Union Of India & Ors vs Vasavi Co-Op. Housing Society Ltd. & Ors on 7 January, 2014

Equivalent citations: AIR 2014 SUPREME COURT 937, 2014 (2) SCC 269, 2014 AIR SCW 580, 2014 (2) AJR 704, 2014 (1) SCALE 126, (2014) 2 MAD LW 862, (2014) 2 ALL WC 1507, (2014) 2 CURCC 19, (2014) 1 SIM LC 411, (2014) 2 ALLMR 415 (SC), (2014) 2 MPLJ 486, (2014) 1 KER LT 77, (2014) 134 ALLINDCAS 10 (SC), (2014) 2 RAJ LW 1453, (2014) 122 REVDEC 634, (2014) 2 KCCR 125, (2014) 2 ANDHLD 157, (2014) 1 CLR 264 (SC), (2014) 3 CAL HN 49, (2014) 4 CURCC 396, 2014 (134) ALLINDCAS 10, (2014) 2 CIVLJ 646, (2014) 3 MAH LJ 244, (2014) 3 MPHT 367, (2014) 2 RECCIVR 76, (2014) 1 LANDLR 317, AIR 2014 SC (CIVIL) 613, (2014) 1 ALL RENTCAS 467, (2014) 1 CIVILCOURTC 836, (2014) 1 ICC 571, (2014) 1 SCALE 126, (2014) 1 WLC(SC)CVL 260, (2014) 102 ALL LR 735

Author: K.S. Radhakrishnan

Bench: A.K. Sikri, K.S. Radhakrishnan

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4702 OF 2004

Union of India and others … Appellants

Versus

Vasavi Co-op. Housing Society
Ltd. and others … Respondents

J U D G M E N T

K.S. Radhakrishnan, J.

1. The Vasavi Co-op. Housing Society Ltd., the first respondent herein instituted a suit No.794 of 1988 before the City Civil Court, Hyderabad, seeking a declaration of title over land comprising 6 acres 30 guntas in Survey No.60/1 and 61 of Kakaguda village and recovery of the vacant possession

from Defendant Nos.1 to 3 and 7, the appellants herein, after removal of the structure made therein by them. The plaintiff has also sought for an injunction restraining the defendants from interfering with the above-mentioned land and also for other consequential refliefs. The City Civil Court vide its judgment dated 31.07.1996 decreed the suit, as prayed for, against which the appellants preferred C.C.C.A. No.123 of 1996 before the High Court of Andhra Pradesh at Hyderabad. The High Court also affirmed the judgment of the trial Court on 6.9.2002, but noticed that the appellant had made large scale construction of quarters for the Defence Accounts Department, therefore, it would be in the interest of justice that an opportunity be given to the appellants to provide alternative suitable extent of land in lieu of the scheduled suit land, for which eight months' time was granted from the date of the judgment. Aggrieved by the same, the Union of India and others have filed the present appeal. FACTS

2. The plaintiff's case is that it had purchased the land situated in Survey Nos.60, 61 and 62 of Kakaguda Village from Pattedar B.M. Rama Reddy and his sons and others during the year 1981-82. The suit land in question forms part of Survey Nos.60 and 61. The suit land in question belonged to the family of B. Venkata Narasimha Reddy consisting of himself and his sons Anna Reddy, B.V. Pulla Reddy and B.M. Rama Reddy and Anna Reddy's son Prakash Reddy. Land in old Survey No.53 was allotted to Rama Reddy vide registered family settlement and partition deed dated 11.12.1939 (Ex.A2). In the subsequent re-settlement of village (Setwar of 1353 FASLI), the land in Survey No.53 was re-numbered as Survey No.60, 61 and 62. Ever since the allotment in the family partition of the above-mentioned land, vide the family partition deed dated 19.03.1939, Rama Reddy had been in exclusive possession and enjoyment and was paying land revenue. Rama Reddy's name was also mutated in the Pahanies.

3. Plaintiffs further stated that the first defendant had it's A.O.C. Centre building complex in Tirumalagiri village adjoining the suit land Survey No.60 of Kakaguda village. The first defendant had also requisitioned 4 acres and 28 guntas in Survey No.60 of Kakaguda Village in the year 1971 along with the adjoining land in Tirumalagiri for extension of A.O.C. Centre. Further, it was stated that 6th Defendant took possession of the above-mentioned land and delivered possession of the same to other defendants. The 3rd Defendant later vide his letter dated 18.12.1979 sent a requisition for acquisition of 4.38 guntas in Surevy No.60 for the extension of A.O.C. Centre. Notification was published in the official Gazette dated 18.09.1980 and a declaration was made on 30.06.1981 and compensation was awarded to Rama Reddy vide Award dated 26.07.1982.

