P. Kishore Kumar Vs Vittal K. Patkar

Civil Appeal No. 7210 Of 2011

Court: Supreme Court Of India

Date of Decision: Nov. 20, 2023

Acts Referred:
Code Of Civil Procedure, 1908 â€" Section 96, 100#Mysore (Personal & Miscellaneous) Inam Abolition Act, 1954 â€" Section 9, 9A

Hon'ble Judges: Bela M. Trivedi, J; Dipankar Datta, J

Bench: Division Bench

Advocate: A. Sumathi, Vishweshwar, Anand Sanjay M Nuli, Dharam Singh, Nanda Kumar K B, Shiva Swaroop

Final Decision: Dismissed

Judgement

Sl. No.,"Order of proceedings with signatureÃ, Ã, Ã,

ofÃ, Ã, Ã, Presiding Officer","SignatureÃ, Ã, of

partiesÃ, Ã, Ã, Ã, Ã, Ã, or

pleaders when necessary

,"TheÃ, Ã, personsÃ, Ã, notedÃ, Ã,

belowÃ, Ã, have purchased the lands noted

against them after the date of vesting from

jodidars",

1,Sri. Keralavarma S.No. 13_33-00,

2,"Sri. Lokaranjan, S. No. 13_20-00",

3,Smt. Akula Yogama S. No. 3_15_00,

4,Sri Venkata Rao S.No. 3_1-4,

5,"Sri M. Raja Rao S. No. _ Dry 3-26, 6- 00",

6,S. No. 3 12-00,

7,"Hence, the claim of the applicants may be

rejected and Khata u/s 9 of the Act in the

name of the jodidar may be made.

Sd/- Special Deputy Commissioner for

Abolition of Inams Kolar District,

Kolar",

,"25thÃ, November, 1958 Order",

guntas, thus vesting him with the better title.",,

vi) Amendments made to the Act in 1979 vested the powers of the Special Deputy Commissioner with the Land Tribunal. Upon applications being,,

made by other tenants for occupancy rights in Sy. No. 3, the Land Tribunal, vide order dated 20th September, 1982, conferred occupancy rights on the",,

defendantÃ¢â‚¬â„¢s predecessor-in-interest, with respect to an extent of 21 acres in Sy. No. 3. An endorsement to the same effect was also led in",,

evidence by the defendant.,,

vii) Sale deeds were thereafter executed for the same parcel of land by both sides. While the plaintiffÃ¢â‚¬â„¢s vendor sold an extent of 15 acres to the,,

plaintiff vide registered sale deed dated 12th November, 1987, the defendant purchased 5 acres and 28 guntas comprised in Sy. No.3 vide registered",,

sale deeds dated 20th June, 1984 from his respective vendors.",,

viii) Portions of Sy. No.3 being sold to two different parties, a dispute between the two parties became imminent and, in fact, triggered O.S. 506/1995",,

(Ã¢â‚¬Å“the suitÃ¢â‚¬ hereafter) instituted by the plaintiff, inter alia, praying for declaration of title and permanent injunction with respect to Schedules",,

Ã¢â‚¬ËœAÃ¢â‚¬â„¢ and Ã¢â‚¬ËœBÃ¢â‚¬â„¢ property, against the defendant. The prayers in the plaint are reproduced hereinbelow for the sake of clarity:",,

Ã¢â‚¬Å“a) declaring that the plaintiff is the absolute owner of the schedule property? (sic),,

b) for permanent injunction restraining the defendant or his henchmen, person from in any way interfering with the plaintiffÃ¢â‚¬â„¢s lawful peaceful",,

possession in both A and B schedule property.,,

c) and for the costs and such other reliefs as this HonÃ¢â‚¬â„¢ble Court deems fit to grant in the circumstances of the case, in the interest of justice and",,

equity.Ã¢â‚¬â€‹,,

The property schedules are extracted hereinbelow:,,

Ã¢â‚¬Å“Schedule Ã¢â‚¬" A,,

15 Acres of land situated in Sy No. 93, Old No. 3 in Navarathna Agrahara, Jala Hobli Devanahalli Taluk, Bangalore District**",,

