

SUPREME COURT OF INDIA

P.H. Dayanand

Vs.

S. Venugopal Naidu

C.A.No.6570 of 2008

(S.B. Sinha and Cyriac Joseph JJ.)

07.11.2008

JUDGMENT

S.B. Sinha, J.

1. Leave granted.
2. The short question that arises for consideration in this appeal is as to whether the Courts below were correct in decreeing the suit only on the premise that defendant No.2-appellant could not prove his title.
3. The basic fact of the matter is not in dispute. The plaintiff-respondent No.1 purchased the suit property in the year 1991 from one T. Bayarappa. Apparently plaintiff-respondent No.2 was in permissive possession thereof. As despite request he refused to vacate the licensed premises, the suit was filed.
4. On the other hand, the defence of the appellant before us was that he had been in lawful possession of the property in his own right. Appellant, inter alia, contended that the original owner of the property, viz., Shri T. Bayarappa had entered into an agreement of sale with one Shri Krishnamurthy. A Power of Attorney was also executed in his favour. The said Krishnamurthy has assigned his rights under an agreement in favour of defendant No.1, (late Shri G. Srinivas) and delivered possession of the property to him. Shri Srinivas raised constructions thereupon. Shri Krishnamurthy allegedly as an agent of T. Bayarappa assigned his rights in favour of G. Srinivas on 10.5.1997.

“He filed a suit for specific performance of contract. It was furthermore claimed that Shri Srinivasan entered into an agreement with the petitioner to convey the property for a total consideration of Rs.9,60,000/-.

A joint written statement was filed in the said suit by the contesting defendants. Admittedly, however, the said suit for specific performance of contract was withdrawn. An additional written statement was filed by the petitioner claiming his

title under the aforementioned agreement entered into by and between him and the defendant No.1.”

5. The learned Trial Court framed a large number of issues. Parties adduced their respective evidences on the said issues. The suit was decreed and the first appeal filed thereagainst was also dismissed by the High Court by reason of the impugned judgment.

6. Mr. Nageshwar Rao, learned senior counsel appearing on behalf of the appellant, in support of the appeal at the outset, drew our attention to the fact that although plaintiff purported to have purchased the suit property in the year 1994 but from the records it would appear that he allegedly entered into an agreement for sale with Shri T. Bayrappa in the year 1991. The Power of Attorney was also executed in his favour authorizing him to encumber and alienate the said property.

“It was pointed out that from the record it would furthermore appear that the plaintiff-first respondent filed a writ petition before the High Court of Karnataka alleging that Bangalore Development Authority had been making attempts to dispossess him and demolish the structures on the land when his application for regularization of construction was pending before the said Authority. Learned counsel would contend that from the said records, thus, it would appear that the land in question had been acquired by the Bangalore Development Authority and, thus, the plaintiff having lost his title, the question of defendant No.2's being in permissive possession thereof would not arise and thus, the suit filed by the plaintiff claiming title over the property could not have been decreed.”

7. Mr. P.V. Shetty, learned counsel appearing on behalf of the respondent, on the other hand, would support the judgment.

8. Both the courts below have concurrently found the contentions of the plaintiff-respondent that he had purchased the property from the rightful owner T. Bayrappa. Even according to the appellant, the purported transaction between Shri T. Bayrappa and Shri Krishnamurthy and defendant No.1 did not result in execution of a registered deed of sale in his favour. Admittedly, the defendant No.1 himself filed a suit for specific performance of the contract against his vendor. It has concurrently been found by both the courts that the defendant No.2 cannot be said to have acquired any title over the property, particularly when the defendant No.1 himself withdrew the suit for specific performance of contract. It was furthermore noticed that even the purported agreement for sale was not produced before the trial court by the defendant No.1.

10. When questioned, Mr. Nageshwar Rao conceded that there is nothing on record to show that the Bangalore Development Authority at any point of time has acquired the property in suit in terms of the provisions of the *Land Acquisition Act, 1894* or otherwise. Admittedly, the plaintiff's vendor was in possession of the suit property. It is only through him, the defendant No.1 and defendant No.2 claimed possession. As the original owner has transferred his title in favour of the plaintiff-respondent, the court was required to go into the

question of inter se claim between the parties on or over the land in dispute. Even if plaintiff and his vendor has been in prior possession, the defendant No.2 who came in permissive possession of the property through him cannot be said to have acquired a better title than the plaintiff.

“This aspect of the matter has been considered in *Somnath Burman v. Dr. S.P. Raju & Anr.*¹ wherein this Court held:

"It was next contended on behalf of the appellant that in a suit for possession brought on the basis of title, the plaintiff cannot succeed unless he proves his title to the suit property as well as its possession within twelve years. According to the appellant, except in a suit under Section 9 of the Specific Relief Act, the plaintiff for succeeding in the suit, has to prove both existing title to the suit property and its possession within twelve years. We are unable to accept this contention as correct. In our opinion the possession of the plaintiff prior to 1945 is a good title against all but the true owner. The defendants who are mere trespassers cannot defeat the plaintiff's lawful possession by ousting him from the suit property. Possessory title is a good title as against everybody other than the lawful owner."

11. Mr. Nageshwar Rao, however, drew our attention to a decision of this Court in *Ramchandra Sakharam Mahajan v. Damodar Trimbak Tanksale (Dead) & Ors.*², wherein it was held :

"13. The suit is for recovery of possession on the strength of title. Obviously, the burden is on the plaintiff to establish that title. No doubt in appreciating the case of title set up by the plaintiff, the court is also entitled to consider the rival title set up by the defendants. But the weakness of the defence or the failure of the defendants to establish the title set up by them, would not enable the plaintiff to a decree. There cannot be any demur to these propositions."

12. The said decision, thus, itself is an authority for the proposition that the court is entitled to take into consideration the defence of the defendants. The sole question which arose for consideration before the Court therein was as to which of the parties a better title had.

13. For the reasons aforementioned, there is no merit in this appeal. It is dismissed accordingly. As a finding of fact has been arrived at by the courts below that the appellant had been prolonging the hearing of the suit, he must pay and bear the costs of the first respondent. Counsel's fee assessed at Rs.75,000/-.

¹[1969] 3 SCC 129]

²[2007] 6 SCC 737]