

Non-Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5237 OF 2002

V. Srinivasaraju

... Appellant

Vs.

M/s. Bharat Electronics Ltd. & Ors.

... Respondent

J U D G M E N T**R.V.RAVEENDRAN, J.**

Appellants 1 to 6 and respondent No. 2 were plaintiffs (that is plaintiff Nos. 1, 3 to 7 and Plaintiff No.2 in O.S. No. 1831/1989 on the file of the Additional City Civil Court, Bangalore. Respondents 1 and 3 were defendants 1 and 2 in the said suit for declaration of title and possession in regard to an extent of 2 acres and 12 guntas of land in Survey No. 101/2 of Kodigehalli village , Bangalore North Taluk. For convenience the appellants and respondent No. 2 will together be referred to as plaintiffs, first respondent as 'BEL' and third respondent as 'LAO'.

2. The case of plaintiffs as per the plaint averments and evidence of plaintiffs is as follows :

2.1) Sy.No.101 of Kodigehalli measures 10 acres 29 guntas (of which 24 guntas was phut Karab). An extent of 5 acres 17 guntas in Sy.No.101, alongwith other lands were acquired for BEL on 25.2.1954. One Anjaneya Gowda who was the owner of the remaining extent of Sy.No.101, sold to V. Varadaraju, (father of the plaintiffs) an extent of 5 acres and 12 guntas of land in Survey No. 101 (bounded on the East by Railway line and Survey No.100, West by Survey No. 102, North by Survey No. 121 Hanumantha garden lane, and South by portion of Survey No. 101 acquired for and belonging to BEL) under a registered sale deed dated 1.12.1961. At the time of such purchase, the land sold was under requisition and therefore only symbolic possession was given to their father and not actual possession. After such purchase, the competent authority passed an order under section 6(2) of the Requisitioning and Acquisition of Immovable Property Act, 1952 (for short 'Requisition Act') specifying Anjaneya Gowda as the person to whom possession of Sy.No.101 (5 A 12 G) should be delivered in pursuance of Central Government's decision to release the land from requisition with effect from 1.8.1962. Varadaraju accordingly accepted

possession of the said land and his name was entered as the owner thereof in the revenue records -- index of land and record of rights. On 24.7.1965, Survey No. 101 was phodded and sub-divided into Sy.101/1 measuring 5 A 17 G belonging to BEL and 101/2 measuring 5 acres 12 guntas belonging to V.Vardaraju. On taking actual physical possession Vardaraju got the land measured and got boundary stones fixed by the Revenue Department and he was thus in peaceful possession and enjoyment of the entire 5 A and 12 G by putting up a fencing all around the land. When matter stood thus, on 4.12.1965, BEL which acquired a huge track of land including Survey No. 101/1 measuring 5 A 17 G, through its officials removed the fencing put up by V.Varadaraju and started enclosing a part of his land (on the southern side) by putting up a compound wall.

2.2) Varadaraju filed a suit for injunction in O.S. No. 700 of 1965. The said suit was dismissed by judgment dated 27.9.1977 holding that the said Varadaraju had failed to prove that he was in lawful possession of the suit property. In the course of the said judgment the learned Munsiff observed that Varadaraju having failed to prove his possession of the suit schedule property, he was not entitled to the relief of permanent injunction against the defendant BEL and that he may, if so advised, bring a separate action for

re-establishing his title to 5 A 12 G and seek consequential relief of obtaining possession, to the suit land or any portion thereof, which is not in his possession. Thereafter the said Varadaraju died, and the plaintiffs as his legal heirs filed an appeal (R.A. No. 129 of 1977) against the dismissal of the injunction suit and the appeal was dismissed as being barred by limitation on 7.6.1983.

2.3) Though what was acquired by BEL was only 5 A 17 G in Survey No. 101 (subsequently assigned the sub number 101/1), it had in addition encroached upon 2 A 12 G out of 5 A 12 G in Sy.No.101/2 belonging to the plaintiffs, in 1965 by including it in their compound. They were therefore entitled to a declaration of title in regard to 5 A 12 G in Survey No. 101/2 and for a direction to BEL to deliver possession of the 2 A 12 G which was in their unlawful possession, and an inquiry into mesne profits.

3. The suit was contested by BEL. BEL did not dispute the fact that what was acquired for its benefit in the year 1954 was an extent of 5 A 17 G in Survey No. 101. It however denied the title of plaintiffs in regard to 5 A 12 G in Sy.No.101 and also denied that it had encroached an extent of 2 A

12 G out of the said 5 A 12 G. BEL contended that it had been in possession of its land ever since the time of acquisition and that it did not encroach or add any land in 1965 or any other time and therefore the suit was barred by limitation.

