
(2017) 02 KAR CK 0289

KARNATAKA HIGH COURT

Case No: 2373 of 2007

Bangalore
Development Authority,
Bangalore

APPELLANT

Vs

Bhagavandas Patel

RESPONDENT

Date of Decision: Feb. 28, 2017

Acts Referred:

- Constitution of India, Article 226 - Power of High Courts to Issue certain writs
- Code of Civil Procedure, 1908, Section 4, Section 6, Se

Hon'ble Judges: G. Narendar

Bench: SINGLE BENCH

Advocate: K.N. Putte Gowda, Padmanabha Mahale, H. Devendrappa

Judgement

1. Heard the learned counsel for the appellant/defendant and the learned Senior Counsel appearing on behalf of the respondent/plaintiff.

2. The parties are referred to by their nomenclature before the trial Court for the sake of convenience and brevity.

3. The appellant/defendant is before this Court being aggrieved by the judgment and decree rendered by the XVI Addl. City Civil and Sessions Judge, Bengaluru, rendered in O.S.No.2844/2001 whereby the trial Court has been pleased to decree the suit of the respondent/plaintiff and thereby declared him to be the owner in possession of the suit schedule property and further pleased to grant an injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit property.

4. The case of the plaintiff was that he is the absolute owner and he had acquired ownership for valuable consideration under a registered sale deed dated 23.10.1999. It was further contended that after the purchase of the property, he had put up a construction thereon and is presently residing in the suit schedule property along with his family members and that he had approached the Bangalore City Corporation for issuance of katha. He had also applied for telephone and electricity connections to the suit property and that he is in physical possession and enjoyment of the suit schedule property and that on 16.4.2001 the authorities i.e. the appellant herein attempted to demolish the existing structure on the property and that he (plaintiff) could prevent them only with the aid of his neighbours and that the officials retracted on account of interference by the people in the neighbourhood and that while leaving, the officials said that they would come back and demolish the same and informed that next time they would come with sufficient preparation for demolition. Hence, on these grounds the plaintiff got instituted the suit praying for the relief of declaration to declare that he is the absolute owner of the schedule property and he is in possession of the same and for grant of permanent injunction restraining the defendant or anyone claiming through them from entering upon the schedule property with the threat to demolish the existing building.

5. In support of his claim, the plaintiff produced and got marked exhibits P1 to P20. Ex.P1 is the GPA by the plaintiff in respect of a 3rd party enabling him to conduct the suit on his behalf. Ex.P2 is the sale deed dated 23.10.1999. Ex.P3 is the encumbrance certificate for the period 1.4.1999 to 21.12.1999 in respect of a site bearing Nos.22 and 11 and assigned HA Sanitary Board katha No.63/2 and 63 and new No.513/1-B. Ex.P4 is the acknowledgment issued by the BBMP dated 3.1.2001 and the demand note issued by the telecommunication department dated 14.3.2001 and a receipt for having received the initial deposit for Rs.15,000/-. Ex.P7 is another receipt issued by the KPTCL dated 19.2.2001 which is titled as an automatic receipt for a sum of Rs.100/-. Ex.P8 and Ex.P9 are the photo and the negative to demonstrate the existence of the construction. Ex.P10 and Ex.P11 are encumbrance certificates dated 7.3.2006 and Exs.P12 to P16 are the bills for a very meagre sums in the range of Rs. 20/- and Rs.30/-. Exs.P17 and P18 are the sale deeds allegedly in the name of his vendors. Ex.P19 is an another receipt and Ex.P20 is the certified copy of another sale deed.

6. The said suit came to be resisted by the defendant by filing a detailed statement of objection dated 4.11.2004. The claim and case of the plaintiff was denied in to. At paragraph 6 of the written statement it was specifically contended that the plaintiff has not mentioned the survey number, out of which the alleged site has been carved out, in order to demonstrate the actual existence of the suit property. It was further specifically contended that the land factually claimed is the subject matter of an acquisition initiated for the purposes of achieving the object for which the Authority was established and hence it was contended that the land vests in the Authority free from all encumbrances and the Authority alone is at liberty to dispose off the same in the best interest of the general public. It was contended that the document referred to in paragraphs 8 to 12 are

engineered for the sake of filing the suit.