4. The Plaintiffs, as already stated, had entered into various sale deeds with Rama Reddy during the year 1981-82 by which land measuring 13 acres and 08 guntas in Survey No.60, 11 acres and 04 guntas in Survey No.61 and 17 acres and 20 guntas in Survey No.62 were purchased, that is in all 41 acres and 32 guntas. Plaintiffs further stated that the land, which was purchased by it was vacant, but persons of the Defence Department started making some marking on the portions of the land purchased by the plaintiff, stating that a substantial portion of the land purchased by the plaintiff in Survey No.60/1 and 61 belonged to the Defence Department and treated as B-4 in their records. Plaintiff then preferred an application dated 12.09.1983 to the District Collector under the A.P. Survey and Boundaries Act for demarcation of boundaries. Following that, Deputy Director of Survey issued a notice dated 21.01.1984 calling upon the plaintiff and 3rd Defendant to attend to the

demarcation on 25.01.1984. Later, a joint survey was conducted. The 3rd Defendant stated that land to the extent of 4 acres and 35 guntas in Survey No.60 and 61 corresponds to their G.L.R. (General Land Register) No.445 and it is their land as per the record. The Deputy Director of Survey, however, stated that lands in Survey Nos.60 and 61 of Kakaguda village are patta lands as per the settlement records and vacant, abutting Tirumalagiri village boundaries to Military Pillers and not partly covered in Survey No.60. Plaintiff later filed an application for issuing of a certificate as per the plan prepared by the Revenue Records under Section 19(v) of the Urban Land Ceiling Act. Plaintiff further stated that pending that application, officers of Garrison Engineers, on the direction of the 3rd Defendant, illegally occupied land measuring 2 acres and 29 guntas in Survey No.60 and 4 acres and 01 guntas in Survey No.61. Thus, a total extent of land 6 acres and 30 guntas was encroached upon and construction was effected despite the protest by the plaintiff. Under such circumstances, the plaintiff preferred the present suit, the details of which have already been stated earlier.

5. The 3rd Defendant filed a written statement stating that an area of land measuring 7 acres and 51 guntas, out of Survey No.1, 60 and 61 of Kakaguda village comprising G.L.R. Survey No.445 of Cantonment belongs to the first Defendant, which is locally managed and possessed by Defendant No.3 being local representative of Defendant No.1 and D-3 and is also the custodian of all defence records. Further, it was also stated that, as per the G.L.R., the said land was classified as B-4 and placed under the management of Defence Estates Officer. It was also stated that the suit land is part of review Survey Nos.60 and 61 and the plaintiff is wrongly claiming that the said land was purchased by it. Further, it was also stated that the plaintiff is threatening to encroach upon another 6 guntas of land alleged to be situated in Survey Nos.60/1 and 61. It has been categorically stated that, as per the records maintained by the 3rd Defendant, land measuring 7 acres and 51 guntas, forming part of G.L.R. Survey No.445 of the Cantonment is part of Survey Nos.1, 60 and 61 of Kakaguda village. It is owned, possessed and enjoyed by Defendant Nos.1 to 4 and 7.

6. The plaintiff, in order to establish its claim, examined PWs 1 to 4 and produced Exs. A-1 to A-85 and Exs. X-1 to X-10 besides Exs. A-86 to A- 89 on behalf of DW1. On behalf of the defendants DW1 was examined and Exs D-1 to D-7 are produced.

7. The primary issue which came up for consideration before the trial court was whether the plaintiff has got ownership and possession over 6 acres and 30 guntas covered by Survey No.60/1 and 61 of Kakaguda village for which considerable reliance was placed on the settlement record (Setwar Ex.A-3 of 1353 Fasli). On the other hand, the defendants placed considerable reliance on G.L.R. Survey No.445 of the Cantonment which is part of Survey No.1, 60 and 61 of Kakaguda village, wherein, according to the defendants, the suit land falls. PW2, the Deputy Inspector of Survey stated, according to Setwar, land in Survey Nos.60, 61 and 62 is patta land of Prakash Reddy and others and such Survey numbers corresponds to Old Survey No.53. The evidence of PW-3 and 4 also states that the land is covered by old Survey No.53 which figures in Survey Nos.60, 61 and 62. Ext. A-3 Setwar, is a settlement register prepared by the Survey Officer at the time of revised survey and settlement in the year 1358 Fasli in which the names of the predecessors in title of the plaintiff are shown as pattedars. In other words, Ex-A-3 is the exhibit of rights and title of plaintiff's predecessors in title.

