
(2015) 04 KAR CK 0195

In the Karnataka High Court

Case No : Regular Second Appeal No. 1636/2011 (INJ)

Bhagyarathna Bhopal Suryavanshi

APPELLANT

Vs

A. Papanna

RESPONDENT

Date of Decision : 16-04-2015

Acts Referred:

Citation : (2015) 04 KAR CK 0195

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : O. Shivarama Bhat, for the Appellant; E.S. Indires, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

A.S. Bopanna, J.—The appellant herein is the plaintiff in O.S. No. 185/1998. The second defendant- Hinkal Grama Panchayat in the said suit had filed a suit in O.S. No. 196/1998 to restrain the appellant herein from putting up construction. The appellant herein had filed another suit in O.S. No. 230/1996 against Mysore Urban Development Authority seeking injunction against interference. Hence, all the three suits were clubbed and a common judgment dated 31.08.2006 was passed by the trial Court. By the said judgment, the suits filed by the appellant herein in O.S. No. 185/1998 and O.S. No. 230/1998 were decreed. The suit filed against the appellant herein in O.S. No. 196/1998 was dismissed. The judgments passed in O.S. No. 196/1998 and O.S. No. 230/1998 attained finality, while the judgment passed in O.S. No. 185/1998 was carried in appeal by the second defendant by filing R.A. No. 517/2010. The Lower Appellate Court by its judgment dated 23.04.2011 has allowed the appeal and dismissed the suit. The plaintiff is therefore before this Court.

2. This Court at the first instance had allowed the appeal by the judgment dated 12.08.2011. The respondent thereafter filed a review petition in R.P. No. 403/2011 bringing to the notice of this Court that the suit subject property was gifted away under deed dated 06.12.2006 and as such the plaintiff has no

interest in the property. This Court by the order dated 07.03.2013 allowed the review petition and restored this appeal for reconsideration on recalling the judgment dated 12.08.2011. In that view, the appeal having once again arisen for consideration is being disposed of by this judgment.

3. The above noticed sequence will disclose that the consideration in this appeal is only the dispute involved in O.S. No. 185/1998 and as such the case arising therein needs to be noticed. The suit is filed in respect of three items of property which are shown as Schedule - 1, 2 and 3 properties respectively. For the present, even the appellant does not dispute that the schedule- 2 and 3 properties described in the suit are the properties which have been gifted under the deed dated 06.12.2006 regarding which the appellant does not claim interest at this stage and the claim is limited to schedule- 1 property only.

4. Whether the relief in respect of the same also should be denied for suppressing the fact is another aspect since the learned counsel for the respondent has urged such contention. Subject to the same, what is required to be noticed herein is only the case sought to be made out by the appellant in respect of one item of the property retained by the appellant i.e., schedule-1 and it is not necessary to advert to the details regarding the schedule- 2 and 3 properties since the same in any event does not arise for consideration. Hence, the facts noticed herein are only with regard to the suit schedule-1 property and the parties are also referred in the same rank as assigned to them before the trial Court.

5. The suit schedule-1 property which is situate within the limits of the second defendant is contended to have originally belonged to Sri. Amarulla Shariff, who sold it to the plaintiff under a registered sale deed dated 19.03.1994. On purchase, the khatha was mutated in favour of the plaintiff who claims to be in possession ever since the purchase. Accordingly, the plaintiff sought to construct compound wall and at that stage, the first defendant interfered and insisted that it cannot be constructed without obtaining licence from the second defendant. The plaintiff however contended that such approval for constructing a compound wall is not required. But, since there was continued interference, the plaintiff instituted the suit seeking for injunction.

6. The defendant filed the written statement and disputed the contention. Apart from the maintainability of the suit against panchayat , it was contended that the khatha in respect of the suit schedule property is fake. It is contended that illegal transfer of gramathana sites were made in Hinkal village and the illegal transaction is being enquired into by the Government. The Deputy Commissioner has seized all the records and the enquiry is going on regarding transfer of ownership and change of khatha. Until the enquiry is completed, the title of the plaintiff itself is in dispute. The contention that the plaintiff is in possession is disputed and it is contended that the first defendant is in possession. The second defendant has to accordingly protect the property which belonged to panchayat is the contention. The plaintiff has no right to construct and as such the

obstruction by the second defendant is legally justified. It is also contended that the suit schedule property is still agricultural land and has not yet been alienated. The plaintiff having no right to put up construction, the cause of action has not arisen is the contention. Hence, they seek dismissal of the suit.

