

The Municipal Council, Vs. Mohd.Abdul Rasheed S/O.Late Haji Gulam Rasool

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Court : Andhra Pradesh

Decided On : Nov-02-2010

Judge : B.Prakash Rao; B.N.Rao Nalla, Jj.

Appeal No. : Appeal Suit No.2203 of 2002

Appellant : The Municipal Council,

Respondent : Mohd.Abdul Rasheed S/O.Late Haji Gulam Rasool

Advocate for Def. : MR.V.HARI HARAN; MR.C.PANDURANGA RAO, Advs.

Advocate for Pet/Ap. : Mr.SHANTHI NEELAM, Adv.

Judgement :

: (Hon'ble Sri Justice B.N.Rao Nalla)

1. Aggrieved by the judgment and decree dated 03.5.2002 in O.S.No.10 of 1997 on the file of the Senior Civil Judge at Nalgonda, the first defendant filed this appeal. The suit filed for declaration of title and for recovery of suit schedule property was decreed.

2. For the sake of convenience, the parties shall be referred to as they were arrayed in the suit.

3. The case of the plaintiff in brief is that one Gulam Musthafa was the owner and possessor of 36500 square yards of land in Nalgonda revenue village prior to Fasli 1320. Out of it, 29376 square yards forms part of old Survey No.3 and new Survey Nos.841 and 842 and the remaining 7120 square yards forms part of Ramagiri Ambari, adjacent to the old Survey No.3 towards East. Gulam Musthafa constructed a house in a portion of land after obtaining necessary permission. After the death of Gulam Musthafa, his two sons, being legal heirs, sold the said house with the entire open land to one Shahabodddin vide registered sale deed bearing No.32 of Fasli 1350. The vendors, attestors and vendee are no more. The original sale deed executed by the sons of Gulam Musthafa was with late Shahabodddin, who after purchase of the land along with the house, was in possession of the same till 1952. During the Fasli 1351, the lands in Survey Nos. 841 and 842 were excised from agricultural category and made Abadi site. Late Shahabodddin gifted the house along with open land to his elder brother's daughter Smt.Ameena Begum in the year 1952 orally and the same was mutated in her name in municipal records. Thereafter, Ameena Begum sold a portion of the house and some open land to different persons, retaining 4142 square yards. She made application to the first defendant to permit her to construct a compound wall around 3220 square yards out of 4142 square yards leaving private roads on the east and south of the compound wall and 100 square yards on the eastern side. The first defendant passed a resolution on 30.4.1986 granting permission to construct the compound wall. However, on 05.11.1986, the District Collector as Special Officer, cancelled the said resolution observing that the said land is to be kept as park area. It is the second defendant which had shown the said land as park while obtaining permission for layout of its land. The land shown in the layout as park was not part of the land purchased by the second defendant. It is a portion of Ameena Begum's land who has nothing to do with the layout plan submitted by the second defendant for approval. Against the cancellation of the resolution by the District Collector as Special Officer, Ameena Begum filed writ petition No.14192 of 1986 and this court disposed of the same on 23.02.1989, quashing the resolution with a direction to the first defendant to cause notice to Ameena Begum and pass appropriate orders after hearing. While the writ petition was pending, on 15.02.1988, Ameena Begum orally gifted the entire land of 4142

square yards to the plaintiff. Subsequently, when Ameena Begum denied the gift in favour of the plaintiff, the plaintiff filed O.S.No.107 of 1989 for declaration of title and injunction. Ameena Begum filed a written statement therein admitting his case. On that, the said suit was decreed on 12.09.1989 for 4142 square yards. The plaintiff set apart 535 square yards for roads out of 4142 square yards, while retaining 3607 square yards. Since the first defendant did not take action as per the directions of this court in the writ petition filed by Ameena Begum, the plaintiff applied with the first defendant on 15.09.1989 seeking permission to construct compound wall. However, the first defendant treating the said land to be a park land and demarcated it for that purpose. Mere conversion of land in Survey Nos. 841 and 842 from agricultural category to Goathem category in Fasli 1350 did not empower the Government to entitle to any portion of the said survey numbers and deprive the original owner and his successors-in-interest. In the year 1991, the first defendant while admitting the plaintiff's ownership over the land, gave him permission to construct a compound wall on condition of leaving 650 square yards out of 3607 square yards for park, besides leaving the land on the south and east for roads, but the plaintiff left an extent of 735 square yards which is excess to the land required by the first defendant. Then, the plaintiff started constructing compound wall on the northern and eastern sides of 2872 square yards retained by him after leaving 735 square yards. At that time, the second defendant filed a writ petition against the plaintiff, defendant No.1 and the Government restraining them from making any construction in the land which was shown as park in the layout submitted by it. During the pendency of the writ petition, the plaintiff completed the construction of compound wall on northern and eastern sides. The writ petition filed by the second defendant was disposed of on 12.7.1994 holding that since there are rival claims with regard to title, they have to be adjudicated by a civil court and till then the land shall be maintained by the first defendant municipality. As against, the plaintiff filed writ appeal and the same was dismissed on 06.06.1996. On 16.08.1996, defendants 1 and 2 occupied the land of 2872 square yards with northern and eastern compound walls raised by the plaintiff with a board "site under municipality". Hence, the suit.