7. In support of their contention the defendant produced and got marked Ex.D1 which is the preliminary notification dated 18.10.1972 notifying the acquisition of the lands in certain survey numbers and their sub numbers (hissa) i.e. Sy.Nos.63, 64/1, 64/2, 64/3, 64/4, 65/1 and 65/2. Ex.D2 is the final notification dated 18.10.1973 notifying the acquisition of the aforesaid survey numbers. Exs.D3 to D7 are the mahazars drawn up evidencing the fact of taking possession of the lands. Ex.D8 to D12 are the awards passed.

8. Upon the above pleadings the trial Court framed the following issues :-

1) Whether the plaintiff proves that they are the absolute owners in lawful possession and enjoyment of the suit schedule property;

2) Whether the plaintiff proves the alleged interference by the defendants?

3) Whether the defendant proves that the suit is not maintainable for want of mandatory notice as contemplated under Section 64 of BDA Act?

4) Whether the defendant proves that the suit schedule land absolutely belongs to it, free from all encumbrances and is at liberty to dispose the same in the best interest of the general public?

5) Whether the plaintiff is entitled to the relief of declaration and injunction as prayed for?

6) To what order and decree ?

9. The plaintiff got examined the power of attorney holder -PW1. The defendant got examined DW1 and DW2. The trial Court thereafter rendered a finding holding the issues 1, 2 and 5 in the affirmative and rendered a finding in the negative in respect of issues 3 and 4 and thereafter was pleased to pass a judgment and decree declaring the plaintiff as the owner in possession of the suit schedule property and further was pleased to issue a permanent injunction restraining the defendant from entering upon the suit schedule property to demolish the structure. In the course of its judgment to arrive at this conclusion and grant the relief, the court below concluded that the suit property is carved out of S.No.65 and that exhibits D1 to D12 do not demonstrate the acquisition of the said survey number or the taking of its possession from the predecessor-in-title. It also held that no document in the nature of a layout plan is placed on record to demonstrate the fact that the suit schedule property is an integral part of the lands acquired by the defendant-Authority. It also observed that the defendant has not mentioned as to in which survey number the suit schedule property is situated. On the contrary it held that the plaintiff has given details of site numbers including old and new numbers, place where it is situated, the hobli and taluk and also the measurement and hence concluded there is no confusion in identifying the suit schedule property. It further concluded that the omission to mention S.No.65 in the sale deed executed in favour of the plaintiff is not fatal to the identification of the property. It was pleased to decree the suit.

10. Aggrieved by the same, the present appeal is preferred by the defendant-Authority.

11. The defendant/appellant has preferred I.A.2 under Order 41, Rule 27 of CPC praying leave of this court to produce certain additional documents to demonstrate his case. It is contended that production of additional documents is necessitated on account of the trial Court holding that the suit is decreed on account of the omission of the defendant to place on record the layout plan and the notification.

12. This court had directed the consideration of the said application at the time of final hearing. Therefore, it is necessary to consider the said application prior to disposal of the appeal.

13. The said application is stoutly resisted by the plaintiff/respondent.

14. The learned counsel for the defendant would contend that the application is not to bring on record any new material or ought to canvass any new point but it was filed only to place certain additional documents in support of the documents marked as Exhibits, more particularly Exs.D1. and D2, evidencing the fact of the preliminary notification and final notification and that the production of the additional documents has been necessitated by the unsubstantiated conclusions arrived at by the trial Court while decreeing the suit and the failure of the trial Court to appreciate exhibits D1 and D2 in the proper perspective. It is contended by the learned counsel that the documents now sought to be introduced are only complimentary in nature i.e. to compliment and corroborate the evidence already on record i.e. Exs.D1 and D2.

15. It is seen that no objections are preferred by the plaintiff/respondent to the application.

16. Per contra, learned senior counsel for the plaintiff/respondent would contend that the additional documents cannot be permitted to be brought on record as a matter of right and that the right to place additional documents before the appellate forum is severely curtailed by the provisions of Order 41, Rule 27, CPC. He would contend that only in a case where it is pleaded that the said documents, despite the best diligence and best efforts, could not be secured at the time of trial alone can be permitted to be brought on record at the appellate stage. The learned Senior counsel would further contend that this is not the case that is pleaded in the application and hence he would submit that the application-I.A.2 filed under Order 41 R 27 of CPC deserves to be rejected.

