2026 INSC 1155

Non-reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. ..... OF 2026
(@ SLP (C) No. 29808 of 2011)

BALAKRISHNA (DEAD) THR. LRS. ….. Appellants

versus

G.N. KANNIAH NAIDU (DEAD)
THR. LRS. AND ANOTHER ….. Respondents

J U D G M E N T

SANJAY KUMAR, J

1. Leave granted.

2. Concurrent adverse findings weighing against them, the legal representatives of the deceased applicant in IA No. 'A' in Execution Case No. 100 of 2000 on the file of the learned XIV Additional City Civil Judge, Bangalore, are in appeal. IA No. 'A' was an application filed under Order XXI, Rules 97 to 101 of the Code of Civil Procedure, 1908 (CPC).

3. By order dated 14.11.2011, this Court directed both parties to maintain *status quo* prevailing as on that date. During the pendency of this matter, G.N. Kanniah Naidu, respondent No. 1, viz., the decree holder/ plaintiff, expired on 07.06.2018 and his legal representatives were brought on record as respondent Nos. 1.1 to 1.10. Srikanta Rao, respondent No.2,

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viz., the judgment debtor/defendant, expired on 11.01.2012 and his legal representatives were brought on record as respondent Nos. 2.1 to 2.5.

4. G.N. Kanniah Naidu, respondent No. 1, filed O.S. No. 2198 of 1987 before the learned XIV Additional City Civil Judge, Bangalore, against Srikanta Rao, respondent No. 2, seeking declaration of his title over the site bearing No. 261 in Munnekolala New Extension, Varthur Hobli, Bangalore South Taluk. He also prayed for delivery of possession and a permanent injunction. His claim was that the suit site was granted to him by the Tahsildar, Bangalore South Taluk, under Hakkupatra dated 05.01.1972 and he was put in possession. He claimed that the defendant took advantage of his absence and trespassed upon the suit site and put up a temporary hut in January, 1987. This being the cause of action, he filed the suit on 25.05.1987. Srikanta Rao, the defendant, entered appearance therein and filed his written statement, denying the plaintiff's title. Six issues were framed for trial. The plaintiff examined himself as PW1 and marked Ex:P1 to Ex:P15 in evidence, while the defendant examined himself as DW1 but did not adduce any documentary evidence.

5. Significantly, the plaintiff did not produce the original Hakkupatra dated 05.01.1972 by which the suit site was purportedly allotted to him. He only marked a photocopy of the said document in evidence as Ex:P1. He claimed that the Tahsildar took back the original Hakkupatra on the ground that multiple allotments had been made in relation to the same

sites and did not return the same. His efforts to summon the Tahsildar, Bangalore South Taluk, did not yield any result.

6. However, as the defendant did not seriously dispute the grant of the Hakkupatra to the plaintiff, the Trial Court chose to act upon the photocopy (Ex:P1). The defendant had claimed that he was put in possession of the suit site but without indicating the source of his title or possession. As he failed to produce even a scrap of paper in proof thereof, the Trial Court held that that the plaintiff had a better claim to title and that the defendant had trespassed upon the suit site and constructed a temporary hut. The Trial Court, accordingly, decreed the suit in part on 08.10.1999, holding in favour of the plaintiff as regards his prayers for declaration of title and possession but denying him injunctive relief as he was not in possession of the suit site as on the date of the suit. The defendant was directed to hand over possession of the suit site within 60 days, failing which the plaintiff was given liberty to obtain possession through the process of law.

7. Pursuant to the aforestated decree, Execution Case No. 100 of 2000 was filed by the plaintiff for delivery of possession. While so, the application in IA No. 'A' was filed therein by Balakrishna, the original applicant, under Order XXI, Rules 97 to 101 CPC, claiming that he was the owner and possessor of the suit site and that the decree secured by the plaintiff was fraudulent and collusive and could not be given effect to. Balakrishna claimed that the suit site was granted to him by the Tahsildar,

Bangalore South Taluk, under Hakkupatra dated 05.01.1972 and that he, along with his son, Ananda, constructed a roofed house thereon and were residing there. He also stated that he had constructed 3 shops in the front portion and had let out the same to tenants. He asserted that the decree holder/plaintiff had no manner of right, title or interest in the suit site but he had come to dispossess him on 08.12.2002 along with others. He asserted that he was the true owner who was in possession and that an inquiry was necessary to establish his right, title and interest.

