

Non-Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 5801 OF 2022

(arising out of SLP (Civil) Nos. 17195 of 2021)

THE STATE OF KARNATAKA & ANR ...APPELLANT(S)

VERSUS

M.A. MOHAMAD SANAULLA & ANR. ...RESPONDENT(S)

JUDGMENT

VIKRAM NATH, J.

The appellant State of Karnataka has preferred this appeal assailing the correctness of the judgment and order dated 16.04.2021 passed by the Division Bench of the High Court of Karnataka in Regular First Appeal No.1287 of 2012, “The State of Karnataka and another vs. M.A. Mohd. Sanaulla and another” whereby the appeal of the State was

dismissed along with a cost of Rs.1 lakh with certain adverse remarks against the State law officer conducting the matter with a direction to conduct enquiry also. The High Court had confirmed the judgment and decree of the Trial Court dated 08.03.2012 passed in OS No.1424 of 2006 whereby suit for declaration, possession and permanent injunction filed by the State- appellant was dismissed.

FACTS:

2. The dispute relates to land situated in village Chikkasanne within Bhuvanahalli State Forest area. Notification dated 08.01.1921 issued under Section 4 of the Forest Regulation read with Section 17 of the Mysore Forests Regulations declared that with effect from 01.02.1921 an area of 59 acres 08 guntas equal to 09 square miles in Taluk Devanahalli, District Bangalore (Block Bhuvanahalli) comprising of lot no. 66, 67 and 68 of village Chikkasanne to be a State Forest. Later on, at some stage during resurvey,

Survey No. 67 measuring 44 acres 29 guntas was given new Survey No. 69 for the same area.

3. During an auction sale held on 13.09.1936 by the Court for recovery of arrears of land revenue, and confirmed on 19.11.1936 Survey No. 69 measuring 43 acres and 24 guntas was purchased by one T.N.Subbaraiya Mudaliar. Later on, vide sale deed dated 19.08.1977, the respondent No.1 purchased 08 acres 35 guntas of Survey No. 69 from the auction purchaser/his successor-in-interest. The respondent No.1 claimed to have continued his possession but on account of some interferences by the State authorities, he was compelled to approach the Civil Court.

4. The respondent No.1 instituted OS No. 600 of 1981 against the forest department praying for the relief of permanent injunction from interfering with his peaceful possession and enjoyment in respect of the suit schedule

property being 08 acres 35 guntas of dry land in Survey No. 69 with the boundaries described in the schedule.

5. The Court of Munsiff, Devanahalli vide judgment and order dated 13.12.1985 dismissed the suit with cost. Aggrieved by the same, the respondent No.1 preferred an appeal in the Court of the Principal Civil Judge, Bangalore, registered as R.A. No.10/1986. The said appeal was allowed vide judgment dated 24.07.1989 by setting aside the judgment and decree of learned Munsiff and decreeing the suit.

6. The State of Karnataka, preferred Regular Second Appeal No. 673 of 1996 before the High Court. During the pendency of the Second Appeal, the State of Karnataka instituted OS No. 34 of 1997 against the respondent No.1 for declaration that the suit schedule land and trees of the cashew nuts and other trees grown in the said land are part and parcel of Bhuvanahalli Forest block; that the

respondent No.1 has no manner of right, title and interest over the schedule land. Further, consequential reliefs by way of mandatory injunction directing the respondent to remove the illegal fence put up by him on the schedule land was also prayed for. The schedule land was the same land as described in the OS No. 600 of 1981 instituted by the respondent No.1. Later on, the said suit OS No. 34 of 1997 was renumbered as OS No.1424 of 2006 for the reason that it was transferred to Fast Track Court, Devanhalli.

7. The appellant -State after filing of the above suit moved a memo in the Second Appeal No. 673 of 1996 to withdraw the appeal in view of the fact that it had already instituted OS No. 34 of 1997 in the Court of Civil Judge, Bangalore. The appeal was accordingly dismissed as withdrawn on 11.03.1997.

8. The respondent No.1 contested the suit and filed written statement. Issues were framed. Parties led evidence. The

Trial Court vide judgment and order dated 08.03.2012 dismissed the OS No.1424 of 2006.

