

CASE NO.:
Appeal (civil) 3540 of 2002

PETITIONER:
B. ARVIND KUMAR

RESPONDENT:
GOVERNMENT OF INDIA & ORS.

DATE OF JUDGMENT: 28/05/2007

BENCH:
R.V. Raveendran & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T

R.V. Raveendran, J.

This is an appeal by special leave against the judgment and decree dated 10.7.2001 in RFA No.181/1996 passed by the High Court of Karnataka reversing the judgment and decree dated 8.12.1995 passed by the III Addl. City Civil Judge, Mayo Hall, Bangalore in his suit OS.No.10653/1987. For convenience, the appellant will also be referred to as 'plaintiff' and respondents as 'defendants'.

2. Appellant filed the said suit alleging that suit land measuring 2550 sq. yds. had been leased in perpetuity by the military authorities (General Officer Commanding, Madras District, Bangalore) to M/s S. Giridharilal & Son, a proprietary concern under a registered lease deed dated 30.9.1921; that the lessee put up several structures thereon and was in possession and enjoyment thereof as absolute owners; that G. Anraj Sankla, proprietor of Giridharilal & Son was declared as insolvent in Insolvency Case No.7 and 12 of 1940 on the file of the District Judge, Civil & Military Station, Bangalore and the Official Receiver took charge of the insolvent's properties including the said land with buildings (for short 'suit property'); that the Official Receiver put up the suit property for sale by auction; that M. Bhowrilal, father of plaintiff was the highest bidder and the sale of the right, title and interest of Anraj Sankla that is, his leasehold rights, in regard to the suit property in favour of M. Bhowrilal was confirmed on 25.8.1941 and Sale Certificate was issued to him on 29.8.1941 which was duly registered. After the death of his father on 21.7.1969, he came into possession and enjoyment of the suit property. According to the appellant though the lease was one in perpetuity, it was an absolute grant and since no premium or rent was fixed, the enjoyment was to be perpetual and absolute. When matters stood thus, the Commanding Officer of Station Headquarters, Bangalore (Fourth Defendant), under instructions from the first defendant, illegally and unauthorizedly dispossessed him from the suit property in September, 1975, during the emergency period. Thereafter, he was corresponding with the Defence Ministry for relief, and they went on promising to look into the matter. Ultimately, as they failed to give any relief, he issued a notice through counsel under Section 80 of the Code of Civil Procedure on 8.5.1984, followed by another notice dated 13.4.1987, claiming possession of the suit property. As the said demand was not complied with, he filed the suit (OS No.10653/1987) on 21.8.1987 for the following reliefs:

- (a) for a declaration that he was the absolute owner of the suit property;
- (b) for a direction to the defendants to deliver back possession of the suit property to him; and

(c) for mesne profits, costs and other appropriate reliefs.

3. The suit was resisted by the Defendants-Respondents. They contended that S. Giridharilal & Son was only a lessee and therefore, plaintiff even if he was the successor-in-interest could under no circumstances, claim absolute ownership. It was also alleged that they had taken action for resumption of the leased land for contravention of the terms of lease (construction of unauthorized structures and failure to notify the lessor about transfer of the leasehold rights) and the suit land was surrendered without protest. The allegation of forcible dispossession in September, 1975 was denied. It was also contended that the only relief sought by the plaintiff in his several representations and letters, in respect of the resumption of the leased land, was compensation for the structures; that the claim was not entertained as the structures were unauthorized; and that if there was any dispute or outstanding claim in that behalf, he should have sought reference to arbitration in terms of the lease-deed, and the suit was misconceived and not maintainable.

4. On the said pleadings, the trial court framed the following issues :

(1) Whether the plaintiff proves that he is the absolute owner of the suit property;

(2) Whether the defendants prove that there was contravention of the terms of lease deed dated 30.9.1921?

(3) Whether the Defendants prove that the plaintiff has expressed his intention not to seek possession of the suit property?

(4) Whether the Defendants prove that the suit is barred by time?

(5) Whether the Defendants prove that suit is not maintainable for the reasons stated in para 12 of the Written Statement.

(6) Whether the defendants prove that suit is bad for non-joinder of necessary parties?

(7) Whether the defendants prove that court fee paid is insufficient?

(8) What relief the parties are entitled to.

Plaintiff examined himself as PW1 and got exhibited Ex.P1 to Ex.P43. The Defendants also examined one witness. After appreciating the oral and documentary evidence, the trial court decreed the suit in part. It answered the first issue against the plaintiff by holding that plaintiff had not acquired ownership. It held issues (2) to (6) against the defendants. It held that issue No.(7) did not survive for consideration. As a consequence, it rejected the prayer for declaration of title and granted the relief of possession to the Plaintiff and ordered a separate enquiry regarding mesne profits.

