

## **M. Kallappa Setty vs M.V. Lakshminarayana Rao on 1 May, 1972**

**Equivalent citations: AIR1972SC2299, (1973)2SCC358, 1973(5)UJ50(SC), AIR 1972 SUPREME COURT 2299, 1973 2 SCC 358 1973 (1) SCJ 374, 1973 (1) SCJ 374**

**Bench: A.N. Grover, K.S. Hegde**

### **JUDGMENT**

Hegde, J.

1. This is a plaintiff's appeal by special leave. In the suit from which this appeal arises, the plaintiff Prayed for two reliefs viz:

(1) declaring that the plaintiff is the absolute owner of the plaint schedule site being in possession and enjoyment of the same, and that the defendant has no right whatever in this site, nor is he in enjoyment of the same and.

(2) granting permanent injunction restraining the defendant from unlawfully and forcibly entering upon the suit site, and disturbing the plaintiff's possession and also from constructing the house by unlawfully obtaining a licence from the Municipality.

2. The trial court decreed the suit as prayed for. The first appellate court affirmed the decision of the trial court. In second appeal the High Court reversed the decree of the court below and dismissed the plaintiff's suit with costs, primarily on the ground that the plaintiff has failed to establish satisfactorily his title to the suit property.

3. The suit property is a building site measuring 80 x 40 feet situated within the municipal limits of Birur. The plaintiff claims to have purchased the same from one Banavarada Abdulla Saheb for a sum of Rs. 100/- on January 11, 1947. His case is that ever since the purchase he was in possession of the suit property and before the sale in his favour, his vendor was in possession of the suit property. The property sold to the plaintiff is described in the sale deed both by Survey No. as well as by boundaries. The survey No. of the plaintiff was 1711 whereas it is now established that its correct survey No. is 1719. It is not disputed that according to the boundaries shown in the sale deed in favour of the plaintiff, it is a suit site that had been sold to him. Some time after the purchase made by him, the plaintiff came to know that the survey No. of the property sold to him was not correctly mentioned in the sale deed in his favour. But by that time his vendor had died. Therefore he got a rectification deed from the son of the vendor on December 24, 1960. The sale deed as rectified shows the survey No. of the plot sold as survey No. 1719 (its old survey No. is 1726). After obtaining the rectification deed the plaintiff had the revenue records changed to his name. Before changing the

registry in the name of the plaintiff the municipality had notified to D.W. 5. On December 1, 1953, the defendant purported to purchase the suit property from D.W. 5. Thereafter he got the registry rechanged to his name without notice to the plaintiff.

4. Neither the trial court nor the first appellate court carefully examined the title of the plaintiff. In upholding the title of the plaintiff they have primarily relied on the said deed executed by Abdul la Saheb in his favour. The defendant in his written statement had pleaded that D.W. 5 was the owner of the suit property and that he had purchased the same from him in 1953. The question whether the defendant had a valid title to the suit property or not has not been examined either by the trial court or by the first appellate court. The High Court has also not gone into that question. But the High Court has dismissed the plaintiff's suit on the sole ground that the plaintiff has not satisfactorily proved his title.

5. So far as the question of possession is concerned, as mentioned earlier, both the trial court and the first appellate court have accepted the plaintiff's case that he was in possession of the suit site ever since he purchased the same in 1947. This is essentially a finding of fact. That finding is based on evidence. The High Court, in our opinion, erred in coming to the conclusion that the possession of the plaintiff after the sale deed in his favour is not a relevant circumstance. We are of opinion that it is an extremely important circumstance. The plaintiff can on the strength of his possession visit interference from persons who have no better title than himself to the suit property. Once it is accepted, as the trial court and the first appellate court have done, that the plaintiff was in possession of the property ever since 1947 then his possession has to be protected as against interference by some one who is not proved to have a better title than himself to the suit property. On the findings arrived at by the fact finding courts as regards possession, the plaintiff was entitled to the second relief asked for by him even if he had failed to prove his title satisfactorily. Therefore in our opinion, the High Court was not right in interfering with the judgment of the trial court as affirmed by the first appellate court regarding relief No. 2.

6. Now coming to relief No. 1, the plaintiff cannot obtain that relief unless he satisfied the court that he has good title to the suit property. The High Court has come to the conclusion and with that conclusion we agree, that on the material on record, it is not possible to come to the conclusion that the plaintiff has satisfactorily established his title to the suit property. Hence he is not entitled to relief No. 1. Ordinarily under these circumstances we would have remanded the case for deciding the question of title afresh. But this litigation has gone on for a long time and the property in dispute was purchased for Rs. 100. Under these circumstances, it is in the interest of the parties to keep open the question of title to be agitated by the parties if they so desire in fresh proceeding and confirm the decree of the trial court in respect of relief No. 2 and set aside its decree in respect of relief No. 1. As we specifically keep open the question of title, it will not be open to the plaintiff or his representatives or successors to resist any suit the defendant or his representatives or successors may bring in future for possession of the suit on the basis of their title either on the ground of res judicata or Order II Rule 8.

7. In the result we allow this appeal in part and decree the plaintiff's suit in respect of the second relief asked for by him in the plaint but dismiss the suit so far as the first relief is concerned. In the

circumstances of the case we direct that the parties shall bear their own costs both in this Court as well as in the High Court, but the defendant shall pay the costs of the plaintiff in the trial court as well as well as in the first appellate court.