

# SUPREME COURT OF INDIA

Dhanpal Balu Lhawale

Vs.

Adagouda Nemagouda Patil (D) by Prop. Lr

C.A.No.5229 of 2000

(Dalveer Bhandari and Harjit Singh Bedi JJ.)

01.05.2009

## JUDGMENT

### **Harjit Singh Bedi, J.**

1. This appeal arises out of the following facts.
2. The plaintiff-respondent Adagouda Nemagouda Patil, filed O.S. No. 182/1972 for a declaration of title and permanent injunction claiming tenancy over the suit land and in the alternative, to title on the basis of a will dated 27th December 1971 alleged to have been executed by Smt. Kusabai. The defendant/appellant Dhanpal Balu Lhawale, his mother, sister and wife entered appearance and resisted the suit, and challenged the execution of the will aforesaid. Dhanpal Balu, the first defendant in the aforesaid suit also filed O.S. No.310/1990 claiming the relief of permanent injunction on the basis of title. As the subject matter in both the suits was common, they were clubbed together. On an examination of the record, the trial court vide its judgment dated 15th December 1994 decreed O.S. No.182 of 1972 to the extent of granting an injunction but rejected the prayer for a declaration whereas OS No.310 of 1990 was dismissed. Aggrieved by the judgment in O.S. No.310/1990 defendant No.1, the appellant in the present proceedings, Dhanpal Balu preferred R.A.No.18/1995 whereas the plaintiff Adagouda Nemagouda too being aggrieved by only the partial decretal of O.S. No.182/1972 preferred R.A.No.23/1995. The first appellate court on a re-appreciation of the evidence allowed R.A.No.18/1995 and dismissed R.A.No.23/1995 vide order dated 7th October 1996. It also appears that the plaintiff, Adagouda Nemagouda, had filed an application in form VII before the Land Tribunal claiming occupancy rights and this plea too was rejected by the tribunal on 11th November 1981. It has been pointed out to us that the order of the Land Tribunal had been challenged by Adagouda by way of Writ Petition No.3912/2001 which was dismissed on 7th December 2006 and the writ appeal filed against the order of the learned Single Judge, that is Writ Appeal No. 1023/2007, too has been dismissed by the Division Bench on 24th September 2007. Aggrieved by the order of the Lower Appellate Court dated 7th October 1996, in which Adagouda's prayer on the basis of the will had been rejected, he preferred a second appeal in the High Court. The High Court in its judgment dated 7th April 1999 while upholding that the will had not been proved,

granted a decree for injunction to Adagouda but dismissed the suit for injunction filed by Dhanpal observing that even though Adagouda was in unlawful possession of the property he was nonetheless entitled to an injunction. The present special leave petition has been filed in this Court against the order dated 7th April, 1999 of the High Court. During the pendency of this appeal, I.A. No.1 under Order 6 Rule 17 read with Section 151 of the CPC has been filed by the appellant seeking to amend the prayer clause in the Special Leave Petition as originally laid. The amendment sought is reproduced below: "In the circumstances obtaining in this case, this Hon.Court be pleased to set aside the judgment of the Hon'ble High Court of Karnataka in R.S.A.No.73/97 dated 7.4.99 by granting the relief of injunction in favour of the petitioners or in the alternative this Hon'ble Court be pleased to grant an order directing the respondent to hand over possession of the suit schedule property to the petitioners."

3. In the facts of the case, we are of the opinion that this amendment application needs to be allowed in the face of the fact that, as of today, the claim of the plaintiff respondent, Adagouda Nemagouda, on the basis of the will and in the alternative, on the basis of a tenancy has been rejected and his status is only that of a trespasser.

4. During the course of the hearing, the learned counsel for the plaintiff-respondent herein Adagouda Nemagouda, has pointed out that the facts given above are correct and the status of the respondent was that of a trespasser and though a trespasser he was entitled to an injunction as he had been in possession since the year 1959 and it was thus appropriate that the appellant be called upon to file another suit seeking possession. The learned counsel for the appellant has, however, pointed out that in view of the above admitted position and the fact that there was virtually no defence left to the respondent, and in the background of the fact that the litigation inter-se the parties, has been pending in one forum or the other since the year 1972, it would be a matter of great hardship if the matter was relegated to the civil court for yet another suit for possession.

5. We are of the opinion that the assertion made by the learned counsel for the appellant has merit. We find from the record that Adagouda Nemagouda has exhausted all the remedies that were or are open to him. Admittedly he has been in possession since long, but in view of the above factual statement, his status now is of that of a trespasser. We accordingly in the interest of justice allow this appeal, set aside the order of the High Court dated 7th April 1999 in RSA No. 73 of 1997 and in the light of the amended prayer clause direct the respondent to hand over possession to the appellant herein by the end of the year 2010, on paying a sum of Rs.5,000/- per acre and filing an undertaking in the above terms within 12 weeks from today. In case the undertaking is not filed, the appellant will be entitled to seek police help to recover possession.

6. The appeal is allowed in the above terms. There will, however, be no order as to costs.