

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.1220 OF 2006

HANUMESH

Appellant(s)

VERSUS

CHANNAMMA

Respondent(s)

O R D E R

This appeal has been filed against the judgment dated 21.12.2005 of the High Court of Karnataka at Bangalore in RSA No.566 of 2001.

The RSA was filed by the plaintiff. The High Court vide impugned judgment has allowed the Regular Second Appeal setting aside the decree of the trial Court. High Court further held that defendant's right, if any, is on the eastern side of the portion, only 3 guntas. Defendant, aggrieved by the judgment of the High Court, has come up in this appeal.

The parties shall be referred to as described in the plaint. The plaintiff filed Original Suit No.610/89 praying for decree of declaration and permanent

injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the suit land. There were certain other prayers in the plaint. Schedule property described in the plaint was Survey No.315, measuring 1 acre 3 guntas. The plaintiff's case, in the plaint, was that plaintiff's husband Hanuma @ Hanumegowda was in possession and enjoyment of the land bearing 1 acre 3 guntas in Survey No.315 till his death. It was further pleaded that formerly Survey No.315 measured 3 acre 8 guntas out of which 5 guntas belongs to one Nathegowda the grand-father of the defendant and the remaining land belongs to the plaintiff's husband. It was further pleaded that out of 3 acre 8 guntas an extent of 2 acre 2 guntas was taken over for the purpose of excavating Iruvin Nala by the then Mysore Government by notification dated 22.04.1933. It was further pleaded that defendant or his ancestors in no way related to the plaintiff's family. It was pleaded that revenue records like Pasalu Pahani from the year 1954 to 1969 shows that the plaintiff's husband was the owner in possession of 1 acre 3 guntas and defendant's ancestors owned only 3 guntas until 1969. It was further pleaded that revenue records were corrected in 1968 in mechanical manner without any verification. When it came to the knowledge of the plaintiff, she submitted an application to the Tahsildar to correct the wrong entry. Ultimately, the matter was decided by the Commissioner with an

observation that entries made in record of rights by the official is wrong and the same has been written without applying the mind. It was observed that it is a matter to be decided by the Civil Court. The petition was dismissed ordering to keep the khata in joint until the matter is adjudicated by the Civil Court. The plaintiff pleaded that defendant attempted to cut and remove the standing paddy and sugarcane crop grown by the plaintiff, hence cause of action arose for filing of the suit.

The defendant filed written statement and denied the plaintiff allegations that defendant has only 3 guntas land in the Survey No.315. It was pleaded that the defendant's ancestors were joint owner in possession and enjoyment of the entire land comprised in serial no.315. 2 acres and 2 guntas was acquired for the purpose of Irvin Cannal. It was further pleaded that about 32 to 33 years back, the father of the defendant and the husband of the plaintiff orally divided the said extent of land i.e. 1 acre 6 guntas in the suit schedule property. In the said oral division the eastern half portion fell into the share of the defendant's father and the remaining western half fell into the share of the plaintiff's husband. An additional written statement was also filed claiming right on the basis of the continuous adverse possession. It was pleaded that by law he has matured right of adverse possession. The trial Court came to the

conclusion that plaintiff has proved that she is owner of the suit property only in respect of western half portion and with regard to possession also the same finding was returned. Other issues were decided against the plaintiff. The trial Court noticed the documentary evidence, produced by parties. The notification, which was issued by the Government under Sections 4 and 6 of the Land Acquisition Act i.e. notification dated 13.06.1933, were also referred to. The trial Court gave much emphasis that no phode numbers were mentioned in pasalu pahanies Ex.P12 to P21, how can they be relied as correct. The argument of learned counsel for the defendant was accepted. Trial Court ultimately dismissed the suit of the plaintiff for other reliefs against which first appeal was filed by the plaintiff. Trial Court decreed the suit partly by passing following decree:

"The suit of plaintiff is hereby partly decreed declaring that the plaintiff is the owner in possession of western half portion of the suit schedule land in S.N.315 of Yeliyur village. So far as the relief in respect of permanent injunction and alternative relief of possession and mesne profits, the suit of the plaintiff is dismissed. Considering the facts and circumstances of the case, I direct the parties to bear their own costs.:"

The First Appellate Court also observed that plaintiff in her pleadings has not stated as to when the property was phoded and what was the numbers given to

suit schedule property out of which her husband was in possession and enjoyment of the property. First Appellate Court observed that it was for the plaintiff, who has come before the Court, to prove her possession and to prove that her husband has acquired the suit schedule property under a valid deed or from his ancestors. First Appellate Court observed that except the entries from the preliminary records and subsequently in the record of right and RTC and pahani extract no source of title has been produced by the plaintiff to prove her exclusive possession. Court further observed that both plaintiff and defendant have not proved source source of title in suit survey number. Court held that plaintiff did not prove that they are in exclusive possession. The decree passed by the trial Court was affirmed.

The plaintiff aggrieved by the judgment of First Appellate Court filed Regular Second Appeal.

The High Court by the impugned judgment has set aside decree passed by the trial Court and held that defendant has rights, if any, only on the eastern side of the portion i.e. 3 guntas. The High Court has noticed in the judgment about the notification issued by the Land Acquisition Authorities where Survey No.315 was divided in four portions totaling 3 acres 8 guntas. The High Court observed that on the reading of those documents

that the property to the extent of 3 guntas stand in the name of Nathegowda, the father of the defendant, and 3 acre 8 guntas in the name of husband of the plaintiff.