4. The trial court, after considering the evidence, passed a judgment dated 11.8.1995. It held that the plaintiffs had proved that they were the owners of Survey No. 101/2 measuring 5 A 12 G and that BEL had encroached an extent of 2 A 12 G out of the said land. It, therefore, decreed the suit as prayed. It may be mentioned that the consideration of the evidence, both documentary and oral, by the trial court is rather without full and exhaustive consideration.

5. Feeling aggrieved, BEL filed an appeal before the High Court. The High Court after exhaustive consideration of the evidence, held that plaintiffs had failed to prove that BEL, a defence establishment, had encroached or came into possession of any land which was in the possession of the plaintiffs at any point of time. Consequently the High Court allowed the first appeal, set aside the judgment of the trial court and dismissed the

suit as a speculative litigation. The said judgment is under challenge in this appeal by special leave.

6. At the outset, it should be noted that BEL claims title in regard to only 5 A 17 G of land (Survey No. 101/1) which was acquired for its benefit. It does not claim title or possession in regard to any land in acquisition of 5 A 12 G in Survey No. 101/2. It also does not admit that the plaintiffs are the owners of Survey No. 101/2 measuring 5 A 12 G or that it had encroached upon or in illegal possession of any portion of Survey No. 101/2, in particular, the southern part of Sy.No.101/2 measuring 2 A 12 G as alleged by the plaintiffs. As noticed above, the trial court did not examine the evidence in detail. On the other hand, the High Court had considered all the relevant exhibits and the oral evidence and recorded clear findings that plaintiff's father was never in possession of the disputed portion of 2 A 12 G and that BEL did not encroach upon the said 2 A 12 G in the year 1965 as alleged. The High Court held that as the plaintiffs failed to prove that they were ever in possession of the said 2 A 12 G and that BEL had encroached upon 2 A 12 G in 1965, the suit had to fail. This is purely a finding of fact arrived at on appreciating the evidence and does not involve any question of law. Therefore, the decision of the High Court does

not call for interference under article 136 of the Constitution. Having said so, we may briefly to the contentions of the appellant to demonstrate that they are without merit.

7. As noticed above, the specific case of the plaintiffs is that Varadaraju did not get physical possession of the land when he purchased the land in the year 1961; that subsequently he got actual physical possession of 5 A 12 G on 1.8.1962 from Deputy Commissioner and competent authority under the Requisition Act and he was in possession of the entire property of 5 A 12 G by putting up a fence and that BEL encroached upon 2 A 12 G in 1965 when it started putting up a compound wall. Ex.P1 is the sale deed dated 1.12.1961 in favour of Varadaraju. It clearly states that the extent of 5 A 12 G in Sy.No.101 sold to Varadaraju was under requisition and therefore only symbolic possession was delivered to him. What is significant is that the said sale states that a portion of the land sold to Varadaraju was in the unauthorized occupation of BEL. This would mean that the alleged encroachment was not in 1965, but long prior to 1.12.1961 when the land was purchased by Varadaraju. Admittedly BEL did not surrender any land to Varadaraju after 1.12.1961. Nor does plaintiffs claim that BEL released any land after 1.12.1961. Therefore when land which was the

subject matter of sale was released from requisition in the year 1962, Varadaraju could not have got physical possession of entire 5 A 12 G in Sy.No.101, as portion thereof was already in possession of BEL according to the sale deed. If Varadaraju did not get possession of 5 A 12 G from the competent authority under the Requisition Act on 1.8.1962, his claim that he was in possession of 5 A 12 G from 1.8.1962 and he had fenced the said extent and that in December, 1965, BEL removed the fence and encroached an extent of 2 A 12 G of land in Sy.No.101/2 becomes false.

8. Ex P-2 is the order under which the competent authority under the Requisition Act is stated to have released 5 A 12 G of land in Survey No. 101 in favour of Anjaneya Gowda, that is the vendor of Varadaraju on 1.8.1962. On the reverse of it, there is an endorsement made by Varadaraju, father of the plaintiff to the following effect :-

“I have accepted the possession of land bearing Sy. No. 101 measuring 5 A 12 G on the following conditions, that I will be paid crop compensation for 5 years and also that should be paid arrear crop compensation for 5 years and also that I should be paid arrear crop compensation as has been paid to others and as mentioned by to erstwhile owner Sri H. Anjane Gowda. Also I should be compensated for the changes towards leveling the land which is uneven, falling which, you have to get it levelled and also the boundaries of the land should be marked.”

