

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). 5146/2022

(Arising out of impugned judgment and order dated 18-08-2021 in WP No. 40488/2015 (GM-CPC) passed by the High Court of Karnataka at Bengaluru)

V. VISHWANATH SINCE DECEASED BY LRS.

Petitioner(s)

VERSUS

B.N. SAROJAMMA & ORS.

Respondent(s)

Date : 30-01-2024 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA

For Petitioner(s) Mr. Shekhar G Devasa, Adv.
Mr. Manish Tiwari, Adv.
Ms. Thashmitha Muthanna, Adv.
Mr. Shashi Bhushan Nagar, Adv.
Mr. Vishwanath Chaturvedi, Adv.
M/S. Devasa & Co., AOR

For Respondent(s) Mr. Bharadwaj S., AOR
Mr. Anshuman Ashok, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Heard Mr. Shekhar G Devasa, learned counsel appearing for the petitioners. Also heard Mr. Bharadwaj S., learned counsel appearing for the respondents.

2. The petitioners are the legal heirs of the deceased plaintiff - V. Vishwanath and the respondents were the defendants in the OS No. 131 of 1999.

3. The prayer in the suit reads as under:

"a) declaring that the Registered Sale Deed dated 17.8.1997 registered as Document No.3872/1987-88 of Book I Volume 2583 at pages 215-218, registered in the office of the Sub registrar, Bangalore South

Taluk, Bangalore on 1.9.1987 is null and void and not binding on the Plaintiff with respect to item No.1 of the suit schedule properties;

b) pass an order of permanent injunction restraining the Defendants, their agents any body acting or claiming under their behalf from interfering with the peaceful possession and enjoyment of the item No.1 of the suit schedule property; and

c) pass such other appropriate order/orders as deemed fit to pass with costs and Advocates' fee in the interests of Justice and Equity."

4. The suit came to be dismissed on 14.06.2004 due to non-prosecution by the plaintiff, who was absent on six consecutive dates. However, it is pointed out that the plaintiff had died on 18.11.2002 and that is how there was none to pursue the suit which came to be dismissed for default. The application filed from the plaintiff's side under Order IX Rule 9 of the Code of Civil Procedure, 1908 was dismissed on 27.11.2009. A second application was then filed. However, with the order dated 07.08.2015, the learned Principal Senior Civil Judge, Bangalore Rural District dismissed the application on the ground of delay and also because a second application was not maintainable. The resultant petition filed by the aggrieved party under Article 227 of the Constitution was dismissed by the High Court under the impugned judgment dated 18.08.2021.

5. While the petitioners counsel raises various arguments including the death of the plaintiff which led to non-prosecution of the suit, the counsel for the respondents would point out that much water has flown since the dismissal of the suit on 14.06.2004.

6. Adverting to the counter affidavit filed by respondent No. 1, Mr. Bharadwaj S., learned counsel submits that the suit schedule

land was acquired with the preliminary notification issued on 21.05.2008. In the reference i.e., the Land Acquisition Case No. 18 of 2013, the legal heirs of the plaintiff had claimed a share of the land acquisition compensation but the Reference Court with its order dated 28.09.2021 (Annexure R/2), rejected their claim to a share of the acquisition compensation. The respondents-defendants have accordingly received the acquisition compensation and importantly the petitioners have not challenged the 28.09.2021 decision of the Reference Court against them. Thus, the proceeding in the Land Acquisition Case No. 18 of 2013 has become final against the petitioners.

7. Considering the acquisition of the land and disbursement of compensation in favour of the respondents, the legal heirs of plaintiff are unlikely to secure any meaningful relief on the prayers made in the suit, even if the suit is restored and contested. Accordingly, we decline to do so.

8. However, as the petitioners have deposited a sum of Rs.1 lakh as cost and the amount is lying in the Registry, the same should be returned back to the petitioners.

9. With the above order, the Special Leave Petition stands disposed of.

10. Pending application(s), if any, shall stand closed.

(NITIN TALREJA)
ASTT. REGISTRAR-cum-PS

(KAMLESH RAWAT)
ASSISTANT REGISTRAR