8. Balakrishna was aged about 70 years at the time of the filing of IA No. 'A' in December, 2002. Owing to his old age, Balakrishna authorized his son, Ananda, by way of a power-of-attorney executed in October, 2003, to prosecute the application on his behalf. Balakrishna died during the pendency of IA No. 'A' and his legal representatives were brought on record therein. However, by order dated 27.09.2008, the learned XIV Additional City Civil Judge, Bangalore, dismissed IA No. 'A'. Thereupon, Balakrishna's legal representatives filed an appeal in Regular First Appeal No. 1139 of 2011 assailing the said order. The appeal also met with the same fate when it was dismissed by a learned Judge of the Karnataka High Court, *vide* the impugned judgment dated 17.08.2011.

9. In the order dated 27.09.2008 passed in IA No. 'A', the learned XIV Additional City Civil Judge, Bangalore, noted that Balakrishna had expired and Ananda, his son, got himself examined as PW1 and marked Ex:P1 to

Ex:P7 in evidence. There is no clear indication as to when Balakrishna died and whether he was even alive when Ananda was examined as PW1 in the year 2004. Surprisingly, the learned Judge found fault with Ananda for deposing as a witness, observing that Ananda was 30 years old in 2004 when he gave evidence, and held that he would have no personal knowledge about the grant of the suit site to his father in 1972. This finding disregarded the fact that Balakrishna would have shared relevant information which was not known to Ananda, his son, for what it was worth had he died or was incapacitated by the later date, when he authorized him, by a power-of-attorney, to prosecute the application on his behalf. Further, Balakrishna had himself stated in the application that Ananda and he had constructed a house together on the suit site. More importantly, Ananda marked the original Hakkupatra dated 05.01.1972 in evidence as Ex:P2. The very fact that the original document was produced by him ought to have weighed with the learned Judge, but it failed to do so.

10. Basing on the fact that a tax receipt pertaining to the year 2000 was produced by Ananda, the learned Judge opined that the Hakkupatra had not been acted upon till then. Though the Assessment Register for the year 1994-95 (Ex:P4) issued by the Chief Administrative Officer, Notified Area Committee, Mahadevapura Hoodi, recorded the name of Balakrishna in the owner's column against the suit site, the learned Judge did not pay heed to it on the ground that the document was later in point

of time to the institution of the suit by the decree holder/plaintiff in the year 1987. Reliance was placed by the learned Judge on the tax receipts of the years 1984-85 and 1985-86 produced by the decree holder/plaintiff and the learned Judge opined that these documents negatived Balakrishna's claim. Holding so, the learned Judge dismissed IA No. 'A'

11. In appeal, the learned Judge of the High Court affirmed the findings recorded in the aforestated order, *vide* his judgment dated 17.08.2011. Strangely, the learned Judge found fault with Balakrishna for not moving the Trial Court to seek setting aside of the decree. Knowledge of a suit in relation to a site, filed without impleading the person who claims to be in possession thereof, can hardly be imputed to such person, whereby fault can be laid at his door for not taking steps during the pendency of the suit or immediately thereafter. The learned Judge also found fault with Balakrishna for appearing before the Executing Court to resist the execution. It is only when steps are taken during execution that a person, behind whose back such a decree has been obtained, would come to know of those proceedings. Therefore, Balakrishna would have been made aware of the decree secured by the decree holder/plaintiff only when the said decree was sought to be executed against him.

12. The further finding of the learned Judge that 'the applicant could not raise such contentions before the Executing Court as it has a limited jurisdiction' reflects total non-application of mind to the scheme of Order

XXI, Rules 97 to 101 CPC. An application filed thereunder is on par with a regular suit and that is the reason why an order passed on such application is appealable as a regular first appeal (See ***Shreenath and another vs. Rajesh and others***[1] and ***N.S.S. Narayana Sarma and others vs. Goldstone Exports (P) Ltd. and others***[2]). The observation of the learned Judge that it was for the applicant to approach the Civil Court for a declaration to set aside the decree passed against him is in utter derogation of the mandate of Order XXI, Rule 101 CPC which explicitly bars a separate suit being filed. The finding of the learned Judge to the contrary is, therefore, wholly unsustainable in law.

