

SUPREME COURT OF INDIA

Eureka Builders

Vs.

Gulabchand s/o Veljee Dand Since

C.A.No.4757-4760 of 2018

(R.K.Agrawal and Abhay Manohar Sapre,JJ.,)

03.05.2018

JUDGMENT

Abhay Manohar Sapre,J.,

SLP(C)No.32252-32255 of 2016

1. Leave granted.

2. These appeals arise from the common final judgment and order dated 30.09.2015 passed by the High Court of Karnataka, Circuit Bench at Dharwad in R.F.A. Nos.100017 of 2015, 100018 of 2015, 100016 of 2015 and 100099 of 2015, whereby the Division Bench of the High Court disposed of the appeals by allowing the plaintiff's appeal and accordingly modified the finding of the Trial Court as regards the status and the ownership rights of the plaintiff in the suit land and held that the plaintiff is the owner of the suit land and is, therefore, entitled to claim his 1 /5th share in it along with defendants Nos.1 to 4, who are legal representatives of late Shah Veljee Kanjee.

3. In order to appreciate the issues involved in these appeals, it is necessary to set out the background facts, which led to filing of the suit by the predecessor-in-title of respondent Nos.1 and 2 and now represented by respondent Nos. 1 and 2 against the appellants and remaining respondents No.3 to 34 herein out of which these appeals arise.

4. The case has a history of litigation as it would be clear from the narration of the facts stated hereinbelow. The facts mentioned hereinbelow are taken from SLP paper books and its list of dates.

5. The appellants herein are defendant Nos. 18 to 25 (who are builder, firm and its partners) whereas respondent Nos. 1 and 2 are the legal representatives of original plaintiff and respondent Nos. 3 to 34 are proforma defendants in a civil suit (O.S. No.37/2010) out of which these appeals arise. The contest in these appeals is essentially among the appellants and respondent Nos. 1 and 2.

6. The dispute relates to a land bearing CTS Nos. 361 and 366 of CTS Ward No.1 (originally bearing RS Nos. 20/1/& 20/2 admeasuring 3 Acres 20 Guntas and 1 Acre 25 Guntas respectively) situated at Kusugal Road, Keshwapur, Hubli described in detail in the schedule to the plaint (hereinafter referred to as "the suit land").

7. The suit land was a "watan" property under the Maharashtra Hereditary Offices Act (hereinafter referred to as "the MHO Act") and on its repeal in 1961, was governed by the Karnataka Village Abolition Act, 1961 (hereinafter referred to as "the KVA Act").

8. The suit land originally belonged to three persons namely, Marigouda Patil, Basangouda Patil and Adveppagouda Patil (hereinafter referred to as "three PATIL").

9. On 23.10.1915, three PATIL leased out land bearing CTS No. 366 (3 acres 20 guntas) to one Chaturbhuj Ratansi for a period of 50 years whereas the land bearing CTS No. 361 (1 acre 25 guntas) was permanently leased out to one Kanjee Ghelabhai Shet alias Gujjar on 09.03.1920.

10. In 1942, land bearing CTS No.361 was sold in Court Auction proceedings and one person by name - Shah Veljee Kanjee purchased the said land being the highest bidder.

11. On 14.05.1943, Shah Veljee Kanjee purchased another parcel of land bearing CTS No.366 by direct sale/purchase. Shah Veljee Kanjee died on 02.12.1957 leaving behind his widow-Gunwantibai, two major daughters and four minor sons. By inheritance, the legal representatives stepped into his shoes and became the joint owners of the suit land.

12. On 19.12.1957, the widow and 2 major daughters of late Shah Veljee Kanjee sold the suit land to one Gadag Co-operative Cotton Sales Society Ltd.-defendant No. 17 (hereinafter referred to as the "Society").