Schedule Ã¢â‚¬" B,,

All the piece and parcel of the 5.28 guntas of land in Re. S. No. 93, Old No. 3, situated at Eastern side of by passing mud road situated in Navarathna",,

Agrahara, Jala Hobli Devanahalli Taluk, Bangalore**Ã¢â‚¬â€",,

ix) The learned Civil Judge (Ã¢â‚¬Å“Trial CourtÃ¢â‚¬, hereafter) after extensive examination of revenue records adduced by the plaintiff, and the",,

CommissionerÃ¢â‚¬â„¢s order, held that the ownership of the suit property vested in the plaintiffÃ¢â‚¬â„¢s vendor. In arriving at such a conclusion, the court",,

was predominantly persuaded by Ext. P8 (Record of Rights), which recorded that vide order dated 24th March 1959 passed by the Special Deputy",,

Commissioner, Inam Abolition, occupancy rights had been conferred on the plaintiffÃ¢â‚¬â„¢s vendor. However, no order or endorsement of the said date",,

was actually exhibited before the Trial Court. The decree passed by the Trial Court is quoted below for facility of understanding:,,

Ã¢â‚¬Å“After contest, it is ordered and decreed that the suit of the plaintiff is hereby decreed. It is declared that the plaintiff is the absolute owner of the",,

B Schedule property and the defendant or any persons claiming through him are hereby permanently restrained from interfering with the peaceful,,

possession and enjoyment of the plaintiff over the suit schedule A and B properties.Ã¢â‚¬â€¹,,

x) Aggrieved by the decree, the defendant carried it in an appeal under section 96 of the CPC before the learned District Judge. The first appellate",,

court overturned the findings of the Trial Court, on the premise that revenue records alone could not aid the plaintiff in establishing his title, especially",,

in the glaring absence of any Inam grant in favour of the plaintiffÃ¢â‚¬â„¢s vendor. It was noted by the appellate court that though the plaintiff referred to,,

the order dated 24th March, 1959, the same was not led in evidence.",,

xi) A second appeal carried by the plaintiff before the High Court succeeded vide the judgment and order impugned herein. The High Court framed,,

the following question of law for decision which, according to it, was a substantial question of law:",,

Ã¢â‚¬Å“Whether the lower appellate court had erred in law in not considering Ex P-1 to Ex P-29 and the admissions made by defendant (DW-1)?Ã¢â‚¬â€¹,,

The High Court interpreted the CommissionerÃ¢â‚¬â„¢s order to be in favour of the plaintiffÃ¢â‚¬â„¢s vendor, such interpretation being bolstered solely by the",,

revenue records exhibited by the plaintiff. Though it was noted that the grant of occupancy rights in favour of the plaintiffÃ¢â‚¬â„¢s vendor under section,,

9A was contrary to the provisions of the Act, it was observed that the decision having attained finality could not be challenged after such extensive",,

passage of time before a civil court. The plaintiff was, therefore, held to have established the better title, resulting in upholding of the decree passed by",,

the Trial Court.,,

CONTENTIONS OF THE PARTIES,,

3. Learned senior counsel for the defendant, Mr. A Diwakara, highlighted the dissatisfaction recorded by the High Court with the evidence adduced",,

by the plaintiff, and stressed that in view of the same, the Court could not have held the plaintiff to establish a better title than the defendant, more so",,

when the Court itself recorded the fact that the grant of occupancy rights in favour of the plaintiffÃ¢â‚¬â„¢s vendor under section 9A of the Act was,,

contrary to its import. It was argued by him that the plaintiffÃ¢â‚¬â„¢s vendor being a purchaser, could not have applied as an Ã¢â‚¬Å“occupantÃ¢â‚¬ under the",,

provisions of the Act, such application being restricted only to tenants. The CommissionerÃ¢â‚¬â„¢s order categorically recorded that the plaintiffÃ¢â‚¬â„¢s",,

vendor was not a tenant at the time of vesting of the land; therefore, the order could not, by any stretch of imagination, be interpreted to vest",,