4. The case of the first defendant is that it has no knowledge of the history of land as narrated in the plaint and it has no knowledge of the ownership of the land by

Ameena Begum and gift by her to the plaintiff. The second defendant in the layout plan submitted for approval in 1960 had shown the schedule land as the park and since then it is being maintained as park and plaintiff or Ameena Begum were not in possession of it. Ameena Begum never gifted any property to the plaintiff and she has no right to do so. The plaintiff never carved out any internal road as claimed by him. The land in Survey Nos.841 and 842 admeasuring Ac.12-31gts of Nalgonda village was included in the village site in Fasli 1337 and since then it is being shown as Government land in the revenue records, now within the municipal limits. Out of the said land, an extent of 7880 square yards of open land situate on the western side of Venkateshwara Theatre at N.G. College, has been earmarked as park in T.P.No.13/60 and 4/61 in the layout plan approved by the Director of Town and Country planning, Hyderabad. Defendant No.1 could not develop the park in the land due to lack of funds, though it has been in possession of it. Since the land is recorded in the revenue records as the Government land, the Government is necessary party. The suit is barred by limitation. With the help of the second defendant, the first defendant secured the documents and preventing the plaintiff from encroaching into the suit land. The documents relied on by the plaintiff do not confer any right or title to the plaintiff over the suit land.

5. The case of the second defendant is that it does not know the history as narrated in the plaint with regard to the ownership of the land and its transfer to Ameena Begum. The plaintiff has to establish his title and possession over the suit property. The second defendant purchased 5999 square yards of land from Ameena Begum, which was available with her and a part of it is the suit land set apart for park while submitting the layout plan, which was approved in 1960 itself. Thus, the entire suit land is the park area and the roads. Without any manner of right, the plaintiff filed the suit in collusion with the first defendant. The mutation in the municipal records and obtaining a decree against Ameena Begum by the plaintiff are all result of the fraud and collusion by the plaintiff and Ameena Begum. Ameena Begum in collusion with the officials of the first defendant, got resolution passed in her favour and therefore, the District Collector rightly cancelled the said resolution. Neither Ameena Begum nor the plaintiff was in possession of the suit land at any point of time. She had no right to gift it to the plaintiff. The consent decree in favour of the plaintiff does not confer any right to him. The first defendant

never admitted the plaintiff as the owner of the land and it has no right to grant any permission to the plaintiff for constructing the compound wall on any side on condition of leaving 650 square yards for park area and for roads. The second defendant purchased an extent of Ac.32-00 of land in Nalgonda town under separate registered sale deeds and later submitted the layout plans which were approved vide T.P.Nos.38/60, 4/61, and 14/61 and four open areas were earmarked for the parks in the said layout plans and suit land is open space No.5 and one among them. After development of the entire layout plots, second defendant delivered all the roads and open spaces in the layout plans to the first defendant by its letter dated 26.12.1986 and a resolution was passed. Though the open space and roads which were earmarked in the layout plan vests in the first defendant, it cannot permit anyone to make any construction over it without prior permission of the Government. The Government and the District Collector are necessary parties to the suit. The suit is also barred by limitation.

6. On the basis of pleadings, relevant issues were framed. On behalf of the plaintiff, PWs.1 to PW.3 were examined and Exs.A.1 to A.15 were marked besides marking Exs.C.1 to C.4. On behalf of the second defendant, DWs 1 and 2 were examined and Exs.B.1 to B.5 were marked, besides marking Exs.X.1 to X.12.

