

CASE NO.:
Appeal (civil) 1526-1527 of 2005

PETITIONER:
K. Sharada Bai & Anr.

RESPONDENT:
Shanshunnisa & Ors.

DATE OF JUDGMENT: 24/01/2008

BENCH:
Dr. Arijit Pasayat & P. Sathasivam

JUDGMENT:
JUDGMENT

P. Sathasivam, J.

1) These appeals are directed against the final judgment and order dated 25.06.2002 passed by the High Court of Judicature, Andhra Pradesh at Hyderabad in Writ Petition Nos. 29675 & 29712 of 1997 in and by which the High Court dismissed these writ petitions filed by the appellants herein.

2) BRIEF FACTS:

The schedule land forms part of Sy. No. 30 of Taranagar Village, Serilingampally Mandal, Ranga Reddy District and the total extent of which is Ac. 3.19 guntas. Out of the said extent, one Chakali Ramaiah owned an extent of Ac. 1.29 guntas of land and one Katika Baloji owned an extent of Ac.1.30 guntas. Out of total extent of Ac.1.29 guntas, Chakali Ramaiah sold an extent of Ac.1.00 to Smt. Shamshunnisa Begum, contesting respondent No.1 herein and 20 guntas to one Jahangir and retained the balance of 9 guntas. Katika Baloji sold an extent of 30 guntas to Smt. K. Sharada Bai, appellant No.1 herein and 1 acre to H. Padmini Bhai, appellant No.2 herein. The contesting respondent filed O.S. No. 87 of 1988 on the file of the Munsif Magistrate, West & South, R.R. Dist. for a perpetual injunction restraining appellants herein and others acting on their behalf from interfering with the exclusive possession and enjoyment of her 1 acre land. By order dated 14.07.1995, the said suit was transferred to the Special Court constituted under the A.P. Land Grabbing (Prohibition) Act, 1982, (hereinafter referred to as 'the Act') and numbered as L.G.C. No. 133 of 1995. On its transfer, it was tried along with L.G.C. No. 162 of 1994 which was filed by respondent No.1 herein alleging that the appellants grabbed 12.5 guntas of land out of her 1 acre land. During the pendency of the application, the Special Court appointed an Advocate-Commissioner to inspect and measure the disputed land and the Commissioner filed a report before the Court which is filed as Annexure P-1 along with the S.L.P. On 15.10.1997, the Special Court by a common judgment allowed both the L.G.Cs holding the appellants herein as land grabbers and directed to deliver the vacant possession of 12.5 guntas of land to the 1st respondent. Aggrieved by the said order, the appellants filed Writ Petition Nos. 29675 and 29712 of 1997 before the High Court. The High Court dismissed the writ petitions holding that the Special Court has not committed any error in allowing the L.G.Cs. Questioning the same, the appellants filed the above appeals by way of special leave.

3) We heard Mr. Roy Abraham, learned counsel appearing for the appellants and Mrs. K. Amareswari, learned senior

counsel appearing for respondent No.1.

4) The only question to be considered in these appeals is whether the order passed by the Special Court and the impugned order of the High Court upholding the decision of the Special Court is sustainable or not?

5) Though in the grounds of appeal an objection was raised about the jurisdiction of the Special Court constituted under the Act, no argument was advanced with regard to the same. On the other hand, the appellants challenged the merits of the impugned orders and the ultimate conclusion arrived. The contesting respondent filed an application under Section 8(1) of the Act to declare the appellants herein as land grabbers and evict them from an extent of 15 guntas of land forming part of Sy. No. 30 of Taranagar Village. She filed counter contending that she is bona fide purchaser and she is in possession and enjoyment of her property since the date of purchase and perfected title to the schedule property by adverse possession. Before the Special Court, common evidence was recorded. On behalf of the petitioners, PWs 1 & 2 were examined and Ex. A-1 to A-21 were marked. On behalf of the respondents, RW 1 was examined and EX. B1 to B-14 were marked. The Special Court examined CW-1 and Ex. C1 to C-8 were marked. The Special Court, on appreciation of oral and documentary evidence, found that the applicant before it is the owner of 12= guntas of land forming part of Sy. No. 30 as specifically shown in the sketch of the Commissioner and declared the respondents as land grabbers and directed to deliver possession as far as L.G.C. No. 162 of 1994 is concerned and granted permanent injunction to an extent of 27= guntas of land in S.No. 30 against the respondents in L.G.C. No. 133 of 1995. The said order was confirmed by the High Court.

