

(2010) 12 KL CK 0025

High Court Of Kerala

Case No: S.A. No. 858 of 1998

K. Subbanna Rai

APPELLANT

Vs

Deranna Rai and Others

RESPONDENT

Date of Decision: Dec. 3, 2010

Citation: (2011) 2 KLJ 652 : (2011) 2 KLJ 649 : (2011) 1 KLJ 436 : (2011) 3 KLT 142

Hon'ble Judges: S.S. Satheesachandran, J

Bench: Single Bench

Advocate: N. Subramaniam, K.K. Mohamed Ravuf, K. Sajan Varghese and M.S. Narayanan, for the Appellant; U.P. Kunikullaya and S. Vinod Bhat, for the Respondent

Final Decision: Allowed

Judgement

S.S. Satheesachandran, J.

Plaintiff in a suit for injunction who had been worsted in the two courts below, is the appellant Subject matter involved in the suit is 20 cents of land described as Kattapuni, in the local dialect, which means a ridge, wherein ten yielding coconut trees are situate. Plaintiff claiming title and possession over the suit property described as "A" schedule, though there was no other schedule as such in the suit, sought for the discretionary relief of injunction alleging threat of trespass and interference from the defendants, Claim over the suit property was made by the plaintiff alleging that it formed part of his registered holding having an extent of one acre and eight cents obtained under two sale deeds, Ext.A15 and Ext.A17. Two third right over the above extent of one acre and eight cents, according to the plaintiff, was obtained by him under a sale deed executed by the first defendant and two others under Ext.A15, and the rest, 1/3 right, from the assignor in Ext.A17 deed, one Mahabala Bhandary. There is no dispute between the parties that the above said one acre and eight cents was one among the items involved in a partition suit earlier, O.S No. 291/1949, and from the members of the family, who were allotted that property, the assignors, under Ext.A15 and Ext.A17, obtained right over portions of the same, 2/3rd by the former and 1/3rd by the latter. Ext.A14 is the

conveyance deed under which the first defendant and two others, the assignors in Ext.A15, obtained 2/3rd right over the above said one acre and eight cents of land. The dispute projected in the case as could be seen from the judgment rendered by both the courts was over the identity of the suit property, the ridge having an extent of 20 cents. Among the defendants, the first defendant filed a written statement separately and the defendants 2 and 3 jointly, both of them challenging the title and possession claimed by the plaintiff over the suit property and setting up rival claim of possession over the property. Whereas the first defendant contended that he is having exclusive possession and enjoyment over the suit property the defendants 2 and 3, in their written statement, contended that they have enjoyment over three coconut trees situate in the property. But the main contention pressed into service by both sets of defendants was over the identity of the suit property with a further case that the plaintiff has no possession or enjoyment over the same. Both the courts below examined the merit of the equitable relief canvassed by the plaintiff mainly on the basis of the challenge raised over the identity of the suit property. On the materials placed, the trial court as well as the appellate court concluded that the plaintiff who did not take out a commission to identify the property miserably failed to establish, with precision, the identity of the property to claim the decree of injunction canvassed for. Referring to the description of the property covered by his sale deeds, Ext.A15 and Ext.A17, and examining it with other documentary materials tendered in the case, both the courts below concurrently upheld the challenge of the contesting defendants over the identity of the suit property and also to the tide of the plaintiff, concluding that the plaintiff has not obtained any title and possession over the property under the title deeds produced. Feeling aggrieved, the plaintiff has preferred this appeal.

2. First respondent after entering appearance, during the pendency of the appeal, had passed away, and his legal representatives have been brought in as additional respondents 5 to 12.

3. I heard the counsel on both sides. Having regard to the submissions made by the counsel on both sides with reference to the substantial questions of law formulated and the records of the case, it is seen that both the courts below have misdirected its enquiry over the question of identity of the suit property, which, in the given facts of the case was irrelevant and had no material value in adjudging the merit of the equitable relief of injunction canvassed by the plaintiff in the suit. First defendant was one among the assignors of the plaintiff under Ext.A15 sale deed by which the plaintiff obtained 2/3 right over one acre and eight cents of property, which, according to him, comprised of a kattapuni or ridge on the northern and western extremities of that property. Was it open to the first defendant who was one among the assignors under Ext.A15 conveyance deed to impeach the title and right claimed by the plaintiff over the suit property was the larger question involved. Unfortunately, that was not gone into by both the courts below with reference to Ext.A14 and Ext.A15. Ext.A14 is the title deed under which the first defendant and