5. Feeling aggrieved, the defendants filed RFA No.181/1996 before the High Court. The High Court by judgment and decree dated 10.7.2001 allowed the appeal and dismissed the suit. The judgment of the High Court is based on the following findings of facts:

(a) The lease under deed dated 30.9.1921 (Ex.P1) was not a lease in perpetuity, but only a tenancy at will.

(b) The sale certificate in favour of plaintiff's father (Ex.P3 dated 29.8.1941) was not followed by a registered instrument transferring the lessee's interest in favour of plaintiff's father. Therefore, no title was conveyed to plaintiff's father, in regard to the suit land.

(c) There was a clear embargo in the lease deed in respect of transfer of the leasehold interest, without notice to the lessor and without the consent of the lessor. There was no notice to the lessor in regard to the sale of leasehold right nor consent for such auction sale. Therefore, the transfer of leasehold interest was void, even though it was a court sale.

(d) The possession of plaintiff's father and later that of plaintiff was no better than that of a trespasser as there was no valid transfer.

(e) As plaintiff had failed to prove title or leasehold interest, he was not entitled to recover possession on the basis of possessory title. Nor was he entitled to restitution of possession, on the facts of the case.

6. The appellant has challenged the said judgment and decree of the High Court. He contends that the findings recorded by the High Court are erroneous and contrary to the evidence and therefore, the judgment of the High Court is liable to be set aside. The contentions of appellant gives rise to the following points for consideration :

(i) Whether the lease under deed - Ex.P1 dated 30.9.1921, is a perpetual lease.

(ii) Whether the plaintiff's father did not secure any manner of right, title or interest in the suit property, as the sale certificate in his favour was not followed by a registered deed of transfer.

(iii) Whether the transfer of leasehold interest in favour of plaintiff's father was void, for want of notice to lessor and consent of the lessor.

(iv) Whether the plaintiff was forcibly dispossessed in September 1975 and entitled to a decree for possession.

(v) Whether the suit was barred by limitation.

Re: Point (i)

7. Section 105 of Transfer of Property Act, 1882 defines lease as follows :

"A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied or in perpetuity, in consideration of a price paid or promises or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, Lessee, Premium and Rent defined - The transferor is called the Lessor, the transferee is called the Lessee, the price is called the Premium, and the money, share, service or other thing to be so rendered is called the Rent."

Thus the essential ingredients of a lease are : (a) There should be a transfer of a right to enjoy an immovable property; (b) Such transfer may be for a certain term or in perpetuity; (c) The transfer should be in

consideration of a premium or rent; (d) The transfer should be a bilateral transaction, the transferee accepting the terms of transfer.

8. In this case the plaintiff claims that the suit land was leased in perpetuity by the General Officer Commanding, Madras District, Bangalore under Ex.P1 dated 30.9.1921. Condition II provides that the lessee can erect buildings on the schedule land only in accordance with the plan with the written permission of the General Officer Commanding or by any of his principal staff officers. Condition III provides that the land shall not be used for any purpose other than that specified in the lessee's application. Condition III (A) provides that no rent is payable in respect of the lease. Condition IV provides whenever it is intended to transfer the leasehold interest by sale, gift, mortgage or exchange, the lessee or the intending transferor shall give the lessor one month's notice in writing before the transfer is completed; and the lessor shall have the power to veto on any such transfer within one month. It further provides that if notice of such intended transfer was not given or if such transfer was made after the same has been vetoed, the transfer shall be void. Condition V provides that every person, on whom the lessee's interest in the land or the buildings erected on the land may devolve by transfer, by succession or by operation of law, shall send to the lessor within one month from the date of such devolution, a report in writing of that fact together with such particulars as may be required. Condition VII provides that so long as the lessee observes the conditions to be observed by him, he may subject to condition IX, hold the land for ever without interruption. Condition IX provides that the lessor may resume the land or any portion thereof at any time after giving one month's notice in writing and on payment of compensation for the buildings erected on the land, upon proper authority; and if there is any dispute as to the amount of such compensation, the same shall be referred to a Committee of Arbitration and the lessee shall be bound by the decision of such Committee of Arbitration.

