

Telangana High Court

K.Salini Devi vs Nuthakki Santhi on 20 January, 2023

Bench: P.Sree Sudha

THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

APPEAL SUIT No.328 of 2015

JUDGMENT :

This appeal is filed against the Judgment and Decree of the trial Court in O.S.No.1195 of 2007 dated 10.03.2015.

2. One N.Santhi through her father as a registered G.P.A Holder filed a suit in O.S.No.328 of 2015 to declare her as owner and possessor of Plot No.4 admeasuring 400 Sq.yds equivalent to 334.4 Sq.yds in Sy.No.155 situated at rest of the area in block No.1 of Madeenaguda village, Serilingampally Mandal, R.R.District. The defendants No.1 & 2 were the absolute owners of the land bearing Sy.No.155 admeasuring 30 gts out of Ac.1 - 05 gts situated at Madeenaguda village, Serilingampally Mandal, R.R.District and the same was divided into House plots No.1 to 6 as per layout plan. The defendants No.1 & 2 through defendant No.3/G.P.A as per registered G.P.A.No.1123/89 dated 02.09.1989 sold the plot No.4 admeasuring 400 Sq.yds to the defendant No.4 for valuable consideration through registered sale deed bearing Doc.No.2013/90 dated 12.02.1990.

3. The defendant No.4 was in peaceful possession and enjoyment of the suit property and he sold the same to the plaintiff for valuable sale consideration of Rs.3,60,000/- through registered sale deed bearing No.10087/02 dated 19.11.2002 and he was assigned the identification No.1 as 1510-1-10087 for scanning. The plaintiff was in enjoyment and peaceful possession from the date of purchase without any interference, but on 08.11.2007 defendants No.5 to 8 came to the suit site stating that they purchased the entire land from defendants 1 & 2 through defendant No.3 on 12.07.1990, but they failed to produce any document in support of their claim. The defendants No.1 & 2 through defendant No.3 sold the entire land covered by Plot Nos.1 to 5 as per layout including Plot No.4 of the suit schedule property to plaintiff much early to the date of claim of the defendants No.5 to 8. As such question of selling the same property to defendants No.5 to 8 does not arise and they will not accrue any right over the property. Initially, defendants No.1 & 2 through defendant No.3 sold the suit schedule property to defendant No.4 under a valid document for valuable consideration and he in turn sold the same to the plaintiff, as such any sale deed executed in favour of defendants 5 to 8 is a sham document and it will not create any right and it is illegal and improper, as such he filed suit for declaration.

4. In the written statement filed by defendants 5 to 8, they contended that the defendants 1 and 2 were the owners of 30 guntas of land in Sy.No.155 of Madinaguda Village, Serilingampally Mandal, R.R.District. They are not aware of the sale deed executed by defendant No.3 in favour of defendant No.4 through registered sale deed and also disputed the possession of defendant No.4 and plaintiff in the said land. They further stated that there is no layout for Sy.No.155 and the entire land admeasuring 30 guntas was divided into plots 1 to 6 is false. The plaintiff has not filed the layout nor given the dimensions of the plots. The suit schedule land cannot be located on the ground as there

are no boundaries existing on ground as mentioned in the suit schedule. The total extent of Sy.No.155 is Ac.1 - 06 gts. Defendants No.1 & 2 were the owners of 30 guntas out of Acs.1 - 06 gts which was bounded as follows:

North: Land of Balasaria South: Land of M.Sahrief East: Land of Sathaiah West: Sy.No.152 These defendants jointly purchased Ac.0 - 25 gts out of 30 gts in Sy.No.155 through a registered sale deed vide Doc.No.8706 of 1990 dated 12.07.1990 from defendants No.1 & 2 and delivered the possession of 25 guntas. From then onwards they are in possession and enjoyment of the same. The boundaries existing at the time of purchase was as follows:

