

T.V. Ramakrishna Reddy vs M. Mallappa on 7 September, 2021

Equivalent citations: AIR 2021 SUPREME COURT 4293

Author: B.R. Gavai

Bench: L. Nageswara Rao, B.R. Gavai, B.V. Nagarathna

1

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5577 OF 2021
[@ Special Leave Petition (C) No.10621 of 2020]

T.V. RAMAKRISHNA REDDY . . . APPELLANT(S)

VERSUS

M. MALLAPPA & ANR. . . . RESPONDENT(S)

JUDGMENT

B.R. GAVAI, J.

1. Leave granted.

2. By the present appeal, the appellant/plaintiff challenges the judgment and order passed by the learned single judge of the High Court of Karnataka at Bengaluru dated 19.3.2020 in R.F.A. No. 123 of 2012 thereby allowing the appeal filed by the respondent No.1 – M. Mallappa (defendant No.2) herein.

3. The facts, in brief, giving rise to the present appeal are as under:

The plaintiff/appellant before this Court filed a suit for grant of perpetual injunction against the defendants restraining them or anybody claiming through them from interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

It is the case of the plaintiff-appellant that he is the absolute owner in possession of the suit schedule property. His case is that he has purchased the suit schedule property from one Shri K.P. Govinda Reddy through registered sale deed dated 13.4.1992 and thereafter he is in peaceful possession and enjoyment of the suit property. According to him, he has constructed compound wall of 8 ft. height with hollow bricks. His further case is that he has constructed a house on the said plot and being a civil contractor, is using the same for storing building materials. It is his further case that he has taken loan by depositing the title deed of the suit property. It is his further case that since the defendants attempted to demolish the compound wall and did not pay heed to the plaintiff's request, he was required to file a suit.

The claim of the plaintiff-appellant is resisted by defendant No.1 (respondent No.2 herein) – The Bangalore Development Authority (hereinafter referred to as 'the BDA') by filing written statement. It is the defendant No.1's case that the suit was not maintainable for want of notice under Section 64 of the Bangalore Development Authority Act, 1976. It is its further case that the khata issued in the name of the plaintiff-appellant is only a revenue entry and does not confer any right, title or interest upon the plaintiff-appellant over the suit property.

The defendant No.2-M. Mallappa (respondent No.1 herein) also resisted the claim of the plaintiff-appellant. It is his case that he had purchased the suit property through registered sale deed dated 5.4.1984 from one M. Shivalingaiah. It is his case that since the date of purchase, he was in peaceful possession and enjoyment of the suit schedule property. It is his further case that the vendor of the plaintiff-appellant had no right, title and interest to sell the suit schedule property in favour the plaintiff. It is his case that entire Survey No.37 admeasuring 1 acre 29 guntas belonged to undivided family of M. Shivalingaiah and upon partition, the entire land in the said Survey number came to be allotted to the share of M. Shivalingaiah. It is his case that M. Shivalingaiah had sold plots in the said Survey number to different persons and the suit property was sold to him. It is his further case that he had made an application to B.D.A. for reconveyance since the plot was under reconveyance scheme. It is his case that compound wall was put up by him.

On the basis of the rival pleadings, the learned trial judge framed the following issues:

- “1. Does the plaintiff prove his lawful possession of the suit property as on the date of the suit?
2. Does he prove this alleged interference by the defendants?
3. Is he entitled to a decree of permanent injunction against defendants?” All the issues came to be answered in favour of the plaintiff-appellant and the suit came to be decreed as prayed for.

Being aggrieved thereby, defendant No.2 i.e. respondent No.1 herein filed Regular First Appeal before the High Court of Karnataka at Bengaluru.

The learned single judge of the Karnataka High Court found that in the facts and circumstances of the case, the suit simpliciter for permanent injunction without seeking a declaration of title was not tenable and as such, allowed the appeal and set aside the decree.

Being aggrieved thereby, the present appeal by way of special leave.

4. We have heard Shri Ajit Bhasme, learned Senior Counsel appearing on behalf of the plaintiff-appellant, Shri Basava Prabhu S. Patil, learned Senior Counsel appearing on behalf of respondent No.1 (defendant No.2) and Shri S.K. Kulkarni, learned counsel appearing on behalf of the BDA.

5. Shri Ajit Bhasme, learned Senior Counsel appearing on behalf of the plaintiff-appellant would submit that the learned single judge of the Karnataka High Court has grossly erred in interfering with the well-reasoned judgment and order of the learned trial court. The learned Senior Counsel would further submit that the learned trial Court relying upon the voluminous documentary evidence produced on record by the plaintiff-appellant has found the appellant to be in peaceful possession and rightly decreed the suit. Relying on the judgment and order of the learned single judge of the Karnataka High Court dated 10.2.2000 in Writ Petition No.38853 of 1999, the learned Senior Counsel submitted that possession of the plaintiff-appellant has been found to be lawful by the High Court and as such, another learned single judge of the Karnataka High Court has grossly erred in reversing the judgment and order of the learned trial court decreeing the suit.

6. Shri Basava Prabhu S. Patil, learned Senior Counsel appearing on behalf of the respondent No.1 (defendant No.2), on the contrary, would submit that the learned single judge of the Karnataka High Court has rightly held that the issue involved had to be first decided on the basis of title and until the plaintiff's claim for declaration of title is decided, the suit simpliciter for permanent injunction was not tenable.

7. Shri Basava Prabhu S. Patil, learned Senior Counsel, would further submit that the sale-deed of the defendant No.2 was dated 5.4.1984 whereas the sale-deed on which plaintiff-appellant claimed was dated 13.4.1992. He therefore would submit that no interference is warranted in the present appeal.

