

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 8932 OF 2017
(ARISING OUT OF SLP (CIVIL) NO. 30151 OF 2015)

K. GOPAL

.....APPELLANT(S)

VERSUS

P. S. FRANCIS

.....RESPONDENT(S)

ORDER

A.K. SIKRI, J.

Leave granted.

- 2) On 23rd March, 1995, in terms of a sale deed, the respondent claimed to have purchased site No. 46, house list Khatha No. 415 situated at the Thanisandra village, K.R. Puram Hobli, Bangalore from Sri. Chikkanarayanappa, represented through his General Power of Attorney holder, Shri A. Govindappa. After the purchase, the respondent claims that he was put into possession of the said site No. 46 and that one square house was already constructed with mud, bricks and sheet roof without basic amenities on the said site No. 46.
- 3) On 30th September, 1999, in terms of a sale deed, the appellant claimed to have purchased 5 sites bearing no. 29, 30, 31, 32 and 33 in V.P. Khatha Number 516, Assessment No. 63/2 of Thani-Sandra Village,

Hobli, Bangalore from the registered owner, Sri. Narayanappa.

- 4) After this, the appellant was put in actual physical possession of the above referred sites by its erstwhile owner. As per the appellant, on 17th January, 2001, while renovation work was in progress, the respondent came to the sites with Mr. A. Govindappa and tried to impede the construction on the said sites.
- 5) On 31st January, 2001, the appellant filed a suit (O.S. 887 of 2001) for injunction against the respondent before the Court of City Civil. Thereafter, on 29th February, 2001, the respondent lodged a FIR under Section 448 and 449 read with Section 34 of the IPC against the son and wife of the appellant. The appellant's wife and son were later acquitted in the criminal case on 8th February, 2006 by the Court of the XI A.C.M.M., Bangalore.
- 6) On 26th October, 2009, the learned Trial Court in suit O.S. No. 887 of 2001, decreed the suit in favour of the appellant and thereby restrained the respondent from interfering with the peaceful possession and enjoyment of the appellant over the suit schedule property.
- 7) Aggrieved by the order of the Trial Court, the respondent filed a Regular First Appeal before the High Court of Karnataka on 10th December, 2009.
- 8) The High Court vide order dated 28th April, 2015 has allowed the appeal filed by the respondent and set aside the judgment and decree of the

trial court on the ground that the learned trial court should have reconciled the two sale deeds that were set up by the respective parties and since the boundaries of the two properties, as claimed by both the parties, were identical, the learned trial court should have carried out further investigation.

9) Relevant portion of the judgment of the High Court reads as under:

“The learned counsel for the respondent has remained absent and as already stated, from a perusal of the record, it does appear that the court below was not justified in negating the case of the defendant while upholding the case of the plaintiff without being able to reconcile the two sale deeds that were set up by the parties. In terms of Order VII Rule 3 of the Code of Civil Procedure, 1908 (hereinafter referred to as the ‘CPC’ for brevity), it is mandatory that the suit property be described, sufficient to identify it and in case the suit property can be identified by boundaries or numbers in a record of settlement of survey, the plaint shall specify such boundaries or numbers. Since the boundaries of the two properties as claimed by the plaintiff and the defendant were identical, it was therefore necessary to carryout further investigation with reference to the record of settlement of survey, even if the court were to embark upon an inquiry to address the respective claims of the parties and in the absence of the prayer and the suit relief being restricted to one for permanent injunction, there was no scope for such an inquiry. Hence, the Court below was not justified in decreeing the suit of the plaintiff, notwithstanding a serious dispute as to the identity and location of the respective properties of the parties.

Consequently, the appeal is allowed. The judgment and decree of the trial court is set aside.”

10) Even if the reasoning of the High Court is accepted, the mistake committed by the High Court is that after observing that the Trial Court should have carried out further investigation with reference to the record of settlement of survey, has not remanded the case back to the Trial

Court for the aforesaid purpose. In making the aforesaid observations, the High Court has ignored the evidence which was led before the Trial Court. The appellant/plaintiff had made the following categorical statement in his Examination-in-Chief:

“5. I say that I have purchased the site no. 46 admeasuring 1200 sq. ft. along with a square shed in 1990 and I was in possession of the same since then. The plaintiff claims to have purchased site no. 29,30,31,32 and 33 in the year 1999 without verifying the title of the vendor and also the title of the persons in occupation and possessions of the sites.”

11) Not only there is no cross-examination on the aforesaid aspect, on the contrary, the defendant/respondent had himself stated in his deposition that he had no right over the site nos. 29 to 33, which are mentioned in the suit schedule property, formed in Sy. No. 63/2. He has also admitted that he was no in possessions of the suit property. The learned counsel for the respondent could not refute the aforesaid position.

12) In view of the aforesaid evidence, there was no reason for the High Court to set aside the decree passed by the Trial Court. We, thus, allow this appeal, set aside the order of the High Court and restore the decree passed by the Trial Court.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

**NEW DELHI;
JULY 10, 2017**

ITEM NO.22

COURT NO.7

SECTION IV-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 30151/2015

(Arising out of impugned final judgment and order dated 28-04-2015 in RFA No. 1294/2009 passed by the High Court Of Karnataka At Bangalore)

K GOPAL

Petitioner(s)

VERSUS

P S FRANCIS

Respondent(s)

Date : 10-07-2017 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHANFor Petitioner(s) Mr. Deepak Dhingra, Adv.
Mr. Ritesh Khatri, AOR
Mr. Sumit Kumar Vats, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, stands disposed of
accordingly.(ASHWANI KUMAR)
COURT MASTER(MALA KUMARI SHARMA)
COURT MASTER

(Signed order is placed on the file)