., Ms. Rahat Bansal, Amit A. Pai, Goutham Shivshankar, Akash Dixit, Advs. for the Respondent.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. Leave granted.

2. These appeals are filed against the final judgment and order dated 16.12.2014 passed by the High Court of Karnataka at Bengaluru in Regular First Appeal No. 2096 of 2012 C/W RFA. CROB. No. 27 of 2013 whereby the High Court dismissed the Regular First Appeal filed by the appellants herein and allowed the CROB. No.27 of 2013 and the application filed under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as “the Code”) filed by the Respondent and set aside the findings recorded by the Trial Court on Issue No.1 that the appellants (plaintiffs) are the absolute owners of the Schedule ‘A’ and ‘B’ property.

A 3. In order to appreciate the issue involved in the appeals, few relevant facts need to be mentioned *infra*.

4. The appellants are the plaintiffs whereas the respondent is the defendant in a civil suit out of which these appeals arise.

B 5. The disputes in the civil suit out of which these appeals arise relate to a land bearing Sy. No.2/1, Koramangala Village, Begur Hobli, Bangalore South Taluk measuring 1 acre 27 guntas (hereinafter referred to as “suit land”). It is between the appellants (plaintiffs) and the respondent (defendant) which is a Co-operative Society engaged in the business of manufacturing and selling of Milk.

C 6. One Mr. K.G. Yellappa Reddy was the original holder of the suit land. In the year 1998, K.G. Yellappa Reddy filed a civil suit (OS No. 4875/1998) against the respondent for permanent injunction in relation to the suit land. He claimed, *inter alia*, that he is in possession of the suit land and the respondent is trying to interfere in his possession.

D 7. The suit was, however, dismissed as being not maintainable on 17.02.2001 by the Trial Court for want of notice. Mr. K.G. Yellappa Reddy, in the meantime, died leaving behind the appellants herein as his legal representatives.

E 8. On 14.03.2007, the appellants filed another civil suit (No.2143/2007) against the respondent before the City Civil Judge, Bangalore for a declaration and permanent injunction in relation to the suit land.

F 9. In the suit, the appellants claimed title through their ancestor (late K.G. Yellappa Reddy) and alleged that the appellants are now the owners of the suit land after the death of Mr. K.G. Yellappa Reddy by inheritance and the respondent has no right, title and interest in the suit land and nor has any right to interfere in the possession of the appellants over the suit land.

G 10. The respondent (defendant) denied the appellants’ claim and, *inter alia*, alleged in the written statement that they have been in possession of the suit land in their own rights. It was alleged that the State Government acquired the suit land a long back for public purpose and allotted the suit land to the respondent for a valuable consideration and since then they are in possession of the suit land in their own right and carrying on their business.

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11. The respondent also contended that the suit filed by the appellants is barred by the principle of *res judicata* because of the dismissal of the previous suit filed by their father (Mr. K.G. Yellappa Reddy) against the respondent in relation to the suit land wherein the same relief was claimed but was declined to the appellants' late father. The respondent also raised other legal pleas, such as suit is barred by limitation, it is neither properly valued and nor proper Court Fees has been paid on the relief claimed etc.

12. The Trial Court, by judgment/decreed dated 13.08.2012, though dismissed the suit as being barred by limitation but held the appellants to be the owner of the suit land. In other words, the Trial Court held that the appellants were able to prove their ownership over the suit land but dismissed the suit as being barred by limitation. It was also held that the respondents failed to prove their case inasmuch as they failed to file any document in support of their stand that the suit land had been acquired by the State.

13. The appellants felt aggrieved by the dismissal of their case and filed first appeal in the High Court of Karnataka at Bangalore whereas the respondent felt aggrieved against the finding of ownership recorded against them and filed cross objection under Order 41 Rule 22 of Code. The respondent also filed an application under Order 41 Rule 27 of the Code in the appeal and filed copy of the notification issued under Section 4 of the Land Acquisition Act (for short, "the Act") by the State by which the State had acquired the suit land in support of their case.

14. By impugned judgment, the High Court dismissed the appeal filed by the appellants, allowed the application filed by the respondent under Order 41 Rule 27 of the Code and also the cross objection filed by the respondent and dismissed the appellants' suit.

15. Against this judgment, the appellants(plaintiffs) felt aggrieved and filed the present appeals by way of special leave in this Court.

16. Heard Mr. Sanjay R. Hegde, learned senior counsel for the appellants and Mr. S.S. Naganand, learned senior counsel for the respondent.

17. Having heard the learned counsel for the parties and on perusal of the record of the case, we are constrained to dismiss the appeals finding no merit therein.