13. Leaving aside his legal errors, the learned Judge also failed to notice the evidence on record. Admittedly, the decree holder/plaintiff failed to produce the original Hakkupatra and even in the suit, he had only relied upon a photocopy thereof. On the other hand, the original Hakkupatra dated 05.01.1972 issued by the Tahsildar, Bangalore South Taluk, in favour of Balakrishna was produced by Ananda. The claim of the decree holder/plaintiff was that the Tahsildar took back his original Hakkupatra on the ground that multiple allotments had been made in relation to the same sites. If so, the fact that the Tahsildar allowed the original Hakkupatra issued to Balakrishna to remain with him speaks for itself. The only

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1 (1998) 4 SCC 543
2 (2002) 1 SCC 662

inference that could be drawn therefrom was that the said allotment was genuine and was not cancelled, as was the case with the allotment in favour of the decree holder/plaintiff, whose original Hakkupatra was admittedly taken back and not returned.

14. Further, the Executing Court and the High Court also erred in ignoring the deposition of the decree holder/plaintiff himself. Speaking as RW1 in IA No. 'A', he admitted in his cross examination that Balakrishna had built a RCC house in the suit site, consisting of ground and first floors. He also admitted that the ground floor had 3 shops and that Balakrishna had leased them out to tenants. This admission on his part was fatal to his claim that it was Srikanta Rao, the defendant, who trespassed upon the site and built a hut there. If so, he failed to explain when and how Balakrishna came into possession and how he was allowed to construct a *pucca* structure thereon, including shops. Admittedly, no steps were taken by him to restrain Balakrishna from doing so at any stage.

15. More damaging to his case is the fact that he had no document of title to support his claim in IA No. 'A', as the certified copy of the photocopy, that was produced by him during the suit proceedings, was not allowed to be marked in evidence therein. Significantly, he did not take any further steps when his attempt to do so came to naught. On the other hand, Balakrishna's original Hakkupatra dated 05.01.1972 was placed on record by Ananda, his son.

16. We find that taxes were paid intermittently by both parties in relation to the suit site. Tax payments, at best, could lead to an inference only as to possession but not title. In any event, the reliance placed by the Executing Court and the High Court upon such sporadic tax payments by the parties, so as to infer title and ownership, was wholly uncalled for as the original title document was produced by Balakrishna, one of the rival claimants. The claim to title and ownership by Balakrishna stood settled in his favour by the original Hakkupatra dated 05.01.1972.

17. We may also note that, during the pendency of this matter, this Court called upon the Tahsildar, Bengaluru South Taluk, Karnataka, *vide* order dated 13.10.2022, to file an affidavit stating whether the suit site was allotted in the year 1972 to one or the other of the two parties in question. However, affidavit dated 09.02.2023 was filed by the Tahsildar, Bengaluru East Taluk, stating that Varthur Hobli was now within his revenue jurisdiction but no records were available with his office of the grants made in 1972. He further stated that his inquiries with higher authorities had also failed to yield any result. However, he voiced no suspicion or doubt about the original Hakkupatra dated 05.01.1972 issued to Balakrishna.

18. On the above analysis, the appeal is allowed, setting aside the judgment dated 17.08.2011 in Regular First Appeal 1139 of 2011 passed by the Karnataka High Court and the order dated dated 27.09.2008 passed by the learned XIV Additional City Civil Judge, Bangalore, in IA

No. ‘A’ in Execution Case No. 100 of 2000. The appellants, viz., the legal representatives of Balakrishna, the applicant in IA No. ‘A’ in Execution Case No. 100 of 2000, are declared the lawful owners and possessors of Site No. 261 of Munnekolala New Extension, Varthur Hobli, presently in Bengaluru East Taluk. The judgment and decree dated 08.10.1999 passed by the learned XIV Additional City Civil Judge, Bangalore, in OS No. 2198 of 1987, holding to the contrary, is set aside.

Pending applications, if any, shall stand disposed of.

Parties shall bear their own costs.

....., J
SANJAY KUMAR

....., J.
SANJEEV SACHDEVA

October 26, 2026
New Delhi.