North: Land belonging to Balasariah South: Land belonging to Moinuddin Sharief East: Neighbours property West: Neighbours property The dimensions of 25 guntas possessed by these defendants are on North: 245 feet; South: 212 feet; East:126 feet; West: 121 feet. As there is no approach road for this land, these defendants purchased Plot No.7 admeasuring 343.6 Sq.yrds (in Sy.No.152) in the joint layout of Sy.Nos.117, 151 and 152 of Madinaguda Village, through a registered sale deed vide Doc.No.15837 of 1990 dated 03.12.1990. The said plot is located to the Northwest corner of 25 guntas purchased from defendants No.1 to 3. Immediately after the purchase, they constructed compound wall on all sides of 25 guntas and Plot No.7 in Sy.No.152 and fixed a gate. They also constructed three rooms for watchman. At present one Tatina Chitti is the watchman and he is residing in these rooms. They also obtained electricity connection vide Service No.11051-02113-ERO iii, Kukatpalli and paying electricity charges regularly. The Mandal Revenue Officer, Serilingampally Mandal sanctioned mutation vide Proc.No.B/1161/2005 dated 28.11.2005 and their names were recorded as pattadars and possessors in the pahanies.

Defendants declared the said land before the Urban Land Ceiling Authorities, Hyderabad and obtained clearance from them vide Lr.No.H2/2039/NOC/07 dated 24.01.2005.

5. Defendants further stated that there is no layout for Sy.No.155 and the suit schedule plot cannot be identified on ground. There are no plots on the Eastern and Western side nor there is any road on the southern side to the plot. The plaintiff has not stated that in which portion 25 guntas of suit schedule plot is located. He was never in possession of any part of 25 guntas of land. Defendants since 1990 were in open and continuous possession of the suit schedule land, which is adverse to plaintiff and thus plaintiff lost title to the defendants by virtue of adverse possession. Therefore, the suit is barred by limitation and is not maintainable, the sale deed in favour of the plaintiff is invalid and void and does not confer any title to the plaintiff because the boundaries are imaginary and suit land cannot be identified on ground. Therefore, plaintiff cannot be declared as the owner of the suit plot and requested the Court to dismiss the suit.

6. The G.P.A holder of plaintiff was examined as P.W.1 and marked Exs.A1 to A8. He stated that there is no approved layout for Sy.No.155. Ex.A3 is the un-authorized layout for Sy.No.155. In Ex.A3

there is no mention about the name of the owner of the land. The red and blue marked demarcation with regard to Plot No.4 in Ex.A3 was done by him. He stated that Ex.A3 is the layout supplied by vendor along with Ex.A2 sale deed and noted No.4 in Ex.A3 for the sake of convenience. He did not know who prepared Ex.A3. He stated that present boundaries of Plot No.4, bounded by East - Plot No.5 belongs to Prabhaker Goud, West - Plot No.3 belongs to D5 to D8, South road and North open land and he is not aware of the owner of the open land situated on northern side. He knows about the purchase of 25 guntas of land by defendants 5 to 8 in Sy.No.155 and also knows that they constructed a compound wall around the land. He further knows that there is no approach land to Sy.No.155 to ingress and egress to 30 ft road. They purchased Plot No.7 in Sy.No.152 in order to arrange their passage. He also admitted that Ex.A6 and A7 either name of the plaintiff or name of her vendor is shown as possessor in Plot No.4 of Sy.No.155.

7. Plaintiff also examined one Balaraj Goud as P.W.2 and he stated that plaintiff purchased suit schedule property from one Zaheera Rauf on 19.11.2002 through a registered sale deed vide Doc.No.10087/2002 on the file of Sub-Registrar, Ranga Reddy District. The defendants tried to interfere with the said land on 08.11.2007 and plaintiff resisted the same. In the cross - examination he stated that he was doing Real Estate business from the last 16 years. He was acquainted to P.W.1 for the past 15 years, but he did not know the entire extent of land in Sy.No.155 and he did not know the original owner of the land in Sy.No.155. He also admitted that 25 guntas of land covered with compound wall and further stated there are no plots existing in Sy.No.155.

8. The defendant No.8 in the suit was examined as D.W.1 and marked Exs.B1 to B4 through him. He stated in his cross - examination that under Exs.A6 and A7, the names of defendants 1 and 2 are noted as pattadar and possessors. He also stated that they have verified encumbrance certificate with regard to the title of the property prior to their purchase. He further admitted that in Ex.A5 his name is not mentioned. Though he purchased Ac.0 - 25 guntas of land, he cannot say on which direction Ac.0 - 05 gts of remaining land is existing to their Ac.0 - 25 gts of land. The trial Court considering the evidence on record decreed the suit in favour of the plaintiff by declaring plaintiff as absolute owner of the suit schedule property and granted injunction in favour of defendants. Aggrieved by the said Judgment defendants 5 to 8 in the suit filed the present appeal.

