

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 28TH DAY OF SEPTEMBER 2007

BEFORE

THE HON'BLE MR.JUSTICE K.RAMANNA

R.F.A.NO.360/2003

BETWEEN:

R.MUNIRAJU
S/O.F.LATE SRI RAMAIAH
NOW AGED ABOUT 52 YRS.
R/AT.NO.499, 1ST MAIN
2ND BLOCK, KATHRIGUPPE
BANASHANKARI III STAGE
BANGALORE 560 085

.. APPELLANT

(BY SRI J.RANGARAJAN, ADV)

AND

1. SRI T.BALAKRISHNAM NAIDU
S/O.F.T.RANGAPPA NAIDU,
MAJOR, R/AT.NO.18
SY.NO.2, KATHRIGUPPE ROAD
BANASHANKARI III STAGE
BANGALORE 560 085, SINCE DEAD, BY L.RS:-

(a) SMT.PADMAMMA,
W/O.F. LATE SRI BALAKRISHNAM NAIDU
AGED 53 YRS,

(b) MR.GIRI,
S/O.F. LATE SRI BALAKRISHNAM NAIDU
AGED 36 YRS.

BOTH R/AT.NO.18
SY.NO.2, KATHRIGUPPE ROAD
BANASHANKARI III STAGE
BANGALORE 560 085

(c) SMT.SRIDEVI,
D/O.F.SRI BALAKRISHNAM NAIDU



W/OF.SRI SUBRAMANYA NAIDU
 AGED 33 YRS, R/AT.NO.116
 SAPTAGIRI NILAYA
 KEMPEGOWDA EXTENSION
 BSK III STAGE
 BANGALORE 560 085.

2. SMT.H.T.SHANTA BAI
 S/OF.SRI H.T.S.RAO
 MAJOR, NO.295, 16TH CROSS
 PALACE UPPER ORCHARDS
 BANGALORE 560 080

.. RESPONDENTS

(SRI R.NAGENDRA NAIDU, ADV. FOR R1(a-c),
 R2:SERVED)

R.F.A. IS FILED U/S.96(1) OF CPC AGAINST THE
 JUDGMENT AND DECREE DATED 9.1.2003 PASSED IN
 O.S.NO.955/88 ON THE FILE OF THE IX ADDL.CITY
 CIVIL SESSIONS JUDGE, BANGALORE (CCH.2)
 DISMISSING THE SUIT FOR DECLARATION, POSSESSION,
 PERMANENT INJUNCTION, MANDATORY INJUNCTION AND
 PAST AND FUTURE MESNE PROFITS.

THIS R.F.A. HAVING BEEN HEARD AND RESERVED
 FOR ORDERS, THIS DAY THE COURT PRONOUNCED THE
 FOLLOWING:-

J U D G M E N T

This is an appeal filed by the unsuccessful
 plaintiff questioning the correctness of the
 judgment and decree passed in O.S.NO.955/1988
 dated 9.1.2003 passed by the XIX Addl.City Civil
 and Sessions Judge, Bangalore City (CCH-2)



whereby the trial court dismissed the suit filed by the plaintiff for declaration, possession, permanent and mandatory injunction and for mesne profits and praying to set aside the same by allowing this appeal and to decree the suit.

2. For the sake of convenience and brevity, the rank of the parties are referred to as per their rank assigned in the trial court.

3. For the purpose of appreciating the rival legal contentions and find out whether the judgment and decree under challenge warrant interference, the brief facts are set out as under. The plaintiff-appellant is the owner of the suit schedule property bearing NO.18, situated at Vidyapeeta Nagar Layout (5th series), formed in SY.NO.2 of Kathriguppe Village. He purchased the suit schedule property from its previous owner Smt. Bhagavathi Raghavan pursuant to the sale deed dated 30.1.1987. Smt. Bhagavathi Raghavan had acquired the suit schedule property along with the adjoining properties under a registered sale deed dated 29.8.1963 from its