17. Learned counsel for the appellant (defendant) would rely upon the ruling of Hon"ble Apex Court in the case of Union of India v. Ibrahim Uddin and another reported in (2012) 8 Supreme Court Cases 148 and he would contend that the Apex Court has held where a document is found to be having an important bearing on the main issue or is found necessary to remove any lacunae or clearing any doubt for pronouncing judgment, the application is to be allowed. He would also rely upon another ruling of the Apex Court in the case of Meenaben Pankajkumar Joshi and others v. New India Assurance Company Limited reported in (2009) 9 Supreme Court Cases 363 : (AIR 2010 SC (Supp) 512).

Under the said ruling the Apex Court was pleased to allow the additional evidence in view of the fact that the same are required to determine and award a fair compensation.

18. Per contra, the learned Senior Counsel on behalf of the plaintiff/respondent would rely on a catena of decisions to resist the admission of the additional evidence. He would rely upon a ruling of this court in the case of Thimma Naika v. Papanna alias Kempegowda reported in LAWS (KAR)-2012-3-6 and would contend that the application for additional evidence made at a belated stage to fill up lacunae or gaps in the evidence, not to be permitted. He would place reliance on another ruling of the Apex Court rendered in the case of N. Kamalam (Dead) and another v. Ayyasamy and another reported in (2001) 7

Supreme Court Cases 503 : (AIR 2001 SC 2802) wherein the Hon"ble Apex Court has held that production of additional evidence in the Appellate Court under the provisions of Order 41, Rule 27 of CPC is not to be permitted to help parties to patch up their weak points and make up the omissions made earlier. The Hon"ble Apex Court has held that incidentally the provisions of Order 41, Rule 27 of CPC have not been engrafted in the Code so as to enable the parties to patch up weak points in the case and to fill up the omissions or any lacunae or gaps in the evidence and that the appellate court is empowered to let in fresh evidence for the purpose of pronouncement of judgment and in this regard it would rely on its own ruling rendered in the case of Municipal Corpn. of Greater Bombay v. Lala Pancham reported in AIR 1965 SC 1008: 67 Bom LR 782 wherein the Apex Court held as follows :-

"This provision does not entitle the High Court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. It does not entitle the appellate court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate court is empowered to admit additional evidence. The High Court does not say that there is any such lacuna in this case. On the other hand what it says is that certain documentary evidence on record supports " in large measure- the plaintiffs- contention about fraud and mala fides. We shall deal with these documents presently but before that we must point out that the power under clause (b) of sub-rule (1) of Rule 27 cannot be exercised for adding to the evidence already on record except upon one of the grounds specified in the provision."

He would also rely on the ruling of the Madras High Court in the case of S. Umapathy v. Arunachalam Pattankattiar and another reported in AIR 2000 Madras 259 and would point out that unless acceptable reasons for not placing the required documents at the appropriate stage are assigned, the parties cannot be permitted to place additional documents as evidence at the appellate stage. It is further said that reasons has to be recorded at this stage i.e. the first appellate court itself can record evidence and mark documents.

Learned counsel would also rely upon another ruling of the Apex Court reported in (1997) 7 SCC 297 : (AIR 1997 SC 3243) and would contend that merely because some evidence has been omitted to be produced before the trial Court, that cannot be a ground to permit the production of additional evidence before this Court. He would also rely on a ruling of

the Gujarat High Court reported in AIR 2003 Gujarat 3 (State of Gujarat and another v. Mahendrakumar Parshottambhai Desai and others).

The said ruling is inapplicable as it was a case of filing of an application during the midst of an hearing. In the case on hand the application has been filed at the time of filing of the appeal itself.

He would further rely on another ruling of this Court reported in AIR 1998 Kar 313 (N.Ramaprasad v. C. N. Kumar) wherein it has been held that production of additional documents is impermissible if it is made for the purpose of overcoming certain observations made by the trial Court in the impugned order.

The learned Senior Counsel would also rely upon the ruling of the Allahabad High Court reported in AIR 2001 Allahabad 160 (Mool Chand v. Trilok Chand and other) and would state as in the instant case as it has not been clarified in the application that the said documents were not available and could not be produced at the time of trial despite due diligence, the application - I.A.2 requires to be rejected.

19. In view of the submissions made by both the counsels in respect of I.A.2/2007, it is necessary to look into the provisions of Order 41, Rule 27 of CPC.