13. The son of late Shah Veljee Kanjee, who is plaintiff (since dead) and defendant Nos. 1 to 4 in the present suit out of which these appeals arise felt aggrieved by the sale dated 19.12.1957 made by their mother and two sisters in favour of the Society and accordingly filed civil suit being O.S. No.9/1969 praying therein for a declaration that the sale made by their mother and two sisters is bad in law and void to the extent of plaintiff's share (5/8th) in the suit land. The mother, two sisters and the Society contested the suit as defendants.

14. This suit was, however, decreed on 26.08.1977 by the Principal Civil Judge (Sr. Division) in plaintiff's favour. It was held that the sale made by the mother and two sisters of the plaintiff in favour of the Society is illegal and thus is not binding on the plaintiff to the extent of his 5/8th share in the suit land.

15. This decree was challenged by the purchaser (Society) in the High Court and later in this Court but was not successful. In other words, the Society lost the legal battle throughout up

to this Court and resultantly, the decree dated 26.08.1977 passed by the Principal Civil Judge (Sr. Division) in plaintiff's favour became final.

16. In execution of this decree, the plaintiff and defendant Nos.1-4, who are the legal representatives of late Shah Veljee Kanjee, were accordingly placed in joint possession of their shares in the suit land.

17. As mentioned above, the appellants herein are the builder, firm and its partners. They claimed to have entered into an agreement with the original owners (three PATIL) on 23.03.2001 for purchase of the suit land on certain terms and conditions.

18. In the year 2004, the original owners (three PATIL) claiming their ownership rights over the suit land filed two civil suits being O.S. Nos.364 & 365 of 2004 against the legal representatives of Shah Veljee Kanjee and the Society. The Civil Court dismissed both these civil suits as barred by time vide judgment dated 29.01.2007. The two dismissals attained finality because the three PATIL did not pursue the matter further in appeals to the higher Courts.

19. During interregnum period, there were several rounds of litigation in civil, revenue and rent courts among the parties and their representatives. Similarly some subsequent developments in relation to the suit land conferring some rights by the State on the parties also took place. However, at this stage, it is not necessary to give details of this litigation and its development. The same will be referred to at a later stage while dealing with these submissions.

20. It is basically with the aforementioned background facts, one son of Shah Veljee Kanjee (respondent No.1 herein (since dead) and represented by his legal representatives son/daughter as respondent Nos.1 and 2 filed civil suit (O.S.No.37/2010) on 23.02.2010 in the Court of Principal Civil Judge, Sr. Division at Hubli out of which these appeals arise against 27 defendants which included the members of Shah Veljee Kanjee family, their legal heirs, legal representatives of original holders (three PATIL) and two intending purchasers/buyers of the suit land, namely, Society and the other, M/s Eureka builders - a firm and their partners (appellants herein).

21. The suit was filed for partition and separate possession of plaintiff's 1/5th share in the suit land and also for grant of permanent injunction restraining the two intending buyers/purchasers of the suit land from interfering in plaintiff's possession over the suit land.

22. In substance, the plaintiff (respondent Nos.1 and 2 herein) had claimed the aforementioned reliefs on the basis of his title over the suit land which, according to him, was already adjudicated and recognized in his favour by the Civil Court vide judgment dated 26.08.1977 passed in O.S. No.9/1969 and it remains upheld up to this Court.

23. So far as other family members of Shah Veljee Kanjee (defendant Nos. 1 (a) to (c), 2 and 4) are concerned, they filed their counter claim and admitted the claim set up by the plaintiff in the suit.

24. The suit was mainly contested by appellant No.1 herein i.e. the Builder (defendant No. 18) on several grounds such as, firstly, the suit is not maintainable because proper reliefs were not claimed by the plaintiff; Second, the suit property is not properly valued; Third, the plaint is insufficiently stamped; Fourth, the suit is barred by limitation.

