

*** THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI**

+ A.S.NO.155 OF 2000

% 02.12.2022

MOHD. SYED BIN MUBARAK S/O MUBARAK BIN SYED
ALIAS PEER MIYRA (DIED) REP. BY LRS. 2 to 11.

.. APPELLANTS

And

\$ A.P.S.R.T.C. REP. BY IS GENERAL MANAGER.

.. RESPONDENT

! Counsel for the appellants: Sri M.Ram Mohan Reddy

Counsel for respondent: Sri Gaddam Srinivas

< Gist :

> Head Note :

? Citations:Nil

DATE OF JUDGMENT PRONOUNCED : 02—12—2022

SUBMITTED FOR APPROVAL:

THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

1. Whether Reporters of Local Newspapers : Yes / No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : Yes / No
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : Yes / No
see the fair copy of the Judgment ?

HON'BLE SMT. JUSTICE M.G.PRIYADARSINI**A.S.NO.155 OF 2000****JUDGMENT**

Assailing the judgment and decree dated 17.09.1992 passed by the court of the Subordinate Judge at Karimnagar in O.S.No.91 of 1987, in dismissing the suit filed by the plaintiff for declaration of title and for recovery of possession, the present appeal is filed.

2. During the pendency of appeal, the original plaintiff, who is the appellant in this appeal died, and vide order dated 25.10.2020 in I.A.No.3 of 2018 in A.S.No.155 of 2000, his legal representatives were brought on record as appellants 2 to 11.

3. For the sake of convenience, the parties will be referred to as per their array in the original suit.

4. The case of the plaintiff is that he is the exclusive owner and possessor of hut bearing No.2-7-17/P together with 4 guntas of land and that he is in possession of the land since more than forty years. He purchased the suit land from one Nizamuddin in the year 1951 through a simple sale deed for a consideration of Rs.96/-. His possession was also recorded in the pahanies for the years 1951-52. The suit hut was also assessed in his name by the Municipality, but it was exempted from payment of tax. Thus he has been in continuous possession of the suit hut and land for more than forty years.

5. That the defendant has also filed a suit in O.S.No.59 of 1973 against the plaintiff for recovery of possession of the suit property. The said suit was dismissed for default on 26.11.1973, as such the said order has become final.

6. Even though the defendant has no right to evict the plaintiff from the suit property, as they are trying to take the assistance of revenue and police authorities, to illegally evict the plaintiff from the suit property and that the Revenue Inspector, Tahsildar and S.I. of police, at the instance of defendant, are openly declaring that they will bring the bulldozer and dismantle the hut, he filed the suit for injunction, and temporary injunction was granted vide order dated 26.8.1976, but in violation of the said order, the defendant has dispossessed him from the suit land on 11.9.1976 with the help of bulldozers. In view of the same, he filed the present suit for declaration of title and for recovery of possession.

7. The defendant filed written statement contending that the plaintiff is not the owner and possessor of hut bearing No.2-7-17/P together with four guntas of land, and it is a fictitious door number. The alleged sale deed for Rs.96/- purported to have been executed by Nizamuddin is fabricated for the purpose of this case, and not binding on the defendant.

8. It is stated that the Nizamuddin has no title to the land in the year 1957, as the land has vested in the Government of Andhra Pradesh in the year 1947, and the entries in the pahanies has no effect, as the land belongs to Government till 1957, and the defendant, as a successor of the Government of Andhra Pradesh, Transport Department, took possession of the land. The plaintiff was never in possession of the land and the defendant did not file any suit against the plaintiff. The suit in O.S.No.59 of 1973 was dismissed as no such person, or that hut was in existence, or

in occupation of the property, and the land covered by the said suit was vacant. The said suit was dismissed even before the appearance of the defendant therein, as such, it does not affect the rights of this defendant under Order 9, Rule 3 CPC.

