SUPREME COURT OF INDIA

K. Seetharam

Vs.

B.U. Papamma

C.A.No.2864-65 of 2001

(D.P. Mohapatra and Shivaraj V. Patil JJ.)

18.04.2001

ORDER

D.P. Mohapatra, J.

1. Delay condoned.

2. Leave granted.

3. These appeals filed by the defendant are directed against the **JUDGMENT** passed by the Karnataka High Court on 19th March, 1999 in R.F.A. No. 96/1993 allowing the appeal and setting aside the judgment and decree of the trial Court and decreeing the suit filed by the respondent no. 1.

4. The respondent no. 1 filed the suit praying for the decree of permanent/injunction restraining the appellant from interfering with his possession and enjoyment over the suit property in any manner. The case of the plaintiff, sans details, was that he is the owner in possession of the stir bearing No. 378 at Sunkenahalli Extension, Bangalore. On 20th of March, 1981 husband of the plaintiff noticed that the first defendant had been digging up a portion of the plaintiff land to an extent of 20ft. east to west and 3 ft. north to south on the southern side of the plot. On the protest raised by the plaintiff's husband the first defendant left the site. Subsequently, taking advantage of the plaintiff's absence the first defendant again dug up a portion of the plaintiff's site and put some sized stones in the excavated portion for laying the foundation for construction of a building. The cause of action for this suit was stated in paragraph 7 of the plaint as follows:

> "The cause of action for the suit arose on 20.3.1981 (twenty three eighty one) when the first defendant for the first time attempted to dig up a portion of the site by engaging some workmen and subsequently, on other dated when he has continued to dig up the portion of the site. The cause of action arose within the jurisdiction of this Hon'ble Court."

5. The defendant denied the allegations made by the plaintiff in the plaint that he (defendant) had dug up any portion of the plaintiff's land or had made any construction on the suit land. It was his case that on being delivered vacant possession of the land purchased from one Nijaguneswamigalu he is in peaceful possession and enjoyment of the same and after getting licence from the Bangalore City Corporation to construct a building he has made the construction entirely on his land bearing no. 41 (renumbered as 8/41), 1st Cross, Hanumant Nagar, Division No. 31, Bangalore and not on any portion of the suit land.

6. On the pleadings of the parties, the trial Court framed the following issues:

> "1. Whether the plaintiff is in lawful possession of the suit site ?
>
> 2. Whether the first defendant has been causing unlawful interference into plaintiff's possession of the suit site ?
>
> 3. Whether the second defendant is a necessary party ?
>
> 4. Whether the plaintiff is entitled for the injunction prayed for"?

7. The trial Court answered the first issue in the affirmative; the second in the negative and the third by holding that the second defendant is not a necessary party to the suit. The trial Court dismissed the suit.

8. On appeal by the plaintiff the High Court set aside the judgment and decree passed by the trial Court holding, *inter alia*, that on the basis of the written statement, the suit ought to have been decreed without embarking upon a trial (para 5/9) and that the first defendant clearly and categorically admitted that he is not claiming any right in the plaintiff's property. The High Court placed reliance on the averments in paragraph 6 of the written statement in which it is stated . "This defendant is not carrying on construction in any one's site. As this defendant does not claim any right in site no. 578/3 and he has not trespassed into the site, the plaintiff is not entitled to the relief of injunction sought." The High Court further observed that the trial Court has given a finding on issue no. 1 in favour of the plaintiff and that finding has not been challenged in appeal. In the circumstances, the High Court took the view that the suit for injunction ought to have been decreed. Accordingly, the appeal was allowed and the suit was decreed.

9. The question that arises for consideration is whether the High Court was right in holding that the defendant had admitted the case of the plaintiff in the written statement and, therefore, the trial Court ought to have decreed the suit on the basis of the admission of the defendant in the pleading?

10. In our considered view, the High Court was clearly in error in taking suit a view. On a fair reading of the written statement, particularly the averments in paragraph 6 which has been quoted earlier, it is clear that he case of the defendant is one of denial of the allegations made in the plaint that the defendant had encroached on a portion of the plaintiff's land for

constructing a building. In paragraph 6 of the written statement the defendant has categorically stated that he has not utilized anyone's land for the purpose of the construction of the building. He asserted that the construction stands on the land owned and possessed by him. It was his contention that in the facts and circumstances of the case the plaintiff was not entiteld to the relief of injunction as prayed for. In a suit of this nature the question for determination is whether the defendant, while constructing the building, had encroached upon a portion of the suit land. If the question is answered in the negative, the suit will fail for want of cause of action. In the case in hand a Commissioner was appointed by the Court and according to the report submitted by him, the defendant had not encroached on any portion of the land of the plaintiff. The Commissioner's report was accepted by the trial Court. Considering the report along with the other evidence on record, the Court held that the plaintiff failed to prove that the defendant had encroached on the suit land. The averments in paragraph 6 of the written statement, do not give any indication that the defendant admitted the case stated in the plaint. On the other hand, the averments clearly indicate that the defendant denied that the plaintiff had nay cause of action for filing the suit. The High Court was clearly in error in setting aside the judgment of the trial Court on the mistaken notion that the case of the plaintiff was admitted by the defendant in his pleading. The judgment of the High Court is clearly unsustainable.

11. The appeals are allowed. The judgment of the High Court dated 19.3.1999 in R.F.A. No. 96/1993 is set aside and the judgment and decree passed by the XVII Addl. City Civil Judge, Bangalore in Suit No. OS 1238/81 are restored. There will, however, be no order for cost.