

Syed VikaruddIn and ors. Vs. Vishnuvardhan Reddy and anr.

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Court : Andhra Pradesh

Decided On : Sep-25-2002

Reported in : 2003(1)ALD159

Judge : S.R. Nayak and ;Dalava Subrahmanyam, JJ.

Acts : [Constitution of India](#) - Article 226

Appeal No. : WP No. 7986 of 1995

Appellant : Syed VikaruddIn and ors.

Respondent : Vishnuvardhan Reddy and anr.

Advocate for Def. : S.A. Quddus and D. Ashok Kumar

Advocate for Pet/Ap. : M.V.S. Suresh Kumar and S. Niranjan Reddy

Disposition : Petition dismissed

Judgement :

Dalava Subrahmanyam, J.

1. The writ petitioners/applicants filed the writ petition praying to issue a writ of certiorari and to quash the decree and judgment dated 29.7.1994 in LGC No. 10 of 1993 on the file of the Special Court under Andhra Pradesh Land Grabbing (Prohibition) Act, Hyderabad (for short 'the Special Court') as illegal, arbitrary and

unjust.

2. The brief facts of the case are as follows:

The writ petitioners, who are the petitioners in LGC No. 10 of 1993, filed an application under Section 8(1) of the A.P. Land Grabbing (Prohibition) Act, 1982 (for short 'the Act') praying to evict the respondents from the application schedule property and after demolition of the illegal constructions therein deliver vacant possession of the property to the petitioners and also for damages, costs and other allied reliefs. The petitioners contended that late Syed Yousufuddin, father of the applicants, purchased Ac.145.16 guntas of land from out of Ac.150.16 guntas of land situated in S.Nos.106 to 113 and 117 to 121 at Road No. 10 Banjara Hills, Shaikpet Village, Hyderabad from Smt. Sakeena Begum, Smt. Naseema Begum and Smt. Sayeeda Begum daughters of Dr. Karim Khan under a registered sale deed dated 30th Ardibahist 1342 Fasli (3.4.1933). The said sale deed was executed by Smt. Sayeeda Begum through her G.P.A Nawab Acquil Jung Bahadur. Since the date of the said sale late Syed Yousufuddin was in possession and enjoyment of the said property and during his lifetime he sold some portions and later died in the year 1944 leaving behind his widow Smt. Habibunnisa Begum and 8 daughters and two sons. Syed Arifuddin and Ahmed Moinuddin were brothers of late Syed Yousufuddin. Ahmed Moinuddin pre-deceased Syed Yousufuddin. Syed Arifuddin was working as an Engineer in Hyderabad, who assumed the management of the petitioners' family affairs. There was a registered partition deed executed among the members of the family on 16th Amardad, 1345 Fasli and the recitals in the partition deed that the property was purchased by Syed Yousufuddin benami is not true. In the said partition deed several acres of land out of Ac.145.16 guntas were left out. The recitals in the partition deed were misleading in material particulars and they did not have possession of all the lands mentioned therein. Several plots of lands referred to in the partition deed continued to be in possession of the petitioners' family being the rightful owners and they sold some plots. The 1st respondent purchased a portion of S.No. 118 covered by T.S.No. 7 shown as 'ABCD' in the sketch appended to the application, which was not questioned by the petitioners. There was a compound wall between the T.S.No. 7 and T.S.No. 6 shown as C.D in the sketch. About six months back,

the 1st respondent removed the compound wall and encroached into T.S.No. 6 shown as CDE. The 2nd respondent encroached into a portion of S.No. 118 in T.S.No. 5 shown as EFGH. The respondents 1 and 2 have no lawful entitlement to the application schedule property and they are making illegal constructions. Taking advantage of the absence of the 1st petitioner, the respondents 1 and 2 encroached into the property without any lawful right. Hence the petitioners filed the application.

3. The 1st respondent filed counter denying the right title and possession of the petitioners. The 1st respondent contended that his wife purchased 3,135 sq.yards of site in plot No. 72, Banjara Hills, Road No. 10 from Ali Mohammed Qusro son of Syed Ameenuddin Hussain under a registered sale deed dated 8.11.1973 and after purchase she applied for permission to construct pucca house and permission was accorded and she has been in possession and enjoyment in her own right. The 2nd respondent also filed a counter denying the averments. The 2nd respondent contended that the petitioners cannot question the partition deed dated 15th Amardad 1345 Fasli and the averments that the lands mentioned in the partition deed were occupied by the respondents are not correct. The property bearing door No. 8.2.622/1/1/A, admeasuring 1000 sq.yards situated at Road No. 10 Banjara Hills, Hyderabad was purchased by M/s. K.Rajeswar Rao and K. Satyanarayana Rao jointly under a registered sale deed dated 28.10.1983. The 2nd respondent is an Architect and developer and Managing Partner of M/s. Classic Constructions, a partnership firm, carrying on constructions and development activities. On 12.4.1991, the said firm entered into an agreement cum sale and development with the owners of the said property and obtained Municipal sanction. The 2nd respondent also purchased 300 sq.yards of site belonging to M/s. Rajender Reddy and Vaibhushan Reddy under a registered sale deed dated 28.11.1988 and M/s. Classic Constructions commenced construction in the said premises. Hence the respondents are not land grabbers and they perfected their title by adverse possession. The 3rd respondent contended that no relief is claimed against him and he is not concerned with Plot No. 74. The 4th respondent filed a memo adopting the counter filed by R1.