9. They mainly contended that the trial Court misdirected while assessing the evidence of P.W.Nos.1 & 2 though they confirmed that they were not in possession of the suit schedule property and the Court fee paid under Section 24(b) of A.P.C.F & S.V.Act is not proper. They also stated that P.W.1 is the power of attorney holder of plaintiff and obtained without permission of the Court, as such his evidence is to be eschewed. The appellants stated that they purchased the said land in the year 1990 and also erected compound wall in the year 1991 itself, as such suit filed by plaintiff is beyond period of limitation and it is to be dismissed. Appellants also stated that neither the GPA holder nor his principal were never been in possession of the property, therefore suit filed by plaintiff was bad in law and is to be dismissed. Plaintiff is the subsequent purchaser to the appellants as such he has no right, title or interest over the said property. The names of the appellants were also mutated in the revenue records under Ex.B3 and B4, but the trial Court without considering the same and also considering the admission of P.W.Nos.1 & 2 regarding construction of compound wall decreed the suit and is liable to be set aside.

10. Now, it is for this Court to see whether the Judgment and Decree of the trial Court is on proper appreciation of facts or not, if so to what extent.

11. The learned Counsel for the plaintiff relied upon the decision of the High Court of Himachal Pradesh, Shimla in the case of Ramesh Negi Vs. Hira Lal Mehta in which it was held as follows:

"An appellate Court is the final Court of fact ordinarily and therefore a litigant is entitled to a full and fair and independent consideration of the evidence at the appellate stage. Anything less than this is unjust to him. The first appeal has to be decided on facts as well as on law. The appellate Court has jurisdiction to reverse or affirm the findings of the Trial Court and it is for the appellate Court to deal with all the issues and evidence before finding".

The counsel for the plaintiff also relied upon the decision of the Hon'ble Supreme Court in the case of Anathula Sudhakar vs. P.Buchi Reddy and others in which it was held that mere filing of suit for injunction simpliciter will not arrive when there is title dispute, the prayer for declaration is necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. Admittedly the suit is filed for declaration but not for injunction simpliciter.

12. The learned counsel for the appellants mainly contended that issue regarding adverse interference was not framed and hence matter has to be remanded to the trial Court with a direction to frame the said issue and to decide the same. They never claimed in the written statement that they acquired title by adverse possession. Therefore, their argument cannot be accepted. Admittedly, suit schedule property belongs to defendant Nos.1 and 2, but executed GPA in favour of defendant No.3 and he in-turn executed two registered sale deeds one in favour of defendant No.4 vide document No.2013 of 1990 dated 12.02.1990 and another in favour of defendant Nos.5 to 8 on 12.07.1990 i.e., five (05) months after the execution of the sale deed in favour of defendant No.4 and plaintiff purchased the said property from defendant No.4 on 19.11.2002 vide document No.10087 of 2002. Plaintiff contended that on 08.11.2007 when defendant Nos.5 to 8 came to the suit site and informed that suit land was purchased by them on 12.07.1990, he resisted the same and also filed suit for declaration and for injunction. Plaintiff contended that the defendant Nos.1 and 2 are owners and possessors of the land admeasuring Ac.0-30 gts in Sy.No.155 out of Ac.1-06 gts, situated at Madeenaguda Village, Seri Lingampally Mandal, Rangareddy District and the same was divided into house plots No.1 to 6 as per the layout plan and plot No.4 admeasuring 400 square yards was purchased by defendant No.4 through registered sale deed vide document No.2013 of 1990 dated 12.02.1990. Whereas, defendants 5 to 8 stated that they purchased Ac.0-25 gts of land out of Ac.0-30 gts vide document No.8706 of 1990 dated 12.07.1990 and they constructed a compound wall around the said land and they also purchased plot No.7 admeasuring 343.6 square yards in Sy.No.152 which is in the joint layout of Sy.No.117, 151 and 172 vide registered sale deed vide document No.15837 of 1990 dated 03.12.1990 and it is located on the north west corner of Ac.0-25 gts of land purchased by them from defendant No.3. They also constructed three rooms for watchman, presently one watchman is residing in the said three rooms. They also obtained electricity connection and paying electricity consumable charges regularly. The M.R.O, sherilingampally issued mutation proceedings by order dated 28.11.2005 and their names were

recorded in pattadar and possessors column in the pahanies. They also declared this land before the urban land ceiling authorities and obtained clearance on 24.01.2008 and further stated that from 1990 they are in open and continuous possession of the suit schedule property.

