

## **Abdulla Bin Ali And Ors. vs Galappa And Ors. on 1 February, 1985**

**Equivalent citations: AIR1985SC577, 1985(1)SCALE1205, (1985)2SCC54, 1985(17)UJ318(SC), AIR 1985 SUPREME COURT 577, 1985 SRILJ 29, 1985 UJ (SC) 318, 1985 ALL CJ 561, 1985 (2) SCC 54, (1985) 11 ALL LR 335**

**Author: R.B. Misra**

**Bench: O. Chinnappa Reddy, R.B. Misra**

### **JUDGMENT**

R.B. Misra, J.

1. The dispute in the present appeal by special leave centers round survey plots No. 149 and 150 measuring 17 acres 23 gunthas and 11 acres and 35 gunthas respectively at Yadgir, District Gulbarga. The disputed plots admittedly belonged to one Galappa. The appellants' father purchased the aforesaid two plots under a registered sale deed from Galappa in 1917. As Galappa was a minor at that time the sale deed was executed by his mother, Tayamma as a guardian.

2. In 1919 Tayamma filed an application before the Tahsildar alleging that she executed only a mortgage deed and not a sale deed in favour of the appellants' father. The Tahsildar, however, negated her claim and came to the conclusion after investigation that Tayamma executed a sale deed and not a mortgage deed in favour of the appellants' father. She went up in appeal but the same was dismissed and the parties were directed to approach the civil court for a proper redress of the grievances. In the meantime Saibanna, the brother of Galappa, was inducted as a tenant. In 1932 the father of the appellants filed a suit for the declaration of his title and ownership in respect of the disputed lands against Galappa and his brother Saibanna which was decreed. The father of the appellants died and he was succeeded by the appellants Saibanna continued to pay the rent for sometime but thereafter he fell in arrears for the period 1951 to 1954. The appellants, therefore, filed an application for recovery of the said amount in the court of the Tahsildar. In that proceeding Saibanna, however, denied the title of the appellants as also the tenancy. The appellants also initiated proceedings for the correction of tenancy register and there also the tenant denied the title of the appellants. The application for the recovery of arrears of rent as well as for the correction of tenancy register were dismissed and the appellants were directed to approach the civil court as the dispute between the parties involved a question of title. In the circumstances the appellants were obliged to file a suit for possession and mesne profits treating the defendants-respondents as trespassers. Saibanna has since died and he is now represented by his son Shivappa.

3. The suit was resisted by the defendants-respondents on a number of grounds but it is not necessary to refer to all those pleas for the disposal of the present appeal. One of the pleas though not specifically taken in the written statement but allowed by the court to be urged was the question of jurisdiction. According to the defendants-respondents the civil court had no jurisdiction to try the suit on the own allegations made in the plaint inasmuch as the plaintiffs-appellants had pleaded that defendant No. 2 was the tenant of the disputed plots. They set up the bar of Sections 32 and 99 of the Hyderabad Tenancy and Agricultural Lands Act. The trial court as well as the first appellate court decreed the suit deciding all the issues in favour of the plaintiffs-appellants. The High Court, however, set aside the judgment and decree of the courts below and held that the civil court had no jurisdiction to try the suit on the allegations of the plaintiffs in the plaint. In its opinion the plaintiffs-appellants could get the relief of possession only from the revenue court under Section 32(1) of the said Act and that Section 99 stood as a complete bar to the entertainment of the suit by the civil court on the allegations in the plaint and on that finding it dismissed the suit. Therefore, the only point for consideration in this appeal is whether the civil court had jurisdiction to try the suit,

4. It has already been pointed out that the plaintiffs-appellants had earlier initiated the proceedings for the recovery of the arrears of rent from the defendants-respondents and had also initiated a separate proceeding for the correction of the tenancy register. In both those proceedings the defendant No. 2 had denied the title of the plaintiffs-appellants and the revenue court directed the plaintiffs to get their redress by filing a suit in the civil court. Accordingly, the plaintiffs-appellants had no option but to file the suit. Curiously enough this time the defendants took up the stand that the civil court had no jurisdiction to try the suit when in the earlier proceedings before the revenue court too the defendants had raised an objection that the revenue court had no jurisdiction. Thus, the plaintiffs-appellants had been running from pillar to post to get relief on account of the unreasonable attitude taken by the defendants-respondents.

5. There is no denying the fact that the allegations made in the plaint decide the forum. The jurisdiction does not depend upon the defence taken by the defendants in the written statement. On a reading of the plaint as a whole it is evident that the plaintiffs-appellants had filed the suit giving rise to the present appeal treating the defendants as trespassers as they denied the title of the plaintiffs-appellants. Now a suit against the trespasser would lie only in the civil court and not in the revenue court. The High Court, however, took the view that the plaintiffs-appellants had not claimed a declaration of title over the disputed plots and all that has been set up by them in the plaint is the relationship of landlord and tenant.

6. In our opinion the High Court was not quite correct in observing that the suit was filed by the plaintiffs-appellants on the basis of relationship of landlord and tenant. Indeed, when the defendants denied the title of the plaintiffs and the tenancy the plaintiffs filed the present suit treating them to be trespassers and the suit is not on the basis of the relationship of landlord and tenant between the parties. It is no doubt true that the plaintiffs had alleged that the defendant No. 2 was a tenant but on the denial of the tenancy and the title of the plaintiffs-appellants they filed a suit treating the defendant to be a trespasser and a suit against a trespasser would lie only in the civil court and not in the revenue court.

7. We are, therefore, of the considered opinion that on the allegations made in the plaint the suit was cognizable by the civil court and that the High Court has erred in law in non-suiting the plaintiffs-appellants on the ground that the civil court had no jurisdiction.

8. The learned counsel for the appellants, Shri R.B. Datar, however, contended that the trial court as well as the first appellate court had decided all the issues involved in the case in favour of the plaintiffs-appellants and in case we come to the conclusion, as indeed we have come to, that the jurisdiction of the civil court is not barred, the judgment of the first appellate court should be confirmed and there is no need to remand the case again to the High Court for deciding it afresh on merits.

9. We are not inclined to accept the contention raised by the counsel for the appellants. A number of issues were involved in the case and the High Court has decided the case only on the ground of jurisdiction and no other point has been dealt with. It will not be fair to the respondents to accept the finding of the first appellate court without the same being examined by the High Court.

10. For the reasons given above the judgment of the High Court cannot be sustained. The appeal is accordingly allowed and the judgment of the High Court is set aside and the case is remanded to the High Court for deciding the other issues involved in the case on merits. However, this decision will be without any prejudice to the respondents' rights, if any, under any other enactment. There shall, however, be no orders as to costs.