

Civil Miscellaneous Appeal No. 29 of 2014

S.M. Fazlullah Shah Quadri v. Nemali Krishna

2015 SCC OnLine Hyd 259 : (2015) 5 ALD 743 : (2017) 2 ALT 789 : (2015) 4
CCC 67

(BEFORE M. SEETHARAMA MURTI, J.)

S.M. Fazlullah Shah Quadri and 3 others Appellants

v.

Nemali Krishna and three others Respondents

Counsel for the Appellants: Sri G.V. Ramana Murthy

Counsel for Respondents: Dr. Venkat Reddy Donthi Reddy

Civil Miscellaneous Appeal No. 29 of 2014

Decided on June 24, 2015

JUDGMENT:

This appeal under Order XLIII Rule (1)(r) of the Code of Civil Procedure, 1908 (the Code for short) by the unsuccessful defendants/appellants is directed against the order dated 20.09.2013 of the learned I Additional District Judge, Ranga Reddy passed in IA. No. 2297 of 2012 in OS. No. 942 of 2012 filed by the plaintiffs/respondents under Order XXXIX Rules 1 and 2 of the Code for a temporary injunction restraining the defendants from interfering with the plaintiffs peaceful possession and enjoyment of Ac.2.38 guntas of land in survey nos. 9 and 10 of Allapur Village more fully described in the schedule annexed to the plaint and petition.

2. I have heard the submissions of the learned counsel for the appellants/defendants (the defendants, for brevity) and the learned counsel for the respondents/plaintiffs (the plaintiffs, for brevity). I have perused the material record.

3. Now the point for consideration is Whether the plaintiffs had made out valid and sufficient grounds and had satisfied the cardinal principles for granting a temporary injunction restraining the defendants from interfering with the plaintiffs peaceful possession and enjoyment of the schedule property pending disposal of the suit? And, if so, whether the order impinged can be sustained under facts and in law?

4. POINT:

4.1 The case of the plaintiffs, in brief, is as follows: -

The father of the plaintiffs 1 to 3 by name Muthyalu had purchased Ac.1.16 guntas of land in survey no. 10 of Allapur village under a registered sale deed dated 22.01.1969 bearing document no. 43/69. The copy of the said sale deed is exhibit P1.

Since the date of the said purchase, the said Muthyalu had continued in possession till his death. After his death, the first plaintiff along with the plaintiffs 2 and 4 and his family members had continued in possession and enjoyment of the said property. The first plaintiffs mother Akkamma had purchased the land in survey no. 9 of Allapur village in an extent of Ac.1.22 gunatas under regular registered sale deed dated 30.07.1973. Exhibit P2 is the said sale deed. The plaintiffs 1 to 4 have been in

possession and enjoyment of the above said two extents of land since a long time and pattadar pass books were also given to them and their names were also entered in the revenue records including pahanias as pattadars and possessors. And, the land revenue is being collected from them. The documents filed by them disclose that they are in peaceful possession and enjoyment of the schedule properties. They had entered into a development agreement with the 5th plaintiff for construction of residential complex over the suit schedule property. The 5th plaintiff had spent lakhs of rupees for obtaining permission and to prepare the land for construction and had ultimately taken permission from GHMC for construction of stilt plus five upper floors. The HUDA had also given the land use certificate in respect of the land, of which the plaintiffs 1 to 4 are the absolute owners.

However, the defendants have filed OS. No. 110 of 2012 on the file of II Additional Senior Civil Judges Court, Ranga Reddy District and had further filed an interlocutory application in IA. No. 84 of 2012 in the said suit and had obtained ex parte ad interim injunction. But on appearance of 1st respondent therein and after hearing the arguments, the said ex parte order was not further extended. The defendants have filed an application before revenue authorities for grant of Occupancy Right Certificate claiming that they are the inamdars and that the suit land is not a patta land, but it is an inam land.