High Court in paragraph 12 made following observation:

"12.....Both the Courts below committed an error in not looking earlier set of documents Ex.12 to 23, Ex.P2, which indicates sub-division and for nearly more than 10 years to the property to the extent of 1 acre 3 guntas standing in the name of the plaintiff's husband, defendant's father (sic) subsequently document should have been manipulated. Under such circumstances, both the courts below ought to have considered this aspect and pass order."

After making the above observation, the High Court allowed the appeal. Paragraphs 13 and 14 of the High Court judgment are as follows:

"13. The learned counsel for the respondent relied upon the judgment reported in AIR 99 SC 1809, which is of no help to him. Several of the documents produced by the plaintiffs from the year 1932 and thereafter from 59-60 and 68-69 indicated the fact that the husband of the plaintiff was in possession to the extent of 1 acre and defendant's father to the extent 3 guntas and under such circumstances, the relevant records have to be taken note of. The plaintiff established her right and title and both the courts below committed an error in not appreciating the relevant documents, which calls for interference and substantial question is to be answered in favour of the appellant.

14. For the foregoing reasons:-

i) The appeal is allowed and the judgment and decree passed by the Trial Court is set aside.

ii) The defendant's rights if any on the Eastern side of the portion is only 3 guntas.

iii) Parties to bear their own costs."

Learned counsel for the appellant challenging the judgment of the High Court contends that High Court committed error in confining rights of the defendant only to 3 guntas land. He submitted that the plaintiff and defendant from last several generations were in joint possession of the property. He submitted that High Court without adverting to the documents, which were relied by the trial Court as well as the First Appellate Court, has set aside both the judgments. He further submitted that defendant was in possession of half of the 1 acre 2 guntas land.

The submission of the learned counsel for the appellant has been refuted by the counsel for the respondent. Counsel for the respondent contended that in the revenue records, it was the plaintiff's husband whose name was recorded on 1 acre 2 guntas land, as was pleaded in the plaint. It is further submitted that subsequently 68-69 entires were unauthorizedly corrected, which was challenged by the plaintiff before the Tahsildar and ultimately it was observed that parties may get their rights settled, hence suit was filed. It is submitted that defendant has no relation with the plaintiff and even in the notification which was issued under Section 4

of the Land Acquisition Act, they were shown to have 8 guntas land in 315/2. It is true that plaintiff in plaint schedule property has described the Survey No.315 but pleadings are to be taken as a whole and the material on record indicates that what was referred was as 315 prior to its sub-division. Sub-division of the 315 was matter of record which was reflected even in notification issued under Section 6, hence the Court ought to have considered relevant revenue records and other materials in its right perspective. It is submitted that High Court has rightly held that defendant has only 3 guntas of land out of 1 acre 2 guntas and High Court has not committed any error in allowing the Regular Second Appeal filed by the plaintiff.

We have considered the submissions of learned counsel for the parties and perused the record.

A perusal of the judgment of the High Court indicates that although High Court has observed (as extracted above) that both the Courts below committed error in not appreciating the relevant documents i.e. documents produced by plaintiffs. High Court observed that both the Courts below ought to have considered this aspect and passed order. However, after making above observation, High Court did not proceed to consider those documents

nor has remitted the matter for fresh consideration, rather allowed the appeal.

We are of the view that if the High Court was of the opinion that Courts below have not properly considered documentary evidence, course open was, either to remit the matter for fresh consideration or High Court ought to have itself considered the documents and form its opinion. There were sufficient materials by way of documentary evidence as well as oral statement of the parties, which throw considerable light on the rights of the parties. We will only refer to the notification dated 13.06.1933 issued by the Government, where Survey No.315 has been described in four sub-division i.e. 315/1, 315/2, 315/3 and 315/4.

We are of the view that ends of justice be served in setting aside the judgment of the High Court and remitting the matter to the High Court for fresh consideration, we direct so. High Court may decide the Regular Second Appeal afresh, in accordance with law, after hearing the parties. We make it clear that we have not expressed any opinion on merits of the case and it is for the High Court to consider the evidence and take appropriate decision in accordance with law. The matter being of the Second Appeal, having been decided in the year 2001, more than 17 years having been passed, we are

of the view that the High Court may endeavour to dispose of the Second Appeal as early as possible, preferably within one year.

The appeal is, accordingly, disposed of.

.....J.
(ASHOK BHUSHAN)

.....J.
(K.M. JOSEPH)

New Delhi
February 14, 2019

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).1220/2006

HANUMESH

Appellant(s)

VERSUS

CHANNAMMA

Respondent(s)

Date : 14-02-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHUSHAN
HON'BLE MR. JUSTICE K.M. JOSEPH

For Appellant(s)

Mr. Karunakar Mahalik, Adv.
Mr. B. Vishwanath Bhandarkar, Adv.
Mr. Sarbendra Kumar, Adv.
Ms. Rumi Chanda, Adv.
Mr. V. N. Raghupathy, AOR

For Respondent(s)

Mrs. Rajani K. Prasad, Adv.
Mr. C. V. Subba Rao, AOR

UPON hearing the counsel the Court made the following
O R D E R

Appeal is disposed of in terms of the signed order.

Pending application(s), if any, stands disposed of.

(ARJUN BISHT)
COURT MASTER (SH)

(RENU KAPOOR)
BRANCH OFFICER

(signed order is placed on the file)