

M. PURNACHANDER RAO

v.

SRI NAWAB MAZHARUDDIN KHAN (D) THR. L.R.S. & ORS.
(Civil Appeal No. 1121 of 2008)

FEBRUARY 11, 2008

(DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.)

Code of Civil Procedure, 1908:

Sale of agricultural land – Appellant purchased the land in question – Title and claim under enquiry by Revenue – Legal heirs of original estate holder filing suit for declaration of assignment in respect of land in question in their favour – Legal representatives/alleged assignee filing application after 43 years for declaration of assignment in their favour and to direct authorities to mutate the land in their names in Revenue records; to deliver possession; and for passing final decree – Allowed by Single Judge of the High Court – Challenged by vendee by filing Letters Patent Appeals – Dismissed by Division Bench of High Court on ground of limitation – On appeal, Held: Appellant purchased the land in question from vendor heavily relying on his title from original estate holder – However, the Issues that land in question is excluded from the Schedule of the property in the suit and passing of final decree in favour of legal representatives of original estate holder in violation of preliminary decree, can not be agitated in Letters Patent Appeal before High Court – Appellant could initiate separate proceedings before the appropriate Court to vindicate his grievance – Directions issued.

Letters Patent Appeal – Scope of.

Appellant is a bona fide purchaser of certain agricultural land at village Raidurg Paigah for valuable consideration under a registered sale deed in the year 1996. A suit was filed in the year 1958 before the High

A Court by the legal heirs/sharers of the land in question for declaration of assignment of the land in their favour. A preliminary decree was passed by the High Court excluding item Nos. 230 to 254 from the Schedule of the properties to the suit including the land in question since
B the properties indicated in these items were under enquiry with the Board of Revenue. The legal representatives of the legal heirs, after a lapse of 43 years, filed applications claiming recognition of the Assignments in their favour; to direct the Collector to mutate the names of the
C Assignees in the Revenue Records pertaining to the land in question; and to direct the District Judge to deliver possession of the said land to the Assignees. Single Judge of the High Court allowed the petitions contrary to the provisions of the Civil Procedure Code and other enactments like the Urban Land Ceiling Act, Registration and Stamps Act, Hyderabad Land Revenue Act etc.
D Thereafter another application was filed by the petitioners for passing final decree and the same was allowed by the High Court. However, the appellant was also not made party to the above proceedings. The respondents started
E interfering with the land purchased by the appellant. Being aggrieved by the orders passed by the Single Judge of the High Court, appellant filed an appeal, which was dismissed by the High Court. Hence the present appeal.

F Appellant contended that item No.234, the land in question which is an excluded property, the action of the respondents in including the same in the final decree cannot be sustained; that in such circumstances, he is an aggrieved person and as soon as he came to know about the various orders including the final decree, filed
G the appeal before the Division Bench of the High Court; and that the High Court is not justified in dismissing the appeal on the ground of limitation.

Dismissing the appeal, the Court

H HELD: 1.1 Appellant purchased the land in question

by way of sale deed dated 11.10.2003 from the vendor, heavily relying on his title from one 'W' who was defendant No.41 in C.S. No. 7 of 1958 on the file of the High Court. It is relevant to point out that the appellant himself placed a memo of compromise which was filed and recorded in the said suit. The copy of the decree in the said suit shows that the suit filed against defendant No.41 was dismissed. The appellant claims title from defendant NO.41 through various persons. Therefore, the claim of the appellant that the very same property has been shown in the final decree and allotted to one of the sharers in spite of his possession for several decades cannot be gone into by the High Court after passing a final decree in the year 2003. (Para – 9) [705-E, F, G; 706-A, B]

1.2 The allegation that though the lands in Item No.232-254 in "Schedule A" to preliminary decree concerning defendants 2-12 and 14-22 excluded and shown in the final decree dated 26.12.2003 which is in violation of the preliminary decree can not be agitated by filing an appeal before the High Court. The proper remedy for the appellant is to initiate a separate proceeding and the same cannot be questioned by way of a Letters Patent Appeal before the High Court who is not a party to the entire proceedings. In those circumstances, this Court is refrained from considering various details as projected in the appeal before this Court. Under the circumstances, the conclusion arrived at by the High Court is agreed to. However, the appellant is at liberty to initiate separate proceedings before the appropriate Court to vindicate his grievance for which no opinion has been expressed. (Paras – 9 &10) [706-B, C, D, E]

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 1121 of 2008.

From the final Judgment and Order dated 26.04.2005 of the High Court of Judicature, Andhra Pradesh at Hyderabad in

A OSA (SR) No. 1900/2005 in Appln. No. 1409/2003 in CS No. 7/1958.

