2021 INSC 841

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. OF 2021
(@ SPECIAL LEAVE PETITION (CIVIL) NO. 8283 OF 2020)

SRI LANKAPPA & ORS. ...APPELLANT(S)

VERSUS

KARNATAKA INDUSTRIAL CORPORATION & ORS. ...RESPONDENT(S)

O R D E R

S. RAVINDRA BHAT, J.

1. Special leave granted. The appellants are aggrieved by a judgment and order of the Karnataka High Court[1] which allowed the regular first appeal filed by the first respondent (Karnataka Industrial Corporation, hereafter called "KIC").

2. The appellants had filed a suit[2] seeking declaration of title and injunction in respect of suit properties as stipulated in the schedule[3] (hereafter called "Suit Schedule Property") which were 11 acres and 16 guntas of agricultural land. Muninarayana Gowda, Putta s/o Ramanna, Sampath s/o Hanumantharayappa, Raja s/o Mangamma and KIC were impleaded as respondents. The appellant's case was that Chowdappa, their grandfather, was granted the Suit Schedule Property by order dated 22.10.1929 passed by the Amaldar, Bangalore South

[1] Dated 22.01.2020 by the principal Bench at Bengaluru in RFA No. 14/2019.
[2] O.S. No.388/1995, before the Court of II Munsiff, Bangalore Rural District.
[3] Sy.No. 30, measuring 11 acres 16 guntas situated in Talaghattapura Village, Uttarahalli Hobli, Kanakapura Main Road, Bangalore South Taluk.

Taluk, and that after his death, his heirs and the appellants were owners in possession of the Suit Schedule Property. It was alleged by KIC (the fifth respondent), a partnership firm, that by order dated 25.03.1968, the Karnataka Government had granted the Suit Schedule Property to it, for non-agricultural use, and the appellants sought to interfere with KIC's possession. KIC resisted the suit alleging, *inter alia,* that it was the absolute owner in possession of *"Khatha No. 290 formerly Sy. No. 30 measuring 11 acres 16 guntas in extent situated at Thalaghattapura village, Uttarahalli Hobli, Bangalore South Taluk and it is the suit schedule property"*.

3. During pendency of the appellant's suit [hereafter called the "1995 Suit"] KIC filed O.S. No.21/1996 (hereafter called "KIC Suit-I") claiming injunction to restrain the appellant from disturbing its possession of the Suit Schedule Property. In its suit, it was alleged *inter alia,* that:

> *"3. The plaintiff is the owner in possession of Sy. No. 30 measuring 11 acres 16 guntas in extent, situate at Talaghattapura village, Uttarahalli Hobli, Bangalore South Taluk.*
>
> *4. It has been converted for non-agricultural use for the purpose of establishing a Table Moulded Brick Factory. DOCUMENT NO. 2 (two) and DOCUMENT NO. 3 (Three) is the certified copy of the Index of Lands. The plaintiff is in exclusive possession of the property mentioned above, hereinafter called 'Suit Schedule Property'. After conversion, the Katha number of the schedule property is 290 and it has been assessed to payment of tax to Talaghattapura Orama Panchayat, Uttarahalli Hobli, Bangalore South Taluk. Up-to-date taxes have been paid in respect of the suit schedule property.*
>
> *1.* **********
> *In view of the aforesaid orders in the other suits, the defendants are trying to dispossess the plaintiff-firm from the possession of the land in question and are trying to trespass on the suit schedule property. Defendants have no right, title and interest in the suit schedule property and they are not the owners of the suit schedule property and they are not and were not in possession of the suit schedule property at any point of time.*
>
> *10. The aforesaid documents completely establish that the plaintiff is the owner in possession of the suit schedule property. As the land in question is converted for non-agricultural use and katha number is given by the Panchayath, RTC is not being written in respect of the suit property…."*

4. Both suits, i.e., the 1995 Suit and KIC Suit-I were tried together and disposed of by common judgment[4]. It was held by the trial court that the appellants herein could establish *"their continued, unhindered and unhampered possession, cultivation and enjoyment of the suit schedule property since 1929"* till date of judgment; and that they had perfected title against the Karnataka Government in 1963. It was also held that *"Hence, the Govt. had no rights and title over the suit schedule property on the date of grant i.e., on 25.3.1968".* It was further held that:

