

A SMT. K. SHARADA BAI AND ANR.
v.
SMT. SHAMSHUNNISA AND ORS.
(Civil Appeal Nos. 1526-1527 of 2005)

B JANUARY 24, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Land laws:

C *Land grabbing – Burden to prove right and title over the property as owner – Held: Is on the person claiming it – If same is discharged, burden shifts to person in possession – A.P. Land Grabbing (Prohibition) Act, 1982– s.8(1).*

D The schedule land formed part of Sy.No.30, total extent of which was Ac.3.19 guntas. Out of the said land, one 'R' owned an extent of Ac.1.29 guntas of land and one 'K' owned an extent of Ac.1.30 guntas. 'R' sold an extent of Ac.1.00 to applicant-respondent no.1. 'K' sold an extent of 30 guntas to appellant no.1 and Ac.1.00 to appellant no.2.

E The contesting respondent filed a suit before the Munsif Magistrate for a perpetual injunction restraining appellants from interfering with the exclusive possession and enjoyment of her 1 acre land. The said suit was transferred to the Special Court constituted under the A.P. Land Grabbing (Prohibition) Act, 1982 and was tried along with the case which was filed by respondent no.1 on the ground that the appellants grabbed 12-1/2 guntas of land out of her 1 acre land. The contesting respondent filed an application under s.8(1) of the Act to declare the appellants as land grabbers and evict them from the extent of 15 guntas of land forming part of Sy No.30. During the pendency of the application, Commissioner was appointed to inspect and measure the disputed land, who

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submitted his report. The Special Court allowed both the cases holding the appellants as land grabbers and directing them to deliver vacant possession of 12.5 guntas of land to respondent no.1. Appellants filed writ petitions which were dismissed. Hence these appeals.

Dismissing the appeals, the Court

HELD: 1. In view of the claim of the applicant-respondent that she is the original owner of the schedule property and her land was grabbed by the appellants, 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 appellants Nos. 1 and 2 forming part of Sy. No. 30. 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 'R' and 'SK', 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 27-1/2 guntas of land and the 12-1/2 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 appellants that there is a boundary wall in between those lands i.e., 27-1/2 guntas of land and 12-1/2 guntas of land and rightly rejected their stand.. [Para 6] [1202-C, D, E, F, G]

2. The conclusion of special court 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

A the materials and finding that the appellants are land grabbers and grabbed 12-1/2 guntas of land, concurred with the decision arrived at by the Special Court and dismissed their writ petitions. [Para 7] [1203-G; 1204-A]

B CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1526-1527 Of 2005.

From the final Judgment and Order dated 25.6.2002 of the High Court of Judicature, Andhra Pradesh at Hyderabad in W. P. Nos. 29675 and 29712/1997.

C Roy Abraham, Seema Jain, Vimlesh Kumar and Himinder Lal for the Appellants.

K. Amreswari, V.S. Raju and Debasis Misra for the Respondents.

D The Judgment of the Court was delivered by

E 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:

F 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 Shai, appellant No.2 herein. The contesting H respondent filed O.S. No. 87 of 1988 on the file of the Munsif

Magistrate, West & South, R.R. Dist. for a perpetual injunction A
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 B
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 C
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 D
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 E
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. F

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? G

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 H

A 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 12½ 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 27½ 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.

E 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:

F "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

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unauthorized structures; and the term "to grab land" shall be construed accordingly." A

"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." B C

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 appellants, 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 appellant Nos. 1 & 2 forming part of Sy. No. 30 of Taranagar Village. It is also not disputed that Sy. No. 30 was not subdivided. 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 ½ guntas of land and the adjoining 12 ½ 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 appellants that there is a boundary wall in between those lands i.e., 27 ½ guntas of land and 12 ½ guntas of land and rightly rejected their stand. D E F G

7) Mrs. K. Amareshwari, learned senior counsel appearing H

A 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
B 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
C follows:

“8-xThus 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 ½ guntas as shown in the sketch appended
D 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 ½ 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
E which abuts the extent of 27 ½ 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.”

F “For the foregoing discussion, we hold that the appellant
is the owner of 12 ½ 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.”

G 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
H 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 ½ 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.

D.G.

Appeals dismissed.