earliest owner i.e. Smt.H.T.Shanta Bai. Smt.H.T.Shanta Bai had acquired the larger composite property including the suit schedule property from its previous owner i.e Sri K.M.Gopala Reddy under a registered sale deed dated 28.1.1963 It is the further case of the plaintiff-appellant that original owner Sri K.M.Gopala Reddy was the hiduvalidar/khatedar of the entire extent of 2 acres 6 guntas in SY.No.2 of Kathriguppe village. Smt.Shanta Bai who is the second defendant/second respondent in this appeal purchased the entire extent, formed a private lay out through her husband Sri H.T.S. Rao who was her G.P.A. holder. After formation of the layout, she sold four sites namely, Site Nos.12,13,18 and 19 to Smt.Bhagavati Raghavan who upon purchase was exercising all acts of ownership. Site NO.18 alone is the subject matter of the suit/appeal. The layout plan has been appended to the sale deed dated 29.8.2963 executed by Smt.H.T.Shanta Bai in favour of Smt.Bhagavathi Raghavan. She was put in possession pursuant to the said registered sale deed. The plaintiff-appellant who was



negotiating to purchase the suit schedule property ever since from 1983 and at that point of time the vendor of the first appellant namely Smt.Bhagavathi Raghavan was a resident of Madras. So sale agreement was entered into on 21.3.1983 between the plaintiff-appellant and Smt.Bhagavati Raghavan and the power of attorney was also executed in favour of the plaintiff. The plaintiff was put in possession of the suit schedule property in part performance of the sale agreement executed by Smt.Bhagavati Raghavan in favour of the plaintiff. It is further case of the plaintiff-appellant that prior to purchase of the suit schedule property by him, there were certain legal proceedings pertaining to the suit schedule property. The vendor of the appellant-plaintiff Smt.Bhagavathi Raghavan filed a suit O.S.No.975/1983 against Sri Balakrishnam Naidu, defendant NO.1/respondent No.1 herein for the relief of permanent injunction and an order of temporary injunction was granted in the said suit on 19.4.1984 and the defendant herein challenging the said order filed MFA. NO.952/1984 which was finally allowed by an order of the High

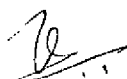


Court dated 14.1.1987. In the previous proceedings, Sri Balakrishnam Naidu had claimed to be in possession of the suit schedule property pursuant to the agreement of sale entered by him with the husband of Smt.H.T.Shanta Bai dated 15.9.1963. It is pertinent to note that Smt.H.T.Shanta Bai the respondent NO.2 herein had sold the plaint schedule properties to Smt.Bhagavathi Raghavan under a registered sale deed dated 29.8.1963 and the alleged agreement had come into existence subsequently i.e. on 15.9.1963. The suit schedule property has been reduced in size on account of formation of the road. After allowing the M.F.A. filed by the first respondent, taking advantage of the said order passed by this Court on 14.1.1987 in MFA 952/1984, the respondent NO.1 forcibly trespassed on the suit schedule property. The earlier suit filed by the vendor of the plaintiff is for permanent injunction and since the 1st defendant denied the title of the plaintiff's vendor, the plaintiff filed this suit seeking declaration of title along with other reliefs against defendant NOS.1 and 2 i.e. respondent NOS.1 and 2



respectively. Subsequent to filing of the suit in view of the order passed by the trial Court on preliminary issue NOS.5, 6, 9, 10 and 11, dated 22.8.1989 the appellant-plaintiff impleaded BDA as defendant No.3 and Muzarai department as defendant no.4, into the suit. Upon service of summons, defendant Nos.1 to 3 appeared through Counsel and filed written statement but defendant NO.4 was placed exparte and after filing written statement by the BDA the plaintiff again amended his plaint in view of the contention taken by the Bangalore Development Authority regarding acquisition of the plaint schedule property.

4. The contention taken by the 1st defendant is that there was no valid enforceable contract between plaintiff and defendant NO.2. He has taken further contention that the appellant-plaintiff is not the owner of the suit schedule property in view of the fact that the competent authority had already passed orders on 20.5.1965 in Appeal No.745/1966 (IA-B) on the file of the Mysore Revenue Appellate Tribunal, Bangalore, conferred occupancy right in favour of Maramma

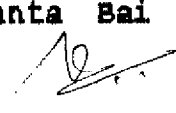


Devaru. The plaintiff's vendor had no right, title or interest in the suit property and the appellant-plaintiff is not the owner and he was never in possession of the suit property. He had never exercised right as a owner on the suit property. In fact, the first respondent-defendant No.1 is in continuous possession and enjoyment of the suit property which was upheld by the High Court in MFA.No.951 and 952/84. The appellant-plaintiff has concocted the documents and has filed a false and frivolous case against the defendants. In fact, the B.D.A. had acquired the property and the defendant had made an application before the B.D.A. for reconveyance of the suit property. The defendant is in undisturbed possession of the suit property over 25 years and has perfected his title over the property by adverse possession. The sale deeds on which the appellant-plaintiff is relying on are void and therefore he has no right, title or interest in the suit schedule property.