8. The short question that falls for consideration before us is:

Whether the learned single judge of the High Court was right in holding that the suit simpliciter for permanent injunction without claiming declaration of title, as filed by the plaintiff, was not maintainable?

9. The issue is no more res integra. The position has been crystalised by this Court in the case of Anathula Sudhakar v. P. Buchi Reddy (dead) by L.Rs. and others 1 in paragraph 21, which read thus:

1 (2008) 4 SCC 594 “21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction.

Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in *Annaimuthu Thevar* [*Annaimuthu Thevar v. Alagammal*, (2005) 6 SCC 202]). Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”

10. It could thus be seen that this Court in unequivocal terms has held that where the plaintiff's title is not in dispute or under a cloud, a suit for injunction could be decided with reference to the finding on possession. It has been clearly held that if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

11. No doubt, this Court has held that where there are necessary pleadings regarding title and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. However, it has been held that such cases are the exception to the normal rule that question of title will not be decided in suits for injunction.

12. In this background, we will have to consider the facts of the present case.

13. The plaintiff-appellant claims to be the owner of the suit property on the basis of a sale deed executed by one K.P. Govinda Reddy in his favour on 13.4.1992. In turn, according to him, the said property was sold by one Smt. Varalakshamma in favour of his vendor K.P. Govinda Reddy on 26.3.1971. He claims that he had mortgaged the suit property for taking loan from one financial institution. He further claimed that an endorsement was also issued by the Corporation of City of Bangalore that Khata regarding the suit property is transferred to the appellant. According to the plaintiff-appellant, when the Bangalore Mahanagar Palike withdrew the Khata in his favour, he went to the High Court and succeeded therein.

14. Per contra, the defendant No.2 (respondent No.1 herein) is specifically denying the title of the plaintiff-appellant. He claims to be the owner of the suit property on the basis of a sale deed dated 5.4.1984 from one M. Shivalingaiah. He also claims to be in peaceful possession and enjoyment of the same on the basis of the said sale deed. It is his case that K.P. Govinda Reddy got the title set up falsely and created fabricated documents with regard to possession. It is also his case that compound wall was constructed by him and not by the plaintiff, as claimed.

15. It could thus clearly be seen that this is not a case where the plaintiff-appellant can be said to have a clear title over the suit property or that there is no cloud on plaintiff-appellant's title over the suit property. The question involved is one which requires adjudication after the evidence is led and questions of fact and law are decided.

16. In that view of the matter, we do not find any reason to interfere with the judgment and order passed by the Karnataka High Court.

17. Insofar as the reliance on the order passed by the learned single judge of the Karnataka High Court dated 10.2.2000 in Writ Petition No.38853 of 1999 is concerned, it will be relevant to refer to the following observations made therein:

“3. It is evident from the plain reading of the above that any entry made in the Corporation Register by fraud, misrepresentation or suppression of facts or by furnishing false, incorrect and incomplete material could be corrected within a period of three years from the date of such recording. The Order in the instant case was passed admittedly much beyond the period of limitation prescribed by the provision extracted above. The same is therefore unsustainable on that ground itself. The parties being in litigation before the Civil Court could upon adjudication of the controversy regarding the title to the property approach the Corporation for any

modification in the entry which is no more any modification in the entry which is no more than a fiscal entry relevant only for purpose of payment of taxes and does not by itself create or extinguish title to the property in regard to which it is made. Till such time the competent Court declared the 3rd respondent as the true owner of the property, the Corporation could not on its own correct the entry after a period of 3 years stipulated under Sec. 114□A of the Act.

4. This writ petition accordingly succeeds and is hereby allowed. The impugned order shall stand quashed reserving liberty for the parties to have the matter adjudicated upon by the Civil Court and to approach the Corporation for a fresh entry/modification of the existing entry to bring the same in consonance with the Civil Court's determination. No costs."

18. It could thus be clearly seen that the High Court in the said order has clearly noted that the parties are in litigation before the Civil Court and that adjudication of controversy regarding the title of the suit property could be done only by the Civil Court. The entry with the Corporation is nothing more than a fiscal entry relevant only for the purpose of payment of taxes and does not by itself create or extinguish title to the property. The Court observed that till such time the competent Court declared the third respondent therein as the true owner of the property, the Corporation could not on its own correct the entry after a period of 3 years stipulated under Section 114□A of the Act. The High Court has therefore set aside the order reserving liberty for the parties to have the matter adjudicated upon by the Civil Court.

19. In that view of the matter, the said judgment and order would be of no assistance to the case of the plaintiff□appellant.

20. It will also be relevant to refer to the following observations of this Court in the case of Jharkhand State Housing Board v. Didar Singh and another²:

"11. It is well settled by catena of judgments of this Court that in each and every case where the defendant disputes the title of the plaintiff it is not necessary that in all those cases plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances (2019) 17 SCC 692 stances, plaintiff cannot maintain a suit for bare injunction."

21. In the facts of the present case, it cannot be said at this stage that the dispute raised by the defendant No.2 with regard to title is not genuine nor can it be said that the title of the plaintiff□appellant over the suit property is free from cloud. The issue with regard to title can be decided only after the full□fledged trial on the basis of the evidence that would be led by the parties in support of their rival claims.

22. In the result, the appeal is without merit and as such, dismissed. There shall be no order as to costs.

....., J.

[L. NAGESWARA RAO], J.

[B.R. GAVAI] NEW DELHI;

SEPTEMBER 07, 2021