



NON-REPORTABLE
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(S). 9317 OF 2014

BASHEERA KHANUM APPELLANT(S)

VERSUS

THE CITY MUNICIPAL RESPONDENT(S)
COUNCIL AND ANOTHER

J U D G M E N T

Mehta, J.

1. Heard.
2. The instant appeal is directed against the final judgment dated 29th July, 2011 passed by the High Court of Karnataka at Bangalore¹ in Regular Second Appeal No. 3394 of 2006, whereby the second appeal preferred by respondent No. 1-City Municipal Council² was allowed.

¹ Hereinafter, referred to as 'High Court'

² Hereinafter, referred to as 'respondent no. 1-CMC'.

3. The appellant Basheera Khanum³ was the plaintiff, and respondent No. 1-CMC was defendant No.1 in the original suit proceedings, which were instituted seeking the relief of declaration and permanent injunction.

4. The High Court, while accepting the second appeal, reversed the judgment and decree dated 13th September, 2006 passed by the first appellate Court, i.e., Additional Sessions Judge and Presiding Officer, Fast Track Court-III, Kolar⁴ in Regular Appeal No. 2 of 1999. The first appellate Court had dismissed the appeal preferred by respondent No. 1-CMC, and affirmed the judgment and decree dated 23rd October, 1998 passed by the Principal Civil Judge (Sr. Division), Kolar⁵ in O.S. No. 113 of 1997 in favour of the appellant-plaintiff.

Facts of the case

5. The dispute between the parties pertains to two plots of land, bearing plot⁶ No. 394 and plot No. 395 (corresponding to bank site No. 2), which were

³ Hereinafter, referred to as 'appellant-plaintiff' or 'appellant'

⁴ Hereinafter, referred to as 'first appellate Court'.

⁵ Hereinafter, referred to as 'trial Court'.

⁶ Hereinafter, referred to as 'plot' or 'site'

auctioned by respondent No. 1-CMC. Admittedly, respondent No. 2-T.M. Prabhudeva⁷ (original defendant No. 2 before the trial Court) purchased plot No. 395 in the first auction held on 25th April, 1973. The sale deed in favour of respondent No. 2-Prabhudeva was executed by respondent No. 1-CMC in the year 1988, wherein an error crept in as the plot number was inadvertently mentioned as 394 instead of 395. The auction purchaser, respondent No. 2-Prabhudeva, upon realizing the said error in the sale deed, moved an application dated 24th July, 1992 for rectification of the mistake of plot number and for demarcation of the plot. Respondent No. 1-CMC appointed its Junior Engineer to inspect the site and furnish a report regarding the same. The Junior Engineer conducted the site inspection and reported that plot No. 394 was auctioned to the appellant and bank site No. 2, which is plot No. 395, had been purchased by respondent No. 2-Prabhudeva. Acting on the report prepared by the Junior Engineer, respondent No. 1-CMC passed a Resolution dated 10th August, 1992, rectifying the mistake that

⁷ Hereinafter, referred to as 'respondent no. 2-Prabhudeva'

occurred in the plot number mentioned in the sale deed and affirming that it was actually plot No. 395 which had been sold to respondent No. 2-Prabhudeva. It has been the contention of the appellant that respondent No. 2-Prabhudeva has executed an agreement to sell the said plot, i.e. plot No. 395, on 12th August, 1992.

6. However, after respondent No. 2-Prabhudeva had parted with the plot No. 395, he got greedy and colluding with respondent No. 1-CMC, he got a meeting convened, wherein a Resolution was drawn to the effect that there was no mistake in executing the original sale deed in favour of respondent No. 2-Prabhudeva, which rightly conveyed plot No. 394. Accordingly, a Resolution dated 29th March, 1993 was drawn up to the effect that the sale deed issued in favour of the appellant for plot No. 394 be cancelled. Based on the said resolution, respondent No. 2-Prabhudeva tried to interfere with the possession of the appellant over plot No. 394, purchased in the auction held on 24th June, 1977.

7. Being aggrieved, the appellant filed a suit, impleading both the respondents, and sought a

declaration that she was the successful bidder for plot No. 394, and that respondent No. 2-Prabhudeva had purchased plot No. 395. She also sought an injunction, restraining the defendants (respondents herein) in the original suit, from interfering with her possession over plot No. 394.