5. Whereas the second defendant who filed a separate written statement contending that the



appellant-plaintiff is not the owner and he was never in possession of the same and the sale deed executed by Smt.Bhagavathi Raghavan on 30.1.1987 in favour of the appellant-plaintiff is null and void. In fact, the suit property has been acquired by the third defendant i.e. B.D.A. in the year 1980 under final award passed by the Land Acquisition Officer and in that award she was directed to hand over physical possession on 14.11.1980. Therefore, the B.D.A. is also a necessary party. The physical possession of the property was never handed over to Smt.Bhagavathi Raghavan and Smt.Bhagavathi Raghavan was not at all present in the Office of the Sub Registrar at the time of registration of the sale deed. It is contended that in pursuance of the order passed by the Mysore Revenue Appellate Tribunal in Appeal NO.745/1966 (IA-B), dated 20th May 1968 setting aside the order granting occupancy right in favour of Sri Gopal Reddy, passed by the Special Deputy Commissioner for Inams Abolition. Therefore the sale deeds alleged to have been executed by Gopal Reddy in favour of the second defendant Smt.H.T.Shanta Bai and the sale deed



executed by the second defendant in favour of Smt.Bhagavathi Raghavan, vendor of the plaintiff are all null and void and the appellant-plaintiff has not at all derived any right, title or interest. In fact, the appellant-plaintiff filed a suit O.S.No.1111/1983 and after protracted litigation finally withdrawn the said suit knowing that he has no case.

6. The 3rd defendant filed the written statement contending that the appellant-plaintiff has not issued any statutory notice as required under Section 64 of the B.D.A. Act, 1976 before filing the suit. The land Sy.NO.2, Kathriguppa Village, measuring 2 Acres 6 Guntas is the subject-matter of the suit which had been notified for acquisition by the erstwhile CITB for formation of BSK III stage Layout as per the preliminary notification dated 9.5.1968, published in the Mysore Gazette dated 13.6.1968 and final notification dated 28.10.1971 which was published in the Mysore Gazette dated 25.11.1971. Smt.H.T.Shanta Bai, wife of Sri H.T.S. Rao was the notified khatedar and anubhavdar was



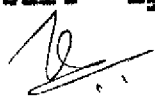
Venkatachalapathy. Therefore, the award has been passed which has been approved by the Special Deputy Commissioner, B.D.A. and the possession of the entire extent of land measuring 2 Acres 6 Guntas including the suit property has been taken by the 3rd defendant-BDA on 1.4.1981. More over, the BDA has already deposited the compensation on 23.4.1982. The award notices have been served on the notified khatedars. Therefore, neither the plaintiff nor the other defendants have any right, title or interest in the suit property. The plaintiff has not purchased the property and he is not at all the owner and is not in possession of the suit property. The 3rd defendant never permitted the second defendant to form a private layout. No approval was accorded for formation of private layout in SY.NO.2 of Katriguppa village and the suit property is not standing in the name of the appellant-plaintiff's vendor or anybody and the plaintiff's vendor or the second respondent have no right, title or interest to alienate the property. Hence, prays for dismissal of the suit.



7. On the basis of the available pleadings and the case put forth by both parties, the trial court framed the following issues:-

"(1) Whether the plaintiff proves his title to the suit schedule property, at Survey NO.2 was Inam land and the occupancy rights were given to K.M. Gopala Reddy by Special Deputy Commissioner by his order dated 25.1.1960 and K.M.Gopala Reddy sold it to the 2nd defendant by a registered sale deed dated 8.1.1963 and the 2nd defendant's husband formed private layout and site Nos.12,13,18 and 19 were sold to Smt.Bhagavathi Raghavan by a sale deed dated 29.5.1963 and the husband of 2nd defendant executed a Power of Attorney and agreement to sell in favour of the plaintiff dated 21.3.1983 and gave possession also to plaintiff and the plaintiff and put structure also as alleged?

