

(2015) 02 KAR CK 0086
In the Karnataka High Court
Case No : R.S.A. No. 5441/2009

Basappa and Others

APPELLANT

Vs

Ramachandra and Others

RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:

Citation : (2015) 02 KAR CK 0086

Hon'ble Judges : S.N. Satyanarayana, J.

Bench : Single Bench

Advocate : B.K. Malligawad, Advocate, for the Appellant; Girish Hiremath, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Satyanarayana, J.—The defendants in O.S. No. 513/2002, on the file of I Addl. Civil Judge (Jr. Dn.), Dharwad, have come up in this second appeal impugning the concurrent finding of both the Courts below in decreeing the suit of plaintiff for the relief of permanent and perpetual injunction.

2. The suit property is R.S. No. 331 measuring 16 acres 17 guntas of Hebballi village in Dharwad taluk, which was undoubtedly the property of plaintiff's grandfather namely Dattobarao S/o. Laxmanrao Jahagirdar @ Heblikar under the Saranjam Inam Land Grant made in the name of his grandfather. It is further not in dispute that the said land was given to the father of defendants 1 to 3 for cultivation as tenant prior to 1950.

3. It is seen that there is failure on the part of defendants father in paying the rent as stipulated in the terms of tenancy which has resulted in proceedings being initiated against him and before the Mamlatdar of Dharwad for possession which is decided in his favour by order 3.2.1953 confirming that the possession is reverted back to the grandfather of plaintiff. However it is stated that the defendants tried to disturb the possession and cultivation of suit property by the plaintiff, which has resulted in the present suit in O.S. No. 513/2002 being filed

for the relief of permanent and perpetual injunction against defendants 1 to 3.

4. In the said suit defendants entered appearance and filed their written statement contending that the order of Mamlatdar is reversed in an appeal filed by them in the year 1953 vide order produced and relied upon by them in Ex. D. 5 which is said to be the order of Assistant Commissioner dated 17.7.1953 and in addition to that they also tried to rely upon the alleged order of re-conveyance of the land in their favour on 10.6.1959 by Deputy Commissioner, Dharwad.

5. In the said proceedings while considering the evidence adduced by the parties on the issues framed, the trial Court did not rely upon the documents Ex. D. 2 a xerox copy produced by the defendant as the order of grant of land in favour of defendants father and also the order dated 17.7.1953 by the Assistant Commissioner of Dharwad vide Ex. D. 5 as the order passed by the Appellate Authority against the order of Tahasildar in Ex. P. 24. The trial Court by accepting the order of land grant by Mamlatdar in favour of the plaintiff's father, decreed the suit of plaintiff for the relief sought in the said suit.

6. The said judgment and decree dated 3.10.2007 was subject matter of R.A. No. 101/2007 on the file of III Addl. Civil Judge (Sr. Dn.), Dharwad, wherein the lower appellate Court on re-appreciation of pleadings and evidence answered the points for consideration in favour of the original plaintiff who is respondent in regular appeal and consequently dismissed the appeal in R.A. No. 101/2007 filed by defendants.

7. As against the concurrent finding of both the Courts below, this second appeal is filed contending that serious error is committed by both the Courts below in accepting the plea raised by the plaintiff in the original suit. It is urged by the appellants/defendants that the records would disclose, defendants father continuing to be in possession and cultivation of suit land even after order of Mamlatdar of Dharwad was passed. On the basis of such possession occupancy rights is granted in favour of defendants vide Ex. D. 2, which is not looked into.

8. It is further contended that during the pendency of this appeal considering the continuous possession of defendants over the suit land, recommendation is made by the Tahasildar, Dharwad, for re-conveyance of the land once again by fresh order and the same is pending consideration before the competent authority. In that view of the matter it is urged that the said document is not being properly appreciated by the lower appellate Court, the same is required to be set aside.

9. Heard the learned counsel for the appellant, perused the judgment and decree passed by both the Courts below. On going through the judgment of both the Courts below and the grounds urged it is clearly seen that the title of plaintiff's grandfather to the land in dispute as Saranjam Inam Land granted prior to 1950 is not in dispute. It is also not in dispute that that the defendants father who was tenant of the said land prior to 1950 has committed default in payment of lavani or rent which has resulted in initiation of proceedings for termination of tenancy and seeking possession before the Mamlatdar, Dharwad, resulting in an order for

restoration of possession being passed in his favour in the year 1953.

10. As against that the defendants tried to assert that they had filed an appeal before the Assistant Commissioner, Dharwad, and has secured an order in the year 1953 in setting aside the order of Mamlatdar of Dharwad, which on verification by the trial Court found to be in respect of some other land and in some other proceedings and that the said order has no basis to the land in question and also the order passed by the Mamlatdar in the year 1953 which is in favour of the plaintiffs grandfather.

11. In the light of aforesaid discussion it is clearly seen that the grounds urged by the defendants in this second appeal already being discussed and decided by both the Courts below relying upon the documents on record, question of admitting this second appeal for consideration of the same does not arise, in as much as no substantial question of law arise for consideration to admit this second appeal. Accordingly the same is dismissed.