9. The State of Karnataka preferred Regular First Appeal before the High Court of Karnataka registered as RFA No.1287 of 2012. In the meantime, criminal proceedings were initiated against the respondent No.1 under the relevant forest laws. The respondent No.1 preferred separate criminal petitions bearing Criminal Petition Nos.1852-57 of 2012 under Section 482 of the Code of Criminal Procedure, 1973¹, for quashing such proceedings. The learned Single Judge vide order dated 13.06.2012 allowed the petitions and quashed the criminal proceedings. However, at the same time, it granted liberty to the Forest Department that if there is any encroachment it may conduct the survey and proceed in accordance with law.

¹ In short "CrPC"

10. On the strength of the said order passed by the High Court on 13.06.2012, broader survey both physical as well as aerial was carried out on 09.01.2015 after due notice to respondent No.1. The survey team comprised of the officers from the Revenue Department as also the Forest Department. Notice for the inspection was served upon respondent No. 1 as also the managing partner of respondent No. 2 one Shri Balakrishna received the survey notice. It is, however, recorded that at the time of the survey neither of the two respondents were present.

11. A sketch map was also prepared of the site showing the boundaries marked during the inspection. Further, notice was issued to the respondent No.1, his heirs and some others who were found to be in illegal possession of the same. The fact which emerged from the inspection/survey was that the State premises were encroached upon. This development having taken place during the pendency of the

RFA No. 1287 of 2012 before the High Court, the appellant-State moved an application under Order 41 Rule 27 of the Code of Civil Procedure, 1908² to take on record evidence relating to the survey. This application was registered as IA No. 1 of 2021.

12. The High Court, vide impugned judgment dated 16.04.2021 not only dismissed the appeal of the appellant but by the same judgment and order also rejected the application under Order 41 Rule 27 of the CPC. Aggrieved by the same the present appeal is before us.

13. The submissions of Shri Nikhil Goel, learned counsel, for the appellants are briefly noted as under:

- (i) The Range Forest Officer, who was examined as PW1, did not present himself for cross-examination on the date fixed i.e. 21.01.2012 and within a short span the Trial Court vide judgment dated 08.03.2012

² In short "CPC"

proceeded to decide the suit with a finding that as PW1 did not present himself for cross-examination, the State failed to prove that the scheduled land was forest land. The submission is that a reasonable opportunity ought to have been given for producing PW1 for cross-examination or in the alternative the State could have produced another witness. The Trial Court acted in great haste by deciding the suit in less than 45 days from the date on which PW1 failed to appear; thus, there has been failure to provide adequate opportunity.

- (ii) The joint survey was carried out on 09.01.2015 consequent to the liberty given by the High Court vide judgment dated 13.06.2012 while quashing the criminal proceedings initiated under the Forest Act against the respondent. The joint survey had been carried out physically as also by aerial survey and the

said report along with ancillary material was sought to be placed along with an application under Order 41 Rule 27 of the CPC. The said survey had been carried out during the pendency of the First Appeal before the High Court. The High Court ought not to have rejected the said application. It committed a serious error in rejecting the same, thereby denying adequate opportunity to the State-appellant;

(iii) Survey Nos. 66, 67 and 68 were part of the original notification of 1921 along with some other survey numbers. During resurvey plot no. 67 measuring 44 acres 29 guntas was assigned new Survey No. 69. The said document of the old numbers being converted into new numbers is part of the counter affidavit of respondent no.1. The courts below proceeded on the premise that as the 1921 notification declaring 59 acres 8 guntas as reserve

forest included Survey Nos. 66, 67 and 68 apart from other numbers. It, however, did not include Survey No. 69, therefore, the claim of the State was not tenable. Courts below committed an error in not taking into consideration the changed numbers allotted after the resurvey;

- (iv) The entire area of Survey No. 69 is not in dispute. It is only the area of 8 acres and 35 guntas of dry land of Survey No. 69 which is under dispute. The issue is that once Survey No. 67 had been renumbered as Survey No. 69, it could not have been sold. The land in the auction of 1936 which was in respect of Survey No. 69 was with respect to an area measuring 43 acres and 24 guntas. It is more or less the same survey number which was earlier Survey No. 67 and now is given Survey No. 69. The submission is that once land in dispute was declared in 1921 as forest

land, the same could not have been auctioned and subsequently sold to the respondent.