8. The trial Court framed the following issues for determination: -

1. Whether the Plaintiff proves that she is the bonafide purchaser of the 'A' Schedule property as alleged?
2. Whether the 2nd Defendant proves that he is the bonafide purchaser of 'A' Schedule property mentioned in the schedule of the plaint.
3. Whether the Plaintiff proves that she is in actual and lawful possession of the suit schedule property?
4. Whether the Plaintiff is illegally interference of the Defendant as alleged?
5. Whether the Plaintiff is entitled for D relief of declaration sought for?
6. Whether the Plaintiff entitled for permanent injunction sought for?
7. What order or decree?

Addl. Issue:

Whether the suit of the Plaintiff is barred by limitation?

9. During the pendency of the suit proceedings, the appellant filed an application, seeking a direction to respondent No. 1-CMC to produce all the records

pertaining to the auction held on 24th June, 1977. However, respondent No.1-CMC failed to produce the records in spite of the pertinent direction given by the trial Court.

10. Upon thorough appreciation of the evidence placed on record by the parties, the trial Court held that respondent No. 1-CMC failed to produce the documents pertaining to the auction of plot No. 394 sold to the plaintiff, i.e., appellant herein. The appellant's suit was decreed by drawing an adverse inference against respondent No. 1-CMC. The auction proceedings dated 24th June, 1977 were held to be valid. The plaintiff, i.e., appellant herein, was found to be the highest bidder for plot No. 394 for a sum of Rs. 16,300/-, which she paid *vide* receipt Nos. 5185 dated 24th June, 1977, and 5186 dated 11th July, 1977. The sale certificate issued on 5th November, 1980 was declared to be conferring a valid title in favour of the plaintiff, i.e., appellant herein.

11. The stand taken by respondent No. 1-CMC, that there was confusion in respect of plot Nos. 394 and 395, was held to be invalid and unsustainable. The trial Court noted that respondent No. 2-Prabhudeva

had himself moved the application for rectification of the plot number from 394 to 395 in his sale certificate, which disentitled him to raise a fresh dispute in relation to the same.

12. The documents of the appellant having been found genuine, the trial Court held that in case respondent No. 1-CMC desired to contradict these documents, then the original records pertaining to the proceedings of the auction of plot No. 394 should have been produced before the Court. The trial Court also held that the Resolution dated 29th March, 1993, holding that plot No. 394 was sold to respondent No. 2-Prabhudeva, was invalid and *non est* in the eyes of law. Accordingly, the appellant was declared to be the *bona fide* purchaser and true owner of plot No. 394 in the auction held on 24th June, 1977.

13. It was also held that the appellant was in possession of plot No. 394 and accordingly, the suit was decreed in favour of the appellant *vide* judgment and decree dated 23rd October, 1998.

14. Respondent No. 1-CMC assailed the said judgment and decree of the trial Court, by filing

Regular Appeal No. 2 of 1999 before the first appellate Court. Respondent No. 2-Prabhudeva did not challenge the judgment of the trial Court.

15. The first appellate Court, *vide* judgment dated 13th September, 2006, dismissed the appeal preferred by respondent No. 1-CMC and affirmed the judgement and decree of the trial Court.

16. Aggrieved, respondent No. 1-CMC preferred a second appeal to the High Court, questioning the concurrent judgments of the first appellate Court and the trial Court. As stated above, the High Court, *vide* judgment dated 29th July, 2011 allowed the said second appeal and reversed the concurrent findings of the courts below.

17. The High Court held, in its judgment, that no material was placed on record to substantiate and prove the sale certificate issued to the plaintiff (appellant herein). The burden was upon the plaintiff to prove the genuineness of the said document. Since she failed to discharge the said burden, the findings of the appellate Court and the trial Court were held to be unsupported by evidence, and accordingly, the

second appeal was allowed, thereby reversing the judgment and decree passed in favour of the appellant-plaintiff. The said judgment of the High Court dated 29th July, 2011 is assailed by the appellant-plaintiff in this appeal by special leave.