> *"When the Govt. itself has lost the title and right over the suit schedule property it has no right to grant the suit schedule property to the 5th defendant. The defendants never in possession of the suit schedule property."*

5. For the same reason, KIC's suit was dismissed. It was held that the grant in its favour was ineffective, as the Karnataka Government had no power to issue it, and further that KIC was never in possession. KIC and the other aggrieved parties (including the other respondents in the 1995 Suit) appealed this, by preferring R.A. No.31/1998. This common appeal was disposed of by judgment and decree dated 03.03.1999. The appellate court noticed that the findings of the trial court in KIC Suit-I were unchallenged. KIC had relied on a document to say that the lands were converted. The appellate court while dismissing the appeal, held as follows:

> *"The appellant Corporation contended that the suit land was got converted by the conversion sanctioned certificate said to have been issued by Tahasildar dated 18.12.78 and copy of the said document is marked as Ex. D4. In my considered view no reliance can be placed upon Ex. D4 which is much disputed by the respondents because it is only a Xerox copy and the appellant has failed to produce the original of the same before the Court. On the other hand Ex. Pl is an endorsement issued by the Assistant Commissioner, Bangalore dated: 27.5.89 which reveals that the proceedings regarding conversion of land are not available in the office. Hence, I find some force in the arguments of the respondent that Ex. D4 is a got up document. If the suit land was really got converted, the appellant could have produced the certified copies of relevant documents from the Revenue Office. It appears that Ex. D4 is a fictitious document and there is no order for conversion of land as contended by the appellant. Hence the entries made in the relevant R.T.C. records that the land was converted are incorrect and false. The R.T.C: extracts for the year 1983-84, 84-85 reveal that 4 acres of land is under cultivation but the name of*

[4] Dated 31.01.1998, Ld. First Add. Civil Judge (Junior) at Bangalore.

> *cultivator is not mentioned in cultivator's column. It is not the case of appellant-that it cultivated the lands during relevant period. Since the finding given in O.S. 21/96 remained unchallenged, I am of the considered view that, it is the respondents who are in physical possession of suit land and trial court is justified in granting the prohibitory injunction as against the appellant."*

6. The declaration granted in the 1995 Suit by judgment dated 31.01.1998 (that the appellants herein were absolute owners) was set aside; however, it was held that KIC's grant had been cancelled. The decree of permanent injunction was however, confirmed. KIC had also preferred a second appeal[5] in which the judgment of the first appellate court in R.A. No.31/1998 was impugned. KIC's second appeal was dismissed by judgment dated 16.06.2005, by the Karnataka High Court. The High Court categorically held that a deemed cancellation of the grant of land in favour of KIC had occurred, as due procedure had not been followed while making the alleged grant. The High Court held:

> *"In view of the detailed discussion made above, while answering the substantial question of law raised in favour of the respondents, it is held that both the courts below have rightly come to the conclusion that the plaintiffs/respondents are in possession of the suit property and thereby rightly injuncted the appellants from interfering with the peaceful possession and enjoyment of the suit property and that there is deemed cancellation of the grant of land granted in favour of the appellants and that due procedure has not been followed while making alleged grant in favour of the appellants."*

7. A special leave petition[6] was preferred before this Court against the above judgment of the Karnataka High Court, in which KIC was the fifth petitioner. Leave was granted, and the petition was converted into Civil Appeal No.10086/2010. The civil appeal was dismissed by order dated 22.11.2017. Therefore, the matter had attained finality.

8. KIC filed another suit O.S. No. 1168/2018 (hereafter called "KIC Suit-II"). In that suit, the following reliefs were claimed:

> *"(a) declaring that the plaintiff is the absolute owner of the suit schedule property;*
> *(b) directing the defendants Nos. 5 to 27 to deliver possession of the suit schedule property to the plaintiff;*

---

[5] RSA No. 236/1999 before Karnataka High Court.
[6] SLP 15070/2006.