Provisions of Order 41, Rule 27 of CPC reads as follows:

"27. Production of additional evidence in Appellate Court:

(1) the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any

witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

20. The contentions of the parties requires to be considered in the background of the facts of this case, the provisions of Order 41, Rule 27, CPC and in the light of the pronouncements by the Hon"ble Apex Court.

21. It is not in dispute that at the time of initiating the suit, the plaintiff had not pleaded as to out of which survey number the schedule property was carved out of. It is also not in

dispute that the plaintiff had failed to plead that the property is part of any survey number. It is also not in dispute that one of the primary objections raised by the defendant/appellant is that the property, as described in the schedule to the plaint, is unidentifiable but factually it formed part of the lands that had been acquired pursuant to the preliminary notification and final notification and it is also not in dispute that the said notifications are part of the record being marked as exhibits D1 and D2. A perusal of Exs.D1 and D2 would substantiate the fact that the details of the lands sought to be acquired for the purpose of formation of sites for the slum dwellers and further extension of HAL 3rd stage, is set out in the schedule to the notifications. The schedule to the notifications evidences the acquisition of the lands comprised in S.Nos.63, 64/1, 64/2, 64/3, 64/4 65/1, and 65/2, totally measuring 21acres, 20 guntas. The schedule also details the village, the hobli, the taluk and the district where the lands are situated. It also details the extent of the lands and the extent that has been acquired. The plaintiff had not pleaded that his lands are part of S.No.65 (hissas) which has been notified for acquisition. On the contrary, the plaintiff has carefully avoided mentioning of the acquisition proceedings and in the opinion of this court the omission to state about the acquisition is not on account of any inadvertence but appears to be deliberate and it appears that only at the stage of arguments, a case regarding the property being part of S.No.65 has been made out by the plaintiff. This view is fortified by the examination-in-chief of PW1 which is filed in the form of an affidavit dated 17.7.2003.

22. There is not even a whisper about the suit property being part of Sy.No.65 and it is also seen that PW1 was examined in chief on 21.6.2004 and on the said date, exhibits - P1 to P9 only came to be marked. Thereafter the witness-PW1 is recalled for further examination-in-chief on 22.3.2006 and the further exhibits i.e. Exs.P10 to P20, including the certified copy of the sale deed of the so called vendors vendor, have been got marked as Exs.P18, P19 and P20. It is also interesting to note that none of the parties to the said document have been examined. Not even PW1 has spoken about the said document. It is seen that after the examination-in-chief on 21.2.2004, the case was posted for cross examination by the defendant-appellant herein. There is no reason ascribed by the trial Court as to how further chief examination was permitted, on what grounds and as to whether any additional affidavit of evidence is filed. Another curious aspect of the case is the claim of PW1-Jagadish Singh that the plaintiff, Bhagavandas Patel s/o Bhimji Patel is his brother- s son. PW1 who is the POA holder is described as one Jagadish Singh s/o Sardar Singh. The names per se would reveal that the attorney is of Punjabi origin and the plaintiff appears to be of Gujarati origin and hence the claim that they are of the same family appears to be suspect.

23. From the above narration it is apparent that the case as made out by the trial Court that the schedule property is part of Sy.No.65 was neither pleaded in the plaint nor part of the deposition by way of examination-in-chief. Thus the defendant was deprived of an opportunity to effectively counter the case as made out by the court i.e. the schedule property is part of Sy.No.65 and hence the finding that no documents to disprove or prove

that they are part of the layout formed by the defendant/appellant are placed before the Court to say the least smacks of perversity. It is settled law that the plaintiff must succeed on his own strength and cannot rely on the weaknesses of the defendant to demonstrate his case. In view of the above, documents that is now sought to be brought on record in this case has to be looked into.

24. It is seen that the documents now produced are nothing but public documents in the form of acquisition proceedings, mahazar proceedings for taking possession, copy of the final notification, certificate issued by the CITB certifying taking possession of the land in Sy.Nos.65/1 and 65/2 and the layout plan as sanctioned by the Government. The said documents viewed from the point of Exs.D1 and D2 would indicate that they are documents which compliment the assertion of the defendant/appellant that the lands were subjected to acquisition as pleaded in the written statement. The documents now sought to be produced do not make out any independent case or any new case nor does it amount to patching up any lacunae but to negate the perversity in the reasoning of the trial Court and to meet out the case that is neither pleaded nor proved by the plaintiff but made out by the court while disposing of the suit and hence in the considered view of this Court, the present application- IA.2/2007 falls within the exception carved out under Clause (b) of Rule 27 Order 41 of CPC which provides that additional evidence may be permitted by the Appellate Court for any other substantial cause and to enable a complete adjudication and pronouncement of a judgment. In the considered view of this Court the introduction of additional evidence to negate the appreciation of a case by the trial Court, which was neither pleaded nor proved by the plaintiff, would squarely fall within the exception of any other substantial cause as provided under Order 41, Rule 27 of the CPC.

