

(2015) 06 KAR CK 0228

In the Karnataka High Court

Case No : Civil Revision Petition No. 100040 of 2015

Bharatiya Adima Jatti Sevaka Sangh (Regd.)

APPELLANT

Vs

Sanjeevappa

RESPONDENT

Date of Decision : 10-06-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 1, Order 7 Rule 2, Order 7 Rule 3, 115, 26

Karnataka Land Revenue Act, 1964 — Section 140, 140, 141, 141, 142

Citation : (2015) 4 AKR 304

Hon'ble Judges : B. Veerappa, J

Bench : Single Bench

Advocate : K.L. Patil, for the Appellant; V.P. Kulkarni, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B. Veerappa, J.—The petitioner/defendant filed the above Civil Revision Petition challenging the order dated 20.04.2015 on I.A. No. 14 in O.S. No. 298/2013, dismissing the application as not maintainable, holding that the Court has got jurisdiction to entertain and try the suit filed by the plaintiff in the present form.

2. The respondent/plaintiff filed O.S. No. 298/2013 for declaration and permanent injunction in respect of the suit schedule properties, contending that he is the owner, in possession of the suit properties in question, based on a registered sale deed dated 18.06.1998. The same was resisted by the present petitioner/defendant and denied the entire plaint averments and contended that he was in possession of the entire suit schedule properties as the lawful owner, etc.

3. When the matter was posted for defendant's evidence, defendant filed an application under Sections 61, 63, 140, 141, 142 and 143 read with Section 25 of the Karnataka Land Revenue Act, 1964 (hereinafter referred to as "the Act" for short), requesting the Court to dismiss the suit holding that it is only the

Revenue Court which has jurisdiction to try the matter involved in the suit but not the Civil Court, contending that the dispute with regard to the measurement and identity of the property, Civil Court has no jurisdiction to decide the same. Therefore, he sought to dismiss the suit.

4. The said application was resisted by the plaintiff by filing objections and denied the averments made in the application and contended that the application filed by the defendant is liable to be dismissed, in view of the dictum of this Court in the case of *Rajasab Husseinsab Mulla Vs. Inayuthullakhan*, (1992) ILR (Kar) 1649 and contended that, for the relief sought in the present petition, only the civil court has jurisdiction and not the revenue courts. Therefore, he sought to dismiss the application.

5. After hearing both parties, learned Civil Judge, by his impugned order dated 20.04.2015, dismissed the application filed by the defendant. Hence, the present Civil Revision Petition is filed.

6. I have heard the learned counsel for the parties to the lis.

7. Sri. K.L. Patil, learned counsel for the petitioner, has contended that the impugned order passed by the trial court is contrary to law and illegal. He has invited the attention of the Court to the averments made in para 14 and 16 of the plaint and stated that, in view of the same, the very relief sought for by the plaintiff is not maintainable and he has contended that the Revenue Court has got exclusive jurisdiction in view of the provisions of Section 61 of the Karnataka Land Revenue Act, 1964 and not a civil court and therefore, sought to set aside the impugned order.

8. Per contra, Sri. V.P. Kulkarni, learned counsel for the respondent, sought to justify the impugned order and contended that the relief sought for by the plaintiff is declaration and permanent injunction in respect of the suit schedule properties, based on a registered sale deed and it is for him to establish before the Court by adducing oral and documentary evidence on record. Therefore, he requests the Court to dismiss the writ petition.

9. I have given my thoughtful consideration to the arguments advanced by the learned counsel for the parties and perused the material on record.

10. It is not in dispute that the respondent/plaintiff filed the suit for declaration of title in respect of suit Schedule "A" properties, which are non-agricultural properties and consequently, the relief of permanent injunction, based on the registered sale deeds dated 18.06.1998 and 10.07.1998 and other material documents. The application filed by the defendant to dismiss the suit as not maintainable cannot be accepted for the simple reason that, it is not disputed that the suit was filed for declaration of title and permanent injunction in respect of non-agricultural properties. The Government is not a party to the suit. It is between private parties. The suit was instituted for establishing a private right in respect of the non-agricultural properties in question. Section 61 of the Act

would not bar a suit coming under any Clauses (a), (b) and (c) of Section 62 of the Act. Section 62 of the Act states that nothing in Section 61 shall be held to prevent the Civil Courts from entertaining suit between private parties for establishing any private right.

11. In the present case, the suit filed by the plaintiff is under Section 26 read with Order VII Rules 1, 2 and 3 of the Code of Civil Procedure, for declaration and permanent injunction, falls under Clause (b) of Section 62 of the Act. He has to establish independently, based on the oral and documentary evidence on record. The defence of the defendant in the written statement that he is claiming ownership in respect of the property in question, which is a dispute with regard to the title. Therefore, the revenue authorities have no jurisdiction to decide the title between the parties in respect of the immoveable properties.

12. The learned Judge, while passing the impugned order on IA No. 14, has considered the provisions of the Karnataka Land Revenue Act, relied upon by the defendant and specifically held that, Section 62 of the Karnataka Land Revenue Act, is made applicable to the facts of the present case, it is not in dispute that present suit between the parties for the purpose of establishing private right. Admittedly, the present suit is filed by the plaintiff for declaration and injunction. According to the case of plaintiff, his right over the suit schedule property is affected entry in respect of property of defendant. Hence, the present suit and relief claimed thereunder separately falls within Sub-section (b) and (c) of Section 62 of the Karnataka Land Revenue Act. Hence, the suit is maintainable.

13. The learned Judge has relied upon the dictum of this Court, reported in 1976 (2) KLJ 28, in the case of Hanumanthappa Kallappa Gudeppanavar v. Veerappa Rudrappa Uppin and Another, wherein this Court has held that Section 61 of the Act would not bar a suit coming under any of the clauses (a), (b) and (c) of Section 62 of the Act. Section 62 of the Act states that nothing in Section 61 shall be held to prevent the Civil Courts from entertaining suits, between private parties for the purpose of establishing any private right, although it may be affected by any entry in any land record and suits between private parties for possession of any land being a whole survey number or sub-division of a survey number or a part thereof (vide clauses (b) and (c) of Section 62 of the Act). The present case falls under Clause (b) of Section 62 of the Act.

14. The learned Judge also relied upon the Division Bench decision of this Court in the case of Rajasab Husseinsab Mulla Vs. Inayathullakhan, (1992) ILR (Kar) 1649 , wherein this Court has held that the Civil Court has jurisdiction to entertain the suit regarding immoveable property for declaration of title and possession, even though such a relief is founded on averments that, revenue records pertaining to such property are either illegal or not valid or incorrect. Accordingly, the trial court dismissed the application filed by the defendant, under the provisions of Sections 61, 63, 140 to 143 read with Section 25 of the Karnataka Land Revenue Act, as not maintainable, holding that the Civil Court has got jurisdiction to entertain and try the suit filed by the plaintiff in the

present form, which is in accordance with law. Therefore, I see no ground to interfere with the impugned order passed by the learned Judge, in exercise of revisional jurisdiction under Section 115 of the Code of Civil Procedure. Accordingly, this Civil Revision Petition is dismissed.