occupancy rights in the plaintiffÃ¢â‚¬â„¢s vendor.,,

4. Per contra, Mr. S.N. Bhat, learned senior counsel for the plaintiff, argued that the plaintiffÃ¢â‚¬â„¢s vendor had made an application for occupancy",,

rights in 15 acres of Sy No. 3, and the Commissioner, while noting that the vendor was not a tenant at the time of vesting, went on to record that",,

occupancy registration under section 9A be done. He strenuously advanced the record of rights for the year 1983 in the name of the plaintiffÃ¢â‚¬â„¢s,,

vendor, along with subsequent revenue entries in the name of the plaintiff, to argue that it was the plaintiff, and his vendor before him, who were being",,

treated as the rightful owners by the revenue authorities, such authorities having rightly interpreted the CommissionerÃ¢â‚¬â„¢s order to mean that",,

ownership vested in the plaintiffÃ¢â‚¬â„¢s vendor.,,

ANALYSIS,,

5. This Court in Nazir Mohamed vs. J. Kamala (2020) 19 SCC 57 has crisply analysed numerous decisions rendered by this Court on section 100 of,,

the CPC and summarised the law as follows:,,

Ã¢â‚¬Å“30. Where no such question of law, nor even a mixed question of law and fact was urged before the trial court or the first appellate court, as in",,

this case, a second appeal cannot be entertained. ***",,

33.2. The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having",,

a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question",,

of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal",,

issue.,,

33.3. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of",,

law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of",,

cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates",,

the settled position of law.Ã¢â‚¬â€‹,,

6. Although it is true that Nazir Mohamed (supra) is a decision of recent origin and the High Court cannot be said to have the benefit of perusal,,

thereof, there can be little doubt that the law on what would constitute a Ã¢â‚¬Ëœsubstantial question of lawÃ¢â‚¬â„¢ within the meaning of section 100, CPC",,

has not changed over the years and the jurisdiction continues to be limited in the sense that interference ought not to be made unless the appeal,,

involves a substantial question of law as distinguished from a mere question of law.,,

7. We have held earlier that much would depend on the CommissionerÃ¢â‚¬â„¢s order, the true interpretation of which was fiercely contested by senior",,

counsel on either side. However, before embarking on the process of determining if the question of ownership of the suit property was rightly decided",,

by the High Court, an examination of sections 9 and 9A of the Act is considered imperative.",,

Ã¢â‚¬Å“9. Lands and buildings to vest in the Inamdar :-,,

(1) Every Inamdar shall, with effect on and from the date of vesting, be entitled to be registered as an occupant of all lands other than:-",,

(i) communal lands, waste lands, gomal lands, forest lands, tank beds, mines, quarries rivers, streams, tanks and irrigation works;",,

(ii) lands in respect of which any person is entitled to be registered under Sections 4, 5, 6, 7 or 8; and (iii) lands upon which have been erected",,

buildings owned by any person other than the Inamdar.,,

(2) Every building situated within the limits of the inam which was owned immediately before the date of vesting by the Inamdar shall, with effect on",,

and from such date, vest in the Inamdar.",,

Explanation: In this section Ã¢â‚¬Ëœinamdarâ€™ means an Inamdar other than a holder of a minor inam referred to in Section 7.,,

9A. Other Tenants of Inamdar: Every tenant of the Inamdar, other than the tenants entitled to be registered as occupants under Sections 4, 5 and 6,",,

shall, with effect on and from the date of vesting and subject to the provisions of Chapter III-A, be entitled to continue as a tenant of the land in",,

respect of which he was a tenant immediately before the date of vesting.Ã¢â‚¬â€‹,,

(emphasis supplied by us),,

8. A bare perusal of the aforesaid provisions reveals that while section 9 allows an Inamdar to make an application for occupancy rights, a tenant is",,

afforded an opportunity for the same under section 9A of the Act subject to the condition that he was a tenant in respect of the subject land,,

immediately prior to the date of vesting. Therefore, it is only a tenant or an Inamdar, who could have made such an application.",,