7. In the light of the rival contentions, the trial Court has framed five issues for its consideration which read as hereunder:

"i) Whether the plaintiff proves that he is in possession of the suit schedule properties?

ii) Whether the plaintiff proves the alleged interference by the defendants?

iii) Whether the suit is not maintainable as there is no statutory compliance under Zilla Panchayat Act?

iv) Whether the plaintiff is entitled for the relief claimed?

v) What order or decree?"

The plaintiff examined herself as P.W.-1 and relied upon documents at Ex. P1 to Ex. P23. Two witnesses were examined as P.W.- 2 and P.W.- 3. The first defendant has examined himself as D.W.-1 and documents at Ex-D1 to Ex-D4 are marked. Three panchayat officers were examined as D.W.- 2 to D.W.- 4.

8. The trial Court on analysing the evidence available on record has decreed the suit granting injunction to the limited extent by restraining the defendants and its officers from interfering, but reserving the liberty to take action against the plaintiff in accordance with law. The first defendant Sri. Papanna alone assailed the judgment of the trial Court by filing the appeal in R.A. No. 517/2010. The Lower Appellate Court by holding that the continued possession of the property by the plaintiff has not been established, has allowed the appeal, set aside the judgment of the trial Court and has consequently dismissed the suit. The plaintiff therefore claiming to be aggrieved by the divergent opinion expressed by the lower appellate Court is before this Court in this second appeal.

9. This Court on 12.08.2011 framed the substantial question of law and disposed of the appeal, which has been recalled as noticed above and as such, it is to be considered once over. The substantial question of law for consideration is as follows;

"Whether the first appellate Court is legally correct in holding that the plaintiff is not in possession and enjoyment of plaint schedule property mainly on the ground that there is an enquiry with regard to the change of khatha in the name of plaintiff?"

10. Heard Sri. O. Shivarama Bhat, learned counsel for the plaintiff, Sri. E.S. Indires, learned counsel for the defendant and perused the appeal papers including the records received from the Courts below.

11. Before advertng to the merits of the case based on the substantial question

of law raised, considering the fact that the judgment passed earlier by this Court had been recalled in view of the fact that the appellant had executed a gift deed dated 06.12.2006 in favour of Akshaya Patra Foundation, the manner of consideration to be made is to be noticed. The fact that under the said document the plaintiff has gifted only the suit schedule- 2 and 3 properties is not in dispute. The plaintiff therefore continues to claim right, title and interest in respect of the suit schedule- 1 property. Therefore, the learned counsel for the plaintiff contends that the consideration is to be made in respect of the relief that is being claimed by the plaintiff to protect the possession of one site which is distinct even though two sites have been gifted. The learned counsel for the respondent would however contend that the plaintiff had withheld the information from the Lower Appellate Court as well as this Court and a person who does not approach the Court with clean hands should be denied the relief. The decision in the case of A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam Represented by Its President etc., AIR 2012 SC 2010 : (2012) 3 RCR(Civil) 1 : (2012) 4 SCALE 666 : (2012) 6 SCC 430 : (2012) AIRSCW 3017 : (2012) 3 Supreme 460 wherein pleadings relating to possession was noticed, it is held that pleadings are the foundation of litigation, which must set forth sufficient factual details to the extent that it reduces the ability to put forward a false or exaggerated claim or defence. It is further held that every litigant is expected to state the truth before the law Court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in law Courts.

12. About the position stated in the cited decision there can be no dispute, but the decision cannot be considered as a statute to be applied without relevance to the facts. In the instant case, the pleadings have been set forth in the plaint and evidence has been tendered based on the factual position as it existed then. As on the date of the judgment of the trial Court, the case of plaintiff continued to remain the same as it was pleaded. Though the two sites were gifted thereafter during the pendency of the appeal before the lower appellate Court, the plaintiff was only defending the judgment and was seeking restoration of the trial Court judgment in this appeal. It is not as if the plaintiff had lost interest in all the suit schedule properties even before the trial in the suit was concluded. Since an order of injunction would operate to the benefit of the person in whose favour it has been granted and if subsequent to the order if possession is transferred the transferee cannot claim benefit under the same order if there is interference. Hence, if a demarcation of the properties are available in the manner it has been described and if there is no ambiguity in that regard to implement the injunction, the relief to the extent the plaintiff is entitled to cannot be denied, if a case is made out. In the instant case, the schedule- 1 to 3 properties have been separately and distinctly described with separate boundaries. If that be the position, since the plaintiff has retained suit schedule-1 property the consideration can still be made in respect of the same to come to conclusion based on the substantial question of law and if the plaintiff succeeds, the relief

will be limited only to suit schedule-1 property. Therefore, the contention of the learned counsel for the defendant cannot be accepted.