Their request was rejected in respect of survey nos. 7 to 12 including the suit schedule property. The appeal preferred by the defendants before the Collector was pending and in that appeal an ex parte status quo order was obtained without impleading the plaintiffs herein. The plaintiffs got themselves impleaded in that proceeding. When the defendants had entered into the schedule property on 02.10.2012 and attempted to dispossess, the plaintiffs were constrained to file the suit and the present application for temporary injunction.

4.2 On the other hand, the defence of the defendants before the trial Court is this: -

The schedule land is an inam land. The father of the defendants by name Syed Shah Yahiya Alam Quadri was the inamdar, possessor and enjoyer of the land covered by survey nos. 1 to 55 of Allapur village. The father of the respondents was divested of the said entire land covered by survey nos. 1 to 55 in an extent of Ac.196.29 guntas as per Section 3(2)(a) of A.P (T.A) Abolition of Inams Act, 1955 (the Act for short) and on such divesture, the land vested with the Government from 20.07.1955, free of all encumbrances. Thus, the lands in the above said survey numbers including the suit schedule lands are not patta lands but, are inam lands. The said Quadri had died on 08.10.1964.

The rights in the inam lands belonging to him devolved upon his legal heirs. In the orders of the Munsif Magistrate Taluq to Hyderabad District passed in OS. No. 16 of 1965, in all eight persons including the 2nd defendant were shown as successors of the said Quadri. In the year 1985, the defendants have applied for grant of occupancy right certificate (ORC) in accordance with the provisions of the above said Act. On that on 03.02.1985, the RDO, West Division had issued notices to all the legal heirs of the original inamdars. They had filed replies stating that they were in possession of Allapur Maqtha and sought for grant of ORC in their favour and had inter alia contended that the illegal entries in the revenue records are not binding upon them. They have been making requests for the last several years to delete the illegal entries in the revenue records and issue ORC in their favour in respect of the suit land as well as the other extents of inam lands. This Court vide orders dated 19.01.2012 had directed the Chief Commissioner, Land Revenue and his subordinates to delete the names which are

illegally entered in the revenue records. Prior to the abolition of inams under the above said Act, the lands in the above said survey nos. 1 to 55 were recorded as inam lands in about 19 revenue records including Muntaqab and Sanath of Allapur village. In-fact, the Tahsildar of Balangar recognised the lands in survey nos. 7 to 12 of Allapur village as inam lands and that inamdars who are in possession and enjoyment of the said lands are entitled to get the ORC. Since the RDO, Chevella by his orders dated 23.07.2010 had refused to grant the ORC to the defendants and others in respect of the lands in survey nos. 1 to 55 of Allapur village, an appeal has been filed before the Joint Collector. After abolition of the inams in the year 1955, though the title vested with the Government, the possessory rights continued with the inamdars. In respect of the lands, which are inam lands, civil Court has no jurisdiction to entertain the suit and grant the relief. What is to be noted is that in support of the said contention, the defendants relied upon the following exhibits before the trial Court.