(c) to grant permanent injunction restraining the defendant No. 1 to 4 from deleting the name of plaintiff from revenue records without due process of law,"

The trial court considered the plaint in KIC Suit-II and rejected the plaint, after considering all the previous facts and the history of the litigation. The trial court observed that:

"In the case on hand, the issue regarding deemed cancellation of grant was decided by all the courts up to the Hon'ble Apex Court. It is also significant to note that the finding of the Hon'ble High Court of Karnataka in RSA 236/99, as to the title of the plaintiff, based on the alleged grant was directly and substantially in issue and sad issue was answered in the Affirmative by the Hon'ble High Court of Karnataka. It appears that challenging the findings of the Hon'ble High Court of Karnataka, the plaintiff herein filed review petition, which was dismissed by the Hon'ble High Court of Karnataka. Indeed, the plaintiff also approached the Hon'ble Apex Court, on couple of occasions. The contention of the plaintiff is that he is in possession and enjoyment of the suit schedule property by virtue of the grant and the plaintiff is the owner of the suit schedule property. The claim of the plaintiff that the property was granted by the Government of Mysore, has been consistently negatived by the Hon'ble Courts. Therefore, this court cannot entertain the above suit, for the relief of declaration, once again on the basis of the alleged grant. Hence, I proceed to pass the following:

ORDER

The suit of the plaintiff is hereby rejected as not maintainable."

9. KIC appealed, contending that the rejection of its plaint in KIC Suit-II was erroneous. The High Court set aside the order rejecting the plaint, and held that in the circumstances of the case, it was incumbent upon the trial court to issue summons, and its *suo motu* determination on the maintainability of the suit before such issuance was erroneous. The impugned judgment also held that it was open to a court to reject the plaint at any stage.

Arguments Advanced

10. Mr. Neeraj Kishan Kaul, learned senior counsel, urged that the High Court fell into error, in overlooking the fact that the subject matter of KIC Suit-II was barred by *res judicata* as the issues in it were directly and substantially in issue in both the 1995 Suit and KIC Suit-I. The decision in that suit had attained finality before this Court in Civil Appeal No.10086/2010. Furthermore, the High Court

erred in ignoring that in terms of the mandate of Order II Rule 2 of the Code of Civil Procedure, 1908 (hereafter called "CPC"), KIC, in KIC Suit-I was bound to include the whole claim which it was entitled to make in respect of the cause of action and if it omitted to sue in respect of, or intentionally relinquished, any portion of its claim, it could not afterwards sue in respect of the portion so omitted or relinquished. It was argued that being party to the 1995 Suit, KIC was aware of its claim ownership over the Suit Schedule Property. Therefore, the omission on KIC's part in claiming relief of declaration of ownership in its earlier suit (i.e., KIC Suit-I) which was tagged with the 1995 Suit, statutorily barred the subsequent suit (i.e., KIC Suit-II) for declaration of title under Order II Rule 2(2) CPC.

11. Learned senior counsel argued that the High Court overlooked that since the grant issued by the Government of Karnataka was held to be *non-est* by the common judgment of the trial court (dated 31.01.1998) in the 1995 Suit and KIC Suit I, and that such finding was modified by the High Court in RSA No. 236/1999 – to the effect that the grant in favour of Muniswamappa is deemed to have been cancelled – KIC lacked *locus standi* to file a suit for declaration on the basis of such grant. Learned senior counsel also drew attention of this Court to the High Court's order in RP No. 493/ 2005 where it confirmed that the grant as claimed by KIC was deemed to have been cancelled, thereby stripping it off of any right to title to the Suit Schedule Property.

12. Learned senior counsel relied on the decision of this Court in *T. Aravindandam and Others v T. V. Satyapal & Anr*[7] where this Court upheld the jurisdiction of trial courts under Order VII Rule 11 CPC in rejecting frivolous and vexatious suits. Reliance was also placed on *Ramrameshwari Devi and Others v Nirmala Devi & Ors*[8] where it was held that the trial court ought not to have framed an issue on a point which had been finally determined up to this Court, and further held that unless the wrongdoers were denied profit or undue

[7] 1977 (4) SCC 467.
[8] (2011) 8 SCC 249.

benefit from the frivolous litigation, it would be difficult to control such litigations.

13. Ms. Kiran Suri, learned senior counsel for the respondents herein, urged that KIC Suit-II was not in abuse of the process of any court of law. Subsequent to the filing of the suit, an application was filed before this Court. That application was declined. KIC Suit- I was a suit for bare injunction and the title to the Suit Schedule Property was not considered. Therefore, the subsequent suit (i.e., KIC Suit-II) seeking title and possession was not barred.