14. On the other hand, Mr. Sundaram, learned senior counsel appearing for respondent No.1, made detailed submissions which are briefly recorded as under:

- (i) Once the 1936 auction and the subsequent sale deed of 1977 had not been challenged, the suit has been rightly dismissed by the courts below;
- (ii) The auction sale of 1936 was a court sale for recovery of land revenue which also clearly establishes that the Survey No. 69 measuring 43 acres and 24 guntas was not forest land;
- (iii) The State has acted in discriminatory manner by picking up the respondent and proceeding against it with respect to part of Survey No. 69 and has not taken any action whatsoever with respect to the remaining land owners;

- (iv) The revenue authorities have partitioned Survey No. 69 into five sub plots i.e. 69/1 to 69/5, which clearly reflects that it is not forest land.
- (v) The entire area of Survey No. 69 is fully developed and by no stretch can it be said to be forest land;
- (vi) The revenue entries right from 1936 onwards are in favour of the auction purchasers and its successors.
- (vii) The alleged criminal proceedings initiated by the State against the respondent were quashed by the High Court.
- (viii) Reliance has been placed upon the judgment in the case of **Elizabeth Jacob vs. District Collector, Idukki & Ors.**³, for the proposition that merely alleging that a land is a forest land is not enough; it has to be established; the State had completely failed to establish that it was forest land.

³ 2008(15) SCC 166

15. We have considered the submissions and have also examined the records minutely.

16. Having given a thoughtful consideration to the entire conspectus, we are of the view that the State has been denied adequate opportunity by the Courts below and certain material documents have not been taken into consideration by the courts below as such it would in the fitness of things and in the interest of justice that the matter may be remitted back to the Trial Court. Accordingly, we are not going into greater details of the merits of the matter as it may prejudice the courts below in the fresh determination. However, we wish to point out briefly the reasons for the remand.

17. The Forest Range Officer PW-1 who had given his examination-in-chief was supposed to appear on 21.01.2012 for cross-examination. He did not appear on the said date. There could have been many reasons for his non-appearance

both genuine and ingenuine. In a state machinery, it takes reasonable time to nominate and arrange for another officer to come and give evidence in court. Trial Court ought to have given adequate opportunity to the State. The time for producing a witness to prove the plaint averments as also other supporting material ought to have been extended in the interest of justice.

18. The document dated 14.08.1979 clearly reflected that Survey No. 67 (old) had been renumbered in resurvey as Survey No. 69 (new). It is not in issue that in 1921 notification under the Forest Regulation Survey No. 67 was covered. Subsequently in the resurvey, its number is changed to 69. It would automatically be understood that Survey No. 69 (new) was notified as Forest Land way back in 1921. This aspect of the matter of whatever worth it may be has been left out for consideration by the courts below.

19. IA No.1 of 2021 was filed before the High Court under Order 41 Rule 27 CPC. The State wanted to place on record as evidence the documents relating to the survey conducted on the strength of the Order of the High Court dated 13.06.2012 passed in criminal petitions under section 482 CrPC quashing the FIRs. This exercise having been undertaken after the judgment of the Trial Court dated 08.03.2012 the survey report and the other material related to it ought to have been allowed by the High Court to be admitted as evidence as it was relevant for the proper adjudication for the issues arising in the suit, of course with the rider that the respondent would have a right of rebuttal. The High Court in our opinion erred in rejecting the IA No.1 of 2021.

20. For the reasons recorded above the appeal is allowed. The impugned judgment of the High Court dated 16.04.2021 and that of the Trial Court dated 08.03.2012 are set aside.

The matter is remanded to the Trial Court for a fresh decision after affording due opportunity of leading evidence to the appellant both documentary and oral and corresponding right of rebuttal to the respondent to lead oral and documentary evidence. As the suit is of the year 1997, we expect the Trial Court to make an endeavor to decide the suit expeditiously preferably within a period of one year. It goes without saying that the parties will extend their cooperation in early disposal of the suit. There shall however be no order as to costs.

.....J.
[HEMANT GUPTA]

.....J.
[VIKRAM NATH]

NEW DELHI
SEPTEMBER 20, 2022.