two others obtained title and right over 2/3rd portion of one acre and eight cents of land, which was later conveyed to the plaintiff under Ext.A15. The description of the property under Ext.A15 deed unmistakably reflects that it comprises of a kattapuni as situate on the northern and western extrimities of that property. The existence of coconut trees in that kattapuni, which formed part of the land conveyed in favour of the assignee under that deed, is also specifically made mention of. Whatever title and rights the assignees obtained under Ext.A14, had been conveyed by them to the plaintiff under Ext.A15. However, when the description of the property transferred was stated in Ext.A15 deed the boundaries were described showing the kattapuni as the demarcating mark on its north and west. The entire edifice of the challenge put up by the first defendant to resist the suit claim of the plaintiff is built upon that boundary description shown in Ext.A15. Whatever be the description of the boundaries in Ext.A15, when there was a transfer assigning the rights obtained by the first defendant and others under Ext.A14 in favour of the plaintiff, it was no longer open to them to plead or set up a case impeaching the transfer effected in favour of the plaintiff. When Ext.A15 was executed by the first defendant and two others, reference was made to Ext.A14, their prior title deed, specifically stating that the land conveyed was with "all appurtenants thereto comprised in R.S No. 183.1C1, 183/1CA shown in our sale deed aforesaid mammool water, wasy, aracanut plants etc.". When such a statement was made, there was omission to mention kattapuni, which was stated in Ext.A14 document, it is seen, was taken advantage by the first defendant to set forth a case that kattapuni or the ridge was not conveyed under Ext.15. It is interesting to note that the first defendant had no case that leaving apart the subject matter involved in the suit, the ridge, he is having possession over any piece of land adjoining to such land. That itself is material circumstance demonstrating that the challenge raised by the first defendant to impeach the title of the plaintiff over the kattapuni, which no doubt, formed part of Ext.A15, wherein he was one among the executants, was devoid of any merit or value. The dispute raised over the identity of the suit property, which was canvassed by the contesting defendants including the first defendant required to be analysed in the backdrop of the false plea set up that there was no conveying of the title over the kattapuni under Ext.A15 and Ext.A17 documents in favour of the plaintiff. In the given facts of the case, challenge raised over the identity of the suit property had innocuous value where it could be reasonably presumed that the plaintiff who is shown to have obtained title over the property is in possession of the land. Though the presumption available under law "possession follows title", is not absolute, where the property of its very nature would not admit of, actual or exclusive possession, like a kattapuni (ridge) accessible to all alike, that principle can definitely be applied especially where it is proved that the plaintiff has title over the property and, in fact, over a major portion thereof such title was obtained from one of the contesting defendants and the conveyance deed (Ext.A15) speaks of transfer of possession with the title. An assignee of land occupies the property in his own right and he is clothed with the rights of his principal-assignor. A leading rule concerning alienations and

forfeitures is "assignatus utitur jure auctoris" - an assignee is clothed with the rights of his principal. Whatever rights obtained by the first defendant and other vendees under Ext.A14, two third right over the property of one acre and eight cents inclusive of kattappuni, had been assigned by them to the plaintiff under Ext.A15 sale deed. No reservation was made in favour of the first defendant and other executants of Ext.A15 when the alienation was made under that deed is sufficient to hold that the assignee/plaintiff had acquired effective and indefeasible right, whatever rights the assignors had under Ext.A14, over the property. Though defendants 2 and 3 had raised a claim over three coconut trees situated in the kattappuni, resisting the exclusive claim over the suit property by the plaintiff, the fact that they did not lead any evidence to substantiate that contention is sufficient to discard such challenge where the materials tendered prove that the plaintiff has title and possession over the kattappuni - the suit property. So, in the given facts of the case, where the defence canvassed that the plaintiff had not obtained any title under Ext.A15 and Ext.A17, is shown to be false and, further, such a plea was not available to at least one of the contesting defendants, the first defendant, the only question that required consideration was whether the plaintiff retained exclusive possession over the suit property. In the context, it has to be noted, the first defendant has no case that after execution of Ext.A15 sale deed by way of trespass or otherwise he has come into possession of the suit property. His claim of possession over the suit property, which is repugnant to and militating to the covenants contained under Ext.A15 sale deed, unless he establishes a case of subsequent trespass over the suit property or under any other right recognisable by law, deserved to be taken note of only for its rejection. When such be the case, the nonsuiting of the plaintiff by both the courts below as if the real issue involved in the case rested on the identity of the property, which in fact had only an innocuous value, cannot at all be sustained and in the facts of the case where the plaintiff has established his title and possession by the materials tendered, he is entitled to the equitable relief applied for. So much so, in reversal of the concurrent decision rendered by both the courts below, a decree of injunction is granted in favour of the plaintiff restraining the defendants/respondents from trespassing upon and interfering with his possession and enjoyment over the suit property. Appeal is allowed directing both sides to suffer their costs.