9. To decide the duration of the lease, the deed has to be read as a whole. The deed dated 30.9.1921 does not specify any duration, but permits the lessee to hold the land forever subject to the right of the lessor to resume the land by giving one month's notice. There is no grant in perpetuity. The right of the lessor to resume the land by giving a month's notice, is unconditional at the absolute will and discretion of the lessor, whenever he desires. These terms indicate that though the instrument was termed as a lease, it only granted permissive occupation terminable at the will of the owner, and therefore, at best a tenancy at will. The absolute discretion to resume the land at any time without assigning any reason, and absence of any express grant in perpetuity and absence of any consideration, militates against the instrument being construed as a lease in perpetuity. The learned counsel for appellant submitted that courts have taken the view that existence of a mere provision for forfeiture for non-payment of rent or other specified breach, in a deed granting permanent lease, will not make the lease non-permanent. Such line of decisions, may not assist the appellant as a provision for determination of the lease for a specified breach, is in no way comparable to reservation of an absolute right to resume at will without assigning any reason, in a lease without consideration. We, therefore, affirm the finding that Ex.P1 is not a lease in perpetuity. We, however, desist from examining the further question whether the lease itself was invalid for want of consideration, as such a contention was not raised in the written statement nor urged before the trial court or High Court.

Re : Point (ii)

10. The plaintiff has produced the original registered sale certificate dated 29.8.1941 executed by the Official Receiver, Civil Station, Bangalore. The said deed certifies that Bhowrilal (father of plaintiff) was the highest bidder at an auction sale held on 22.8.1941, in respect of

the right, title, interest of the insolvent Anraj Sankla, namely the leasehold right in the property described in the schedule to the certificate (suit property), that his bid of Rs.8,350 was accepted and the sale was confirmed by the District Judge, Civil and Military Station, Bangalore on 25.8.1941. The sale certificate declared Bhowrilal to be the owner of the leasehold right in respect of the suit property. When a property is sold by public auction in pursuance of an order of the court and the bid is accepted and the sale is confirmed by the court in favour of the purchaser, the sale becomes absolute and the title vests in the purchaser. A sale certificate is issued to the purchaser only when the sale becomes absolute. The sale certificate is merely the evidence of such title. It is well settled that when an auction purchaser derives title on confirmation of sale in his favour, and a sale certificate is issued evidencing such sale and title, no further deed of transfer from the court is contemplated or required. In this case, the sale certificate itself was registered, though such a sale certificate issued by a court or an officer authorized by the court, does not require registration. Section 17(2)(xii) of the Registration Act, 1908 specifically provides that a certificate of sale granted to any purchaser of any property sold by a public auction by a civil or revenue officer does not fall under the category of non testamentary documents which require registration under sub-section (b) and (c) of section 17(1) of the said Act. We therefore hold that the High Court committed a serious error in holding that the sale certificate did not convey any right, title or interest to plaintiff's father for want of a registered deed of transfer.

Re : Point (iii)

11. Condition IV of the lease deed provides that a transfer of the lease by way of sale, gift, mortgage or exchange shall be void if intimation thereof is not given to the lessee. Condition V requires a report in writing to be sent to the lessor by the transferee of lessee's interest by succession or operation of law. Condition IV deals with transfers inter vivos (transfer from one living or juristic person to another living or juristic person) and Condition V deals with devolution by succession or by operation of law including auction sales confirmed by court. Only transfers in violation of Condition IV are void. No penal consequence is specified for failure to comply with Condition V. Therefore, it is not possible to hold that the auction sale of the leasehold right in favour of Bhowrilal was void for want of notice to the lessor.

Re : Points (iv) and (v)

12. In this case the plaintiff approached the Civil Court with a specific case that he was the owner of the suit property and that he was illegally dispossessed by the defendants in September 1975 and sought a declaration of title as absolute owner and for delivery of possession. He also contended that as the suit was filed within 12 years from the date of dispossession, the suit was within time. The plaintiff admitted in the plaint that the suit property was leased to M/s S. Giridharilal & Son and his father purchased only the leasehold right in a court auction in 1941. Therefore, the trial court rightly found that the plaintiff did not establish ownership to the suit property and therefore, did not grant the relief of declaration of title. That finding attained finality as the Plaintiff did not choose to challenge the rejection of the prayer for declaration of title. Therefore, the only question that remained for consideration was whether the plaintiff has made out any case for the relief of possession. Plaintiff's specific case is that in September 1975 during emergency period, he was forcibly dispossessed. Obviously, therefore, he will be entitled to a decree for possession only if he establishes that he was forcibly dispossessed from lawful possession and such dispossession was within 12 years prior to the date of the suit (21.8.1987).