Submissions on behalf of the appellant

18. Smt. Anjana Chandrashekar, learned counsel representing the appellant, placed reliance on Section 376 of the Karnataka Municipalities Act, 1964, which reads as below: -

“376. Admissibility of document or entry as evidence. (1) A copy of any receipt, application, plan, notice, order or other document or of any entry in a register in the possession of the municipal council shall, if duly certified by the Municipal Commissioner or the Chief Officer, be admissible in evidence of the existence of the document or entry, and shall be admitted as evidence of the matter and transactions, therein recorded in every case where and to the same extent to which the original document or entry would, if produced, have been admissible to prove such matters and transactions.
(2) No municipal officer or other employee shall, in any legal proceedings to which the municipal council is not a party, be required to produce any register or document the contents of which can be proved under sub-section (1) be a certified copy, or to appear as a witness to prove any matter or transaction recorded therein save by order of the court made for special cause.”

19. She urged that a bare reading of sub-section (1) of this provision would make it clear that certified copies of documents in possession of the Municipal Council, and duly certified by the Municipal Commissioner or the Chief Officer, as the case may be, carry the same legal sanctity as the original documents, and are admissible as valid evidence of the existence and contents of the original documents.

20. Learned counsel urged that the certified copies of the documents pertaining to the auction and sale of plot No. 394 to the appellant herein, issued by respondent No. 1-CMC, were produced on record by the appellant in support of the plaint. The genuineness and admissibility of such documents is given an *imprimatur* by the statutory provision mentioned above. In case respondent No.1-CMC intended to question the genuineness of these documents, then the onus was upon respondent No.1-CMC to produce the contemporaneous record to rebut the documents relied upon by the appellant herein.

21. The respondent No. 1-CMC not only failed to discharge this burden, but rather, it flouted the

pertinent direction given by the trial Court on an application filed by the appellant requesting for production of the original record.

22. She further urged that the trial Court had drawn an adverse inference against respondent No. 1-CMC on account of the fact that the original records pertaining to the auction of 1977 were not produced by it, despite a pertinent direction to that effect. However, the High Court failed to advert to this crucial aspect of the matter and, in a very cursory manner, overturned the concurrent findings of the Courts below.

23. Learned counsel further urged that respondent No. 1-CMC failed to offer any explanation regarding mistake of the plot number in the documents of respondent No. 2-Prabhudeva, who himself did not contest the suit and also failed to assail the findings recorded by the trial Court, particularly on the significant aspect of action taken on his own application for rectification of the plot number from 394 to 395 in the contemporaneous records. Thus, as per the learned counsel, the said finding of the trial Court has attained finality. The learned counsel for

the appellant urged that the High Court had committed a grave error in interfering with the concurrent findings of facts recorded in the judgments of the Courts below. The second appeal was allowed without there being any substantial question of law, and hence, the impugned judgment of the High Court should be set aside.

Submissions on behalf of respondent No. 1-CMC

24. *Per contra*, learned counsel for respondent No. 1-CMC supported the judgment of the High Court. He urged that the claim of the appellant regarding having purchased plot No. 394 in the auction held on 24th June, 1977 was not supported by documentary evidence and hence, the High Court was justified in observing that the appellant failed to substantiate her claim. Since the appellant was the plaintiff in the original suit proceedings, the burden to prove the factum of purchase of the plot in auction was upon the appellant, which she failed to discharge. Thus, as per learned counsel, the impugned judgment rendered by the High Court is unassailable in facts and law, and does not require any interference by this Court in exercise of the extraordinary jurisdiction

conferred by virtue of Article 136 of the Constitution of India.

Decision and Analysis:

25. We have given our thoughtful consideration to the submissions advanced at the bar and have perused the judgments of the trial Court, the first appellate Court, and the High Court, as well as the material available on record.

26. At the outset, we may note that the High Court, while exercising jurisdiction under Section 100 of the Code of Civil Procedure, 1908, seems to have undertaken a roving factual inquiry for interfering with the well-reasoned judgment of the trial Court decreeing the suit in favour of the appellant, as affirmed by the first appellate Court.