(2) Whether the plaintiff proves his lawful possession of the suit property till 14.1.1987 and that plaintiffs vendor Smt.Bhagavathi Raghavan had filed suit against the first



defendant in O.S.No.975/83 and temporary injunction was granted and the same was vacated in MFA 952/84 on 14.1.1987 and thereafter the first defendant trespassed in February 1987 and put up temporary structures as alleged?

(3) Whether the plaintiff proves that having put up construction had leased the godown on rental of Rs.300/- per month and therefore he is entitled for mesne profits from February 1987 as claimed?

(4) Whether the plaintiff proves that the 2nd defendant has created and concocted an agreement of sale in favour of 1st defendant dated 15.9.1983, subsequently to plaintiffs transaction and therefore it is not binding on him as alleged?

(5) Whether the defendants prove that the sale deed in favour of Smt.Bhagavathi Rahavan dated 28.1.83 by Gopala Reddy and the agreement dated 29.5.83 in favour of the plaintiff by the husband of 2nd defendant and so also the sale deed



by Smt.Bhagavathi Raghavan dated 30.1.1987 in favour of plaintiff are all null and void as violative under Urban Ceiling Act and as no sales could be effected of revenue sites as alleged?

(6) Whether the defendants prove that the occupancy right in favour of Gopal Reddy by special Deputy Commissioner was set aside and the same was granted to Maramma Devaru by order dated 20.5.1968 as alleged?

(7) Whether the defendants prove that the first defendant was in actual possession of site NOS.12 and 19 right from the date of agreement of sale in his favour viz., from 1963 till the Bangalore Development Authority acquired and took possession in 1980 as alleged?

(8) Whether the defendants prove that Smt.Bhagavathi Raghavan was not given possession at any time and so also Smt.Bhagavathi Raghavan had not given possession to plaintiff and these facts are concluded in MFA 952/84 and in Writ Petition filed by the defendant against BDA not



to demolish the structure in 1987 and hence the suit is hit by principles of Resjudicate as alleged?

(9) Whether the defendants prove that the present suit is hit by Order 2 Rule 2 or the Principles of Estoppel as the plaintiff had filed OS.No.1111/83 against the second defendant's husband and another as alleged?

(10) Whether the defendants prove that the suit is bad for non-joinder of necessary party viz., BDA as alleged?

(11) Whether the defendants prove that the valuation for the purpose of Court fee not correct and the same has to be paid on market value as alleged?

(12) Whether the defendants prove that they have perfected their title by adverse possession as alleged?



(13) Whether the plaintiff is entitled to the reliefs sought?

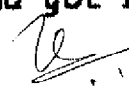
(14) What decree or order?"

ADDITIONAL ISSUES:-

"(1) Whether the suit property has been validly acquired for the SDA and possession was also taken and the plaintiff has no right over the suit property?

(2) Whether the plaintiff proves that the scheme has become legally inconsequential and has lapsed under the provisions of Sec.36 of the SDA act?"

8. To prove their respective contentions, the appellant-plaintiff examined himself as PW.1 and got marked 57 documents as Exs.P-1 to P-57 whereas defendant NO.3 examined DW.1 and DW.2 and got marked Exs.D-1 to D-32. The defendant NO.1 examined Dws.3, 4 and 5 and got marked Exs.D-1 to D-18.

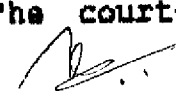


9. After considering the oral and documentary evidence placed on record and also the arguments advanced by both sides, the trial Court recorded its findings on the aforesaid issues as under:-

Issue Nos.1, 2, 5, 7, 8, 11 and 13 in the negative, Issue NOS.3 and 4,9 and 10, 12 does not survive for consideration, Issue No.6 in the affirmative, Issue NO.14 as per final order and additional issue Nos.1 and 2 in the negative.

10. Heard the arguments of the learned Counsel for the appellant-plaintiff Sri J.Rangarajan and Sri R.Nagendra Naidu, Advocate for R-1(a) to (c).

