

RAVISH AND ANR.

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v.

SMT. R. BHARATHI

(Civil Appeal No. 3771 of 2017)

MARCH 07, 2017

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**[KURIAN JOSEPH AND R. BANUMATHI, JJ.]**

*Suit for permanent injunction – Claim of plaintiff based on premise that she was allotted a site no.4307 by the Cooperative society and she was the owner of the said site and the appellants-defendants were trying to interfere with her possession – Summons served but defendants did not appear – Trial court passed ex-parte decree – Defendant challenged the ex-parte decree on the ground that suit property originally carved as site no.690 was purchased by him from original allottee – High Court while noting that suit property is site no.4307 but the sale deed of defendants is in respect of site no.690, directed defendants to institute independent proceedings to establish their right by filing appropriate suit – On appeal, Held: High Court instead of relegating the appellants/defendants to file a fresh suit ought to have remitted the matter back to the trial court to resolve the dispute after trial – As both the parties were claiming right to the registered sale deed originating from the Cooperative Society and also claiming right of possession, therefore, in the interest of justice, the judgment of the High Court as well as the trial court set aside and the matter remitted back to the trial court for fresh consideration.*

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**Allowing the appeal and remitting the matter to trial court, the Court**

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**HELD: 1. As both the parties are claiming right to the registered sale deed originating from the Cooperative Society and also claiming right of possession, in the interest of justice, the judgment of the High Court as well as the trial court are to be set aside and the matter remitted back to the trial court. It would be open to the trial court to appoint a Commissioner to get a report as to the location of the disputed sites both Site No.4307 and Site No.690 and their physical features and other relevant**

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A **facts. It is also open to the trial court either on its own or on the application of either of the parties to summon the officials of the Co-operative Society and relevant documents for resolving the dispute between the parties. [Paras 5, 6] [920-D, F]**

B **CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3771 of 2017.**

From the Judgment and Order dated 20.07.2015 of the High Court of Karnataka at Bengaluru, in Regular First Appeal No. 522 of 2015.

C **Balaji Srinivasan, Ms. Pratiksha Mishra, Ms. Vaishnavi Subrahmanyam, Ms. Srishti Govil, Abhishek Bharti, Advs. for Appellants.**

**Naveen R. Nath, Shrinivas B. S., Ms. Hetu Arora Sethi, Advs. for the Respondent.**

The Judgment of the Court was delivered by

D **R. BANUMATHI J. 1. Leave granted.**

E **2. This appeal is preferred against the judgment of the High Court of Karnataka at Bengaluru dated 20.07.2015 in and by which the High Court dismissed the Regular First Appeal No.522 of 2015 granting liberty to the appellants/defendants to institute independent proceedings and establish their claim in an appropriate suit.**

F **3. Briefly stated, case of the respondent/plaintiff as per the averments in the plaint is as follows:- Respondent/plaintiff filed the suit bearing OS No.4376 of 2014 for permanent injunction claiming that she is the absolute owner of the site bearing No.1077/21. Case of the respondent/plaintiff is that the said site came to be allotted in her name by Vishwabharathi House Building Co-operative Society (for short 'VHBC Society') by way of allotment letter dated 02.08.2004. Pursuant to the issuance of site allotment letter dated 02.08.2004, VHBC Society executed sale deed dated 06.12.2004 in favour of the respondent/plaintiff which came to be registered on 09.12.2004. Respondent/plaintiff states that the VHBC Society had issued possession certificate dated 10.01.2005 in her name. Further case of the respondent/plaintiff is that as there was dispute amongst the members regarding allotment of sites, some members of the VHBC Society filed a writ petition against VHBC Society and in the said writ petition *vide* order dated 16.11.2010, the**