13. Both sale deeds are executed for an extent of Ac.0-30 gts of land which is pertaining to defendant Nos.1 and 2 out of Ac.1-06 gts in Sy.No.155, but the plaintiff stated that it was divided into plots and one plot No.4 measuring an extent of 400 square yards was purchased by defendant No.4 through GPA holder i.e., defendant No.3 whereas defendant Nos.5 to 8 contended that they purchased Ac.0-25 gts of land in Sy.No.155 from defendant No.3 as there was no approach for the said extent. They have purchased plot No.7 and constructed a compound wall and later mutated their names in the revenue records and again they stated that they were in continuous possession of the suit schedule property from 1990 onwards. They mainly contended that P.W.1 clearly admitted in his evidence regarding construction of compound wall and also purchase of plot No.7 for ingress and egress to the suit schedule property and thus suit filed by plaintiff at later point of time is barred by limitation. Plaintiff purchased property from defendant No.4 on 19.11.2002 and he stated that he was in peaceful possession and enjoyment of the suit property, only when defendant Nos.5 to 8 tried to interfere with the suit schedule land on 08.11.2007 he resisted them and filed suit for declaration on 11.12.2007.

14. Plaintiff filed original encumbrance Certificate, Certified copies of pahanies for the year 2001-02 and 2002-03 along with registered sale deed executed by defendant No.4 in favour of plaintiff and registered sale deed executed by defendant No.3 in favour of defendant No.4 and also GPA executed by plaintiff in favour of her father. P.W.1 stated that her daughter residing at USA, as such GPA holder filed suit on behalf of his daughter. Defendants contended that plaintiff purchased the property subsequent to their purchase, as such he is not entitled for any declaration. In fact, defendant No.3 executed sale deed in favour of defendant No.4 five months prior to the sale deed executed in favour of defendant Nos.5 to 8. It is for defendant Nos.5 to 8 to enquire about the details of the property prior to the purchase, but they have not obtained any encumbrance certificate or made any enquiries prior to the purchase property from defendant No.3. Moreover, they purchased Ac.0-25 gts of land out of Ac.0-30 gts. They also denied that said land was not divided into plots and there is no layout showing location of the plots. In fact, P.W.1 filed Ex.A3 which is unauthorized layout and stated that it was supplied by vendor along with Ex.A2 sale deed. He himself made certain corrections in the said layout plan for the sake of convenience, but that ground cannot be discarded the fact that defendant Nos.5 to 8 purchased plot No.7 for ingress and egress to the Ac.0-25 gts of land purchased by them. It clearly shows on 03.12.1990 the land was divided into plots merely because he got mutated in his name and also got clearance from the urban land ceiling authorities on 24.01.2008, he cannot claim right over the property. Defendant Nos.1 to 4 did not file any written statement, it was mentioned that defendant No.3 died during the pendency of the proceedings but defendant Nos.1 and 2 who are owners of the land remained ex-party. Admittedly defendant No.4 is the first purchaser and defendant Nos.5 to 8 are subsequent purchasers of the same property. It was also sold to defendant No.4 by defendant No.3/GPA holder on behalf of defendant Nos.1 and 2. Therefore, their contention that from 1990 onwards they are in possession of the suit schedule property enjoyed by P.W.1 and thus they acquire for title by adverse possession cannot be accepted. Defendant No.4 purchased property from defendant No.3 much earlier to

defendant Nos.5 to 8 and he in-turn sold to the plaintiff in the year 2002. When defendants tried to enter into the property of plaintiff in the year 2007, he filed suit for declaration. Considering the documents filed by plaintiff and evidence on record the trial Court rightly decreed the suit in favour of plaintiff, there is no infirmity in the Judgment and decree of the trial Court and it needs no interference.

In the result, the appeal is dismissed confirming the Judgment and Decree of the trial Court in O.S.No.1195 of 2007 dated 10.03.2015. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

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