11. It is contended by the learned Counsel for the appellant that the trial court grossly erred in not fully reading/appreciating the implication of the order dated 22.8.89 while answering issue NOS.5, 6, 9, 10 and 11 as preliminary issues. The court-below failed to



appreciate whether the issue No.5 pertains to the implications of Urban Land Ceiling Act on the sale deed. While answering issue NO.6 as Preliminary Issue, the court-below has given the finding that in the absence of Marammadevaru, the suit cannot be proceeded and the court-below specifically directed the plaintiff to implead BDA and Muzarai department who claim alleged title to the suit schedule property. Although issue NO.6 was held in favour of respondent-defendant, Court-below has categorically come to the conclusion that it is for the Marammadevaru to challenge the previous sale deed of the plaintiff. The trial Court misdirected itself in reading and misinterpreting its own order dated 22.8.1989 passed on preliminary issues raised in the suit. The Trial Court erred in not noticing the fact that Gopala Reddy who was the hiduvalidar of the land Sy.NO.2 measuring 2 Acres 6 Guntas of Katriguppe village sold the said land to respondent No.2-defendant No.2 Shanta Bai on 28.1.1963. Subsequently Shanta Bai formed Layout through her husband and sold the suit schedule property to Bhagavathi Raghavan on 29th August



1963 and these transactions took place when Gopala Reddy had absolute title with reference to the entire extent of the land in question. Alleged title of Marammadevaru if at all had accrued on 25.1.1968 being the date of the order of the Mysore Appellate Tribunal and that by the time Tribunal passed orders granting occupancy rights in favour of Maramma Devaru, the government had already issued a preliminary notification in 1968 for acquisition of these lands. Therefore, judgment and decree passed by the Tribunal is legally inconsequential. As per the direction of the trial court, the appellant-plaintiff impleaded Marammadevaru as a necessary party but it remained unrepresented. It is further contended that Maramma Devaru never preferred a claim before the Land Acquisition Officer. The contentions of the defendants 1 and 2 that they have perfected their title by adverse possession over the suit schedule property is incorrect. Therefore, the finding recorded by the courts-below is incorrect and illegal and capricious. Hence the Counsel for the appellant prays that the appeal be allowed by decreeing



the suit filed by the appellant-plaintiff. In support of his contention, learned counsel for the appellant-plaintiff relied on the following decisions:-

a) (1994) 6 SUPREME COURT CASES PAGE 591
(THAKUR KISHAN SINGH (DEAD) .v. ARVIND KUMAR
wherein it has been held as follows:-

"HEAD	NOTE	C:-Limitation
Act, 1964,		Art. 65-Adverse
Possession-	When	initial
	possession is	under a license or
	is permissive,	burden lies on the
	person claiming	adverse possession
	to establish by	cogent evidence
	that the possession	became adverse
- Finding of	the appellate court	
that possession	was not adverse,	
cannot normally	be interfered with	
in second appeal."		

On the very point, learned Counsel for the appellant relied on another decision rendered by this Court in the case of MARCEL LOUIS .v. THE STATE OF KARNATAKA (2001 (3) KCCR 1585) with regard to plea of adverse possession against



Government in respect of kumki land in Dakshina Kannada district, wherein it has been held as follows :-

"The use and possession of the land, namely, kumki land, is always in the nature of permissive privilege of the holder of patta land. That being permissive in nature, in my opinion, no doubt, it can be said that, the person entering into permissive possession or user of the land is debarred from claiming title by adverse possession to the land, in the enjoyment of which he has been in permissive nature".

Therefore, findings recorded by the trial court in dismissing the suit is incorrect and illegal. Therefore, the appeal be allowed and judgment and order of the trial Court be set aside.

12. On the other hand, learned Counsel for the respondent submitted that under the MYSORE (PERSONAL AND MISCELLANEOUS) INAMS ABOLITION Act, 1954, according to Sections 10 and 13, Civil Court



has no jurisdiction to entertain a suit for declaration of the title or possession of the land vested in government- To attract section 13, conversion of land before vesting not being void or illegal essential. In this regard, the Counsel for the respondent relied on a decision reported in case of KRISHNAMURTHY .v. HEMANNA reported in ILR 1987 KAR 1466. Therefore, since the land in question is a devadai inam land, any hiduvali patra or hakku patra granted in favour of Gopala Reddy to the extent of 2 Acres 6 Guntas of SY.NO.2 of Katriguppe village is illegal and the trial court is right in dismissing the suit. Learned Counsel for the L.Rs. of respondent NO.1 further contended that the L.Rs. of respondent NO.1 are in settled possession. They cannot be disturbed without recourse to law. Settled possession gives right to possession such that even the rightful owner may only recover it by taking recourse to law. The maxim "possessio contra omnes valet practer eum cui ius sit possession" i.e. he that hath possession hath right against all but him that hath the very right. It is further argued that the person in



peaceful possession is entitled to retain his possession and in order to protect such possession, he may even use reasonable threat to keep out the trespasser. In support of his contention he relied on a decision reported in (2004) 1 SCC 769 in case of RAME GOWDA (DEAD) BY L.RS. vs. M.VARADAPPA NAIDU (DEAD) BY L.RS. AND ANOTHER. It is argued that under Section 3(1)(g) of the Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 wherein it has been held as follows:-

