

(2003) 10 KAR CK 0064

In the Karnataka High Court

Case No : Regular Second Appeal No. 732 of 1997

Babubali Hanamantappa Ijari

APPELLANT

Vs

Smt. Shalinibai (deceased) by L.Rs.

RESPONDENT

Date of Decision : 23-10-2003

Acts Referred:

Limitation Act, 1963 — Section 64

Citation : (2004) 3 KCCR 1481

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : B.S. Patil, for the Appellant; Manikappa Patil, for Respondents 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedhar Rao, J.—The appeal filed against the Judgment and decree passed in RA 52 of 1993 on the file of I Additional Civil Judge, Dharwad arising out of the Judgment and decree passed in O.S. No. 523 of 1986 on the file of I Additional Munsiff, Dharwad.

2. The Appellant is the Plaintiff filed a suit for declaration of title and for permanent injunction and also to direct the revenue authorities to delete the name of Defendants and to enter the name of Plaintiff in the revenue records relating to suit land. The Plaintiff claims that the suit properties were allotted to his father in the partition in the family in the year 1960. The husband of the first Defendant and father of Defendants 2 and 3 is the brother of the Plaintiff. The Plaintiff contends that the Defendants got the entries manipulated in the revenue records to show that the land is in their possession and cultivation hence the suit is filed.

3. The Defendants in their written statement admit that the property was allotted to the share of the Plaintiff but contend that the Plaintiff had relinquished his share in respect of the suit property in favour of Bujabali in the year 1967 and

mutation entries were also effected in the land revenue records. Accordingly Bujabali and the Defendants are in continuous possession and enjoyment of the land from the year 1967. The Defendants plead title on the basis of relinquishment and also alternatively plead adverse possession and pray for dismissal of the suit.

4. The trial Court upholds the claim of adverse possession of the Defendants and dismissed the suit. The first appellate Court confirms the findings of the trial Court and dismissed the appeal of the Plaintiff. Hence, this second appeal.

5. The admission Judge had framed the following substantial question of law for consideration.

Whether the Defendant having set up the defence of relinquishment of the rights by the Plaintiff in respect of the suit schedule property and both the Courts having found that there is no relinquishment by the Plaintiff ?" Is it open for the Defendant to set up the plea of adverse possession so as to perfect his title over the suit schedule property ?

6. After hearing the parties the additional question of law is framed as follows:

Whether the appellate Court was justified in holding that the Defendants have proved the case of adverse possession and the finding thereon is perverse and contrary to evidence on record ?

7. The Defendants admit that the property was allotted to the Plaintiff in the partition in the year 1960. However, in 1961 it is said Plaintiff relinquished his share in favour of his brother Bujabali. Ex.D.19 ROR extract of the year 1967-68 disclose the name of Bujabali as Kabjedar in column No. 9. The revenue records are produced by the Defendants to show payment of taxes. The ROR extracts at Exs. D19, 20 21 pertains to the period 1967-68 to 1986-87. In Ex.D.19 and Ex.D.20 the name of Chayappa Kurkuri is shown for the period 1967-68 to 1982-83 as the cultivator. From the period of 1983-84 onwards in Ex.D.20 till the filing of the suit in column No. 12 the Defendants are shown to be cultivators. Ex.D.43 is the order of the Tahsildar for deleting the name of Chayappa Kurkuri from the cultivator's column in the ROR. The contents of the order disclose that the Defendants made an application to the Tahsildar alleging that wrongly in column No. 12 the name of Chayappa Kurkuri has been entered and sought for deletion. A full fledged enquiry was conducted by the Tahsildar as required under the Karnataka Land Revenue Act. Notice was issued to Chayappa Kurkuri, as he was dead his son appeared in the enquiry and gave a statement before the Tahsildar that his father Chayappa Kurkuri at no point of time cultivated the suit lands as shown in Ex.D.19 and Ex.D.20. In view of such evidence, the Tahsildar directed the deletion of name of Chayappa Kurkuri. Thereafter from the date of Ex.D.43 the name of Defendants are shown as the cultivators in Column No. 12. In column No. 9 the names of Defendants are shown. From 1967 till 1983 Bujabali's name was shown as the Kabjedar in column No. 9 who is none other than the husband of the first Defendant and father of Defendants 2 and 3. In

view of the clinching material produced, the appellate Court comes to the conclusion that the Defendants have proved the case of continuous and uninterrupted possession from 1967 onwards and hence holds that adverse possession is proved.

8. It is the contention of the Appellant that the plea of title and alternative plea of possession cannot go together in law and they are mutually inconsistent. I am unable to agree with the contention of the Counsel for the Appellant. The Division Bench of this Court in *The Karnataka Wakf Board Vs. State of Karnataka and others*, in para 22 has held as follows:

22. The Plaintiff has taken up an alternative plea that it has perfected its title to the suit property by adverse possession also. In the appeal memo, in para 10 at page No. 7, it is contended that the said plea is inconsistent with the plea of title under issue No. 1. It is not possible to accept this contention. It is well-settled that the Plaintiff can take an alternative plea. The plea regarding title and the plea of adverse possession pleaded by the Plaintiff in this case, cannot be said to be inconsistent with one another. The evidence of P.W.1 and the documentary evidence placed on record by the Plaintiff and also the clear and unequivocal admissions made by D.W.1 in his evidence, as discussed above, go to show that the Plaintiff has been in possession of the suit property right from the year 1928 and in 1941, the Plaintiff granted the suit property in favour of the District Local Board under Ex.P.3 and subsequently the Education Department constructed a building in the suit property in the year 1961 and the Plaintiff has been in possession of it till the date of suit. The suit has been filed on 18.12.1980. Since the Defendants have been putting forward a claim to the suit property since ancient times, the possession of the Plaintiff is necessarily hostile to the claim of title made by the Defendants and is to their knowledge. The period of Plaintiff's possession being well over the statutory period under Article 64 of the Limitation Act, 1963, the learned trial Judge has rightly held that the Plaintiff has established its title to the suit property by adverse possession also. There is no substance in the contention of the Appellant that the appreciation of evidence on record by the Trial Court is not proper. Hence, Point No. (i) is answered in the affirmative.

9. That apart, as per the pleadings and evidence the Defendants get into possession by virtue of relinquishment under unregistered partition deed and get mutation entries in their favour and they are in continuous and uninterrupted possession. In view of the ruling of the Supreme Court in *State of West Bengal Vs. The Dalhousie Institute Society*, and the ruling of this Court in *Laxmibai v. Thoreppa* AIR 1982 Kar. 248 when a person gets into possession under invalid document such possession if continuously enjoyed without interruption for over a period of 12 years, it becomes an adverse possession investing a title in the possessor.

10. The ratio laid down in the above cases squarely applies to the facts of the case and supports the Defendants' contention of adverse possession. The view

taken by the appellate Court that the Defendants have proved adverse possession is sound and proper.

For the reasons and discussion made above, the first and second points of law are answered in Negative. The appeal is dismissed.