14. Learned senior counsel contended that the civil court had to mandatorily issue summons to the respondents; and that maintainability of the suit could only be considered *after* such issuance, when it was contested by the respondents. However, in this case, before issuance of the summons to the respondents, the trial court *suo moto* passed determination on maintainability of the suit and rejected it as not maintainable. That order was contrary to law. Consequently, the High Court was justified in setting it aside.

15. Ms. Suri relied on the judgment of this Court in *Anathula Sudhakar v. P. Buchi Reddy*[9] to urge that KIC Suit-I was one for injunction. There was no occasion for KIC to claim ownership or title to the Suit Schedule Property. In these circumstances, KIC Suit-II claiming title and possession was maintainable. She also relied on *Alka Gupta v Narendr Kumar Gupta*[10] to say that the courts should not summarily reject a plaint, on the ground that the judgment in an earlier suit, barred the later one.

Analysis

16. It is apparent from the above facts that the two suits filed earlier – the 1995 Suit and KIC Suit-I – culminated in a decision favourable to the appellants herein, as KIC's suit was dismissed. KIC and the other respondents appealed against the decision in the present appellant's suit; that appeal was also dismissed. The

[9] (2008) 4 SCC 594.
[10] 2010 (10) SCC 141.

second appeal preferred by the parties i.e., RSA No. 236/1999 was dismissed on 16.06.2005. The High Court pertinently observed and held that the appellants herein were in possession of the Suit Schedule Property and rightly injuncted the respondents from interfering with their peaceful possession and enjoyment of the same, holding further that there was deemed cancellation of the grant of land granted in favour of the respondents herein as due procedure had not been followed.

17. These findings were challenged in a suit filed by the appellants, which claimed that they had absolute title to the property. No doubt, KIC's suit claimed injunction; its dismissal, if that were the only proceeding, would not have precluded a subsequent suit, claiming title. However, the fact here is that KIC was a respondent in the suit filed by the appellant (i.e., the 1995 Suit) which expressly sought the relief of declaration that the appellant was the absolute owner. It was in such a context that the question of 'ownership', which was directly in issue, in a proceeding, i.e., a suit, filed before a competent court, was decided. That decision ruled out KIC's ownership, holding that there was *"deemed cancellation of the grant of land"* before the High Court. All these facts were disclosed by KIC in the suit filed after this Court dismissed its civil appeal, thus rendering the judgment in the second appeal final. In these circumstances, the issue which remains is whether the trial court wrongly rejected KIC Suit-II, as found by the impugned judgment.

18. In *Anathula Sudhakar,* this Court outlined various situations in which a person claiming possession or injunction can claim relief. They are set out below:

> *"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."

19. In the present case, KIC no doubt sought only a permanent injunction in its first suit. However, it is a fact of equal importance that the appellants-herein consistently agitated KIC's title. KIC was a party to those proceedings. All the courts concurrently held that the grant, on which KIC based its possession, was deemed to be cancelled. Therefore, KIC could, by no procedure known to law, claim in another suit, that it was the absolute owner by virtue of the self-same grant, which was deemed to have been cancelled. The trial court therefore cannot be faulted with for holding that the question of title was directly in issue in the previous proceedings, and merely because it resulted in findings adverse to KIC, it could not escape being bound by those findings.

20. It is noticeable that the High Court, in the impugned judgment, has

considered *Vithalbhai (P) Ltd., v Union Bank of India*[11]where it has been held that a plaint can be rejected at any stage. Furthermore, it has also been ruled in *M. Nagabhushana v State of Karnataka & Others*[12] that the principle of *res judicata* is fundamental to the judicial system. Having regard to the above discussion, this Court is of the opinion that the impugned judgment (in holding that despite the fact that in the previous proceedings the issue of title stood concluded, the trail court had to proceed with the suit) is clearly in error.

21. For the above reasons, the impugned judgment is hereby set aside; the appeal is allowed, without order on costs.

….....J
[UDAY UMESH LALIT]

….....J
[S. RAVINDRA BHAT]

New Delhi;
December 8, 2021.

[11] (2005) 4 SCC 315.
[12] (2011) 3 SCC 408.