

**(2025) 12 SC CK 0043**

**Supreme Court**

**Case No:** Civil Appeal No. 14824 Of 2025 (@Special Leave Petition (Civil) No.14966 Of 2025)

Obalappa And Ors

APPELLANT

Vs

Pawan Kumar Bhihani And Ors

RESPONDENT

---

**Date of Decision:** Dec. 17, 2025

**Hon'ble Judges:** Ahsanuddin Amanullah, J; K. Vinod Chandran, J

**Bench:** Division Bench

**Advocate:** Shailesh Madiyal, Chandrashekhar A. Chakalabbi, S.K Pandey, Awanish Kumar, Anshul Rai, Mallika Ranjan, Rahul Singh Latwal, M/s Dharmaprabhas Law Associates, Vagisha Kochar

**Final Decision:** Allowed

---

**Judgement**

K. Vinod Chandran, J

1. Leave granted.

2. A suit for permanent injunction, by the respondents herein; the plaintiffs, from interference to the suit scheduled properties was dismissed, which was reversed by the High Court and decreed in First Appeal, against which the appellants/defendants in the suit have filed the above appeal.

3. Mr. Shailesh Madiyal, learned Senior Counsel appearing for the appellants would submit that the property of the appellants in Survey Nos.349/1 and 350/12, situated in Kempapura Agrahara Village, Kasaba Hobli, Bengaluru, North Taluq was acquired by the Bangalore Development Authority the BDA. Though possession was not taken an agreement was executed, allotting the property to the father of the respondents/plaintiffs. Later, a sale deed was executed despite the conditions of the agreement having not been complied with. Subsequently, on a writ petition filed by the appellants, the acquisition itself was set aside. The respondents filed a suit for permanent injunction, claiming allotment of Site No.66 comprised in Survey Nos.349/1 and 350/12. While the matter was pending, a rectification deed was executed by the BDA in favour of the children of the original allottee, the

respondents herein, alleging that there was a mistake in the survey numbers shown in the original deed and replacing it with Survey Nos. 350/9, 350/10 and 350/11. A further suit was filed in which the trial court found the claim of title to be not established and even going by the documents produced, the identification of the property, not possible. The trial court rejected the claim for permanent injunction.

4. The High Court reversed the judgment on the ground that there was a survey conducted by the BDA on a request made by the respondents advocate to the Police, in which Site No.66 was found existing in the survey numbers as mentioned in the rectified deed. It is urged that there can be no injunction against the appellants, whose property, though acquired was not taken possession of and later, the acquisition itself was set aside. The rectification made after two decades of the sale agreement cannot be countenanced. The trial court clearly found that the appellants/defendants traced the title of the property existing in Survey Nos.349/1 and 350/12 to their grandfather. The learned Senior Counsel would urge that the so-called survey conducted by the BDA was not proved before the trial court nor was the document produced, even authenticated by a seal of the BDA. The High Court egregiously erred in reversing the dismissal of the suit, is the plea in the appeal.

5. Mr. M.N. Umashankar, learned counsel appearing for the respondents, however, would point out that the respondents father had purchased the property in auction from the BDA and the possession was handed over to him long back in the year 1993. There was also an adjacent property purchased for which also an injunction was sought, however, on which the appellants do not have any right. The High Court correctly relied on the survey conducted by the BDA and there is no scope for an interference at this stage. The claim of the defendants is with respect to a land in totally different survey numbers.

6. The plaintiffs/respondents herein, as is seen from the plaint produced at Annexure P-8 sought injunction against the defendants/appellants herein, from interference to the property described as Site bearing No.66 in the layout formed by the BDA in Survey Nos.350/9, 350/10 and 350/11. It is claimed that the purchase was made in an auction pursuant to which an agreement was executed on 24.05.1993 (Annexure P-2). Later, a sale deed was executed on 17.11.2003, produced as Annexure P-3. An adjacent property also was purchased as is evident from Annexure P-4, all of which, lying contiguously was possessed by the respondents, on which when a construction was attempted, the appellants created obstruction specifically on 29.01.2012, which was pleaded as the cause of action for the suit.

7. In fact, in paragraph 14 of the plaint, as produced at Annexure P-8, it was specifically pleaded that the respondents had filed another suit bearing O.S. No. 26629 of 2011 against the second defendant, wherein there was an ex-parte temporary injunction granted. It was also admitted therein that the suit was with respect to the claim on Site No.66, comprised in Survey Nos.349 and 352. The present suit was filed after a rectification deed was registered by the BDA on

03.08.2012. We are not apprised of what transpired in O.S.No.26629 of 2011 which obviously the respondents did not pursue. It is pertinent that O.S.No.26629 of 2011 was filed earlier in time and there was no leave sought to file a subsequent suit with respect to the very same property, with the survey numbers in which the plot is comprised, altered.