4. On the above said pleadings, the following issues were framed and settled by the Special Court.

1. Whether the petitioners are the owners of the petition-schedule property?

2. Whether the rival title set up by the respondent Nos.1 and 2 is true and valid?

3. Whether respondent Nos.1, 2 and 4 are land grabbers within the meaning of the Act?

4. To what relief?

5. On behalf of the petitioners Syed Vikaruddin, who is the 1st petitioner, is examined as PW1 and Exs.A1 to A12 were marked through him. The 2nd respondent Vishnuvardhan Reddy is examined as RW1 and through him Exs.B1 to B9 were marked. The Special Court after appreciating the entire oral and documentary evidence came to the conclusion that the petitioners failed to prove their right, title and possession so as to declare the respondents as land grabbers and to evict them from application schedule property and accordingly the application was dismissed.

6. Aggrieved against the decree and judgment in LGC No. 10 of 1993, the writ petitioners filed the present writ petition praying to quash the decree and judgment of the Special Court. The 1 st petitioner filed an affidavit in the writ petition contending that the petitioners have got right title and possession to the application schedule property relying on the averments contained in the application. The writ petitioners denied the contentions of the respondents. The writ petitioners contended that the Special Court failed to appreciate that the father of the petitioners purchased an extent of Ac. 145.16 guntas under Ex.A2 sale deed dated 3.4.1933. The special Court failed to appreciate that the partition deed Ex.A4 was acted upon and neither Arifuddin nor his daughters were ever in possession and enjoyment of the property in Plot No. 74. The Special Court failed to appreciate that the respondents have no right title or possession to the disputed property. The special Court failed to appreciate the documents filed by the petitioners. The special Court erred in observing that the petitioners failed to

establish prima facie case. The Special Court ought to have held that the respondents are land grabbers and thereby allowed the petition. For the above said reasons, the decree and judgment of the Special Court may be set aside by allowing the writ petition.

7. The 1st respondent in the writ petition Mr. Vishnuvardhan Reddy filed counter-affidavit denying the averments contained in the affidavit filed in support of the writ petition. It was contended by the 1st respondent that there are no sufficient grounds for invoking the jurisdiction under Article 226 of the Constitution. The decree and judgment passed by the Special Court cannot be set aside since the judgment was delivered after hearing both sides and after considering all the evidence placed before it. The 1st respondent proved that he is lawfully entitled to the suit property. He is an Architect Engineer by profession and he is developing the suit property by virtue of development agreement entered into with the owners. The vendors and their predecessors-in-title are the bona fide purchasers for valuable consideration and are in continuous possession and enjoyment of the disputed property for more than 30 years and thereby they perfected their title by adverse possession. The recitals in the partition deed would clinchingly prove the said fact. The averments contained in the affidavit filed by the writ petitioners are false, frivolous and baseless. At no point of time the petitioners were ever in possession of the property and therefore there are no grounds to interfere with the decree and judgment of the Special Court by invoking jurisdiction under Section 226 of the Constitution. Hence the writ petition may be dismissed.

8. Now the following points would arise for consideration.

1. Whether the Special Court committed an error, apparent on the face of record that the petitioners in LGC 10 of 1993 failed to prove their right title and interest and that the respondents are land grabbers and thereby entitled to deliver vacant possession?

2. Whether the Special Court committed an error in appreciating the evidence on record and came to an erroneous conclusion so as to warrant interference by this Court under Article 226 of the Constitution?

9. Points 1 and 2 :--The writ petitioners, who are applicants in LGC 10 of 1993, contended that the Special Court committed error apparent on the face of record in not declaring the respondents as land grabbers and directing them to deliver vacant possession of the application schedule properties to the petitioners. It is, therefore, just and necessary to examine whether the Special Court committed any error so as to require interference by this Court under Article 226 of the Constitution.

10. The first petitioner, who is examined as PW1, deposed with regard to the case of the petitioners. The petitioners relied on the registration extract of the sale deed dated 30th Ardibahist 1342 Fasli and also the entries in khasra pahani and other revenue records. The learned Counsel for the petitioners contended that the entries in the khasra pahani are conclusive proof for evidence of title which would prevail over other documents. The entries in the record of rights will be conclusive proof with regard to the ownership until contrary is proved. The learned Counsel for the petitioners relied on a decision reported in *Mylaram Latchaiah v. Nafeezunnisa Begum*, 1972 ILR 652, wherein it was held that the entries in the record of rights can be relied to presume the rights of parties. The learned Counsel for the petitioners contended that the Special Court committed grave error in not appreciating and relying on the entries in the khasra pahanies and the sale deed Ex.A2 and it is an error apparent on the face of record. Under Ex.A2 Syed Yousufuddin purchased the disputed property and the entries in the khasra pahani marked as Ex.A6 and other documents would also prove the ownership of Syed Yousufuddin.

