

(2004) 07 KAR CK 0001

In the Karnataka High Court

Case No : Regular Second Appeal No. 1075 of 2003

Balappa Narasappa Karade

APPELLANT

Vs

Govind Narasappa Karade, by his L.Rs. and Others

RESPONDENT

Date of Decision : 13-07-2004

Acts Referred:

Citation : (2004) ILR (Kar) 4044 : (2004) 6 KarLJ 239 : (2004) 4 KCCR 2323

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : Jagdeesh Patil, for the Appellant; Ravi S. Balikai, for R1(a), for the Respondent

Final Decision : Dismissed

Judgement

Gopala Gowda, J.—The respondent was the plaintiff and Appellant was the defendant in the Trial Court. For the sake of convenience, the parties are referred to as per their rank in the Trial Court.

2. The plaintiff filed the suit for declaration that he is the absolute owner of suit schedule properties for possession and for permanent injunction restraining the defendant from interfering with his possession and enjoyment of the same. It is the case of the plaintiff that the defendant in the year 1968 requested to permit him to stay in a portion of the suit house and the plaintiff permitted him to stay. The further case of the plaintiff is that the defendant managed to get his name entered in respect of CTS No. 4137 showing the source of title as ancestral. It is alleged that on the instigation of others, the defendant asserted to claim right, title and interest over half portion but the Tahsildar rejected it. In appeal, the Assistant Commissioner allowed the same on 24.11.1986 and on the basis of the said order the defendant is claiming half portion.

3. The defendant filed written statement resisting the suit and denying the plaintiff's averments. It is denied that plaintiff is the absolute owner of the suit properties. On the other hand, it is stated that the elder brother Shidram paid Rs. 2,000/- to

the plaintiff and the remaining amount was paid out of the income of the plaintiff and the defendant to purchase the property and that plaintiff being elder to defendant, taking undue advantage Of the same the plaintiff claims to be absolute owner. The defendant asserts that his name is entered in the records pursuant to the order of the Asst. Commissioner, which the defendant claims to be legal and valid.

4. On the basis of the pleadings, the Trial Court framed issues and went for trial. Parties adduced evidence and produced documents in support of their respective case. Upon consideration of the material brought on record, the Trial Court decreed the suit holding that plaintiff is the absolute owner of the property, restrained the defendant from interfering with plaintiff's possession and enjoyment and directed the defendant to hand-over possession of the suit house to the plaintiff. The appeal preferred against the judgment and decree of the Trial Court was dismissed by the first Appellate Court and decreed the suit. Aggrieved by the first appellate Court. Being aggrieved by the same the defendant has presented this second appeal.

5. The plaintiff and defendant are none other than brothers. Plaintiff claimed that the suit properties were his self acquired properties. The defendant denies the same and claims that they are jointly owned by him and the plaintiff. Issue No. 1 was framed by the Trial Court casting the burden on the defendant to prove his claim. The suit house was purchased in the year 1952 under Ex.P.2 and the suit land was purchased in the year 1956 under Ex.P.3. According to the defendant, the suit house was purchased out of joint income derived by plaintiff and defendant by tailoring business. But, the evidence of the defendant is that he learnt tailoring in the year 1957 and thereafter started joint business with the plaintiff. That being the fact, defendant could not have contributed any amount for purchasing the suit house out of his income from tailoring profession.

6. In the written statement the defendant asserted that he learnt the tailoring profession in the year 1945-46 whereas in the evidence he admitted that he learnt it in the year 1956, after the suit properties had been purchased by the plaintiff. Thus, the plea of the defendant is contradictory. Therefore, the Trial Court has rightly disbelieved the version of the defendant.

7. So far as the suit land is concerned, plaintiff claimed that he obtained the same on lease and thereafter purchased the same. According to the defendant, his father was the tenant of the land and the three brothers (plaintiff, defendant and another brother) were cultivating the same and he got half-share in it. The plaintiff produced the certified copy of the lease deed to prove that he took the land on lease under Ex.P.3. Ex.P.6 is the proceedings relating to the permission sought by the plaintiff to purchase the suit land. The sale deed was produced to prove the purchase of suit land by the plaintiff.

8. It is pertinent to note that only the defendant is claiming that the suit properties are joint family properties. His other brothers have not put forth claim

for share in the properties. On the other hand, Exs.P.17 and 18 were produced by the plaintiff to show that he mortgaged the suit properties in his individual capacity. The Trial Court elaborately considered the version of the defendant and found that he changed his stand from time to time. Taking into consideration the oral and documentary evidence on record, the Trial Court has rightly held that the suit properties were the self acquired properties of the plaintiff and that the defendant utterly failed to prove his stand.

9. So far as possession of the suit properties is concerned, the Trial Court found from the records that the plaintiff is in possession from 1955-56 to 1986. The name of the defendant came to be entered only on the basis of the order passed by the Asst. Commissioner. Ex.P. 40 is the order of the Tahsildar which states that during the spot inspection plaintiff was in possession of the suit land. The Trial Court was rightly held that the evidence of DW-2 is not trustworthy as he is an interested witness in view of the fact that the suit filed against him by the plaintiff for damages was decreed. On the other hand, PW-2 examined by the plaintiff stated that plaintiff was in possession of the suit land.

10. Plaintiff has specifically stated that he permitted the defendant to stay in some portion of the suit house. But, on the basis of the order of the Asst. Commissioner the defendant claimed half share. Though the Tahsildar rightly rejected the application of the defendant, the Asst. Commissioner wrongly passed the order in favour of the defendant. But, as long as the plaintiff is the absolute owner, his right and title over the suit properties cannot be taken away by the order of the Asst. Commissioner.

11. The defendant claims that the suit properties are joint family properties. But he claims half share in them. Admittedly, they are three brothers. According to the defendant the elder brother Shidram paid Rs. 2,000/- to purchase the properties. If that is true, the defendant should have claimed 1/3rd share and not half share. On what basis the defendant is claiming half share in the suit properties, is not forthcoming. Hence, the Trial Court rightly negated the case of the defendant.

12. Having held that the plaintiff is the absolute owner of the suit properties, the Trial Court was justified in directing the defendant to hand-over possession to the plaintiff. The assertion of the defendant for half share in the suit properties itself an obstruction to the plaintiff's possession and enjoyment of the suit properties. Hence, the Trial Court granted injunction restraining the defendant from causing interference with the possession of the plaintiff.

13. The first Appellate Court re-appreciated the findings and reasons assigned by the Trial Court and concurred with the same. Regarding the possession of the defendant, it has framed additional issue and held that defendant was in permissive possession of suit house. The possession of the defendant being permissive, he could be evicted at any time and the plaintiff was justified in seeking possession of the suit house. The judgment and decrees of the Courts

below perfectly justified and there are no grounds to interfere with the same. The substantial questions of law framed in the memorandum of appeal are not involve and the appeal is devoid of merit.

10. The appeal stands dismissed.