9. It is further stated that the plaintiff occupied the suit land on 28-07-1976 and tried to erect a stall therein. Therefore, the Depot Manager of defendant immediately informed about the illegal occupation of the plaintiff to the Commissioner, Municipal Counsel, who prevented the plaintiff from raising any structures. The Government removed all the encroachers on the land of defendant and delivered entire vacant possession of the land in Sy.No.1098, including the suit land, to defendant. The plaintiff is not in possession of the suit land including any land. The Government got evicted the illegal encroachments from the suit survey number, under the A.P. Land Encroachments Act and handed over the same to them. As such, the plaintiff is not entitled for any relief of recovery of possession and that the suit is barred by limitation. With these averments, the suit was sought to be dismissed.

10. Based on the above pleadings, the Trial Court framed the following issues for trial:

1. Whether the plaintiff is owner and possessor?
2. Whether the plaintiff is entitled to the grant of decree as prayed for?
3. To what relief?

11. In support of the case of the plaintiff, P.Ws.1 to 3 were examined and Exs.A-1 to A-21 were marked, and on behalf of the defendant D.W.1 was examined and Exs.B-1 to B-10 were marked.

12. Appreciating the entire evidence, both oral and documentary, the trial court, vide the impugned judgment and decree, held that the plaintiff utterly failed to

establish that he is owner and possessor of the suit property and accordingly dismissed the suit with costs. The trial court further directed the plaintiff to pay the court fee of Rs.2,946/- as required under law. Aggrieved by the dismissal of the suit, the plaintiff filed the present appeal.

13. Heard the learned counsel appearing for both the parties and perused the material available on record.

14. The issue that arises for consideration is whether the impugned judgment warrants any interference?

15. To prove the case of the plaintiff, he got examined himself as P.W.1, and also examined P.W.2, Patwari to prove Exs.A-7 to A-13 tax receipts and also examined P.W.3, Syed Sirajuddin Ahmed, who is one of the attestors of Ex.A-2 sale deed.

16. On behalf of the defendant – Corporation, D.W.1, who is the Deputy Executive Engineer was examined.

17. Plaintiff, who was examined as P.W.1 deposed that in the year 1951, he purchased the suit land for a consideration of Rs.96/- from one Nizamuddin, who died subsequently. Even prior to his purchase, he was in possession of the suit land about ten years with permission of the vendor and he continued his possession till 1976 i.e., till the defendant dispossessed him and that he was dispossessed after filing of the suit in O.S.No.354 of 1976. That one Anwar and Sirajuddin were the attestors of the sale deed and the defendant dispossessed him on 11.9.1976 by demolishing the house with bulldozers and the suit filed by him was dismissed, as he was already dispossessed and in the appeal, he was permitted to convert his suit into possession.

18. P.W.2 is one Mali Patel, who is claimed to have worked from the year 1965 to 1975. Plaintiff examined him to prove that he paid the land revenue under Exs.A-7 to A-13.

19. P.W.3 is one of the attestors of Ex.A-2 sale deed, and he deposed that plaintiff purchased the property from Nizamuddin in the year 1951 for a consideration of Rs.96/- and one Minouddin was the scribe of the document, and he (P.W.3) attested the same and one Anwar Nizam, the son of Nizamuddin was another attesting witness and; that in is presence Nizamuddin signed on the said document.

20. To rebut the above evidence, Corporation examined D.W.1, who is the Deputy Executive Engineer working in the defendant – Corporation. He deposed that suit Sy.No.1098 consists of Acs.7-08 gts., and it was given to one Nizamuddin under a *Farmana* by the erstwhile Nizam in the year 1924 for running his private buses for carrying passengers, and he was running the buses in the name and style as ‘Hyderabad Motor and Oil Company’ and he was the Chairman of the said company. That in the year 1976, the above said property was handed over to the defendant by Government, and as there were certain encroachments in the land, the Government removed the same, and handed over the land to defendant, including the suit property. He further deposed that after taking over possession by the Government from Nizamuddin, the said Hyderabad Motor and Oil Company filed a suit in O.S.No.2 of 1959 on the file of the District Judge, Nizamabad, for compensation and compensation was awarded in favour of the said company. As such, the APSRTC went in appeal before the High Court vide A.S.No.643 of 1964, which was partly allowed, but the matter ended before the Supreme Court, as both parties have arrived at compromise, and APSRTC paid the compensation amount to the said Nizamuddin

