IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 01ST DAY OF JUNE 2016

BEFORE

THE HON'BLE MRS.JUSTICE B.V.NAGARATHNA

REGULAR SECOND APPEAL NO.2053/2010

BETWEEN:

SRI. SIDDAIAH, S/O. KUNDEERAIAH, AGED about 68 YEARS, R/AT DEVAIAHNA HUNDI, SRIRAMPURA DHAKLE, KASABA HOBLI, MYSORE TALUK, MYSORE DISTRICT.

... APPELLANT

(BY SRI: V.N. MADHAVA REDDY, ADVOCATE)

AND:

- 1. THE MYSORE URBAN
 DEVELOPMENT AUTHORITY,
 OFFICE SITUATED AT JLB ROAD,
 MYSORE, REPRESENTED BY ITS
 CHAIRMAN.
 PIN 570 001.
- 2. THE SPECIAL L.A.O.,
 M.U.D.A., OFFICE SITUATED AT
 JLB ROAD, MYSORE 570 001. ... RESPONDENTS

(BY SRI: SHARATH GOWDA .G.B, ADVOCATE FOR R-1 & R-2)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 26.03.2010 PASSED IN

R.A.NO.107/2002 ON THE FILE OF THE JUDGE, COURT OF SMALL CAUSES AND CIVIL JUDGE (SR.DN.), MYSORE, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED: 22.03.2002 PASSED IN O.S.NO.262/1999 ON THE FILE OF THE V ADDL. I CIVIL JUDGE (JR.DN.), MYSORE AND ETC.,

THIS RSA COMING ON FOR ADMISSION THIS DAY, THE COURT DELIVERED THE FOLLOWING:

<u>JUDGMENT</u>

This second appeal is preferred by the plaintiff in O.S.No.262/1999, being aggrieved by the judgment and decree of the Court of Small Causes and Civil Judge (Sr.Dn.) Mysore, dated 26/03/2010, passed in R.A.No.107/2002, by which, the judgment and decree passed by the V Addl. Civil Judge (Jr.Dn.) Mysore, in O.S.No.262/1999 dated 22/03/2002, decreeing the suit of the plaintiff – appellant herein is set aside and consequently, the suit is dismissed.

- 2. For the sake of convenience, the parties shall be referred to, in terms of their status before the trial court.
- Appellant plaintiff filed the suit seeking relief of mandatory injunction against the defendant - Mysore Urban Development Authority, directing the defendant to allot a site in favour of the It is the case of the plaintiff that lands plaintiff. bearing Sy.No.92/1 measuring 32 Guntas and Sy.No.92/2 measuring 1 Acre, both situated at Sreeramapura village, Kasaba Hobli, Mysore Taluk, were acquired by the defendant in LAC.No.305/1989 dated 19/12/1986 and an award was passed on 20/03/1989. The said extent of lands originally belonged to the plaintiff and his brother's son by name Papanna. Katha also stood in the name of the plaintiff and his brother's son, revenue records were also in the joint names of the plaintiff and his

brother's son. The defendant determined the compensation and passed an award. Plaintiff received the compensation under protest and made several applications for allotment of sites under land losers category at half the rate of MUDA but representation of the plaintiff were not considered by the defendant. Thereafter, a legal notice dated 27/01/1999 was issued calling upon the defendant to consider the request of the plaintiff as per the circular of the Inspite of the said legal notice being defendant. served on the defendant, there was no response to the same. According to the plaintiff, he is entitled to one vacant site measuring 60' x 40' to be allotted in land losers category. He therefore sought relief of mandatory injunction against the defendant vis-à-vis allotment of site.

4. In response to the suit summons and court notices issued by the trial court, defendants appeared

and filed its written statement denying the averments made in the plaint insofar as the relief sought by the plaintiff is concerned. The defendants admitted that compensation was payable and the same was paid to the plaintiff and his brother's son, Papanna and that both of them have received the compensation and that the plaintiff had sent a notice on 27/01/1999 but there was no obligation on the part of the defendants to allot any land in land losers quota.

5. That by mutual consent, 1 Acre 30 Guntas of land in Sy.Nos.92/1 and 92/2 of Sriramapura village were acquired and a sum of Rs.43,780/- was paid to the plaintiff and his brother's son Papanna, as they were joint owners and as members of the joint family. Further, site measuring 30' x 40' was allotted to family of the plaintiff in the name of Papanna. Plaintiff had given his consent for allotment of the said site in the name of Papanna, in the land losers quota.

Such a consent letter was signed by the plaintiff as well as Papanna and they have acknowledged receipt of compensation also. Having agreed for allotment of site in land losers quota, in the name of Papanna, plaintiff cannot now seek allotment of a site in his name. It was contended that family as a whole was entitled to a site measuring 30' x 40', which was allotted in the name of Papanna and if the plaintiff had any grievance, he could resolve it with his brother. The first defendant contended that plaintiff cannot claim an allotment of a site after lapse of a decade. Hence, defendant sought for dismissal of the suit.