27. The reasoning assigned by the High Court in the impugned judgment, that the burden lay upon the appellant to fortify the factum of purchase of plot No. 394 in the auction and that she failed to discharge this burden, was recorded in sheer ignorance of the evidence on record and is absolutely perverse. There is no dispute that the appellant had placed on record

the certified copies of the documents pertaining to the auction proceedings held on 24th June, 1977, in which she was declared to be the highest bidder for plot No. 394. These documents included the money receipts, evidencing the deposit of the bid amount by the appellant, and also the documents pertaining to allotment of plot No. 395 made to respondent No. 2-Prabhudeva. The minutes of the meeting dated 10th August, 1992 convened by respondent No. 1-CMC, whereby the plot number of respondent No. 2-Prabhudeva was altered from 394 to 395, were also placed on record by the appellant and were not disputed by any of the parties to the *lis*. The appellant had taken a specific plea that respondent No. 2-Prabhudeva entered into an agreement for selling plot No. 395 to another person during the pendency of the suit proceedings. This fact was also not disputed by respondent No. 2-Prabhudeva, who unsurprisingly did not contest any of the proceedings. There was wholesome evidence, documentary as well as oral, on the record to establish beyond the shadow of doubt that the appellant had purchased plot No. 394 in the auction held on 24th June, 1977. Moreover, it has also been

established that such sale had been fructified with the payment of the auction money and issuance of the sale certificate, which was a duly registered document. Respondent No. 1-CMC, by virtue of the Resolution drawn in its meeting dated 29th March, 1993, tried to set at naught the registered sale certificate issued to the appellant, which tantamounts to a gross illegality.

28. We may record that generally and subject to exceptions as may be provided by statute, a valid registered document conveying immovable property cannot be annulled by any procedure other than a civil suit. In any event, cancellation of such a valid document of title by simply drawing a resolution in a board meeting is illegal on the face of the record. Such grossly illegal and high-handed action deserves to be deprecated.

29. The view taken by the High Court that the appellant failed to establish and fortify the sale deed issued to her is conjectural and erroneous on the face of the record. The appellant filed a suit for declaration and injunction, premising her claim on the purchase of plot No. 394 in an open auction. She had placed

the copies of the contemporaneous documents on record to fortify her claim. The original documents pertaining to the auction were unquestionably in the possession of respondent No. 1-CMC, who failed to bring the same on record despite a specific direction given by the trial Court, thus inviting adverse inference and rightly so.

30. Apart from a bald assertion that the documents relied upon by the appellant regarding the purchase of plot No. 394 were fabricated, no substantive evidence was produced by respondent No. 1-CMC to prove this theory. If at all these documents were fabricated and the said fact had come to the knowledge of the officers of respondent No. 1-CMC way back in the year 1992-1993, the first step which they would be expected to take would be to lodge an FIR. Further, respondent no. 1-CMC has failed to produce the original documents before the trial Court, even after trial Court had directed to produce such documents.

31. Resultantly, we are of the view that the High Court misdirected itself in holding that the appellant failed to substantiate the case set up by her in the

plaint. Suffice it to note that the appellant submitted certified copies of the relevant documents, including the sale certificate, money receipt, etc., on record, and an application was filed on her behalf with a clear indication that if respondent No. 1-CMC intended to dispute the title of the appellant, then it should have come forward with the contemporaneous record. These documents are admissible in evidence by virtue of Section 376 of the Karnataka Municipalities Act, 1964.

32. The fact that respondent No. 2-Prabhudeva had purchased plot No. 395, and not plot No. 394 (which the appellant purchased in the auction dated 24th June 1977), is supported by unimpeachable documentary evidence referred above. The most significant among them is the Resolution dated 10th August, 1992 passed during the board meeting of respondent No. 1-CMC, wherein the number of the plot purchased by respondent No. 2-Prabhudeva was rectified in the documents from 394 to 395.

33. The assertion of the appellant that pursuant to the rectification in the plot number, respondent No. 2-Prabhudeva entered into an agreement for selling

the said plot No. 395, is not denied. In this backdrop, we are of the firm opinion that the impugned judgment dated 29th July, 2011, passed by the High Court is unsustainable in facts as well as in law, and hence, the same is quashed and set aside.

34. The judgment and decree passed by the trial Court decreeing the suit in favour of the appellant, as affirmed by the first appellate Court, is restored.

35. The appeal is allowed accordingly. No order as to costs.

36. Pending application(s), if any, shall stand disposed of.

.....**J.**
(ARAVIND KUMAR)

.....**J.**
(SANDEEP MEHTA)

NEW DELHI;
JULY 31, 2025.