and thus the suit survey number is not the property of Nizamuddin, and that it is a Government land, and Nizamuddin was only Chairman of the Hyderabad Motor and Oil Company, and he has no right to alienate the property. D.W.1 has also denied that the plaintiff has any right over the suit property, and stated that he was never in possession of the suit property.

21. He further deposed that plaintiff also filed O.S.No.354 of 1976 and also filed I.A.No.108/1976 against the defendant herein and obtained ex parte injunction, but the said suit was dismissed on the ground that the plaintiff was not in possession of the suit land at the time of filing of the suit. Subsequently by way of amendment, the plaintiff in this suit pleaded that during the pendency of earlier suit he was dispossessed from suit land on 11.9.1976 and that he is owner and possessor of the suit property, said to have been purchased from one Nizamuddin, the Pattedar.

22. Thus from the above evidence on record it has to be seen whether the plaintiff could prove his title and possession over the suit schedule property.

23. As per Ex.A-2 sale deed it could be seen that the plaintiff purchased open land, but in his evidence, he deposed that there was stall bearing No.2-7-17/P existing in the suit property and he was staying in the same. Further the case of the plaintiff is that he purchased the suit land for a consideration of Rs.96/-, but he has not stated the mode of payment. P.W.3 – Syed Sirajuddin Ahmed, is one of the attestors. He deposed that plaintiff purchased the property from Nizamuddin in the year 1951 for a consideration of Rs.96/- and one Minouddin was the scribe of the document, and that he attested the same, and one Anwar Nizam, the son of Nizamuddin was also another attesting witness and that in his presence, Nizamuddin signed on the said document.

24. From the above it could be seen that Anwar Nizam, is the son of Nizamuddin and he was also another attesting witness. But the plaintiff has not taken any steps to examine him or any other heir of Nizamuddin. Further, on an examination of Ex.A-2 sale deed, the trial court found that the hand writing of signature of Nizamuddin, as well as the that of the attesting witness i.e., Anwar Nizam, are tallying with each other and this creates any amount of doubt. As already noted above, the son of the vendor, who is the attesting witness, would be proper person to depose about the signature of Nizamuddin, but the plaintiff has not taken steps to examine him. In view of the above facts and circumstances, it is clear that the plaintiff failed to prove Ex.A-2, in accordance with law, and no reliance can be placed on the said document.

25. Further, the case of the plaintiff, who was examined as P.W.1, is that he is in possession of the suit land even prior to 1951 from ten years with the permission of the vendor. But, he has not filed any documentary proof in support of his claim. Further, he also filed Exs.A-5 and A-6, which are pahanies for the years 1951-52 and 1952-53, and in these documents, Nizamuddin was shown as pattedar and in the possessory column Syed Mubarak and others were shown in Sy.No.1098.

26. The plaintiff also filed land revenue receipts under Exs.A-7 to A-10, but a perusal of these documents show that there is no survey number. Plaintiff also examined P.W.2, who is Mali Patel, who is stated to have worked from the year 1965 to 1975, to prove that he paid land revenue under Exs.A-7 to A-13 for non-agricultural assessment. But this witness has deposed that one Venkatarama Rao was the Patwari at the relevant period of Ex.A-7 to A-13, and that they were issued by him, and the said receipt s bears the signature of Venkatarama Rao. As already noted

above, there are no survey numbers in these documents and hence, it cannot be said that they pertain to the suit land.