11. The learned Counsel appearing for the first respondent contended that the Special Court considered all the documents filed by both parties and rightly came to the conclusion that the petitioners failed to prove prima facie right title and possession to the properties. The first respondent entered into an agreement of sale with K. Rajeswara Rao and another who purchased the disputed property under Ex.B2. The first respondent traced the title of his vendor and proved that his vendor had right title and possession as evidenced under Ex.B5 to B9. The learned Counsel for the first respondent contended that the decree and judgment of the Special Court is based on the evidence available on record and the Special

Court has not committed any error in appreciating the evidence. The petitioners cannot question the decree and judgment and this Court cannot interfere with the findings recorded by the Special Court.

12. The petitioners having filed an application praying to declare the respondents as land grabbers have to prove prima facie right and title to the application schedule property. It is the burden of the petitioners to establish their right and title and PW1, who is the first petitioner, is the sole witness who is examined on their behalf to prove their title. The writ petitioners are mainly relying on Exs.A2 and A6 to A9 to prove their right and title. Ex.A2 is the registration extract of the sale deed under which the property was purchased by Syed Yousufuddin. Subsequently, after the death of Syed Yousufuddin, the properties were partitioned under Ex.A4 partition deed, among the legal heirs of Syed Yousufuddin, his brothers and other sharers. The petitioners contended that the recitals in the partition deed that the properties were purchased benami cannot be accepted and they mainly relied on the entries in the khasra pahani. In the khasra pahani the name of Syed Yousufuddin alone is mentioned and therefore the petitioners contended that they are the legal heirs of Syed Yousufuddin and thus they proved their title. The Special Court observed that PW1 was aged about two years only when the partition deed was executed among the sharers and therefore he is not competent to depose with regard to the fact of partition or the circumstances under which properties were divided. The petitioners have not filed any other documents to show that they have been in continuous possession and enjoyment of the application schedule properties. Except the self-serving statement of PW1, there is no other evidence. On the other hand, the respondents filed Exs.B1 to B9. Ex.B5 would show that the disputed property is the subject matter of O.S. No. 31 of 1972 on the file of the IV Additional Judge, City Civil Court, Hyderabad, which was subsequently compromised and the right of Yadagiri was recognised. The vendors of first respondent purchased the property from the said Yadagiri under a registered sale deed marked as Ex.B2. Subsequently, the first respondent entered into an agreement with Sri K.Rajeswara Rao and K. Satyanarayana who purchased the properties from the said Yadagiri. The documents filed by the respondents would prove his possession and enjoyment as on the date of filing of the application. The Special Court considered all the documents filed by both sides

and recorded a finding that the applicants were never in possession of the schedule property within the statutory period and the applicants failed to establish that they are the owners of the schedule property. This finding of fact cannot be interfered under writ jurisdiction. The Special Court considered the entries in the khasra pahani as against the documents filed by the respondents and rightly came to the conclusion that the applicants failed to prove prima facie right and title to the application schedule property and hence the respondents cannot be declared as land grabbers.

13. The jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that the findings of fact reached by the inferior Court or Tribunal is a result of appreciation of evidence which cannot be reopened or questioned in writ proceedings. An error of law, which is apparent on the face of the record, can be corrected by a Writ but not an error of fact however grave it may appear to be. The adequacy or sufficiency of evidence led on a point and the interference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal and the said points cannot be agitated before a Writ Court. It is within these limits that the jurisdiction conferred on the High Court under Article 226 of the Constitution to issue a writ of certiorari can be legitimately exercised. What can be corrected by a writ has to be an error of law, but it must be such error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court, or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or something in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In the instant case, the special Court considered the recitals in Ex.A2 sale deed and Ex.A6 certified copy of khasra pahani as against Exs.BS to B9 and rightly came to the conclusion that the applicants failed to prove prima facie right title and possession to the disputed property and hence the Special Court has not committed any error which is apparent on the face of record. We have carefully perused the judgment of the Special Court on the question of right title and possession of the writ petitioners and the documents produced by both sides and we are satisfied that no material

was excluded from considering or any irrelevant material was relied on by the Special Court in recording its finding which requires interference by this Court. In our view the special Court has not committed any error of law so as to interfere with its findings. The Special Court considered all the material placed before it and it is a well considered judgment. There are no tenable grounds to interfere with the findings of the Special Court. There are no merits in the writ petition and accordingly the writ petition is liable to be dismissed.

14. In the result, the writ petition is dismissed. No order as to costs.

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