9. Let us now examine the CommissionerÃ¢â‚¬â„¢s order. In the case before the Commissioner, the plaintiffÃ¢â‚¬â„¢s vendor was one of the applicants while",,

the defendantÃ¢â‚¬â„¢s predecessor-in-interest was one of the respondent Inamdars. The Commissioner lucidly stated that the claimants were not tenants,,

at the time of vesting and, therefore, the claims of, inter alia, the plaintiffÃ¢â‚¬â„¢s vendor, were ordered to be rejected. It was further said that their",,

respective survey numbers were to be registered in favour of the Inamdars under section 9. This, in our view, can have only one possible meaning,",,

that the claim of the plaintiffÃ¢â‚¬â„¢s vendor for occupancy right as a tenant was rejected, and that of the defendantÃ¢â‚¬â„¢s predecessor-in-interest was",,

acknowledged. The plaintiffÃ¢â‚¬â„¢s vendor having failed to satisfy the condition of being vested with tenancy rights as on the date stipulated by section,,

9A and such order having remained unchallenged for all times, we are unable to agree with the argument advanced on behalf of the plaintiff.",,

10. Mr. S.N. Bhat for the plaintiff sought to rely on Ext. P8 and the other revenue entries containing the name of the plaintiff and the plaintiffÃ¢â‚¬â„¢s,,

vendor to argue that the CommissionerÃ¢â‚¬â„¢s order vested the plaintiffÃ¢â‚¬â„¢s vendor with occupancy rights, and it is only in accordance with such",,

order did the revenue authorities enter the plaintiffÃ¢â‚¬â„¢s vendorÃ¢â‚¬â„¢s name in the records. However, we are also unable to agree with such an",,

argument.,,

11. It is trite law that revenue records are not documents of title.,,

12. This Court in Sawarni vs. Inder Kaur and Ors. (1996) 6 SCC 223 held that mutation in revenue records neither creates nor extinguishes title, nor",,

does it have any presumptive value on title. All it does is entitle the person in whose favour mutation is done to pay the land revenue in question.,,

13. This was further affirmed in Balwant Singh & Ors vs. Daulat Singh (Dead) by LRs and Ors. (1997) 7 SCC 137 wherein this Court held that mere,,

mutation of records would not divest the owners of a land of their right, title and interest in the land.",,

14. In Jitendra Singh vs. State of Madhya Pradesh and Ors. 2021 SCC OnLine SC 802, this Court after considering a catena of judgments, reiterated",,

the principle of law as follows:,,

Ã¢â‚¬Å“6. ***mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the",,

fiscal purpose.Ã¢â‚¬â€‹,,

15. We may also profitably refer to the decision of this Court in Sita Ram Bhau Patil vs. Ramchandra Nago Patil (Dead) by LRs. and Ors. (1977) 2,,

SCC 49 wherein it was held that there exists no universal principle that whatever will appear in the record of rights will be presumed to be correct,",,

when there exists evidence to the contrary.,,

16. In the present case, the CommissionerÃ¢â‚¬â„¢s order distinctly denying the rights of occupancy to the plaintiffÃ¢â‚¬â„¢s vendor is evidence that renders",,

these revenue entries unworthy of acceptance.,,

17. An examination of the sale deed executed in favour of the plaintiff, also tilts the balance against him. The deed simply states that the plaintiffÃ¢â‚¬â„¢s",,

vendor traces her title not to a grant in her favour by the government, but through a sale deed executed in her favour. Further, there is a categorical",,

recital in the deed that the property is neither Inam land nor tenanted land, and that there is no legal impediment to the sale of such property. Some",,

element of mischief being present is clear inasmuch as a relevant fact was concealed, i.e., the plaintiffÃ¢â‚¬â„¢s vendor had indeed applied for occupancy",,

rights under the Act but had failed to secure them. Such an application would never have been necessary, had the property not been Inam or tenanted",,

land, thus laying bare the deficiency in the plaintiffÃ¢â‚¬â„¢s title. The High Court, while observing that there existed a lawfully registered sale deed in",,

favour of the plaintiff, failed to identify this inherent defect in the title claimed by the plaintiff.",,