Exhibit R1 is the Muntaqaab No. 926 granted to the ancestor of Syed Shah Yahya Alam Quadri, exhibit R2 is the Parwana (Sanad) issued by H.E.H the Nizam Government, exhibit R3 is the Sanad issued by HEH the Nizam Government, exhibit R4 is the succession enquiry of Mohd. Ali Shah Saheb, exhibit R5 is the Inam Enquiry in respect of Allahpur village, exhibit R6 is the Genealogical Tree of family of the ancestors, exhibit R7 is the letter, dt.10th Zeequada, 1305 Hijri, exhibit R8 is the HEH the Nizam Govt. proceedings, dt:29th Safar 1309 Hijri, exhibit R9 is the HEH the Nizam Government Inam Enquiry Dept Proceedings, dt: 22nd Farwardi, 1301 Fasli, exhibit R10 is the proceedings of the 1st Collector in respect of enquiry of succession of Mohd. Ali Quadri Saheb, dt: 19th Farvardi, 1313 Fasli, exhibit R11 is the Enquiry of Inam Maqtha Allahpur Certified copy issued by Revenue Secretary the HEH, the Nizam Govt., exhibit R12 is the Vakalathnama filed by Syed Shah Yahya Alam Quadri before Inam enquiry, Revenue Secretary, Sarkar E Aali, exhibit R13 is the Inam enquiry connected document dt: 10th Ramazan Sharif 1313 Hijri, submitted to Deputy Commissioner, Enquiry of Inams by the ancestor of Syed Shah Yahya Alam Quadri, exhibit R14 is the Statement of witness deposing that Allahpur Maqtha with 100 Begas and with one talab conferred to the ancestor of Syed Shah Yahya Alam Quadri, exhibit R15 is the deposition of witness i.e, Sayenna Prasanna, exhibit R16 is the deposition of another witness by name Baligga, exhibit R17 is the letter issued by Revenue Secretary to Nawab Iqbal Yarjung Bhadur, exhibit R18 is the application made by Syed Mohd. Ali Quadri, exhibit R19 is the letter of Commissioner of Inam Enquiries sent by Deputy Commissioner, Inams, exhibit R20 is the Register of Wassol Baqui, village, Allapur, exhibit R21 is the Shetwar of Allapur villagae maqta, exhibit R22 is the copy of sketch of Allapur village showing the Maqta land of Syed Shah Yahya Alam Quadri, exhibit R23 is the registered Gift deed of the year 1896 along with the true translation, exhibit R24 is the Muntakab issued by board of Revenue 30th Teer 1332 Fasli along with its true translation, exhibit R25 is the succession certificate, doc. No. 899 of 1333 Fasli, exhibit R26 is the Succession granted in File No. 50/54 of 1305 Fasli, exhibit R27 is the death certificate of Syed Shah Yahya Alam Quadri, dt.08.10.1964, exhibit R28 is the copies of judgment and decree, dt.18.03.1965 in O.S. No. 16 of 1965, exhibit R29 is the CC of the note filed issued by Asst. Director LR's, R.R. District, exhibit R30 is the copy of order passed by Tahsildar, Hyderabad, West Taluq in his proceedings in case NO. A1/6161 of 1970, dt.24.07.1971, exhibit R31 is the order of Jagir administrator passed in Jamabandi 1953, dt:16.-03.1954, exhibit R32 is the letter of the District Collector, Hyderabad, exhibit R33 is the order of Jagir administrator, dt.16.01.1957, exhibit R34 is the succession order of Tahsildar, Taluq Baghdad, exhibit R35 is the Memo issued by Tahasildar, Balanagar Mandal in his file No. E/305/2009, dt.08.09.2009, exhibit R36 is the copy of the General Power of Attorney made and executed by Khairunnisha Begum and 5 others, exhibit R37 is the Notice by

Inamdars to the RDO, West Division in the year 1975, exhibit R38 is the preliminary enquiry reports of tahasildar Balangar, exhibit R39 is the classer register for Sy. nos. 1 to 55 of Allapur village and exhibit R40 is the orders passed by the Honble High Court of AP.

4.3 Be it noted that the defendants filed as additional evidence before this Court, the copy of the common order dated 29.03.2014 of the Joint Collector-I, Ranga Reddy District passed in case No. F1/799/2012 (and other batch cases) whereby the learned Joint Collector had set aside the orders dated 27.12.2011 of the RDO, Chevella, which is exhibited as exhibit P22 and had inter alia directed to conduct de novo enquiry, giving notices to all concerned, in regard to classification of lands in question and pass appropriate orders. The said application in CMA.MP. No. 736 of 2014 for receiving additional evidence is allowed and the copy of the common order dated 29.03.2014 is taken on record and is exhibited as exhibit R41.