8. Defedants, as already indicated, on the other hand, pleaded that the total extent of Survey No.53 was only 33 acres and 12 guntas and if that be so, after sub-division the extent of sub-divided survey numbers would also remain the same, but the extent of sub-divided Survey Nos.60, 61 and 62 were increased to 41 acres and 32 guntas in the revenue records without any notice to the defendants which according to the defendants, was fraudulently done by one Venkata Narasimha Reddy, the original land owner of Survey No.53 of Kakaguda village, who himself was the Patwari of Kakaguda village. Further, it was the stand of the Defendants that in exercise of powers under The Secunderabad and Aurangabad Cantonment Land Administration Rules, 1930, the G.LR. of 1933 was prepared by Captain O.M. James after making detailed enquiries from the holder of occupancy rights as well as general public. Further, it is also stated that certain land within the villages were handed over by the then Nizam to British Government for military use. Land in question measuring 7 acres and 51 guntas in G.L.R. 1933 at Survey No.581 was used by the British Government as murram pits and it was classified as Class-C land vested in the Cantonment Authority. G.L.R. 1933 was re-written in the year 1956 in view of the provisions of Rule 3 of Cantonment Land Administration Rules, 1937 and said Survey No.581 was re-written as G.L.R. Survey No.445. Further, in view of the classification of the land, as stipulated in Cantonment Land Administration rules, 1937, land pertaining to G.L.R. Survey No.445 was re- classified as B-4 (vacant land) reserved for future military purposes and management was transferred from cantonment authority to Defence Estate.

9. The above-mentioned facts would indicate that the plaintiff traces their title to the various sale deeds, Ext.A-3 Setwar of 1353 Fasli and the oral evidence of the survey officials and the defendants claim title and possession of the land on the basis of the G.L.R. The question that falls for consideration is whether the evidence adduced by the plaintiff is sufficient to establish the title to the land in question and to give a declaration of title and possession by the civil court.

10. Shri Vikas Singh, learned senior counsel appearing for the appellants submitted that G.L.R. 445 measuring an area of 7 acres and 51 guntas is classified as B-4 and placed under the management of the Defence Estate Officer. Column 7 of the G.L.R. would indicate that the landlord is the Central Government. Out of 7 acres and 51 guntas, land admeasuring 6 acres has been handed over to Defence Accounts Department for construction of Defence Staff Quarters as per survey No.445/A, as per the records as early as in 1984. Further, it was pointed out that the appellant had already constructed approximately 300 quarters in 6 acres of land. Learned senior counsel submitted that since the extent of land mentioned in old Survey No.53 as well as in the settlement and partition deed, do not tally to the extent of land mentioned in Ext.A-3 and burden is heavy on the side of the plaintiff to show and explain as to how the registered family settlement and partition deed did not take place in the disputed land. Learned senior counsel also submitted that the High Court has committed an error in ignoring the G.L.R. produced by the defendants, even though there is no burden on the defendants to establish its title in a suit filed by the plaintiff for declaration of title and possession.

11. Shri P.S. Narasimha, learned senior counsel and Shri Basava Prabhu Patil, learned senior counsel appearing for the respondents submitted that the city civil court as well as the High Court have correctly appreciated and understood the legal position and correctly discarded the entries made in

the G.L.R. Learned senior counsel submitted that the correctness and evidentiary value of G.L.R. entries have to be appreciated in the context of the history of the Secunderabad Cantonment. Reference was made to the provisions of Cantonment Act, 1924 and it was pointed out that the Secunderabad and Aurangabad Cantonment Land Administration Rules, 1930 do not apply to the Kakaguda village. Learned senior counsel have also referred to Ex.A6, the Sesala Pahani for the year 1955-58, of Kakaguda village, Ex.A7, the Pahani Patrika for the year 1971-72, Ex.A8, the Pahani Patrika for the year 1972-73 and submitted that they would indicate that Methurama Reddy, the predecessor in title, was the Pattedar of Survey Nos.60 and 61 of Kakaguda village. It was pointed out that the entries made therein have evidentiary value. Learned counsel pointed out that the Settlement Register prepared under the Statutes and Pahanies maintained under the Hyderabad Record of Rights in Land Regulations of 1358, Fasli have considerable evidentiary value. Further, it was also pointed out that the land in question is pot kharab land, which is not normally treated as land in Section 3(j) of Ceiling Act and hance may not figure in a Settlement or Partition Deed, hence not subjected to any revenue assessment. Learned senior counsel submitted that the plaintiff has succeeded in establishing its title to the property in question, as was found by the city civil court as well as the High Court which calls for no interference by this Court under Article 136 of the Constitution.