Anoop G. Chaudhary, June Chaudhary, P. Badri Premnath, Shakil Ahmed Syed, S.A. Saud and Mohd. Yasir Abbas for the Appellant.

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H.N. Salve, R.F. Nariman, Arun Jaitley, L.N. Rao, S. Udaya Kumar Sagar, Bina Madhavan, H. Venugopal, A. Venayagam, Hemal K. Sheth (for M/s. Lawyer's Knit & Co.), S. Madhusudhan Babu, Mukesh K. Giri, R. Santhan Krishnan, K. Radha Rani, Praveen K. Pandey, P. Vijaya Kumar, D. Mahesh Babu, Anis Ahmed Khan, Devendra Singh, Ciccu Mukhopaadhay, Shambhu Pd. Singh, Prem Sunder Jha, Manjula Gupta, Anjani Aiyagari, Manoj Saxena, Rajnish Kr. Singh, Rahul Shukla and T.V. George for the Respondents.

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The Judgment of the Court was delivered by

P. Sathasivam, J. 1) Leave granted.

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2) This appeal is directed against the order dated 26.04.2005 of the High Court of Andhra Pradesh at Hyderabad in O.S.A. (SR) No. 1900 of 2005 in and by which the Division Bench dismissed the said appeal on the ground of limitation. The appellant preferred O.S.A. before the Division Bench of the High Court under clause 15 of the Letters Patent against the order of the Single Judge dated 26.12.2003 in Application

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3) According to the appellant, he purchased an extent of 4 acres of agricultural land situated in Sy. No. 46 of Raidurg Paigah Village, Serilingampally Mandal, R.R. District, Andhra Pradesh under a registered sale deed dated 11.10.1996. The appellant's title flows from Sri Mala Ramulu and others who have purchased land under a registered sale deed dated 12.11.1962 from Sri Waliullah Hussaini. The said Sri Waliullah Hussaini derives title from his father Late Sri Moulvi Syed Akbar Hussaini. Late Sri Moulvi Syed Akbar Hussaini was given four villages by the then Paigah under the Nizam Rule somewhere in the beginning of

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the century. The said Late Sri Moulvi Syed Akbar Hussaini, who was the estate holder, died in the year 1923. He was survived by his wife, three sons and four daughters. After his death, the Court of Wards (Revenue Department), constituted under the Hyderabad District Court of Wards Act, took custody of the property of Late Sri Moulvi Syed Akbar Hussaini. The Court of Wards will take custody of the property only if it is a private property. The land in Patta Raidurg was also taken over by the Court of Wards after the death of Sri Moulvi Syed Akbar Hussaini. In 1925, there was a compromise between the legal heirs of late Sri Moulvi Syed Akbar Hussaini. The properties located in Yenkapally Maqta and Patta Raidurg were allotted to Sri Waliullah Hussaini and other sisters and brothers and Maqta Karimnagar was allotted to other members of the family. After the compromise, the other shareholders sold away their rights in favour of Waliullah Hussaini and two minors, namely, Sri Syed Akbar Nizamuddin and Sri Syed Aminuddin Hussaini, under registered sale deeds.

4) It is the further claim of the appellant that the land in Raidurg village is a Patta land (private property). In view of the fact that Sri Waliullah Hussaini purchased other shareholders' rights over the property, except Sri Waliullah Hussaini no other person got any right. Sri Waliullah Hussaini paid land revenue from 1950 onwards and he sold the same in favour of the appellant's predecessors in title Sri Mala Ramulu and others after obtaining permission in the year 1962 as per the sale deed dated 12.11.1962. They, in turn, sold the property in favour of the appellant's vendors.

5) It is the further case of the appellant that he is a *bona fide* purchaser of land to an extent of 4 acres in Survey No. 46 of village Raidurg Paigah District Ranga Reddy, Andhra Pradesh for valuable consideration under a registered sale deed in the year 1996. The Civil Suit was filed on the original side jurisdiction of the High Court of Andhra Pradesh in C.S. No. 7 of 1958. The suit was filed by the legal heirs who are the sharers of the property belonging to the estate as "Asmanja Paigah". A