25. The documents now sought to be produced along with I.A.2/2007 are public documents and merely compliment the exhibits already marked as D1 and D2. The same being public documents, this Court takes judicial notice of the same. This Court is of the considered opinion that further trial is not required as the fact remains that the veracity or authenticity of the said documents is not disputed by the plaintiff/respondent. Hence, the application-I.A. 2/2007 is accordingly, allowed and this Court takes judicial notice of the documents produced along with the said application.

26. Heard the learned Senior counsel for the plaintiff/respondent and learned counsel for the defendant/appellant.

27. It is contended on behalf of the defendant that the plaintiff has not demonstrated as to out of which survey number the site is formed. The learned counsel would draw the attention of this Court to Ex.P2- sale deed, more particularly to the schedule, and would submit that what is detailed is the site number and katha number alleged to have been issued by the now defunct HAL Sanitary Board. He would contend that it was the specific case of the defendant that the suit schedule property is not identifiable and that factually the claim of the plaintiff is in respect of a property which is part of the lands comprised in

survey numbers subjected to acquisition under Exs.D1 and D2.

Learned counsel for the defendant would further contend that it was never the plea of the plaintiff that the suit schedule property was part of Sy.No.65 of Varthur Hobli, Konena Agrahara and hence the admission of the sale deeds at Exs.P17, P18 and P20 and the reliance placed on the same by the trial Court has resulted in mis-trial and the trial Court erred in accepting a case which was neither pleaded nor proved by the plaintiff/respondent resulting in miscarriage of justice and handing over of valuable public property. He would also draw the attention of the court to the boundaries described in Exs.P17, P18 and P20 and would contend that none of the boundaries tally with the boundary description under Ex.P2, a document under which the plaintiff is claiming title. He would further contend that even the boundaries as detailed in Exs.P17, P18 and P20 are not available and that the plaintiff has woefully failed in establishing and demonstrating the identity of the suit schedule property.

28. Per contra, the learned senior counsel for the plaintiff/respondent would contend that the site has been formed in Sy.No.65 and that the documents, more particularly Exs.D1, and D2 relate only to Sy.Nos.65/1 and 65/2 and none of the document relate to Sy.No.65. He would submit that there were three suits viz. O.S.Nos.2844/2001, 2845 & 2846 of 2001. He would further submit that the other two suits were in respect of the adjoining properties and the same have been decreed by the court below.

He would further contend that the land comprised in O.S.No.2846/01, which is lying adjoining to the suit schedule property, is a larger extent and the claim of the plaintiff therein against this appellant has been upheld. He would further contend that the appeal filed in respect of O.S.No.2845/01 has been dismissed for non-prosecution and that the appellant-Authority is vehemently resisting the claim of this plaintiff only for the reasons best known to them. He would also draw the attention of this Court to the statement by the witness-DW2 stating that the site is formed out of Sy.Nos.63, 64/1, and 64/2 and that the case now sought to be canvassed is that the site is part of Sy.Nos.65/1 & 65/2 and he would contend that the defendant has miserably failed to demonstrate the said case. He would also state that Ex.P20 would reflect the name of the plaintiff's predecessor-in-title.

29. Per contra, learned counsel for the defendant/appellant would contend that the burden of proof of demonstrating the fact that the site has been carved out of Sy.No.65 has not been discharged as required by the provisions of Section 101 of the Indian Evidence Act of 1872. He would submit that the trial Court has accepted the bald and vague plea of the plaintiff which is neither supported by pleadings nor evidence. He would draw the attention of this Court to plaint pleadings and to the evidence, filed by way of the affidavit, and would point out that there is no pleading to demonstrate that the suit schedule property is carved out of Sy.No.65 of Varthur Hobli, Konena Agrahara.