4.4 The learned counsel for the defendants while reiterating their pleaded defence before the trial Court had inter alia contended forcefully as follows:

In view of the subsequent event namely the order of the Joint collector ordering a fresh enquiry as to the classification of the subject lands and the entire inam lands, the order of the RDO under exhibit P22 on which much reliance was placed by the plaintiffs cannot be countenanced. The findings to the effect that the lands are not inam lands but, are patta lands being relied upon by the plaintiffs have not become final and that the said issue has to be decided by the revenue authorities concerned. The inamdars including the defendants have a right to obtain ORC and that at present the land had vested with the Government. Several irregularities were committed by the revenue authorities since the date of abolition of inams and various illegal entries were made in the revenue records by drawing incorrect presumptions, inferences and conclusions to the effect that the inam lands including the suit schedule lands are patta lands. The sale deeds dated 22.01.1969 and 30.07.1973 under exhibits P1 and P3 in respect of the schedule lands, which are inam lands, and the further records like pattadar pass books, title deeds etcetera in exhibit P series, being relied upon by plaintiffs, are of no avail. By virtue of section 2 of the Act, which defines inamdar, the defendants are inamdars of the entire land including the suit schedule land. By virtue of Section 3(2)(a) of the Act the consequences stated in the said provision of law operate with effect from the date of vesting of inam lands with the Government and that under the provisions of the said act, the inamdar, kabiz-e-kadim, permanent tenant, protected tenant and non-protected tenant in respect of the inam land and any person holding under them and a holder of an inam, shall, as against the Government, be entitled only to such rights and privileges and be subject to such conditions as provided for under the Act and the other rights and privileges which have accrued to them or any one of them in the inam before the date of vesting against the inamdar shall cease and shall not be enforceable against the Government or the inamdar; and, therefore, the defendants and other rightful claimants are only entitled to the ORC in respect of the inam lands including the schedule lands. The plaintiffs have no manner of right, title and interest in the schedule lands and their possession, if any, is not legal. They have no prima facie case or balance of convenience in their favour. Therefore, they are not entitled to the temporary injunction. The trial Court had erroneously granted a temporary injunction and that, therefore, the impugned order is liable to be set aside. The registration department ought not to have registered documents in favour of any party in respect of the inam lands as under the provisions of the Act, inam lands shall not be sold or purchased from 20.07.1955 onwards till grant of ORC to the eligible persons.

Even the inamdars or other eligible persons under the provisions of the Act have no right to alienate or deal with the property till the grant of ORC.

Therefore, except the provisions of the Act no other provisions of any other statute govern the schedule lands. In the land that is vested with the Government free of all encumbrances, the possessory title of inamdars is protected under the provisions of the Act.

4.5 On the other hand, the learned counsel for the plaintiffs would contend as follows: -

As on the date the injunction application was decided by the trial Court, the order of the Joint collector was not rendered. The said order has not yet become final. Even according to the Joint Collector, who had passed the said order, there is no finality as to the classification of land. The Joint collector while setting aside the orders of the RDO under exhibit P22 had only directed de novo enquiry and for passing appropriate orders in regard to the classification of land in question. Admittedly, the title deeds of the plaintiffs 1 to 4 under exhibits P1 and P2 are more than 30 year old and for several long years no dispute was raised by the defendants or anybody claiming that the schedule lands or any other lands covered by survey nos. 1 to 55 of Allapur village are inam lands; and, no applications were filed till the year 2011 for grant of ORCs and as could be seen from the orders of the Joint Collector, such applications before the Special Grade Deputy Collector and RDO, Chevella Division were filed in the year 2011 for the first time seeking ORCs. The alleged rights, if any, of the alleged successors of inamdars in respect of the alleged inamdars stood extinguished by operation of law of limitation. Except an assertion that the suit schedule lands are inam lands, no documents of credible nature are produced and even according to the defence of the defendants, the said issue as to the classification of the suit lands is subject matter of consideration before the revenue authorities. Admittedly the suit schedule lands are in possession of the plaintiffs. In view of the contention that the land vested with the Government and that ORC is not yet granted in favour of the defendants in respect of the suit schedule lands, the plaintiffs are entitled to continue in peaceful possession and enjoyment till they are evicted by due process of law by the Government. As on today the defendants, who have no occupancy right certificate or khas possession over the suit schedule lands, have no locus standi and have no right, title and interest whatsoever to interfere with the settled long possession of the plaintiffs 1 to 4. The trial court, having properly considered the long settled possession of the plaintiffs 1 to 4 and the fact that the defendants had not obtained the ORC in their favour and the defendants are not in possession, had rightly held that the plaintiffs satisfied the necessary requirements for granting a temporary injunction and had rightly granted a temporary injunction. The said well considered orders do not call for any interference. The appeal by the defendants who have no manner of right particularly possession over the suit land is devoid of merit and is liable to be dismissed.