13. The plaintiff who was examined as PW1 stated that in September, 1975, fourth defendant forcibly dispossessed him from the suit property

without any notice. No other witness was examined to corroborate his testimony. No other evidence was let in to show that he was in possession of the suit property in September, 1975 or that he was illegally dispossessed. In his cross-examination, he admitted that he was never in personal possession and that his tenant was in possession. There was also no evidence in regard to the measurement of the alleged structures. The evidence of plaintiff shows that neither he nor his alleged tenant gave any complaint regarding the forcible dispossession. In fact, no document was produced to show that any tenant of plaintiff was in possession in 1975. The documentary evidence produced by the plaintiff himself, however, tell a different story regarding dispossession.

14. Ex.P10 dated 6.3.1976 is a letter from plaintiff to fourth defendant. In that letter, he makes a vague allegation that the defendants were trying to commit acts of trespass and take forcible possession of the property. The said letter was sent nearly six months after September 1975. If he had already been dispossessed from the suit property in September 1975, the tenor of the letter would have been completely different. Be that as it may.

15. Ex.P16 dated 27.4.1977, is a letter written by the plaintiff's advocate. It states that plaintiff had already furnished necessary documents and therefore the fourth defendant should take immediate steps to resolve the question of compensation. This document does not speak about forcible dispossession at all. In Ex.P23 dated 21.2.1979, Ex.P26 dated 30.1.1980 and Ex.P31 dated 9.3.1981, all referring to the subject "resumption of defence land (suit property)", plaintiff requests the defendants to take immediate steps to resolve the question of compensation. These letters clearly show that the suit land was already resumed by the defendants in terms of the lease and that plaintiff was seeking only compensation and nothing more. In fact, the plaintiff specifically stated thus in Ex.P31 dated 9.3.1981 :

"I have already expressed that I have no objection for the resumption of the land in question provided suitable compensation for the property created on the land is paid to me."

Again in Ex.P34 dated 11.5.1981 and Ex.P35 dated 16.11.1981, the plaintiff, with reference to the subject of resumption of the suit land, requested that compensation be paid to him at the earliest. Alternatively, he requested that resumption may be cancelled.

16. It is thus seen from 1975, when the plaintiff alleges that he was forcibly dispossessed from the suit property, till 1981 there is no whisper in any of the letters written by the plaintiff (either personally or through counsel) about any forcible dispossession in September, 1975. On the other hand, all the letters specifically refer to resumption of the land by defendants and seek only compensation. It can be inferred from these letters that the suit property had been resumed long prior to September, 1975 in accordance with the terms of the lease deed, that from about 1976-1977, plaintiff attempted to get some compensation for the structures, that as the records did not show any authorized structures, the defence department sought documents and clarifications and plaintiff furnished some documents to claim compensation. Having failed in his claim for compensation and being tempted by the steady rise in property values in the area, the plaintiff has apparently put forth a case of forcible dispossession in September, 1975.

17. Significantly, in the notice dated 8.5.1984 (Exhibit P.40) sent through counsel under Section 80 CPC, the plaintiff for the first time alleged that in the year 1975 the military authorities unauthorizedly and illegally and forcibly dispossessed him from the property. The month or date of alleged dispossession is not mentioned. The subsequent notice dated 13.4.1987 (Exhibit P.42) makes an improvement as it is alleged

therein that the forcible dispossession was in the year September, 1975. This was reiterated in the plaint. But the detailed correspondence consisting of several letters and representations by Plaintiff from 1976 to 1981 do not refer to forcible dispossession but, on the other hand, refers to resumption of possession by the Defence Department in terms of the lease and to the claim of plaintiff for payment of compensation for the structures. It is, therefore, clear that the case of plaintiff that he was forcibly dispossessed from the suit land in September, 1975 is an afterthought to grab defence land. As plaintiff has failed to prove forcible dispossession and the documents disclose that the land was resumed in terms of the lease dated 30.9.1921 without any protest from the plaintiff, he is not entitled to the relief of possession, even if such dispossession was within twelve years before the date of suit. Apart from merits, the claim for possession is also clearly barred by limitation as the suit was filed on 21.8.1987 and plaintiff was lawfully dispossessed several years prior to 1975.

18. If at all there is any dispute or issue was pending, that was relating to the claim for compensation and plaintiff had to seek arbitration in that behalf by establishing that structures were lawfully put up with the permission of the lessor and the nature and extent of such structures. But no such request was made for arbitration. No such relief is claimed in the plaint. At all events by 1987, there was no surviving claim for compensation and no request could even be made for reference to arbitration. The plaintiff - appellant is not therefore entitled to any relief.

Conclusion

19. Though the judgment of the High Court may be erroneous in regard to certain issues of fact, we find that the final decision of the High Court to dismiss the suit was correct and just and does not call for interference. We, therefore, affirm the decision of the High Court dismissing the suit.

20. The appeal is, accordingly, dismissed. Parties to bear their respective costs.