- A preliminary decree was passed on 06.4.1959 and in the list of properties shown in "A" Schedule to the preliminary decree, Item No. 234 is shown as Raidurg and in the preliminary decree item Nos. 230 to 254 have been excluded since the properties were under enquiry with the Board of Revenue as to the title and claim.
- Item No.234 shown as Raidurg is also excluded from the distribution in the preliminary decree. The legal representatives in the year 2002, after a lapse of 43 years, filed applications bearing Nos. 1144 to 1147 of 2002 in C.S. No.7 of 1958 claiming (1) recognition of the Assignments in favour of respondent Nos. 21 to 40; (2) implead the respondents (assignees) as respondents; (3) direct the Collector, R.D.O., M.R.O., to mutate the names of the Assignees in the Revenue Records pertaining to Survey Nos. 37, 39 to 43 and 45 to 49 in all admeasuring 143 acres 11 guntas of land situated in Raidurg Village, Serilingampally Mandal, R.R. District and (4) direct the District Judge, Ranga Reddy to deliver possession of the above land to the Assignees. Without any enquiry, the learned single Judge, by order dated 09.10.2002, contrary to the provisions of the Civil Procedure Code and other enactments like the Urban Land Ceiling Act, Registration and Stamps Act, Hyderabad Land Revenue Act etc., allowed those applications. The State Government which was a party in the preliminary decree dated 06.04.1959 was not made a party in the abovementioned applications filed in the year 2002. Thereafter another application was filed bearing No. 1409 of 2003 in C.S. No.7 of 1958 for passing final decree and the same was allowed on 26.12.2003.

6) The appellant is a stranger to the above proceedings. By virtue of the order passed as stated above, the respondents started interfering with the land purchased by the appellant and coming to know about the above orders passed by the High Court and being aggrieved by the orders passed in Application No. 1409 of 2003, filed an appeal in OSA (SR) No. 1900 of 2005. By the impugned order, the Division Bench of the High Court sustaining the office objection with regard to the limitation

in filing the appeal and finding that there is no satisfactory explanation, dismissed the appeal. Questioning the same, the appellant has filed the present appeal before this Court.

7) We have heard Mr. Anoop G. Chaudhary, Ms. June Chaudhary, learned senior counsel for the appellant and Mr. Harish N. Salve, Mr. R.F. Nariman, Mr. Arun Jaitely, Mr. L. N. Rao, learned senior counsel and other learned counsel for the respondents.

8) Learned senior counsel appearing for the appellant, after taking us through the chequered history of the case and by drawing our attention to the various proceedings submitted that Item Nos. 230-254 which have been excluded in the preliminary decree and item No.234 being Raidurg land which is an excluded property, the action of the respondents in including the same in the final decree cannot be sustained. In such circumstances, according to him, the appellant is an aggrieved person and as soon as he came to know about the various orders including the last one, namely, the final decree, filed the original side appeal before the Division Bench of the High Court. He further contended that the High Court is not justified in dismissing the appeal on the ground of limitation.

9) We have perused all the earlier proceedings as well as documents in respect of the property in question. It is not in dispute that the appellant, who purchased 4 acres of land by way of sale deed dated 11.10.2003 from his vendor, heavily relied his title to the same from Sri Waliullah Hussaini who was defendant No.41 in C.S. No. 7 of 1958 on the file of the High Court. It is relevant to point out that the appellant himself placed a memo of compromise which was filed and recorded in C.S. No. 7 of 1958. The copy of the decree in C.S. No.7 of 1958 dated 6.4.1959 which is available on pages 156-232 in the S.L.P. Paper Book (Part II) filed as additional document by the appellant in this Court shows that the suit filed against Sri Waliullah Hussaini was dismissed. Clause 14 which is available at page 198 of the said paper book reads as under:

A "That the plaintiff's suit against defendants 27 to 49 be and hereby is dismissed."

B It is not in dispute that defendant No.41 is Sri Waliullah Hussaini from whom the appellant claims title through various persons. In view of the same, the claim of the appellant that the very same property has been shown in the final decree and allotted to one of the sharers in spite of his possession for several decades cannot be gone into by the High Court after passing a final decree even in the year 2003. Likewise, the allegation that though the lands in Item No.232-254 in "Schedule A" to preliminary decree concerning defendants 2-12 and 14-22 excluded and however shown in the final decree dated 26.12.2003 which is in violation of the preliminary decree can not be agitated by filing an appeal before the High Court. We are of the view that the proper remedy for the appellant is to initiate a separate proceeding and the same cannot be questioned by way of a Letters Patent Appeal before the High Court who is not a party to the entire proceedings. In those circumstances, we refrain from considering various details projected before us.

E 10) In the light of the above discussion, we agree with the conclusion arrived at by the High Court and dismiss the above appeal. However, the appellant is at liberty to initiate separate proceedings before the appropriate Court to vindicate his grievance for which we express no opinion. With the above observation, the appeal is dismissed. No costs.

S.K.S.

Appeal dismissed.