25. So far as the merits of the claim is concerned, appellant No.1 (defendant No.18) denied the plaintiff's title over the suit land and averred inter alia that the original holders of the suit land (three PATIL) with whom they entered into an agreement to purchase the suit land were having subsisting right, title and interest in the suit land by virtue of two re-grant orders (31.03.1973 and 01.04.1973) made by the State in their favour under the KVA Act of 1961 on the application of the original holders (three PATIL) and, therefore, the original holders (three PATIL) were competent to enter into an agreement to transfer the suit land in their favour on 23.03.2001.

26. It was also averred that whatever ownership rights in the suit land which the plaintiff and defendant Nos. 1 to 4 were possessing in their favour stood extinguished on account of the two re-grant orders dated 31.03.1973 and 01.04.1973 made by the State in favour of the original holders (three PATIL) and, therefore, in the light of these subsequent events which came into existence, no decree can now be passed in favour of plaintiff and defendant Nos.1 to 4 in relation to the suit land for any relief on the strength of their title.

27. Issues were framed and parties adduced their evidence. By judgment/decreed dated 07.11.2014, the III Addl. Senior Civil Judge, Hubli decreed the plaintiff's suit in part and passed the preliminary decree of partition and separate possession in relation to the suit land in plaintiff's favour as prayed in the suit.

28. The Additional Senior Civil Judge answered almost all the issues in plaintiff's favour and held that the plaintiff is entitled for 1/5th share in the leasehold right in respect of the suit scheduled property and so also defendant Nos. 1 (a) to (c), 2 and 4 are entitled to claim their 1/5th share each in leasehold rights in respect of the suit land along with the plaintiff.

29. The plaintiff, the legal representatives of defendant Nos. 2, 3 and 4 and defendant No. 17- Society felt aggrieved of certain findings about the ownership status of the plaintiff in the suit land and accordingly filed four separate first appeals in the High Court at Bangalore.

30. So far as the present appellants are concerned, they did not prefer any appeal as they seemed to be satisfied with the judgment of the Trial Court.

31. By the impugned judgment, the Division Bench disposed of all the four appeals. The High Court allowed the appeal filed by the plaintiff and accordingly modified the finding of the Trial Court as regards the status and the ownership rights of the plaintiff in the suit land

and held that the plaintiff is the owner of the suit land and is, therefore, entitled to claim his 1/5th share in the suit land along with defendants, who are legal representatives of late Shah Veljee Kanjee like the plaintiff.

32. It is against this judgment of the High Court, the appellants herein (defendant Nos. 18 to 25 - who are builder, firm and its partners) have felt aggrieved and filed the present appeals by way of special leave petitions in this Court.

33. Heard Mr. Shekhar Naphade, learned senior counsel for the appellants and Mr. Basava Prabhu S. Patil, learned senior counsel, Mr. G.V. Chandrashekhar, Mr. Ranbir Singh Yadav, Mr. Raghavendra S. Srivastava, learned counsel for the respective respondents.

34. Having heard the learned counsel for the parties at length and on perusal of the record of the case, we find no merit in these appeals. In our view, the reasoning and the conclusion arrived at by the High Court cannot be faulted with. We are, therefore, inclined to uphold the reasoning and the conclusion arrived at by the High Court by assigning our reasoning infra.

35. At the outset, we observe that so far as the right, title and interest of the appellants in the suit land is concerned, the appellants neither claim and nor do they have a right to claim any right, title and interest in the suit land in their own rights. In other words, the status of the appellants in this litigation are that of the intending purchasers of the suit land from the original holders of the suit land (three PATIL).

36. In our view, if the original holders (three PATIL) are able to prove their subsisting right, title and interest over the suit land against the plaintiff, the appellants would be able to get the relief in the suit because they are claiming through original holders (three PATIL). But if the original holders (three PATIL) are not able to prove their subsisting right, title and interest over the suit land against the plaintiff, then the appellants would also loose the case.

