

A

MANOJI RAO
v.
T. KRISHNA AND ORS.

JANUARY 11, 2001

B

[S. RAJENDRA BABU AND K.G. BALAKRISHNAN JJ.]

Code of Civil Procedure, 1908:

C *Section 96—Original decree—Appeal from—Plaintiff filed a suit for declaration—Defendant claimed that he was residing in a portion of the suit property even prior to its allotment to the plaintiff—Trial court dismissed the suit—High Court held that mere residence did not confer title on the defendant and allowed the appeal—Correctness of—Held: The matter falls within the region of appreciation of material on record—Hence no interference is called for.*

D

The respondents-plaintiff filed a suit for declaration as to the ownership of the suit property. The appellant-defendant claimed that he was in possession of a portion of the suit property even prior to its allotment to the respondents. The trial court dismissed the suit.

E

The High Court allowed the appeal on the ground that no right would be conferred on the defendant although he was residing in a portion of suit property even prior to his allotment. Hence this appeal.

Dismissing the appeal, the Court

F

HELD: 1. The matter falls within the region of appreciation of material on record. Though the trial court had taken a different view, on appreciation of the material the first appellate court took the view that the documents clearly establish the claim made by the plaintiffs and no documents were available with the defendant. [328-F]

G

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 482 of 2001.

From the Judgment and Order dated 13.12.99 of the Karnataka High Court in R.F.A. No. 153 of 1994.

H

P.C. Jain and Balbir Singh Gupta for the Appellant.

A

S.K. Kulkarni and Vijay Kumar for the Respondents.

The Judgment of the Court was delivered by

RAJENDRA BABU, J. Leave granted.

B

This appeal arises out of a suit [O.S. No. 10579/89] filed in the court of First Addl. City Civil Judge, Bangalore. The respondents-plaintiffs sought for the relief of declaration as to the ownership of the suit site No. 20, measuring 20 ft. x 32.5 ft. at Ramakrishna Mutt Extension, Gavipuram, Guttahalli, Bangalore as described in detail in the schedule to the plaint. They claimed that they have been residing in this site by putting up a hut and thereafter the C.I.T.B, the predecessors of the Bangalore Development Authority issued a letter of allotment dated 19.7.1973 and a possession certificate was also given on 17.3.1981. Allegations against the appellant-defendants are that they had trespassed over a portion of the property and as regards rest of the property they were creating disturbance and thus the plaintiffs sought for declaration of right, title or injunction. The plaintiffs relied upon several documents such as the letter of allotment dated 19.7.1973 [Ex. P.1]; a demand notice calling upon the plaintiffs to pay the value of the site as per Ex. P.2; the challans showing that amounts were remitted by the plaintiffs [Ex. P.3 to P.5]; the possession certificate dated 18.3.1981 issued by the Bangalore Development Authority that the plaintiffs was given possession of site No. 20 with the measurements indicated in the plaint [Ex.P.6]; the certificate issued by the Bangalore Development Authority to indicate that the suit site stands in the name of the plaintiffs [Ex.P.7]; the licence issued by the Bangalore Development Authority for construction of building on site No. 20 [Ex.P.8] and the plan approved by the Bangalore Development Authority [Ex. P.9]. The trial court, however, took the view that the possession certificate dated 17.3.1981 cannot be taken to be a document of title which is only a possession certificate and no document conveying the title to the plaintiffs had been made available for the court and, therefore, the plaintiffs cannot be declared to be the owner. Proceeding on this basis, the trial court dismissed the suit. It relied upon the circumstance that the defendants were in possession of a portion of the property and they were residing there at even prior to 1980. Therefore, the plaintiffs cannot seek a suit for ejection of the defendants on the basis that they had been allotted the site by the Bangalore Development Authority without obtaining any documents of title. When vacant possession

C

D

E

F

G

H

A has not been given to the defendants the plaintiffs had failed to prove their possession of the suit property and the question whether the defendants trespassed into the suit property illegally and encroached upon it by putting up structures would not arise for consideration. On that basis, the trial court dismissed the suit.

B On appeal to the High Court, the learned single Judge, after noticing the various documents that have been filed in the case, held that the fact that the defendants were residing in a portion of the suit site even prior to the allotment would not confer any right upon them and DW.1 had admitted in the course of his evidence that site No. 20 was allotted to the plaintiffs. In the absence of any title set up by the defendants or claimed by them and when the defendants have not only unequivocally admitted the title of the plaintiffs but also merely claimed that the application was pending consideration of the Government, the trial court ought to have decreed the suit and allowed the appeal granting the relief sought for by the plaintiffs. Hence this appeal.

D It is contended before us that in the course of arguments it had been submitted by the Advocate appearing for the plaintiffs that site No. 20 which is the subject matter of the dispute has been allotted to defendant No. 1 by the Bangalore Development Authority. But no clarification was made either by production of any document before the Court in support of this contention.

E In the absence of any such material, we do not think it would be safe to assume that such allotment had been made in favour of defendant No. 1 and so the plaintiffs have become disentitled. On the other hand, when the High Court has taken into consideration all the documents available on record and on that basis holds *prima facie* that the plaintiffs have the possessory rights over the suit property and a declaration to that effect has been given, the matter falls within the region of appreciation of material on record. Though the trial court had taken a different view, on appreciation of the material the first appellate court took the view that the documents clearly establish the claim made by the plaintiffs and no documents were available with the defendants. We do not, therefore, think that there is any good reason to interfere with the order made by the High Court and we dismiss this appeal.

G No costs.