13. Since the Lower Appellate Court has reversed the judgment of the trial Court by holding that the plaintiff has not proved possession, the nature of consideration made by the trial Court is to be noticed. The documents relied on at Exhs. P1 to P 23 have been noticed. In respect of suit schedule-1 property the sale deed dated 19.03.1994 executed by Sri. Amarulla Shariff as P.A. Holder of Y.B. Prabhuswamy for consideration has been taken note. The documents at Ex-P4 sketch and the documents at Exhs.-P5, P8, P13 and P14 which are the tax demand register and the tax paid receipts are referred. The documents at Ex-P 16 onwards relating to Venkat Rao was also referred. In that background the oral evidence tendered by P.W.-1 to P.W.-3 has been referred in detail and the allegation of the first defendant interfering with the possession as stated has been noticed. Though the cross examination was directed at contending that the property belonged to the panchayat and the witnesses D.W.-1 to 4 were examined, no document was relied on to show that the property stood in the name of panchayat . The documents relied on at Ex-D 1 to 4 are only extracts of the resolution and the communication to the Deputy Commissioner. From the said evidence it is evident that the plaintiff purchased the site under a registered document, secured revenue entries and is in possession. Therefore injunction has been granted. If any action is taken in accordance with law by the official defendants that right has also been reserved by the trial Court while granting injunction.

14. The first defendant filed the appeal before the lower appellate Court in his individual capacity and the second defendant Hinkal Grama Panchayat was not a party to the appeal. The learned counsel for the plaintiff contended that such appeal should not have been entertained. However considering the fact that plaintiff had impleaded him also as a defendant to the suit and the suit being decreed, his appeal filed as a defendant no doubt would be maintainable. Having said that, the question is also as to whether the contention of the first defendant as an appellant claiming right to the property can be accepted keeping in view the nature of the defence that was put forth in the suit.

15. The Lower Appellate Court while re-appreciating the evidence has referred to Ex. P16 whereunder Sri N.S. Venkatrao had purchased the property and to the status of lands being agricultural property and has doubted as to how khatha numbers were shown when the property was sold to the plaintiff. The seizure of the khatha records by the Deputy Commissioner has been noticed and in that light has held that the plaintiff is not in possession when a cloud is created on the title.

16. In the written statement filed, to which the first defendant himself has subscribed his signature the contention raised is that the property belongs to the Hinkal Grama panchayat , but the lower appellate Court has noticed that whether the properties come under Hinkal Grama Panchayat is to be adjudicated in the

enquiry to be held by the Deputy Commissioner. Whether the private property is under the Panchayat or whether it actually belongs to the Panchayat are two different aspects. Further, the defence in one breath is that it is gramatana and in the other, it is agricultural property. The lower appellate Court though did not accept the documents sought to be relied on by the first defendant who was the appellant before the Lower Appellate Court, the claim sought to be made by him seeking to rely on a sale deed dated 06.01.2001 said to have been executed in his favour and a compromise petition filed in O.S. No. 224/1999 which on the face of it indicates that they are not only documents subsequent to the purchase by the plaintiff but also subsequent to the suit instituted by the plaintiff. Therefore in a circumstance where the defendants had contended in the suit that the suit schedule property belongs to the Panchayat and no documents to that effect was produced it cannot be said that a cloud has been raised on the title of the plaintiff. Further, when the plaintiff has come in possession of the property under a sale deed dated 19.03.1994, merely because there are certain enquiries relating to the khatha, the possession could not have been held against the plaintiff. In any event to that extent the trial Court had reserved the liberty to the Hinkal Grama Panchayat . The first defendant in the guise of protecting the right of the panchayat could not have claimed right to the property without independently establishing his right in accordance with law in appropriate proceedings. The possession of the plaintiff could not have been doubted by the Lower Appellate Court for the reasons stated by it.

17. In that view, I am of the considered opinion that the first appellate Court is not legally correct in holding that the plaintiff is not in possession and enjoyment of the suit schedule property on the ground that there is enquiry pending regarding change of khatha. The substantial question of law is therefore answered in favour of the plaintiff who is the appellant herein. However the benefit of the same would enure to the plaintiff in respect of suit schedule-1 property only since the plaintiff has lost title, interest and is not presently in possession of the suit schedule-2 and 3 properties.

18. For the aforestated reasons, I pass the following:

ORDER

"(i) The judgment dated 23.04.2011 passed by the Lower Appellate Court in R.A. No. 517/2010 is set aside.

(ii) The judgment and decree dated 31.08.2006 passed by the trial Court in O.S. No. 185/1998 is restored. However, the injunction granted therein shall stand limited and operate only in respect of the suit schedule-1 property.

(iii) The appeal is accordingly allowed in part in the above terms.

(iv) In the facts and circumstances, the parties shall bear their own costs incurred in this appeal."