7. The learned Senior Civil Judge having gone through the evidence adduced on either side and having heard the counsel on either side, decreed the suit on 03.5.2002 directing the first defendant to deliver vacant possession of the land described in the plaint schedule to the plaintiff within six months from that date. Challenging the same, the present appeal suit has been preferred by the first defendant.

8. The learned counsel for the first defendant-appellant herein contends that the trial court ought to have seen that the lands in Survey Nos.841 and 842 admeasuring Ac.12.31 gts of Nalgonda village were included in the village site in Fasli 1338 and ever since they are being shown as Government lands in the revenue records, now within the municipal limits; that the trial court ought to have seen that the suit schedule land is earmarked as park in the layout approved by the Director of Town and Country Planning, Andhra Pradesh in the year 1960 and

the land is in possession of the first defendant; that the trial court ought to have dismissed the suit, which was filed in the year 1997, on the ground of limitation; that the trial court ought to have seen that since the lands are recorded in the revenue records as Government lands, the Government represented by the District Collector is necessary party; that the trial court failed to see that the plaintiff has no title over the suit land; that the trial court ought not to have considered the commissioner's report and that the trial court failed to consider the evidence of the defendants and erroneously decreed the suit.

9. Per contra, the learned counsel for the plaintiff submits that the trial court after taking into consideration the evidence brought on record by both sides and the factual and legal aspects decreed the suit by giving cogent and convincing reasons. As such, the impugned order needs no interference from this court.

10. Heard the learned counsel on either side and perused the record.

11. It is the contention of the first defendant that the lands in Survey Nos. 841 and 842 were included in the village site in Fasli 1337 and since then they are being shown as Government lands in the revenue records. But there is evidence on record to show how the lands in those survey numbers have become the Government lands. The defendants in their pleadings stated that they do not know the history of the land claimed by the Ameena Begum. But it is pertinent to note that the second defendant purchased 5991 square yards of land on 21.12.1959 from Ameena Begum under Ex.B.2 sale deed and in Ex.B.2-sale deed, the eastern boundary is shown as the land of the Vendor Ameena Begum. As such, the contention of the defendants that Ameena Begum has no right over the land and the entire land belonged to the Government cannot be accepted. Further, it is to be seen that the second defendant submitted a layout plan-Ex.B1 for approval to the first defendant in the year 1962 and in the said layout, the house of Gulam Musthafa, the original owner of the property before Fasli 1320 is shown on the south east corner. The evidence of PW.2 goes to show that Ameena Begum gifted the suit land to the plaintiff. The evidence adduced on behalf of the defendants does not substantiate their claim that the suit land forms part of the land purchased by the second defendant and it was earmarked for park. On the other

hand, the plaintiff has categorically explained how he acquired title over the suit land by examining PWs 1 to 3 and marking Ex.A.1 and A.13. In Exs.A.2- Property tax assessment register and A.4- revision register, the names of the plaintiff's predecessor-in-title were shown. The report of Advocate Commissioner coupled with the evidence of PW.3 reveals that the suit land is part and parcel of the property gifted to the plaintiff by Ameena Begum. Admittedly, the plaintiff has constructed a compound wall on the permission given by the Municipality. As far as the limitation to file suit is concerned, pursuant to the orders of this court in W.P.No.14602 of 1992, the Municipality has taken possession of the suit land in the year 1996 and the suit was filed in the year 1997. Therefore, it cannot be said that the suit is barred by limitation. Further, it is pertinent to note that the first defendant, who filed this appeal, did not adduce any evidence either oral or documentary to substantiate its case before the trial court. It is to be seen that pursuant to the judgment and decree in the suit, possession of the suit schedule property was delivered to the plaintiff.

12. In the circumstances, we are of the considered opinion that the first defendant has failed to prove that the suit land is earmarked for park and it forms part of the land purchased by the second defendant. Therefore, we do not find any infirmity in the impugned judgment dated 03.5.2002 in O.S.No.10 of 1997 on the file of the Senior Civil Judge at Nalgonda warranting interference from this court.

13. The Appeal Suit is devoid of merit and the same is accordingly dismissed. No order as to costs.

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