"Vesting of Inam Land in the State :-

Right of a person in possession of land as a tenant, vesting of inam land not to be dispossessed as an occupant of the land or to be continued as a tenant where a person claiming to be a tenant is still in possession of the land and his application for registration of occupation of the land is pending decision before the authority, the state government was not justified in transferring the land to the industrial area."



Further it is contended that since the said K.M.Gopal Reddy was not the absolute owner of the land in question, disposing of the said land by the said K.M. Gopal Reddy in favour of third party by way of agreement or sale deed, cannot be permitted. Hence he prays for dismissal of the appeal.

13. Having heard the arguments of the learned Counsel for both parties, the point that would arise for my consideration is:-

"(1) Whether the findings recorded by the court-below are perverse, incorrect and illegal both on facts and on law?

2) Whether the judgment and decree of dismissing the suit filed by the appellant-plaintiff calls for interference?"

14. According to the appellant that land SY.NO.2 measuring 2 Acres 6 Guntas of Katriguppa village was initially granted to one Gopala Reddy



and he was cultivating the said land as a hiduvalidar. Hakkupatra/hiduvalipatra was granted in his favour by the special Deputy Commissioner by order dated 25.1.1960 and the said land was sold by him to second defendant herein Smt.H.T.Shanta Bai by registered sale deed dated 28.1.1963 and in turn the husband of second defendant formed a layout in the said land and site Nos.12,13, 18 and 19 formed in the said land were sold to Smt.Bhagavathi Raghavan. Smt.Bhagavathi Raghavan and her husband entered into an agreement to sell in favour of the plaintiff and also executed a General Power of Attorney on 21.3.1983, parting with possession to the appellant-plaintiff. Subsequently sale deed came to be executed in favour of the plaintiff on 30.1.1987 and the appellant-plaintiff who had purchased the suit schedule property from Smt.Bhagavati Raghavan constructed the said structure which is in his possession but subsequently during 1987 he was ousted from the possession of the property on the strength of the order passed by this Court in MFA Nos.951 and 952 of 1984, dated 14.1.1987 but the trial court has

not taken into consideration this fact as well as the documents produced by the appellant-plaintiff. Ex.P-1 is the sale deed executed by Smt.Bhagavathi Raghavan in favour of plaintiff. Ex.P-2 is the sale deed executed by Sri K.M.Gopal Reddy in favour of Smt.H.T.Shantha Bai-2nd respondent herein. Ex.P-3 is the sale deed executed by the 2nd respondent in favour of vendor of the plaintiff Smt.Bhagavathi Raghavan. Ex.P-4 is the Power of Attorney in favour of plaintiff executed by his vendor. Exs.P-5 and P-6 are the encumbrance certificates, Exs.P-7, P-8 and P-9 are the tax paid receipts. Exs.P-10 and P-11 are the index of land and record of rights standing in the name of vendor of the plaintiff Smt.Bhagavathi Raghavan. Ex.P-12 is the Survey Settlement Record. Ex.P-13 is the revenue tax paid receipt in the name of plaintiff. Ex.P-14 is the receipt issued by Smt.Shantha Bai and Sri H.T.S.Rao to Smt.Bhagavathi Raghavan. Ex.P-2 is the sale deed in favour of the 2nd defendant-respondent executed by Sri K.M.Gopal Reddy through which the 2nd defendant is claiming right over the property. Ex.P-3 is the sale deed executed by the 2nd



