

Corporation of the City of Bangalore

Vs

M. Papaiah and Another

Civil Appeal No. 2951 of 1984

(L. M. Sharma, J. S. Verma JJ)

01.08.1989

JUDGMENT

SHARMA, J. -

1. This appeal by special leave has been filed by the defendant in a suit for a decree of perpetual injunction restraining the appellant from interfering with the possession of the plaintiff-respondents over five acres of land in the Bangalore city. The disputed area was acquired for using it as a burial ground in 1927-28 under G.O. No. 4888 and, according to the case of the appellant, compensation was paid out of the municipal funds and the land has been in its possessions since then. According to the plaintiff-respondents, the afore-mentioned GO was cancelled and the land was settled with Guttahalli Hanumaiah in 1929 under G. O. No. 3540, which, however, has not been produced in the case. Guttahalli Hanumaiah remained in possession till 1937 when he died. After his death his widow plaintiff 2 came in possession and continued till 1969 when an area of 2.02 acres was sold to plaintiff 1. In 1970 there was an agreement of sale by plaintiff 2 in favour of plaintiff 1 for the sale of the remaining land also for a total sum of Rs. 20,000 out of which Rs. 10,000 is said to have been paid. On August 8, 1973 the plaintiff got his name entered in the revenue records. On September 3, 1973 the present suit was filed stating that cause of action arose on August 24, 1973 when a function was held at the instance of the appellant Corporation laying down the foundation stone of a building of a proposed school on the disputed area.

2. The appellant denied the claim of the plaintiffs and asserted its continuous possession since 1927 and also pleaded that the suit was not maintainable as the relief claimed was limited to permanent injunction without asking for a decree to declare the plaintiff's title.

3. The trial court decreed the suit. On appeal by the appellant, the first appellate court reversed the decision and dismissed the suit holding that the appellant has been in continuous possession. The suit was also held to be not maintainable. The plaintiffs challenged the decision by a regular second appeal before the High Court. By the impugned judgment the second appeal was allowed and the decree of the trial court was restored.

4. So far the scope of the suit is concerned, a perusal of the plaint clearly indicates that the foundation of the claim of the plaintiffs is the title which they have pleaded in express terms in paragraph 2 of the plaint. It has been stated that after cancelling the acquisition of the suit property of a burial ground the land was transferred to Guttahalli Hanumaiah under G.P. No. 3540 dated 10, June 1929 on payment of upset price. In paragraphs 3 and 5 the plaintiffs have reiterated that the first plaintiff was the owner-in-possession. It is well established that for deciding the nature of a suit the entire plaint has to be read and not merely the relief portion, and the plaint in the

present case does not leave any manner of doubt that the suit has been filed for establishing the title of the plaintiffs and on that basis getting an injunction against the appellant-Corporation. The court fee payable on the plaint has also to be assessed accordingly. It follows that the appellant's objection that the suit is not maintainable has to be rejected. The Additional Civil Judge, who heard the appeal from the judgment of the trial court, examined the question of plaintiffs' title and rejected their case. The question of possession was also separately taken up, and it was found that the plaintiffs had failed to prove their possession until August 24, 1973 when they allege that the appellant-Corporation trespassed. Accordingly, the appeal was allowed and the suit was dismissed.

5. In reversing the decision of the first appellate court the High Court committed several serious errors of law. The High Court appears to have been confused on the question whether the issue of title to the disputed property was involved in the suit or not. The judgment shows that the High Court has made several inconsistent observations.

By way of illustration, the following passage at page 13 of the paper book (of this Court) may be seen :

This Court must accept this argument in view of the circumstances that there was no issue involving the title. The title has been satisfactorily established by the appellants and the respondent has failed to establish its title. Therefore, the first appellate court is wholly wrong in raising issues which did not arise in the case and reaching the conclusion that the suit was bad since the appellants did not seek the relief of declaration of title and possession.

We do agree that the suit cannot be dismissed on the ground that the relief of declaration of title and possession has not been specifically mentioned in the plaint. But the observations on the question whether the issue of title is involved in the suit or not are clearly discrepant. In some other part of the judgment the High Court has mentioned a portion of the relevant evidence on the question of title and possession the first appellate court comments against the findings of fact recorded by the first appellate court without giving any valid reason therefor. So far the revenue records are concerned, the appellate court considered the same and held that they did not support the plaint. The High Court has reserved the finding saying that the interpretation of the first appellate court was erroneous. It is firmly established that the revenue records are not documents of title, and the question of interpretation of a document not being a document of title is not a question of law. These errors have seriously vitiated the impugned judgment of the High Court which must be set aside.

6. As the very approach of the High Court in deciding the second appeal appears to be wholly unsatisfactory, it is a fit case in which the second appeal should be re-heard by it.

7. This appeal is, for the reasons indicated above, allowed. The decision of the High Court is set aside and the case is remitted to it for a fresh decision in the light of the observations made above. The costs shall abide the final result in the litigation. Before the second appeal is taken up for rehearing, proper steps under the law for assessing and realising court fees payable on the plaint and the memoranda of the appeals in the first appellate court and the High Court on the basis of a correct valuation should be taken.

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