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A 18. In our considered opinion, the filing of the two suits, namely, first by the appellants' father, Mr. K.G. Yellappa Reddy, (O.S.No.4875/1998) and later by the appellants out of which these appeals arise were wholly misconceived in nature and were not maintainable as would be clear from the following reasons.

B 19. It is not in dispute that once the respondent filed a copy of the notification in appeal before the High Court bearing No.L-5468-MI 10-4-15 dated 22.01.1941 issued under Section 4 of the Act by the State Government, which was taken on record as additional evidence by the High Court, showing that the suit land was acquired by the State in the year 1941, the legal position arising in the case in relation to the suit land became clear.

C 20. Indeed, as a matter of fact, consequent upon issuance of the notification under Section 4 of the Act, which was followed by declaration under Section 6 and then by an award under Section 11 of the Act and lastly, by taking over of the possession of the suit land from the owner of the suit land (appellants' father) under Section 16 of the Act, the suit land stood vested in the State absolutely free from all encumbrances as provided under Section 16 of the Act.

D 21. In other words, on and after issuance of the notifications under the Act and initiation of acquisition proceedings by the State which culminated in passing of the award as far back as in the year 1941, the appellants' predecessor-in-title ceased to be the owner of the suit land and lost all his rights to hold the suit land and claim possession over it.

E 22. The only legal remedy available to the appellants' predecessor-in-title (Mr. K.G.Yellappa Reddy) in such case was to challenge the legality and correctness of the notifications issued under Section 4 or/and 6 of the Act and that too within a reasonable time after their issuance in the year 1941. It is not in dispute that the landowners, admittedly, did not challenge the validity and correctness of the notifications and, on the other hand, by suppressing the fact of acquisition proceedings from the Court filed two suits one after the other and claimed title over the suit land.

F 23. In our considered opinion, neither the predecessor-in-title of the appellants and nor the appellants had any subsisting right, title and interest in the suit land on and after 1941 consequent upon issuance of

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the notifications by the State under the Act. The reason was that all the ownership rights of the appellants' predecessor-in-title in the suit land stood vested in the State once the acquisition proceedings were completed under the Act. As mentioned above, the appellants' only right was to either challenge the land acquisition proceedings as being against the provisions of Act or to claim compensation payable under the Act in relation to the suit land under Section 11 of the Act followed by reference proceedings under Section 18 of the Act and lastly, in appeal before the High Court for its re-determination.

24. We find from the record that the appellants failed to file any document in rebuttal to the documents filed by the respondent in appeal by way of additional evidence with a view to show that the notifications issued under the Act for acquiring the suit land, which were relied on by the respondent in appeal, were either withdrawn or set aside or not given effect to. Such fact, in our view, alone would have enabled the appellants to claim and assert their right of ownership over the suit land. Such was, however, not the case of the appellants.

25. In the light of the foregoing discussion, we are of the considered opinion that the suit filed by the appellants seeking therein a declaration of their title over the suit land and further claiming permanent injunction was wholly misconceived and was liable to be dismissed.

26. Indeed, no declaration of title over the suit land could be claimed or/and granted by the Civil Court and nor any suit of such nature could be filed in the Civil Court in the light of background facts brought on record by the respondent by way of additional evidence in appeal. These documents fully establish that neither the appellants' predecessor and nor the appellants had any subsisting *prima facie* title in their favour over the suit land on the date of filing the two suits.

27. Learned counsel for the appellants, however, argued that there was non-compliance of the provisions of Order 41 Rule 27-A of the Code and hence the application filed by the respondent ought not to have been allowed by the High Court. The submission, in our opinion, has no merit for the following reasons.

28. In the first place, the documents sought to be filed by the respondent, namely, notifications issued under the Act were relevant and also necessary for deciding the rights of the parties involved in the

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- A suit/appeal. Second, these documents did not require any proof being public documents in nature. Third, the respondent had already made reference of these documents and laid foundation in the pleadings and lastly, the first Appellate Court has jurisdiction under Order 41 Rule 27 of the Code to allow the parties to file additional evidence, if such documents are required to decide the suit/appeal provided satisfactory explanation is given as to why the documents could not be filed in the suit and why they are filed in appeal. The respondent, in this case, did give the explanation, which found acceptance to the High Court and, in our opinion, rightly.
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- C 29. Learned counsel for the appellants (plaintiffs) argued some issues but they did not impress us in the light of the settled legal position taken note of us supra.
30. In the light of the foregoing discussion, we concur with the reasoning and the conclusion arrived at by the High Court and find no merit in the appeals.
- D 31. The appeals thus fail and are accordingly dismissed.