27. The Trial Court further found that Exs.A-10 to A-13 receipts were issued from one book as the serial numbers of these documents are 610842, 610831, 610885 and 610832 respectively. So this creates any amount of doubt, and further either the plaintiff or P.W.2, could depose that the amount collected under these documents is towards non-agricultural tax or towards any other tax.

28. The plaintiff also filed Ex.A-12 extract of property tax assessment, showing door No.2-7-17/P. It is well settled that mere filing of the document is of no use and that he has to adduce evidence by examining the authorities concerned to show when the door number was allotted and whether it is registered in the municipal records. Hence, no reliance can be placed on Ex.A-12.

29. Similarly he also filed Ex.A-15, which is the voters list to prove his possession for the year 1966, but in Ex.A-15, the plaintiff's house number is shown as 7-17/y, whereas the claim of the plaintiff is that his house number is 2-7-17/P. Thus, even Ex.A-15 does not clinchingly prove his possession.

30. The contention of the learned counsel appearing for the plaintiff is that when the defendant – Corporation has claimed that when the plaintiff encroached the land and tried to erect a tea-stall, the said alleged encroachment was removed by the Government, further even in the earlier suit in O.S.No.354 of 1976 filed by the plaintiff for injunction, the trial court has granted temporary injunction on 26.08.1976 and these circumstances show that the plaintiff is in possession of the suit land.

31. It is to be seen that plaintiff has not examined any independent witness to prove his continuous possession since 1951 to 1976 i.e., the from the date of purchase till his alleged dispossession, and thus in view of these circumstances, it cannot be said that the plaintiff proved his possession over the suit land. Further, even assuming for a moment, that he was in possession of the suit property, his possession has to be termed as 'illegal' and as per the case of the respondent – Corporation, the encroachments were removed in accordance with Land Encroachment Act. If the plaintiff was really in possession, he would have challenged the proceedings initiated under the Land Encroachment Act, but the plaintiff has not filed any documentary proof to show that he challenged the said proceedings.

32. On the other hand, the case of the defendant is that the original owner Nizamuddin filed suit in O.S.No.2 of 1959 claiming compensation and the same was carried up to Apex Court, and eventually matter ended in compromise and Corporation paid the compensation. Further, the defendant also filed Exs.B-4 to B-7, which show that the Government is the pattadar, and further under Ex.B-1 judgment, the Corporation, which is the beneficiary of the land, paid the compensation to Nizamuddin.

33. The case of the plaintiff is that he purchased the land in the year 1951, but the trial court on examination of the boundaries mentioned in Ex.A-2 sale deed, found that in the boundaries on eastern and, western sides, the land of the owner is shown as existing, but the same is contrary to Ex.B-1 judgment, which is clear that the entire land was handed over to the Corporation.

34. Thus, appreciating the entire evidence, both oral and documentary, the trial court has categorically held that the plaintiff utterly failed to establish his title

and possession over the suit land and hence is not entitled to any relief as prayed for. Having regard to the facts and circumstances of the case, I do not find any reason to interfere with the same.

35. Coming to the direction of the court below in directing the plaintiff to pay the court fee of Rs.2,946/- is concerned, I am of the considered view, the same requires to be set aside, having regard to the financial status of the plaintiff, and having regard to the facts and circumstances of the case, the costs imposed by the trial court is also required to be set aside. The issue frames is accordingly answered.

36. For the foregoing reasons, the impugned judgment and decree of the trial court to the extent of holding that the plaintiff has no title and possession over the suit land and that he is not entitled to any relief, is confirmed, and the direction of the trial court directing the plaintiff to pay the court fee of Rs.2,946/-, and imposition of costs, are set aside.

37. Thus, the appeal is disposed of accordingly.

38. Interlocutory Applications pending, if any, shall stand closed. No order as to costs.

M.G.PRIYADARSINI,J

DATE:02—12—2022
AVS

Note:
L.R.Copy to be marked.
B/O