12. It is trite law that, in a suit for declaration of title, burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff.

13. The High Court, we notice, has taken the view that once the evidence is let in by both the parties, the question of burden of proof pales into insignificance and the evidence let in by both the parties is required to be appreciated by the court in order to record its findings in respect of each of the issues that may ultimately determine the fate of the suit. The High Court has also proceeded on the basis that initial burden would always be upon the plaintiff to establish its case but if the evidence let in by defendants in support of their case probabalises the case set up by the plaintiff, such evidence cannot be ignored and kept out of consideration.

14. At the outset, let us examine the legal position with regard to whom the burden of proof lies in a suit for declaration of title and possession. This Court in Maran Mar Basselios Catholicos v. Thukalan Paulo Avira reported in AIR1959 SC 31 observed that “in a suit for declaration if the plaintiffs are to succeed, they must do so on the strength of their own title.” In Nagar Palika, Jind v. Jagat Singh, Advocate (1995) 3 SCC 426, this Court held as under:

> “the onus to prove title to the property in question was on the plaintiff. In a suit for ejectment based on title it was incumbent on the part of the court of appeal first to record a finding on the claim of title to the suit land made on behalf of the plaintiff. The court is bound to enquire or investigate that question first before going into any other question that may arise in a suit.”

15. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by

adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited.

16. We notice that the trial court as well as the High Court rather than examining that question in depth, as to whether the plaintiffs have succeeded in establishing their title on the scheduled suit land, went on to examine in depth the weakness of the defendants title. Defendants relied on the entries in the GLR and their possession or re-possession over the suit land to non-suit the Plaintiffs. The court went on to examine the correctness and evidentiary value of the entries in the GLR in the context of the history and scope of Cantonment Act, 1924, the Cantonment Land Administration Rules, 1925 and tried to establish that no reliance could be placed on the GLR. The question is not whether the GLR could be accepted or not, the question is, whether the plaintiff could prove its title over the suit property in question. The entries in the GLR by themselves may not constitute title, but the question is whether entries made in Ext.A-3 would confer title or not on the Plaintiff.

17. This Court in several Judgments has held that the revenue records does not confer title. In Corporation of the City of Bangalore v. M. Papaiah and another (1989) 3 SCC 612 held that "it is firmly established that revenue records are not documents of title, and the question of interpretation of document not being a document of title is not a question of law." In Guru Amarjit Singh v. Rattan Chand and others (1993) 4 SCC 349 this Court has held that "that the entries in jamabandi are not proof of title". In State of Himachal Pradesh v. Keshav Ram and others (1996) 11 SCC 257 this Court held that "the entries in the revenue papers, by no stretch of imagination can form the basis for declaration of title in favour of the plaintiff."

18. The Plaintiff has also maintained the stand that their predecessor-in- interest was the Pattadar of the suit land. In a given case, the conferment of Patta as such does not confer title. Reference may be made to the judgment of this Court in Syndicate Bank v. Estate Officer & Manager, APIIC Ltd. & Ors. (2007) 8 SCC 361 and Vatticherukuru Village Panchayat v. Nori Venkatarama Deekshithulu & Ors. (1991) Supp. (2) SCC 228.

19. We notice that the above principle laid down by this Court sought to be distinguished by the High Court on the ground that none of the above- mentioned judgments, there is any reference to any statutory provisions under which revenue records referred therein, namely, revenue register, settlement register, jamabandi registers are maintained. The High Court took the view that Ext.A-3 has evidentiary value since the same has been prepared on the basis of Hyderabad record of Rights in Land Regulation, 1358 Fasli. It was also noticed that column 1 to 19 of Pahani Patrika is nothing but record of rights and the entries in column 1 to 19 in Pahani Patrika shall be deemed to be entries made and maintained under Regulations.