Thus Ex P2 cannot be of any assistance to show that Varadaraju got actual physical possession of 5 A 12 G of land in Sy.No.101 on 1.8.1962. The fact that Varadaraju did not secure physical possession of 5 A 12 G also becomes evident from the recital in the endorsement accepting possession made on Ex.P2 by Varadaraju, that the boundaries of the said land were yet to be marked. It is thus clear from the endorsement that Varadaraju got only partial physical possession in regard to 5 A 12 G on release from acquisition and the land of 5 A 12 G in entirety was not identified. There is thus very serious doubt/dispute as to whether Varadaraju got valid title and possession of 5A 12 G and whether his vendor Anjaneya Gowda owned and possessed 5 A 12 G in Sy. No.101.

9. The appellant next contended that the Commissioners were appointed thrice, that is first time in the injunction suit (OS No.700/1965), second time by the trial court in OS No.1831 of 1989 and third time by the High Court in RFA No.93/1996 and the Commissioners submitted reports which showed an encroachment of 2 A 12 G by BEL and this crucial evidence has been ignored. In so far as the report of the Commissioner appointed by the learned Munsiff in the injunction suit (OS No.700/1965) the trial court while dismissing the said suit filed by the father of the plaintiffs, held that

the inference of the Commissioner in his report that plaintiff Varadaraju was entitled to 5 A 12 G in Sy.No.101/2 was unwarranted and the report does not show that Varadaraju was in possession of entire extent. The said report in the earlier suit is therefore of no assistance to the plaintiffs. Insofar as the report of the Commissioner appointed by the trial court it is true that the report opined that 2 A 12 G in Survey No.101/2 was in possession of BEL. But it was found that the said opinion was an inference without basis, as the boundaries could not be identified and the 2 A 12 G was not demarcated with reference to any acceptable revenue or survey records. As noticed above neither the 5 A 17 G in Survey No.101/1 belonging to BEL, nor the portion of Survey No.101/2 allegedly in the possession of BEL was demarcated. BEL had within its compound a huge area running into several hundreds acres and there was no evidence to show that it had encroached any land. It is for this reason that the High Court appointed a Commissioner. The report and evidence of the Commissioner appointed by the High Court was also found to be of no assistance as the sketch prepared by him mentioned only the area that in the occupation of the plaintiff as 2 A 37 G, but did not give the area in the occupation of BEL. The Commissioner did not say that 2 A 12 G were encroached by BEL. He also admitted that he had no reference point by which he could measure or identify the disputed

land. His statement that he took measurements with reference to Survey No.97 as a contiguous land, was also found to be incorrect as Survey No.97 was not a contiguous land. He also admitted that he could not give the Survey number of the land to the East of Survey No.101 and that he had also not relied upon any official records. Therefore the Commissioners' evidence is of no assistance.

10. We are therefore of the view that the finding of fact recorded by the High Court that the plaintiffs did not prove that they were the owners in possession of 5 A 12 G, does not call for interference. Neither plaintiffs nor their father were ever in possession of more than 3 acres (or 2 A 37 G as per Commissioner's report). In fact the trial court completely ignored the fact that when 5 A 17 G was acquired for the benefit of defendant, it was clearly demarcated as the land to the South of the railway line and also to the West of the railway line. The remaining land in Survey No.101 was to the North of the railway line. It may be mentioned that the railway line dividing the Southern portion belonging to BEL and the Northern portion which was not acquired, was subsequently removed and there is no way of knowing whether any extent of Survey No.101 to the North of the BEL's land was encroached by anyone or taken over by Railways. Be that as it may. The finding recorded by the High Court that the plaintiffs were not in possession

of 2 A 12 G at any point of time and that plaintiffs failed to prove that BEL had encroached 2 A 12 G out of Sy. No. 101/2 of land belonging to plaintiffs shows that they were not entitled to the reliefs sought and also that their suit was hopelessly barred by time. If plaintiffs and their father never had possession of '2 A 12 G' of land from the date of purchase in 1961, obviously, the suit filed in 1989 for was declaration of title and possession was barred by limitation.

11. The appeal is therefore dismissed.

.....J.
(R V Raveendran)

New Delhi;
March 27, 2009.

.....J.
(Markandey Katju)