37. As mentioned above, the appellant alone was contesting the suit as defendant No.18. It is not in dispute that original holders (three PATIL) did not contest the suit. It is also not in dispute that the appellant was satisfied with the judgment/decree passed by the Trial Court, therefore, they did not file any appeal in the High Court.

38. It is with these background facts of the case, we have to examine the question arising in these appeals as to whether the respondent (plaintiff) was able to prove his subsisting title over the suit land on the date of filing of the suit and, if so, how, or in the alternative, whether the appellants (builder, firm and its partners) were able to prove the subsisting title of the original holders (three PATIL) over the suit land, if so, how.

39. In our considered opinion, the appellants have failed to substantiate the right, title and interest of the original holders (three PATIL) in the suit land through whom they claim to derive interest in the suit land, whereas the respondent (plaintiff) has been able to prove his subsisting right, title and interest in the suit land on the date of filing of the suit, out of which

these appeals arise. The appellants, therefore, have no locus to claim any interest in the suit land.

40. It is a settled principle of law that a person can only transfer to other person a right, title or interest in any tangible property which he is possessed of to transfer it for consideration or otherwise.

41. In other words, whatever interest a person is possessed of in any tangible property, he can transfer only that interest to the other person and no other interest, which he himself does not possess in the tangible property.

42. So, once it is proved that on the date of transfer of any tangible property, the seller of the property did not have any subsisting right, title or interest over it, then a buyer of such property would not get any right, title and interest in the property purchased by him for consideration or otherwise. Such transfer would be an illegal and void transfer.

43. In such eventuality and subject to any terms and conditions if agreed between the parties, a buyer will have a right to claim refund of sale consideration from his seller, which he paid for purchase of the property under the law of contract. The reason is that the contract to purchase has failed and, therefore, the parties have to be restored back to their original positions, which existed at the time of execution of the contract.

44. This principle of law may apply inter se the original holders (three PATIL) of the land and the intending buyers of the suit land with which we are not concerned in this case because the present litigation does not arise between these parties and nor we are deciding the inter se rights of these parties in these appeals.

45. This principle we have mentioned only to clarify the inter se rights of the parties against each other in relation to the suit land and especially the right of the appellants against the original holders(three PATIL) and not beyond it.

46. In our considered opinion, the reasons as to why the appellants failed to prove the subsisting right, title and interest of the original holders (intending sellers-three PATIL) in the suit land are more than one as are set out by us hereinbelow.

47. First, the original holders (three PATIL) had filed two suits (O.S. Nos. 364 and 365 of 2004) in relation to the suit land asserting therein their ownership rights over the suit land against the present plaintiff and other members of Shah Veljee Kanjee but both the suits were dismissed by the Civil Court on 23.11.2004.

48. These dismissal attained finality regardless of the fact as to on what grounds they suffered dismissal. These dismissals were binding on the original holder (three PATIL). A fortiori, these dismissals are binding on the appellants too because the appellants were claiming through the original holders (three PATIL).

49. It is for this reason, we are of the view that the original owners did not have any subsisting right, title and interest in the suit land, which they could have or/and were capable to transfer to the appellants whether for consideration or otherwise on the date when they entered into an agreement of sale of the suit land to the appellants on 23.03.2001.

50. Second, it cannot be disputed that original holders (three PATIL) had parted with the suit land long back by legal mode of transfer, one through Court Auction proceedings in 1942 and the other by direct sale/purchase on 14.05.1943 in favour of Shah Veljee Kanjee.

51. Since then, the original holders (three PATIL) did not have any subsisting right, title and interest in the suit land because whatever rights, title and interest which they had in the suit land, the same were transferred to Shah Veljee Kanjee through Court Auction proceedings in 1942 and by direct sale/purchase on 14.05.1943. These rights were then devolved on his legal representatives by inheritance consequent upon the death of Shah Veljee Kanjee.