20. We are of the view that even if the entries in the Record of Rights carry evidentiary value, that itself would not confer any title on the plaintiff on the suit land in question. Ext.X-1 is Classer Register of 1347 which according to the trial court, speaks of the ownership of the plaintiff's vendor's property. We are of the view that these entries, as such, would not confer any title. Plaintiffs have to

show, independent of those entries, that the plaintiff's predecessors had title over the property in question and it is that property which they have purchased. The only document that has been produced before the court was the registered family settlement and partition deed dated 11.12.1939 of their predecessor in interest, wherein, admittedly, the suit land in question has not been mentioned.

21. Learned senior counsel appearing for the respondents submitted that the land in question is pot kharab and since no tax is being paid, the same would not normally be mentioned in the partition deed or settlement deed. The A.P. Survey and Settlement Mannual, Chapter XIII deals with pot kharab land, which is generally a non-cultivable land and if the predecessors in interest had ownership over this pot kharab land, the suit land, we fail to see, why there is no reference at all to the family settlement and partition deed dated 11.12.1939. Admittedly, the predecessor in interest of the plaintiff got this property in question through the above-mentioned family settlement and partition deed. Conspicuous absence of the suit land in question in the above-mentioned deed would cast doubt about the ownership and title of the plaintiffs over the suit land in question. No acceptable explanation has been given by the plaintiff to explain away the conspicuous omission of the suit land in the registered family settlement and partition deed. Facts would also clearly indicate that in Ext-A1, the suit land has been described in old Survey No.53 which was allotted to the plaintiff's predecessors in title. It is the common case of the parties that Survey No.53 was sub-divided into Survey Nos.60, 61 and 63. Admittedly, the old Survey No.53 takes in only 33 acres and 12 guntas, then naturally, Survey Nos.60, 61 and 63 cannot be more than that extent. Further, if pot kharab land is not recorded in the revenue record, it would be so even in case of sub-division of Old Survey No. 53. The only explanation was that, since the suit land being pot kharab land, it might not have been mentioned in Ex.A.

22. A family settlement is based generally on the assumption that there was an antecedent title of some kind in the purchase and the arrangement acknowledges and defines what that title was. In a family settlement-cum- partition, the parties may define the shares in the joint property and may either choose to divide the property by metes and bounds or may continue to live together and enjoy the property as common. So far as this case is concerned, Ex.A1 is totally silent as to whose share the suit land will fall and who will enjoy it. Needless to say that the burden is on the plaintiff to explain away those factors, but the plaintiff has not succeeded. On other hand, much emphasis has been placed on the failure on the part of the defendants to show that the applicability of the GLR. The defendant maintained the stand that the entries made in GLR, maintained under the Cantonment Land Administration Rules, 1937, in the regular course of administration of the cantonment lands, are admissible in evidence and the entries made therein will prevail over the records maintained under the various enactment, like the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Falsi, the Hyderabad Record of Rights in Land Regulation, 1358 Falsi, the Hyderabad Record of Rights Rules, 1956 etc. In order to establish that position, reliance was placed on the judgments of this Court in Union of India v. Ibrahim Uddin & Anr. (2012) 8 SCC 148, Union of India & Ors. v. Kamla Verma (2010) 13 SCC 511, Chief Executive Officer v. Surendra Kumar Vakil & Ors. (1999) 3 SCC 555 and Secunderabad Cantonment Board, Andhra Circle, Secundrabad v. Mohd. Mohiuddin & Ors. (2003) 12 SCC

315. Both, the trial Court and the High Court made a detailed exercise to find out whether the GLR Register maintained under the Cantonment Land Administration Rules, 1937 and the entries made there under will have more evidentiary value than the Revenue records made by the Survey Department of the State Government. In our view, such an exercise was totally unnecessary. Rather than finding out the weakness of GLR, the Courts ought to have examined the soundness of the plaintiff case. We reiterate that the plaintiff has to succeed only on the strength of his case and not on the weakness of the case set up by the defendants in a suit for declaration of title and possession.

23. In such circumstances, we are of the view that the plaintiff has not succeeded in establishing his title and possession of the suit land in question. The appeal is, therefore, allowed and the judgment of the trial court, affirmed by the High Court, is set aside. However, there will be no order as to costs.

.....J. (K.S. Radhakrishnan) .....J. (A.K. Sikri) New Delhi, January 07, 2014