6) It is useful to refer the definition of "Land Grabbing" and "Land Grabbers" as defined in Section 2(e) and Section 2(d) of the Act respectively:

"Section 2(e) "land grabbing" means every activity of grabbing of any land (whether belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf, or any other private person) by a person or group of persons, without any lawful entitlement and with a view to illegally taking possession of such lands, or enter into or create illegal tenancies or lease and licences agreements or any other illegal agreements in respect of such lands, or to construct unauthorized structures thereon for sale or hire, or give such lands to any person on rental or lease and licence basis for construction, or use and occupation, or unauthorized structures; and the term "to grab land" shall be construed accordingly."

"Section 2(d) "land grabber" means a person or a group of persons who commits land grabbing and includes any person who gives financial aid to any person for taking illegal possession of lands or for construction of unauthorized structures thereon, or who collects or attempts to collect from any occupiers of such lands rent, compensation and other charges by criminal intimidation, or who abets the doing of any of the above mentioned acts; and also includes the successors-in-interest."

In view of the above statutory provisions and of the claim of the applicant that she is the original owner of the schedule property and her land was grabbed by the respondents, the initial burden is on her to prove her right and title to the property and if the same is discharged, the burden shifts on the respondents. It is not in dispute that the land was

purchased by the applicant and respondent Nos. 1 & 2 forming part of Sy. No. 30 of Taranagar Village. It is also not disputed that Sy. No. 30 was not sub-divided. It is the claim of the applicant that she purchased the property from Ramaiah and S. Krishnamurthy under a registered sale deed dated 15.02.1979 which is marked as Ex. A-1 which is part of Sy. No.30. Before the Special Court, the applicant very much relied on the report of the Mandal Revenue Officer. On the direction of the Court, a Commissioner was appointed, who after inspection submitted a report. Based on the oral and documentary evidence coupled with the report of the Mandal Revenue Officer as well as the Commissioner, the Special Court found that the applicant is in possession of 27 = guntas of land and the adjoining 12 = guntas of land forming part of Sy. No. 30 which is claimed by the applicant is adjoining to the said land. The Special Court disbelieved the claim of the respondents that there is a boundary wall in between those lands i.e., 27 = guntas of land and 12 = guntas of land and rightly rejected their stand.

7) Mrs. K. Amareshwari, learned senior counsel appearing for the contesting respondent before us by taking us through the relevant portion of the order of the Special Court submitted that the applicant has duly established her case by placing oral and documentary evidence and the Special Court after accepting the same and basing reliance on the records as well as the report of the Commissioner rightly passed an order which was confirmed by the High Court. In the light of the submission, we verified the order of the Special Court and the materials placed before it. It shows that after tabulating all the details furnished by the applicant and the respondents, it concluded as follows:

\0238-x \005\005\005\005\005Thus the respondents 1 & 2 or their successors-in-interest are in occupation of land which does not belong to them. The report of the Commissioner shows that about 12 = guntas as shown in the sketch appended to the report of the Advocate-Commissioner is in the occupation of R1 and R2 or their vendees. In the absence of any evidence to show that 12 = guntas of land belongs to R1 & R2 and that it lies in Survey Number 30 A, it shall be presumed that the said land which is in SY. No.30 and which abuts the extent of 27 = guntas of land of the applicant, belongs to the applicant, particularly when it is shown in Ex. B6 to Ex. B13 that one of the survey numbers in which plots 50 to 55 lie, is 30 AA. In fact the area covered by plots 49 to 55 is the disputed land.\024

\023For the foregoing discussion, we hold that the appellant is the owner of 12 = guntas of land forming part of the land in Sy. No. 30 as shown in the sketch appended to the report of the Commissioner and that the rival title set up by R1 & R2 over the said land is not true and valid.\024

Inasmuch as the above conclusion is based on the appreciation of oral and documentary evidence led by the applicant and the respondents as well revenue records and the report of the Commissioner, the said conclusion cannot be faulted with. The High Court, after analyzing all the materials and finding that the petitioners before them who are appellants before us are land grabbers and grabbed 12 = guntas of land, concurred with the decision arrived at by the Special Court and dismissed their writ petitions.

8) In the light of the abundant acceptable materials in the form of oral and documentary evidence coupled with the report of the Mandal Revenue Officer and of the Commissioner, we

agree with the conclusion arrived at by the Special Court and the High Court and reject the claim of the appellants. Consequently, both the appeals are liable to be dismissed, accordingly, we do so. No costs.

JUDIS