18. It is settled law that a vendor cannot transfer a title to the vendee better than he himself possesses, the principle arising from the maxim nemo dat",,

quod non habet, i.e., ""no one can confer a better title than what he himself has"". In the present case, the plaintiffÃ¢â‚¬â„¢s vendor having been denied the",,

right of title in the land by the CommissionerÃ¢â‚¬â„¢s order, could not have conveyed the same to her vendee.",,

19. In contrast, when the sale deed dated 20th June, 1984 executed in favour of the defendant is examined, there is an unequivocal and categorical",,

recital that the vendor purchased the land from Sri K. Srinivasa Murthy, in whose favour occupancy rights were granted vide the CommissionerÃ¢â‚¬â„¢s",,

order. A comparative study of the two sale deeds leaves none in doubt that the defendantÃ¢â‚¬â„¢s sale deeds, supported by the CommissionerÃ¢â‚¬â„¢s",,

order, weigh heavier in the scales of justice as compared to the plaintiffÃ¢â‚¬â„¢s sale deed, which is only supported by revenue documents.",,

20. The deficiencies in the plaintiffÃ¢â‚¬â„¢s case are further revealed by the deposition of the plaintiff, wherein he has admitted that he had not seen the",,

CommissionerÃ¢â‚¬â„¢s order, and that he Ã¢â‚¬Å“was not told that Smt. Akula Yogamba is merely a tenant and that, she had no right over the landÃ¢â‚¬. The",,

doctrine of caveat emptor tasks a vendee with the duty to diligently investigate the title he is purchasing, but the plaintiff in the present case has",,

evidently shirked such duty for which the law cannot come to his rescue.,,

21. It is also curious to note that the plaintiff has placed on record endorsements issued by the Commissioner in favour of four other tenants, but has",,

failed to produce one in his own vendorÃ¢â‚¬â„¢s name. We cannot help but take an adverse view of the same against the plaintiff, since it only goes",,

towards making denser the cloud which has been cast on the plaintiffÃ¢â‚¬â„¢s title.,,

22. Contention advanced on behalf of the plaintiff that through the record of rights the plaintiff has established his title by a preponderance of,,

probabilities is not sustainable. As noted above, the plaintiff failed to produce a single document of title in respect of the suit property. In a dispute with",,

respect to determination of title, merely pointing out the lacunae in the defendantÃ¢â‚¬â„¢s title would not suffice. Having instituted the suit for declaration,",,

the burden of proof rested on the shoulders of the plaintiff to reasonably establish the probability of better title, which the plaintiff in the present case,",,

has manifestly failed to do.,,

23. This Court, in Union of India and Ors. vs. Vasavi Co-operative Housing Society Limited and Ors. (2014) 2 SCC 269, held as under:",,

Ã¢â‚¬Å“15. It is trite law that, in a suit for declaration of title, the 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.Ã¢â‚¬â€",,

24. This decision was affirmed, and further elaborated upon, in Jagdish Prasad Patel (Dead) thr. LRs. and Ors. vs. Shivnath and Ors. (2019) 6 SCC",,

82, wherein this Court has succinctly summarized the law on burden of proof in suits for declaration of title as follows:",,

Ã¢â‚¬Å“44. In the suit for declaration for title and possession, the Plaintiffs-Respondents could succeed only on the strength of their own title and not on",,

the weakness of the case of the Defendants-Appellants. The burden is on the Plaintiffs-Respondents to establish their title to the suit properties to,,

show that they are entitled for a decree for declaration. The Plaintiffs-Respondents have neither produced the title document i.e. patta-lease which the,,

Plaintiffs-Respondents are relying upon nor proved their right by adducing any other evidence. As noted above, the revenue entries relied on by them",,

are also held to be not genuine. In any event, revenue entries for few Khataunis are not proof of title; but are mere statements for revenue purpose.",,

They cannot confer any right or title on the party relying on them for proving their title.Ã¢â‚¬â€‹,,

25. Mr. S.N. Bhat placed reliance on the decision of this Court in R.V.E. Venkatachala Gounder vs. Arulmigu Viswesaraswami & V.P. Temple,,