defendant-respondent Smt.Bhagavathi Raghavan which document has not been disputed either by the 1st defendant or the 2nd defendant and from a plain reading of Ex.P-3 and also the amended written statement filed by the second defendant, it is clear that in pursuance to the said sale deed, possession of the suit property was handed over to Smt.Bhagavathi Raghavan, the vendor of the plaintiff. Ex.P-14 is the receipt issued by the 2nd defendant in lieu of the sale transaction which further makes it clear that the said sale deed is for consideration and not a nominal one. Further it is not the case of the 2nd defendant or the 1st defendant that the said sale deed executed by Smt.Shantha Bai in favour of Smt.Bhagavathi Raghavan is void or otherwise invalid in law. Thus it is clear that the 2nd defendant when once sold the property to the vendor of the plaintiff and delivered possession to her, she cannot now contend that the said sale deed is void in view of subsequent order of the Land Tribunal or the acquisition of the property by the Bangalore Development Authority. When once she has sold the property in favour of Smt.Bhagavathi Raghavan for

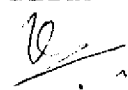


consideration, she lost all her right over the property. As such, she has no locus standi to question the title of the plaintiff who has purchased the said property from Smt. Bhagavathi Raghavan under a registered sale deed.

15. Though the Mysore Appellate Tribunal is said to have set aside the order of grant made in favour of K.M. Gopal Reddy and granted the said land to Maramma Devaru and also that the preliminary notification passed by the Government acquiring the said land but as on the date of the order passed by the Tribunal or on the date of Preliminary Notification passed by the Government, the 2nd defendant is not at all having any right over the property. As such the 2nd defendant and also the 1st defendant who are claiming the property through 2nd defendant, gets no right over the property. The plea of adverse possession raised by the parties is also not available to them. The defendants have not placed any reliable documents to show that they were in continuous and uninterrupted possession of the suit schedule property adverse to the interest of the plaintiff



or to the interest of 3rd or 4th defendant. On the other hand, the plaintiff-appellant has produced sufficient documents to prove his ownership and possession over the suit schedule property. Exs.P-20 to P-23 are the receipts issued by BWSSB. Ex.P-24 is the sketch. Exs.P-25 to P-26 are the receipts issued by KEB. Ex.P-28 is the police complaint lodged by BDA against the plaintiff. Exs.P-29 to P-31 are the records issued by the Village Panchayat. All these documents clearly indicate the possession of the plaintiff over the suit schedule property. So also correspondence from the Office of Tahsildar at Exs.P-32 to P-34, orders passed by the Bangalore Development Authority for demolition of the unauthorised construction put up by the plaintiff over the suit schedule property at Exs.P-35 to P-36 and the correspondence made by the plaintiff with the Bangalore Development Authority and the orders passed by the Bangalore Development Authority and Bangalore Mahanagara Palike at Exs.P-44 to P-52, prima facie demonstrate that the plaintiff is exercising acts of ownership over the suit property. Thus it is clear that the plaintiff is



in possession of the suit schedule property ever since 1983 till 1987. The plaintiff has also paid the deficit stamp duty and registration fee on the sale deed Ex.P-1 as per certificate issued by the undervaluation authority Ex.P-53. The possession of the 1st defendant is only subsequent to the order passed by this Court in MFA 951-952 of 1984, dated 14.1.1987 and the same cannot be treated as adverse to the interest of the plaintiff-appellant. In this regard, the decision relied upon by the learned Counsel for the appellant reported in (1994) 6 SCC 591, in case of THAKUR KISHAN SINGH (DEAD) .v. ARVIND KUMAR (referred supra) is aptly applicable to the case on hand. As such the possession of the respondents is only permissive in nature and they cannot claim adverse possession against appellant. It is curious to note that as per Ex.P-39 Voters' List the first defendant is said to be a resident of Chittur Taluk, Andhra Pradesh. More over, as per Ex.P-56 letter issued by the 2nd defendant and Ex.P-57 paper publication issued by the second defendant regarding cancellation of GPA, executed by 2nd defendant in favour of 1st defendant in respect of



suit schedule property. It is clear that the 1st defendant who initially claimed right over the property through 2nd defendant has now lost all his right over the suit property and in view of the cancellation of GPA which was executed by 2nd defendant in his favour in respect of the suit property, the 1st defendant has no locus standi to question the right, title or interest of the plaintiff-appellant and he cannot claim any individual right over the property. He even cannot claim adverse possession against the plaintiff or against the 2nd defendant.