4.6 While re-iterating the case of the plaintiffs, the learned counsel for the plaintiffs had relied upon the following documents marked before the trial Court. Exhibits P3 to P8 are the certified copies of pattadar pass books and title deed books. Exhibits P9 to P21 are the certified copies of ryot pass books, the copies of the land tax book, copies of tax receipts, the copies of the pahani patrika for the year 1975-76, the copy of the proceeding of the MRO, Balanagar dated 21.10.1989, the copy of the succession certificate dated 29.01.1996, the copy of the development agreement dated 23.01.2007, the copy of the letter issued by GHMC dated 31.03.2010, the no objection certificate dated 18.08.2007 issued by the Special Grade Deputy Collector, the letter dated 28.06.2006 issued by HUDA respectively. Exhibit P22 is the certified copy of the order dated 27.12.2011 passed by the RDO, Chevella, whereunder the schedule land

was stated to be a patta land and not a Government land.

Further, he placed reliance on copies of pahanies for the year 2008-09 and 2010-11 which were exhibited as exhibits P23 and P24 and the copies of encumbrance certificates dated 28.07.2011, 28.07.2011, 28.07.2011, 28.07.2011, 28.08.2011 and 28.07.2011, which were exhibited as exhibits P25 to P30; exhibit P31, the order and decree dated 22.09.2022 in CMA. No. 724 of 2009 and exhibit P32, the voter ID card of the 4th defendant.

4.7 I have carefully gone through the pleadings and the contents of all the exhibits. I have noted the submissions.

4.8 The case of the appellants is that the entire vast extent of land of about Acs.196 and odd in survey nos. 1 to 55 of Allapur village is an inam land and that they are the present inamdars and that they being legal heirs the rights in the inam lands belonging to late Quadri devolved upon his legal heirs including the second defendant as he was also shown as successor of the said Quadri in the orders of the Munsif Magistrate Taluq to Hyderabad District passed in OS. No. 16 of 1965 and that in the year 1985 the defendants had applied for grant of ORC in accordance with the provisions of the Act after the inams were abolished and the entire land including the suit schedule land vested with the Government. Be that as it may. Though the inams were abolished by the said Act and the land vested with the Government, on 20.07.1955, till date no ORC was granted in favour of the defendants in respect of any extent of land out of the said entire extent of land which was alleged to be an inam land. Even though the order of the RDO under exhibit P22 was set aside by virtue of the order of the Joint Collector now filed before this Court and exhibited as exhibit R41, it is an admitted fact that the Joint Collector by his said orders had only ordered a fresh enquiry as to the classification of the lands and therefore, the issue as to the classification of the entire land including the suit schedule land has not become final and that issue has to be decided by the revenue authorities concerned. Unless that issue is first decided, the request of the defendants to the ORC will not be taken up for consideration. As on today, according to the defendants, the land vested with the Government and they are only aspiring for ORC and their entitlement to the ORC would depend upon the decision in regard to the classification of the entire land including the schedule land. Therefore, the documents in exhibit R series are of no avail to the defendants as they are neither in possession of the suit schedule land nor was a ORC granted to them as on this date and as the land vested with the Government according to their contentions. Be that as it may, the entire record in exhibit P series would show that both the Government and the private parties are treating the suit schedule land as a patta land since a very long time. As already noted, though the order of the RDO, Chevella under exhibit P22 was set aside by the orders of the Joint Collector under exhibit R41, the classification of land is yet to be determined after a de novo enquiry as directed in the orders under exhibit R41. According to the plaintiffs, the suit schedule lands are patta lands and till the classification is changed or declared otherwise by orders rendered in an appropriate legal proceeding, the lands shall be continued to be treated as patta lands only. The two sale deeds being relied upon by the plaintiffs under exhibits P1 and P2 in respect of the suit schedule lands are of the years 1969 and 1973 and are more than 30 years old as on the date of the suit. It is also to be noted that the plaintiffs 1 to 4 have given the schedule property for development to the 5th plaintiff and that necessary permissions were obtained for development and construction is also evident from the documents in P series, the details of which are referred to supra. It is established prima facie by virtue of exhibits P1 to P20 and P23 to P31 that the plaintiffs 1 to 4 are in long, settled and peaceful possession and enjoyment of the schedule property and

