

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 Nos. 7788-7789 of 2001

CHOWDA SHETTY (DEAD) & ANR.

Appellant (s)

VERSUS

C.R. PADMA & ANR. Respondent (s)

(With I.A. Nos.6-7/2003 - appln(s). for substitution of deceased appellant, prayer for interim relief and office report)

Date : 28/08/2003 These appeals were called on for hearing today.

CORAM :

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

For Appellant (s)Mr. U.U. Lalit,Adv.
Mr. Prasenjit Keswani,Adv.
Mr. Joseph Pookkatt,Adv.
Mr. Prashant Kumar,Adv.

For Respondent (s)Mr. Rajesh Mahale,Adv.

Mr. E.C. Vidya Sagar,Adv.

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

Heard learned counsel for the parties from 11.45 a.m. to 2.15 p.m.

Applications for substitution are allowed.

The civil appeals are dismissed.

No order as to costs.

[T.I. Rajput][Shelly Sengupta]
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 7788-7789 OF 2001

Chowda Shetty (Dead) & Anr. ...Appellant(s)

Versus

C.R. Padma & Anr. ...Respondent(s)

O R D E R

These appeals are filed by the defendants. The plaintiff, Respondent No.1 herein, filed a suit for declaration of title, mandatory injunction, for possession and for permanent injunction in respect of the suit property. The plaintiff based her claim on the ground that the suit property was allotted to her by the erstwhile City Improvement Trust Board (for short, "C.I.T.B.") [now, Bangalore Development Authority] in the year 1968 and thereafter the possession of the suit property was also delivered on 21st January, 1977. The defendant, Appellant No.1 herein, had put up construction on the said site and is running a school. The construction was put up without the permission of the Bangalore City Corporation. The defendant contended that the suit property was allotted to

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him by the C.I.T.B. Thus, the plaintiff as well as the defendant claimed title to the suit property on the basis of the allotment made by the C.I.T.B. A dispute was also raised as to the identity of the suit property. The trial court, on considering the evidence placed before it, concluded that the plaintiff established her title to the suit property and the defendant could not support his case as to the title to the very property by placing any document of title or any other acceptable evidence. The Commissioner was also appointed to find out the identity of the property but the report of the Commissioner was not accepted by the trial court. In that view of the matter, the suit filed by the plaintiff was decreed. Aggrieved thereby, the defendants filed the first appeal before the High Court challenging the validity and the correctness of the judgement and decree passed by the trial court. The High Court did not find any good ground or valid reason to take a contrary view, having regard to the evidence that was available on record and in the light of the findings of fact recorded by the trial court. Hence, the first appeal was dismissed.

The learned counsel representing the appellants contended that the trial court as well as the High Court committed an error in not accepting the case put-forth by the defendants. He emphasised that the report of the Commissioner ought to have been accepted, which clearly established the identity of the suit property on the basis of the possession certificate given to the defendants.

Per contra, the learned counsel for the respondents made submissions supporting the impugned judgement and decree.

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It is clear, as observed by the trial court as well as the High Court, that the defendants did not place any document of title to make a claim over the suit property. The defendants relied on the documents, Exhibits D-1 to D-3, D-1 and D-2, being the notices demanding the value of the property and D-3, being the possession certificate dated 21st January, 1977. We specifically asked the learned counsel for the defendants as to whether any order of allotment is available. The learned counsel was not in a position to say, yes. On the other hand, he wanted to say that on the basis of Exhibits D-1 to D-3, allotment of property in favour of the defendant could be inferred. With regard to the report of the Commissioner, we are of the view that both the courts were right in not accepting his report as the Commissioner did not get any documents from the C.I.T.B. and he proceeded to inspect the site and made the report. It is pertinent to mention here that the sketch produced by the Commissioner himself along with his report, coupled with other evidence on record placed by the plaintiff, clearly indicates that the defendants failed to establish their possession over the suit property. The boundaries of Plot No.27 said to have been allotted to the plaintiff on the eastern and the western side tally.

As far as the boundaries on the northern and the southern sides are concerned, the sketch given by the Commissioner himself shows that the site Nos.26 and 28 correspond to new site Nos.1444 and 1447 respectively. Thus, having regard to the evidence placed on record and the concur

rent findings of fact recorded by the courts below, we do not find any merit in these appeals.
Consequently, the appeals are dismissed but with no order as to costs.

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From the records, it is clear that a building is put up by the defendant on the suit property and a school is running there, which is stated to be running for about twenty five years. It is also on record that the defendants have put up the construction on the site without the permission of the Corporation, as is evident from Exhibit P-10. Under the circumstances, we grant time to the appellants to vacate the premises and deliver the possession of the same to the plaintiff-respondents upto 31st May, 2004, subject to the appellants filing usual undertaking to this effect within a period of six weeks from today.

.....J.
[SHIVARAJ V. PATIL]

.....J.
[D.M. DHARMADHIKARI]
New Delhi,
August 28, 2003.