He would further submit that the suit itself is not maintainable in the light of the law laid down by the Hon"ble Apex Court (Commissioner, Bangalore Development Authority and

another v. Brijesh Reddy and another) (AIR 2014 SC (Supp) 60) wherein it was held that the Civil Court is devoid of jurisdiction to take cognizance under Section 9 of the CPC.

30. In the above facts and circumstances the issues that falls for consideration of this court are :-

1) Whether the plaintiff proves that the suit schedule property is formed out of the lands comprised in Sy.No.65 of Konena Agrahara Varthur Hobli Bangalore South Taluk, Bangalore Dist.?

2) Whether the Civil Court is devoid of jurisdiction to take cognizance and try the suit under the provisions of Section 9 of the CPC?

31. A careful and detailed consideration of the material on record, more particularly the plaint dated 18.4.2001 and the examination-in-chief of PW1 by way of affidavit, would reveal that there is not even a whisper nor a plea that suit schedule property has been carved out of Sy.No.65 of Konena Agrahara Village. A perusal of the documents filed in support of the plaintiff's case also do not demonstrate the fact that the suit schedule property has been carved out of or is part of the land bearing Sy.No.65 of Konena Agrahara Village. As per the provisions of Section 101 of the Indian Evidence Act, 1872, the onus of discharging this burden was squarely on the plaintiff. In the light of the categorical pleadings in the written statement it was incumbent upon the plaintiff to demonstrate a specific case regarding the identity of the property. A perusal of the plaint pleadings would also reveal an another key fact. It has not even been contended by the plaintiff that the suit schedule property is not part of the layout that has been formed by the defendant in the lands acquired under Exs.D1 and D2. Merely because the Sy.No.65 is mentioned in the sale deed -Ex.P20 and Ex.P17, it does not tantamount to proof of the fact that the site (suit property) has been carved out of Sy.No.65. No other document in the nature of the layout plan or assessment register or other revenue documents have been produced to demonstrate the fact that the suit property has been carved out of Sy.No.65. Furthermore a perusal of the additional documents now placed before the court would demonstrate that the very persons who are referred to as predecessors-in-title over the suit schedule property, have been notified about the acquisition of the lands comprised in the survey

number detailed in Exs.D1 and D2. In the light of the fact of acquisition of Sy.Nos.65/1 and 65/2 and in the light of the assertion of the defendant that the suit schedule property lies within the layout formed by them, it became mandatory for the respondent/plaintiff to demonstrate the identity of the suit schedule property. To further compound the issue, the plaintiff witness has not even spoken about exhibits P20 or P17. A further perusal of Ex.P18, sale deed, nowhere reveals the fact that the said sites have been formed out of Sy.No.65. On the other hand the document refers to katha number No.65/2 and old No.65, whereas Ex.P2 details the katha number as 63/2 and 63. The burden was on the plaintiff to demonstrate that the katha number referred to in Ex.P18, in fact, relates to the Sy.No.65, which burden is not discharged by the plaintiff. The witness has not even whispered about the relevance of the said exhibits. It is also seen that the measurements stated therein and the measurement in Ex.P2- sale deed dated 23.10.1999 are at variance. These are the inconsistencies which ought to have been explained by the plaintiff in order to enable the trial Court to arrive at the conclusion regarding the identity of the suit property. It is not disputed by the plaintiff that the property is within the layout formed by the defendant. In fact, in the layout plan produced as an additional document along with I.A.2/2007, the suit schedule property is marked in green and is shown to lie in between the two corner sites. The layout map is the evidence of the property being handed over to the Bangalore City Corporation and is dated 25.3.1996. It is not in dispute that the layout has been sanctioned by the Competent Authority. It is seen that despite these glaring inconsistencies, the trial Court has failed to even have a local inspection conducted to ascertain the identity of the property.

32. It is trite law that no amount of plea without corroborating evidence and all evidence without corresponding pleadings cannot go on to establish a fact. The civil courts are required to act and adjudicate based on pleadings and evidentiary material placed before it. As stated supra, the plaint is bereft of any pleadings which goes to identify the suit schedule property as one that is beyond the boundaries of the lands acquired by the defendant or that the same is comprised in a survey number which is not the subject matter of acquisition. Hence, the first issue is held against the plaintiff.

33. In view of the above finding, the inescapable conclusion that this Court must arrive at is, that the suit schedule property is part of the layout called Anandaram Slum which has been formed out of the lands acquired by the defendant under the acquisition notifications produced as Exs.D1 and D2.