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High Court stipulated certain guidelines to be followed by VHBC Society for allotment of sites to the members. Pursuant to the direction of the High Court, VHBC Society issued a paper publication calling upon its members to produce the documents pertaining to the seniority and eligibility of its members for allotment of sites in the layout formed by VHBC Society as per the new Bangalore Development Authority(BDA) layout plan. The respondent/plaintiff states that VHBC Society issued a fresh allotment letter dated 14.06.2013 allotting a new Site No.4307 measuring 139.40 sq. mtrs. in Phase-IV of VHBC Society layout which was approved by BDA. Further case of the respondent/plaintiff is that subsequent to the issuance of the said allotment letter dated 14.06.2013, a supplement deed dated 30.08.2013 came to be executed in favour of the respondent/plaintiff for the said Site bearing No.4307. Possession of the said site is also said to have been given to the plaintiff for the new Site No.4307 with the possession certificate dated 19.11.2013. Claiming that she is the owner of the said Site No.4307 and alleging that the appellants/defendants are trying to interfere with her possession, respondent/plaintiff filed the suit bearing OS No.4376 of 2014 for permanent injunction before the XVII Additional City Civil and Sessions Judge, Bengaluru.

4. In the said suit, summons were served upon the appellants/defendants but the appellants did not appear in the suit. Based on the evidence of the plaintiff (PW-1) and the documents filed by the respondent/plaintiff, the suit was decreed ex-parte on 13.10.2014. Being aggrieved by the ex-parte decree passed in OS No.4376 of 2014, the appellants/defendants filed Regular First Appeal bearing No.522 of 2015. Case of the appellants/defendants is that the suit schedule property originally being carved as bearing Site No.690 came to be sold by VHBC Society in favour of Shri M.N. Sundaresh by a registered sale deed dated 27.06.2003. The said VHBC Society also gave possession of the said property Site No.690 in favour of the said M.N. Sundaresh and to that effect, a possession certificate was also issued by VHBC Society in favour of the said M.N. Sundaresh. Further case of the appellants/defendants is that they purchased the suit property bearing Site No.690 by a registered sale deed dated 03.06.2011 from the said M.N. Sundaresh. Case of the appellants is that the suit property is nothing but Site No.690 and only the appellants are in possession and enjoyment of the suit property. Further case of the appellants/defendants is that the

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A plaintiff/respondent has manipulated certain documents to lay a false claim in the suit property.

5. The High Court in appeal noticed that the appellants/defendants were claiming to be owners of the suit property; however, the High Court observed that the suit property is in respect of Site No.4307, but the sale deed of the appellants/defendants and their predecessors are in respect of original Site No.690 and directed the appellants/defendants to institute independent proceedings to establish their right by filing an appropriate suit. In our view, as both parties claim right to the suit property through VHBC Society by virtue of sale deeds in their favour, the High Court rather than relegating the appellants/defendants to file a fresh suit, it would have been in order if the High Court remitted the matter back to the trial court to resolve the dispute after trial. In our view, the High Court erred in dismissing the appeal and relegating the appellants/defendants to file a fresh suit. As both the parties are claiming right to the registered sale deed originating from VHBC Society and also claiming right of possession, in the interest of justice, the judgment of the High Court as well as the trial court are to be set aside and the matter remitted back to the trial court.

6. The learned counsel for the respondent/plaintiff raised objections for remitting the matter back to the trial court and submitted that the respondent/plaintiff has already put up construction in the suit property and if the matter is remitted back to the trial court, it may prejudicially affect the interest of the respondent/plaintiff. Having regard to the rival contentions of the parties claiming to be in possession, it would be open to the trial court to appoint a Commissioner to get a report as to the location of the disputed sites both Site No.4307 and Site No.690 and their physical features and other relevant facts. It is also open to the trial court either on its own or on the application of either of the parties to summon the officials of the Vishwabharathi House Building Co-operative Society Limited and relevant documents for resolving the dispute between the parties.

7. In the result, the impugned judgment of the High Court as well as the trial court is set aside and the matter is remitted to the trial court for consideration of the matter afresh. The appellants/defendants are directed to file their written statement within four weeks from today and the trial court is directed to afford sufficient opportunity to both the parties

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to adduce their evidence and proceed with the matter in accordance with law. We make it clear that we have not expressed any opinion on the merits of the matter. A

8. The appeal stands allowed on the above terms.

Devika Gujral

Appeal allowed.

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