

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1819 OF 1998

CHIKKAPUTTEGOWDA

.... APPELLANT

VERSUS

EREGOWDA

.... RESPONDENT

O R D E R

The judgment of the High Court made in the second appeal, reversing the concurrent findings of fact recorded by the two courts below, is under challenge in this appeal, brought by the defendant. The plaintiff filed suit for declaration and injunction in respect of the land Sy.No. 107/2B totally measuring 1 acre 33 guntas claiming to have purchased the said land on 2.6.1941. The Trial Court dismissed the suit after trial holding that the sale deed which was the foundation for claim of the plaintiff showed that area of only 1 acre 12 guntas in the said land was purchased not 1 acre 33 guntas and the occupancy rights granted in favour of the plaintiff for 1 acre 33 guntas could not be accepted merely on the basis of endorsement made by the Tehsildar without anything more to show that there was a proper inquiry and the competent Authority granted occupancy rights. The plaintiff filed

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the first appeal challenging the validity and correctness of the judgment and decree passed by the Trial Court. The First Appellate Court dismissed the appeal. It may be stated here that the First Appellate Court accepted the plea of the plaintiff that the occupancy rights were granted in respect of 1 acre 33 guntas over the land in question as against the finding on this aspect by the Trial Court, but, however, the First Appellate Court recorded a finding accepting the plea of the defendant based on adverse possession. The Appellate Court held that the occupancy rights were granted against 1 acre 33 guntas and the defendant established that he perfected his title by adverse possession to the extent of 1 acre 12 guntas of land. The plaintiff filed the second appeal before the High Court. The High Court allowed the appeal and set aside the judgment and decree of both the courts below and decreed the suit as prayed for.

The learned counsel for the appellant contended that admittedly the sale deed was executed in the land in question to the extent of only 1 acre 12 guntas showing in the sale deed itself that there was some remaining area in the land towards East; no efforts were made for rectification of the sale deed; if the plaintiff was really serious with what was purchased was

1 acre 33

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guntas, he would not have waited to file suit for 40 years, i.e., till 30.04.1982; even after the so called grant of occupancy rights on 31.1.1957, suit was not filed immediately. The learned counsel further submitted that the Trial Court and the First Appellate Court found that the defendant was in possession of 21 guntas of the said land. The High Court committed a serious error in decreeing the suit for injunction also. He added that the plaintiff could not get the title for more than 1 acre 12 guntas under the registered sale deed.

Per contra, the learned counsel for the respondent-plaintiff made submissions supporting the impugned order pointing out that the only substantial question of law raised was in relation to the adverse possession of the appellant-defendant on the property in question.

We have considered the submissions made on either side. We find it difficult to sustain the impugned judgment of the High Court. The High Court could not have negatived the plea of the appellant as regards his possession over 21 guntas of land as against the finding of fact of both the courts below. The High Court also committed an error in granting declaration in favour of the plaintiff for entire extent of 1 acre 33 guntas when the sale deed itself was confined to 1 acre 12 guntas. The High Court has failed to see that no efforts were made

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by the plaintiff to get rectification of the sale deed for long time. However, if the plaintiff

ff had really the case, there was no reason for him to wait for long 40 years to file the suit , at any rate, more than 25 years from the date of alleged granting of occupancy rights. When the plaintiff failed to establish his title and possession over 21 guntas of land, the defendant, perfecting his title by adverse possession did not arise. He continued to have title and possession over the disputed 21 guntas of land.

Thus, viewing from any angle, as already stated above, the judgment of the High Court cannot be sustained. In this view, the appeal is entitled to succeed. The impugned judgment is set aside and the judgment and decree passed by the First Appellate Court, affirming the order passed by the Trial Court, is restored.

The appeal is allowed. No costs.

.....J.
(SHIVARAJ V. PATIL)

.....J.
New Delhi, (D.M. DHARMADHIKARI)
November 20, 2003.

ITEM No.104

Court No. 9

SECTION IVA

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. 1819/1998

CHIKKAPUTTEGOWDA

APPELLANT (S)

VERSUS

EREGOWDA
(With office report)

RESPONDENT (S)

Date : 20/11/2003 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s)
Mr. P.R. Ramasesh, Adv.

For Respondent (s) Ms. Hetu Arora, Adv.
for Mr. S.R. Bhat, Adv.

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

Mr. P.R. Ramasesh, learned counsel for the appellant started his arguments at 3.15 p.m. and concluded at 3.50 p.m. After that, Ms. Hetu Arora, learned counsel for the respondent made her submissions for 5 minutes.

The appeal is allowed in terms of the signed order. No costs.

Sarita (Shelly Sengupta)
Court Master

(Signed order is placed on the file)