16. Coming to the alleged order dated 20.5.1968 passed by the Mysore Revenue Appellate Tribunal in Appeal No.745/1966 (LA-B) setting aside the order granting occupancy right in favour of K.M.Gopal Reddy passed by the Special Deputy Commissioner (Inam Abolition) dated 25.1.1960, the trial Court heavily relied on this document though the same has not been marked or exhibited through competent witness and came to a wrong conclusion in dismissing the suit of the plaintiff-appellant which is incorrect and illegal. In fact the said



order of the Mysore Appellate Tribunal came to be passed subsequent to preliminary notification dated 9.5.1968 issued by the Government acquiring the said land for the use of CITB, now Bangalore Development Authority. As such the order of the Tribunal is wholly inconsequential. The sale deed in favour of plaintiff came to be executed even before the order passed by the Mysore Appellate Tribunal. More over, when the notice has been sent by the Land Acquisition Officer, CITB to the Maramma Devaru in whose favour the Appellate Tribunal passed orders granting occupancy rights, it failed to appear before the Land Acquisition Officer and has not participated in the proceedings before the Land Acquisition Officer, CITB and the award came to be passed in its absence. As such the right, if any, of the Maramma Devaru is lost and the land is vested in the Bangalore Development Authority in view of the acquisition proceedings. More over, even subsequent to the said award passed by the Land Acquisition Officer, even after a lapse of almost 35 years, the said Maramma Devaru has not raised any claim before any authority claiming right over



the said property. As such the said Maramma Devaru has lost its all rights, title and interest, if any.

17. The BDA with whom the property is now vested has no objection for the suit being dismissed against them. In fact the Bangalore Mahanagar Palike has recognised the ownership and issued the Khatha in the name of the plaintiff and the records produced by the BDA itself demonstrate that no layout had been formed in Sy.NO.2 of Kathriguppe village. More over, as could be seen from Exs.P-44 and P-45 Bangalore Mahanagara Palike has collected betterment charges from the plaintiff. Ex.P-47 is the assessment order issued by the Bangalore Mahanagara Palike, Exs.P-48 and P-49 are the tax paid receipts in respect of the said schedule property. Ex.P-50 is the assessment register extract. Exs.P-51 and P-52 are the encumbrance certificates in respect of suit schedule property. From all these it is clear that the appellant-plaintiff is exercising acts of ownership on the suit schedule property but the trial Court without considering the oral and



documentary evidence placed on record by both the parties came to a wrong conclusion only by relying on the unexhibited document i.e. the order passed in Appeal NO.745/1966 (LA-B), dated 20.5.1968 and passed the impugned order which is perverse, incorrect and illegal. Therefore the same deserves to be set aside.

18. Considering the fact that the Maramma Devaru has abandoned its rights over the suit schedule property and that the plaintiff-appellant is in possession of the suit schedule property ever since the date of agreement of sale entered into by him with his vendor Bhagavathi Raghavan during 1983, except during 1987 when the defendants trespassed into the suit schedule property on the strength of the order passed by this Court in MFA Nos.951-952/1984 and continued in possession of the suit schedule property as a person under permissive possession and also considering the fact that the BDA has accepted and recognized the right of the plaintiff-appellant over the suit schedule property and collected betterment charges from the appellant



and he is paying taxes to the authorities. The suit filed by the appellant-plaintiff is required to be allowed by setting aside the order passed by the trial Court.

19. For the foregoing reasons, the appeal is allowed. The judgement and decree dated 9.1.03 passed in O.S.No.955/1988 on the file of the IX Addl.City Civil and Sessions Judge, Bangalore is hereby set aside. The suit filed by the plaintiff-appellant is decreed as prayed for and the matter is remitted back to the trial court.

Sd/-
Judge

GS

Contd..

KRMJ:
8-10-2007

ORDER ON 'BEING SPOKEN TO'

It is seen that this Court while pronouncing the order, a typographical error has crept in, in the operative portion of the judgment stating that the matter has been remanded to the trial Court. The said part of the operative portion of the judgment requires to be deleted.

Accordingly, the corrected operative portion of the judgment reads as under:

"For the foregoing reasons, the appeal is allowed. The judgement and decree dated 9.1.03 passed in O.S.No.955/1988 on the file of the IX Addl.City Civil and Sessions Judge, Bangalore is hereby set aside and the suit filed by the plaintiff-appellant is decreed as prayed for".

Sd/-
Judge