52. It also cannot be disputed, as taken note of above, that the Civil Court had already recognized the rights, title and interest of the legal representatives of Shah Veljee Kanjee in the suit land in O.S. No.9/1969 filed by them against the purchaser-Society. This suit was decreed in favour of legal representative of Shah Veljee Kanjee on 26.08.1977 and remained upheld up to this Court.

53. It is due to these reasons also, all the rights, title and interest of original holders (three PATIL) in the suit land stood extinguished.

54. Now coming to the main argument of Mr. Shekhar Naphade, learned senior counsel for the appellants, which he pressed in service with vehemence.

55. Learned senior counsel urged that the original holders of the suit land (three PATIL) having parted with the suit land in 1942 and 14.05.1943, again got back the suit land by way of re-grant in their favour by order dated 31.03.1973 in respect of land (CTS No. 361) passed by the State under KVA Act of 1961 and by other re-grant order dated 01.04.1973 passed by the State in respect of land (CTS No. 366).

56. It was, therefore, his submission that in this way, the title in the suit land stood reverted to the original holders (three PATIL) from the dates of these two orders.

57. On this basis, the contention of the learned counsel for the appellants was that whatever rights, title and interest in the suit land which the respondent (plaintiff) might have got in 1942 and on 14.05.1943 while acquiring the suit land, the same stood extinguished on account of re-grant made by the State in favour of original holder (three PATIL) in 1973 by the two orders referred above.

58. We find no merit in this submission for more than one reason. Assuming for the sake of argument that as a result of the re-grant orders made by the State in favour of the original

holders (three PATIL), the rights, title and interest in the suit land again reverted to them in 1973 but they failed to exercise their right of ownership over the suit land for a long time, hence their right of ownership stood extinguished.

59. It was only after 31 years from the re-grant order, the original holders woke up from slumber and filed two suits (O.S. Nos.364 and 365/2004) against the plaintiff and other members of Shah Veljee Kanjee in the Civil Court. It is not in dispute that the two civil suits also suffered dismissal from the Civil Court on 23.11.2004 and attained finality.

60. In our considered opinion, whatever so-called rights, title and interest which the original holders derived from the orders of re-grant in 1973 in the suit property in their favour, the same stood extinguished by efflux of time.

61. The reason was that in order to keep such new rights intact and enforceable, the original holders (three PATIL) were under a legal obligation to have filed a suit for claiming a declaration and possession of the suit land and this ought to have been done by them within 12 years from the date of re-grant, i.e., 1973.

62. They, however, failed to do so within 12 years and when they actually tried to exercise their rights by filing the suit in 2004 (after 31 years from 1973), by then it was too late to exercise such rights in law. By that time, their rights in the suit land stood extinguished.

63. Section 27 of the Limitation Act deals with extinguishment of right to property. It says that at the determination of the period prescribed in the Act for any person to institute a suit for possession of any property, his right to such property shall be extinguished. Articles 64 and 65 of the Schedule provide 12 years period for filing a suit to claim possession of any immovable property. The period of 12 years prescribed in these two articles is required to be counted from “the date of dispossession” (Article 64) and “when the possession of the defendant becomes adverse to the plaintiff” (Article 65).

64. As held supra, the original holders (three PATIL) failed to file the civil suit against the plaintiff claiming possession of the suit land on the strength of their new title namely, re-grant in relation to the suit land, within 12 years from the date of re-grant and, therefore, by virtue of Section 27 of the Limitation Act, their all rights, title and interest in the suit land got extinguished.

65. In view of these reasons, we are of the considered view that neither the original holders (three PATIL) and nor the appellants could take any benefit of the orders of re-grant dated 31.03.1973 and 01.04.1973 made by the State so as to divest the legal representatives of Shah Veljee Kanjee (plaintiffs) from their rights, title and interest in the suit land which they had legally acquired through Court Auction and direct purchase in 1942/43.