8. That the acquisition proceedings against the property in Survey Nos.349/1 and 350/12 was set a naught by the High Court in a writ petition, is evident from Annexure P-20. The preliminary notification dated 30.07.1977 and the final notification dated 10.05.1978 with respect to the said property was declared to have been set aside. Though, the BDA filed an appeal, the same was withdrawn, as is evident from Annexure P-13 order dated 13.01.2016.

9. Obviously, the allotment was made to the predecessor of the plaintiffs on the basis of the acquisition of the properties in Survey Nos.349/1 and 350/12, as is evident from the sale agreement and the sale deed which were far apart in time, the former in the year 1993 and the latter after a decade in the year 2003. As has been noticed by the trial court, the sale agreement produced as Annexure P-2 clearly insists on construction of residential house in the allotted plot which also had to be completed within a period of two years from allotment (Clause 2). Clause 15 also provides that the sale deed in respect of the scheduled property would be executed only after the building has been put up in the site. Obviously, no building was constructed by the father of the respondents or the respondents themselves, even when the suit O.S. No.6887 of 2012 was filed. The clear admission in the plaint as produced at Annexure P-8 is that the appellants came to the property and tried to demolish the pillars and the foundation laid by the respondents /plaintiffs. Admittedly, there was no construction of a residential building in the property allotted in the year 1993, with a specific condition that a residential unit has to be constructed within two years. There was no such building existing even when the suit was filed in the year 2012 seeking permanent injunction. The title of the respondents/ plaintiffs, hence, was rightly found, to have been not established, by the trial court.

10. The trial court also found from the acquisition notification dated 10.05.1978, produced as Annexure P-36 in the suit that the properties acquired in Survey Nos.350/9, 350/10 and 350/11 having respective extents of 4 and 3 guntas each were in the name of third parties; who were not arrayed in the suit. It was found that Site No.66 as allotted, hence, cannot be found to be existing in Survey Nos.349/1 or 350/12 and it was also not identified in Survey Nos.350/9, 350/10 and 350/11. The rectification deed also does not speak of the specific grounds on which the alleged errors were rectified.

11. The trial court, according to us, rightly refused to rely on Exhibit P-24, a letter purportedly written by the Land Acquisition Officer of the BDA, wherein there was no seal or a clear signature, the latter being not legible. It was categorically found

that the building licence produced as Annexure P-22 by the respondents also referred to a different property from that described in the schedule to the suit.

12. There was clear ambiguity in the identification of the schedule property and the location of Site No.66, even on a mere perusal of the pleadings. It was incumbent upon the plaintiffs/respondents, hence, to have identified the property by seeking deputation of a Commissioner who could have identified the same with the assistance of a Surveyor. The High Court in our opinion seriously erred in having relied on the alleged survey carried out by the BDA. The letter produced is silent insofar as it does not refer to any clear boundaries or the measurements by metes and bounds. Moreover, the said survey, if at all carried out was behind the back of the appellants which could not have been relied upon by the High Court. The document, though produced by the plaintiff who deposed before Court, production is not proof and the author of the said document, the Surveyor/Land Acquisition Officer was not examined before Court.

13. Admittedly, the original allotment was made of the property acquired from the mother of the appellants; who succeeded to it on her fathers death, existing in Survey Nos.349 and 352, which acquisition proceedings were challenged successfully. Hence, the respondents cannot claim any right over the property acquired by the BDA, which was allotted to the father of the respondents, which acquisition was later set at naught. Insofar as the rectification deed is concerned, as noticed by the trial court, the change of survey numbers after two decades, especially without any valid reasons being shown, that too after the acquisition proceedings in Survey Nos.349 and 352 were set at naught, does not inspire confidence nor can it be treated as a valid rectification. The properties in the survey numbers as shown in the rectification having not been identified, there can be no injunction granted. The plaintiff has not proved the title, nor was Site No.66 properly identified on the ground, based on survey numbers.

14. The judgment of the High Court in First Appeal is liable to be interfered with and we do so, setting aside the same. The order of dismissal of the suit, as passed by the trial court is restored. The appeal stands allowed.

15. Pending applications, if any, shall also stand disposed of.