

(2014) 06 KAR CK 0085
In the Karnataka High Court
Case No : RSA No. 5278/2010 (SP)

Ambalal

APPELLANT

Vs

Iranna

RESPONDENT

Date of Decision : 03-06-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 96
Karnataka Land Revenue Act, 1964 — Section 62

Citation : (2014) 5 KarLJ 642

Hon'ble Judges : A.V. Chandrashekara, J

Bench : Single Bench

Advocate : Dinesh M. Kulkarni, Advocate for the Appellant; R.H. Angadi, Advocate for R1 and R2, Advocate for the Respondent

Final Decision : Allowed

Judgement

A.V. Chandrashekara, J.—This appeal is filed by the plaintiff of an original suit bearing O.S. No. 244/1989, which was pending on the file of the Additional Civil Judge (Jr. Dn.), Gokak. Suit filed for the relief of possession of the encroached portion came to be dismissed by a considered judgment dated 07.02.2001.

2. On the basis of the pleadings of the parties, as many as 9 issues and one additional issue had been framed by the trial Court.

i) Whether plaintiff proves that he is the owner of R.S. No. 139/1A measuring 3 acres 17 guntas assessed at 4-50P of Gokak?

ii) Whether plaintiff proves that the suit land marked as ABCD in the sketch appended to the plaint forms part of R.S. No. 139/1A of Gokak?

iii) Whether plaintiff proves that the defendants have encroached the suit land i.e., ABCD area from R.S. No. 139/1A?

iv) Whether plaintiff proves that he is entitled to evict the defendants and recover possession of the suit land i.e., ABCD area from R.S. No. 139/1A?

v) Whether plaintiff proves that he is entitled for mesne profits from the defendants for their unauthorised occupation of the said land i.e., ABCD area?

vi) Whether the defendants prove that this Court has no jurisdiction to entertain the suit, as contended in para 5 of their written statement?

vii) Whether defendants prove that they are entitled for costs and compensatory costs, as contended in para 10 of their written statement?

viii) To what reliefs the parties are entitled?

ix) To what order or decree?

Additional issue:

Whether the defendants prove that they have perfected their title over the suit property by way of adverse possession?

3. Issue Nos. 1 to 3 regarding the ownership of 3 acres 17 guntas of land in R.S. No. 139 MA, the suit property being the part and parcel of R.S. No. 139/1A of Gokak and in respect of encroachment of an area indicated in letters "ABCD" have been answered in the affirmative. Insofar as it relates to the possession of encroached portion indicated in letters "ABCD" has been answered in the negative vide issue No. 4. Issue No. 5 in regard to the entitlement of mesne profits is not pressed. Issue No. 6 has been answered in the affirmative holding that the trial Court has no jurisdiction to entertain a suit as contemplated in paragraph 5 of the written statement, more particularly, in the light of the inhibition u/s 62 of the Karnataka Land Revenue Act, 1964.

4. Ultimately suit had been dismissed and the appellant chose to file an appeal u/s 96 of CPC before the Court of the Principal Civil Judge (Sr. Dn.), Gokak in R.A. No. 41/2001. The learned Judge of the first appellate Court has held that the trial Court had the jurisdiction to entertain the suit and that inhibition found u/s 62 of the Karnataka Land Revenue Act, 1964 does not come in the way of entertaining a suit filed by the plaintiff. Unfortunately, the first appellate Court has reversed the findings given on issue Nos. 1 to 3, though there is no specific appeal or cross objection being filed by the defendants. It is in this regard, the present appeal is filed. On hearing the parties and perusing the records, following substantial question of law has been framed:

Whether the first appellate Court is justified in reversing the findings of the trial Court after having come to the conclusion that the trial Court had the jurisdiction to entertain the suit, and thus the judgment of the first appellate Court is perverse and illegal?

5. After hearing the counsel for the parties, it is evident that the first appellate Court could not have dismissed the appeal after having held that the trial Court had the jurisdiction to entertain the suit filed before it. In an appeal filed by the plaintiff, positive finding given in favour of the plaintiff by the trial Court could not have been upset by the first appellate Court. Such being the legal position, it

is unfortunate that the first appellate Court has reversed the positive finding given by the trial Court on issue Nos. 1 to 3. When the suit was dismissed mainly on the ground of jurisdiction as found in Section 62 of the Karnataka Land Revenue Act, 1964, it was incumbent upon the first appellate Court to have remanded the matter to the trial Court or in the alternative to consider the negative finding given against the plaintiff in the trial Court. The learned Judge of the first appellate Court has relied upon the decision reported in *Shri Ravinder Kumar Sharma Vs. The State of Assam and Others*, , to come to the conclusion that, the respondent-defendant in an appeal can, without filing cross-objection, attack any adverse finding upon which a decree in part has been passed against the respondent, for the purpose sustaining the decree to the extent the lower court had dismissed the suit against the defendants-respondents. It is further held that filing of cross-objection, after the 1976 Amendment is purely optional and not mandatory.

6. It can be said with certainty that the principles enunciated in the said decision are not applicable to the fact of the case. On the strength of the said decision, positive finding given on issue Nos. 1 to 3 by the trial Court could not have been upset. Such being the case, the judgment of the first appellate Court is not sustainable in the eye of law or on facts. Under the facts and circumstances of the case, the judgment of the first appellate Court has to be set aside and the matter has to be remanded to the first appellate Court to consider the matter afresh, more particularly, keeping in mind the positive finding given by the trial Court. Accordingly, the substantial question of law is answered in the negative. Hence, the following order is passed.

ORDER

Appeal filed u/s 100 of CPC is allowed. The judgment of the first appellate Court passed in R.A. No. 41/2001 is set aside and the matter is remanded to the first appellate Court to consider the matter afresh and dispose of the appeal as early as possible but not later than 31.03.2015. Parties shall appear before the trial Court on 31.07.2014 without fail and without awaiting further notice and thereafter, the learned Judge of the first appellate Court shall make all endeavour to dispose of the matter within the time fixed.

There is no order as to costs.