66. This issue can be examined from yet another legal angle on the admitted facts situation arising in the case.

67. It is not in dispute that Shah Veljee Kanjee, in the first instance, acquired legal and valid title in the suit land through Court Auction proceedings in the year 1942 and second, by direct purchase of the part of the suit land on 14.05.1943 from the original holders (three PATIL).

68. In our view, the plaintiff in alternative can be held to have acquired title against the original holders(three PATIL) by operation of law. The reason is not far to seek.

69. Admittedly, the plaintiff continued to remain in lawful possession of the suit land since 1942/1943, first through Shah Veljee Kanjee and after his death through his legal representatives. It is not in dispute that the original holders (three PATIL) were aware of the ownership rights of Shah Veljee Kanjee over the suit land since 1942/1943 as Shah Veljee Kanjee got the suit land by State Auction proceedings and also by direct sale/purchase.

70. In this way, it was proved that the possession of Shah Veljee Kanjee over the suit land was throughout long, continuous, uninterrupted, open and peaceful with assertion of ownership from 1942 till 2004 to the knowledge of the whole world.

71. The aforesaid undisputed facts confirm the possessory rights, title and interest of the plaintiff in the suit land against everyone including the original holders (three PATIL) by operation of law.

72. Mr. Shekhar Naphade, learned senior counsel then referred the provisions of MHO Act and KVA Act and pointed out the nature of grant and the re-grant of the suit land made in favour of the original holders by the State and how it devolved on the holders etc.

73. In our view, this submission need not be dealt with in detail because it has no relevance in the light of our findings recorded above against the appellants.

74. In other words, once the rights of the original holders in the suit land stood extinguished, this submission does not survive for consideration on its merits.

75. A right in the property once extinguished by operation of law, it cannot be revived unless the law itself provides for its revival in a particular situation. Such is not the case here.

76. There is, however, another infirmity in the case of the appellants, which disentitle them to claim any relief in relation to the suit land.

77. As mentioned above, the appellants, for proving the right of ownership of the original holders (three PATIL) in the suit land, have placed reliance on the two orders dated 31.03.1973 and 01.04.1973 of the State by which the State is alleged to have made re-grant of the suit land in favour of the original holders (three PATIL).

78. In our view, in the absence of any adjudication of the right of ownership of the original holders (three PATIL) on the strength of these two orders by the competent Court as against

the other stakeholders having an interest in the suit land and especially the legal representatives of Shah Veljee Kanjee, it is not possible to give any benefit of these two orders in favour of the original holders (three PATIL) in these proceedings.

79. That apart, what is the effect of passing of the two orders on the rights, title and interest of the purchasers of the suit land because admittedly, the suit land was sold to the purchaser (Late Shah Veljee Kanjee) prior to passing of these two orders and whether these orders will ipso facto divest the purchasers of their rights, title and interest in the suit land were required to be gone into by the competent Court after affording an opportunity to such affected persons, namely, legal representatives of late Shah Veljee Kanjee.

80. The original holders (three PATIL) though filed the civil suits to get these issues adjudicated against the affected persons but failed in their attempt to get these issues adjudicated. In other words, by the time the original holders (three PATIL) approached the Civil Court, their all rights in the suit land itself got extinguished on account of efflux of time (31 years) as has been held supra.

81. It is for these reasons also, we are of the view that the appellants have no case.

82. In our view, therefore, the High Court was right in its reasoning and the conclusion in holding that the original holders (three PATIL) having lost all their rights, title and interest in the suit land on the expiry of 12 years from the date of re-grant in their favour (assuming the re-grant to be valid) in 1985 and secondly, they again lost their ownership rights due to dismissal of their two suits (O.S. Nos. 364 and 365 of 2004) on 23.11.2004, neither the original holders (three PATIL) and nor the appellants, who claimed through original holders, had any right to claim any interest in the suit land.

83. In view of the foregoing discussion, we are of the considered opinion that looking at the issues involved in this case from any angle, these appeals have no merits. The appeals thus fail and are accordingly

84. dismissed.