(2003) 8 SCC 752 to contend that the plaintiff was only expected to prove his title to a high degree of probability and not beyond reasonable doubt.,,

The principle of law argued by the learned senior counsel is not one we wish to dispute, the same having been well settled through numerous decisions",,

of this Court. However, having led in evidence only revenue documents which are essentially fiscal in nature, we have no hesitation in holding that in",,

the present case, the plaintiff has been unable to assert his case to a high degree of probability. It is, therefore, not enough that the plaintiff led in",,

evidence records of rights for a number of years in an attempt to establish his title; such records would not counter the proof of occupancy rights,,

furnished by the defendant, in a test of probative value.",,

26. This Court, in Somnath Burman vs. S.P. Raju and Ors. (1969) 3 SCC 129 held that possession can be regarded as a better title against all, except",,

the true and lawful owner. Therefore, the multitude of revenue documents put to use to argue that the plaintiff was cultivating the suit property would",,

not adequately meet the demands of proof made by law. The only credible document of title led as evidence in the present case was in favour of the,,

defendantÃ¢â‚¬â„¢s predecessor-in-interest; hence, it must follow that it is only the defendant who can be declared the lawful owner of the Ã¢â‚¬ËœBÃ¢â‚¬â„¢",,

schedule property.,,

27. In the light of the discussions made above, we hold that the Trial Court erred in decreeing the suit by placing on a higher probative pedestal the",,

revenue entries. In our considered opinion, the first appellate court rightly overturned the findings of the Trial Court and dismissed the suit. The",,

CommissionerÃ¢â‚¬â„¢s order was correctly interpreted to determine as to in whom occupancy rights vested in respect of the Ã¢â‚¬ËœBÃ¢â‚¬â„¢ schedule,,

property.,,

28. The first appellate court having examined the facts in extenso, the High Court ought not to have interfered with the findings rendered therein by",,

virtue of being, in second appeal, a court of law. As was astutely said by this Court in Gurdev Kaur vs. Kaki (2007) 1 SCC 546, a second appellate",,

court is not expected to conduct a Ã¢â‚¬Å“third trial on factsÃ¢â‚¬ or be Ã¢â‚¬Å“one more dice in the gamble.Ã¢â‚¬ The decision rendered by the first appellate,,

court, not being in violation of the settled position of law, ought not to have been interfered with. With utmost respect to the High Court, we are",,

constrained to observe that the question framed by it could be regarded as one of law, if it all, but did not merit the label of a substantial question of",,

law so as to warrant interference with the first appellate decree under section 100 of the CPC.,,

29. That apart, the High Court was remiss in reversing the findings of facts rightly arrived at by the first appellate court. The decision to adopt the",,

Trial CourtÃ¢â‚¬â„¢s approach of interpreting the CommissionerÃ¢â‚¬â„¢s order within the framework of the revenue records that were exhibited was yet,,

another aspect in which the High Court fell in error. An attempt ought to have been made by the High Court to harmoniously read the,,

CommissionerÃ¢â‚¬â„¢s order with the provisions of the Act and to interpret the same so as to render it in consonance with the law, the failure of which",,

leads to the inescapable conclusion that the same is indefensible.,,

30. The sequitur of this discussion, with respect, is that the High Court while rendering the judgment and order under challenge proceeded on an",,

erroneous approach and contrary to settled law. The plaintiff having failed to meet the burden of proof imposed on him by law, his suit against the",,

defendant must fail.,,

31. The impugned judgment and decree are, accordingly, set aside. The civil appeal stands allowed and the decree passed by the Trial Court,",,

extracted hereinabove, is set aside with the result that the plaintiffÃ¢â‚¬â„¢s suit shall stand dismissed. There shall be no order as to costs.",,

32. We, however, make it clear that any observation made in this judgment may not prejudice the plaintiffÃ¢â‚¬â„¢s right, if any, in respect of Ã¢â‚¬ËœAÃ¢â‚¬â„¢",,

schedule property; if in future his right is put to jeopardy and the appropriate forum is approached to protect such right, such forum shall proceed to",,

decide the lis on its own merits.,,