In the light of the above conclusion, the contention of the defendant that the civil court has no jurisdiction to entertain the suit, assumes significance in the light of the law laid down by the Hon"ble Apex Court in the case of Commissioner, Bangalore Development Authority and another v. Brijesh Reddy and another reported in (2013) 3 Supreme Court Cases 66 : (AIR 2014 SC (Supp) 60) and is required to be upheld.

34. The Hon"ble Apex Court in the afore cited judgment has been pleased to hold as follows :-

"8. The only point for consideration in this appeal is: whether a civil court has jurisdiction to entertain a suit when the schedule lands were acquired under the land acquisition proceedings and whether the High Court was justified in remanding the matter to the trial court without examining the question with regard to the maintainability of the suit?

14. Section 9 of the Code of Civil Procedure, 1908 provides jurisdiction to try all suits of civil nature excepting those that are expressly or impliedly barred which reads as under:

"9. Courts to try all civil suits unless barred:- The courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."

From the above provision, it is clear that courts have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The jurisdiction of civil court with regard to a particular matter can be said to be excluded if there is an express provision or by implication it can be inferred that the jurisdiction is taken away. An objection as to the exclusion of civil court- s jurisdiction for availability of alternative forum should be taken before the trial Court and at the earliest failing which the higher court may refuse to entertain the plea in the absence of proof of prejudice.

15. In State of Bihar v. Dhirendra Kumar (AIR 1995 SC 1955) the core question was whether a civil suit is maintainable and ad interim injunction could be issued where proceedings under the Land Acquisition Act, 1894 was taken pursuant to the notice

issued under Section 9 of the Act and possession delivered to the beneficiary. On going through the entire proceedings initiated under the Land Acquisition Act, this Court held as under: (SCC p.230, para 3)

"3... We are, therefore, inclined to think, as presently advised, that by necessary implication the power of the civil court to take cognizance of the case under Section 9, CPC stands excluded, and a civil court has no jurisdiction to go into the question of the validity or legality of the notification under Section 4 and declaration under Section 6, except by the High Court in a proceeding under Article 226 of the Constitution. So, the civil suit itself was not maintainable."

After holding so, this Court set aside the finding of the trial Court that there is a prima facie triable issue. It also held that the order of injunction was without jurisdiction.

19. No doubt, in the case on hand, the plaintiffs approached the civil court with a prayer only for permanent injunction restraining Defendants 1 and 2 i.e. BDA, their agents, servants and anyone claiming through them from interfering with the peaceful possession and enjoyment of the schedule property. It is true that there is no challenge to the acquisition proceedings. However, in view of the assertion of BAD, in their written statements, about the initiation of acquisition proceedings ending with the passing of award, handing over possession and subsequent action, etc. the said suit is not maintainable. This was rightly concluded by the trial Court. For proper compensation, the aggrieved parties are free to avail the statutory provisions and approach the court concerned. All these aspects have been clearly noted by the trial Court and ultimately it rightly dismissed the suit as not maintainable. On the other hand, the learned single Judge of the High Court though adverted to the principles laid down by this Court with reference to acquisition of land under the Land Acquisition Act and Section 9, CPC committed an error in remanding the matter to the trial Court on the ground that the plaintiffs were not given opportunity to adduce evidence to show that their vendor was in possession which entitles them for grant of permanent injunction from evicting them from the scheduled property without due process of law by the defendants. In the light of the specific assertion coupled with materials in the written statement about the acquisition of land long ago and subsequent events, suit of any nature including bare injunction is not maintainable, hence, we are of view that

the High Court is not right in remitting the matter to the trial court for fresh disposal (Underlining by me).

35. It is pertinent to note the prohibition contained in the said ruling. The Hon"ble Apex Court has held that in the light of specific assertion coupled with the material in the written statement about the acquisition of the land, suit of any nature, including one for bare injunction is not maintainable.

36. In the considered opinion of this Court the silence maintained by the plaintiff with regard to the identity of the property is probably motivated as otherwise the trial Court would have refused to exercise its jurisdiction.

37. In view of the above, the appeal requires to be allowed and is accordingly allowed. The judgment and decree of the trial court is set aside. It is held that the suit is not maintainable as the Civil Court is devoid of jurisdiction to entertain and take cognizance of the suit under Section 9 of the CPC in view of the bar under the Land Acquisition Act.

Appeal allowed.