are exercising peaceably the ordinary rights of ownership in assumed character of owners being persons in settled long possession of the suit schedule lands and therefore, it can be said at this stage that they have perfectly a good incidental and prima facie title against the whole world but, the rightful owner and that in the event of disturbance of their possession by a person/s not having a better title than them, they can maintain a possessory suit for perpetual injunction, ex facie. The above view of the Court finds support from a decision of the Supreme Court in *Nair Service Society Ltd. v. K.C. Alexander* wherein the following proposition of law was quoted with approval: It cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of statute of limitation applicable to the case, his right is forever extinguished and the possessory owner acquires an absolute title. Further, it is advantageous to refer to the ratios in the following decisions. In *M. Kallappa Setty v. M.V. Lakshminarayana Rao*, the Supreme Court held that plaintiff can, on the strength of his possession, resist interference from persons who had no better title than himself to the plaint schedule property. In that case, the Supreme Court, having found that the plaintiff failed to establish his title to the plaint schedule property but, was found to be in possession on the date of filing of the suit, granted injunction in favour of the plaintiff. In *Rame Gowda v. M. Varadapa Naidu*, the Supreme Court held that a person in possession of land in assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against the entire world but a rightful owner, and that when facts disclose no title in either party, possession alone decides. Admittedly, the claim of the defendants is that the suit lands are inam lands and that they are entitled to the ORC. The issue whether the suit lands are inam lands or not is not yet finalised. The claim for ORCs by the defendants is a highly belated claim is evident from the pleadings of both the parties. And as on the date of the suit or as on today neither their contention that the suit lands are inam lands has attained finality nor do they have possession or the ORC in their favour in respect of the suit land. Therefore, they have no locus standi as on today to claim any rights prima facie in respect of the suit schedule lands, which are in long continuous possession of the plaintiffs 1 to 4 and over which the defendants are exercising possessory rights in the assumed character of owners; and, their rights, therefore, are valid against the whole world except the true owner. In this case, even assuming for a moment, without prejudice to the contentions of both the sides, that the suit lands are inam lands, still even according to the contentions of the defendants, the lands had vested with the Government. The entries in Government records made over a long period of time by different Government officers at different stages lend support to the case of the plaintiffs prima facie insofar as their settled possession over the suit lands. Coming to the contentions that the property vested with the Government and that, therefore, the plaintiffs have no prima facie case, the said contention cannot be accepted in the light of the reasoned findings supra that the plaintiffs are in long settled possession and that they have a perfectly good title against the entire world but the rightful owner and as at present the Government is not obstructing their possession and enjoyment of the land; and, if the Government does not want the plaintiffs to possess and enjoy the land, after the decision as to classification of land is finalised, it is for the Government to take steps to do so and it is not for the defendants to plead the cause of the Government and interfere with the plaintiffs peaceful possession and enjoyment of the suit schedule land and obstruct the plaintiffs.

4.9 Having regard to the reasons assigned, this Court is satisfied that the plaintiffs

have established a prima facie case and that the balance of convenience is in their favour and if no injunction is granted they would suffer serious and irreparable loss. On weighing competing possibilities or probabilities of likelihood of injury, i.e, the amount of substantial mischief or injury, which is likely to be caused if injunction is refused and comparing it with that which is likely to be caused to the other side, if the injunction is granted, this court is satisfied that the balance of convenience is not in favour of the appellants/defendants.

5. Viewed thus, this Court finds that the order impugned does not call for any interference.

6. In the result, the Civil Miscellaneous Appeal is dismissed without costs.

Miscellaneous petitions, if any, pending in this CMA shall stand closed.

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