- 6. The second defendant did not file any written statement.
- 7. On the basis of the above pleadings, the trial court framed the following issues for its consideration:-

- "1. Whether the plaintiff proves that he is entitled one vacant site measuring 60' x 40' as a land looser in acquisition of land measuring more than 1 Acre for each survey number?
- 2. Whether the defendants prove that the site measuring 30' x 40' has been allotted to the family of plaintiff that is in the name of Papanna who is the brother of the plaintiff and the plaintiff has given consent for it?
- 3. Whether the plaintiff is entitled for the relief of as prayed for?
- 4. What order or decree?"
- 8. In support of his case, plaintiff examined himself as P.W.1 and produced five documents which were marked as Exs.P.1 to P.5. On behalf of the first defendant, one Sri D.P.Udayakumar, was examined as D.W.1 and he produced six documents, which were marked as Exs.D.1 to D.6. On the basis of the said evidence, trial court answered Issue No.1 as "the plaintiff is entitled for vacant site measuring 30' x

40'," Issue No.2 as partly in affirmative, issue No.3 as affirmative and decreed the suit by directing the defendant to allot a site measuring $30' \times 40'$ under land losers quota, in favour of the plaintiff, within a period of three months from the date of the order.

- 9. Being aggrieved by the judgment and decree of the trial court, defendant preferred R.A.No.107/2002 before the first appellate court, which on hearing the parties, framed the following points for its consideration:-
 - "1. Whether the plaintiff proves that he is entitled for the additional site measuring 40' x 60' in addition to the site already allotted to his brother's son Papanna?
 - 2. Whether the defendant proves that the site measuring 30' x 40' has been allotted to the family of the plaintiff and his brother's son Papanna which will serve the circular issued by the defendants authority. As such there is

- no necessity to allot one more site as alleged?
- 3. Whether the appellant proves that the judgment and decree of the trial court is deserve to the set-aside by dismissing the suit as prayed for?
- 4. What order?"
- 10. It answered Point No.1 in the negative, Point Nos.2 and 3 in the affirmative and allowed the appeal by setting aside the judgment and decree of the trial court dated 22/03/2002 and dismissed the suit filed by the plaintiff. Being aggrieved by the judgment and decree of the first appellate court, plaintiff has preferred this second appeal.
- 11. I have heard learned counsel for appellant and learned counsel for respondents and perused the material on record.
- 12. It is contended on behalf of the appellant that the first appellate court was not right in setting

aside the judgment and decree of the trial court and thereby, dismissing the suit of the plaintiff. contended that the land acquired from the plaintiff and his brother's son were in two different survey They were not in joint ownership and numbers. possession of the suit land. Both his brother's son as well as his family were entitled to allotment of a site in the land losers quota in their individual names. The defendants could not have considered the case of the plaintiff and his brother's son collectively and allotted only one site in land losers quota. He contended that the plaintiff was gracious enough to consent for allotment of a site measuring 30' x 40' in the name of his brother's son Papanna, as the plaintiff was in any case entitled to allotment of a site in his own name, having regard to the fact that the land acquired were in two different survey numbers. He therefore contended that the first appellate court was not right in declining the relief which was granted by the trial court and therefore, substantial questions of law would arise in this appeal.

Per contra, learned counsel for respondents the judgment and decree of the first supporting appellate court submitted that the first appellate court was right in setting aside the judgment and decree of the trial court and thereby dismissing the suit. contended that the trial court misinterpreted Ex.D.6, which is an extract of the proceedings of the defendants held on 01/04/1987 with regard to the manner in which allotment of site in land losers quota was to be made. The trial court had erroneously come to the conclusion that the land losers were entitled to vacant site in respect of each survey number acquired from them and that is how a direction was issued against the defendant to allot a separate site in favour of the plaintiff, although a site has already been

allotted in the name of Papanna. But the first appellate court rightly dismissed the suit. Contending that no substantial question of law would arise in the appeal learned counsel submitted that the appeal may be dismissed.

- In reply, learned counsel for appellant contended that Ex.D.6 clearly indicates that in respect of each owner a separate allotment would have to be made under the land losers quota and that the totality of the acquired land cannot be taken into consideration. This interpretation was rightly made by the trial court and therefore, the first appellate court was not right in holding otherwise, was the subject of appellant's counsel.
- 15. Having heard learned counsel for parties and on perusal of the material on record and also Ex.D.6, which has been submitted at the time of

hearing the learned counsel for respondents, it becomes clear that the pleadings of the appellant plaintiff are clear and categorical. Infact, it is averred by the appellant in the plaint that Sy.No.92/1 measuring 32 Guntas and Sy.No.92/2 measuring 1 Acre situated at Sreeramapura village, Kasaba Hobli, Mysore Taluk, were jointly owned by plaintiff and his brother's son Papanna and that the said land was acquired from them and possession of the same has been admitted by the plaintiff and when acquisition was made by the defendants, it was clear that they were shown as a single ownership of the survey numbers of the acquired land, although there may be several joint owners. The individual or separate possession or ownership in respect of the acquired land was not established before the trial court, neither was it established that the acquisition was in respect of the plaintiff and Papanna independently. In the

circumstances, the defendants considered the ownership of the said land as common and joint and allotment was made in the name of Papanna, who is one of the joint owners of the said land. It has also come in evidence that the plaintiff did not object to the said allotment of site measuring 30' x 40' in favour of Papanna. It is also noted that Ex.D.6 no where states that even though there is joint ownership and possession of the acquired land, each of the owners must be allotted a separate site. When an extent of land in joint ownership and possession is acquired, it implies that only one site would be allotted in respect of that land as per their entitlement in the land losers' category. Merely because the expression "owners" are used in the proceedings dated 01/04/1987, it would not imply that each of the joint owners in possession of the acquired land would be entitled to a separate allotment of sites. In that view of the matter, first appellate court was justified in setting aside the judgment and decree of the trial court and thereby, dismissing the suit filed by the plaintiff. I do not find any substantial question of law which would arise in this appeal.

- 16. The appeal is dismissed.
- 17. Parties to bear their respective costs.

Sd/-JUDGE

*mvs