

(2010) 03 KAR CK 0025

In the Karnataka High Court

Case No : Regular Second Appeal No. 2055 of 2007

Bhimappa Shivappa Manoji

APPELLANT

Vs

Shiddalingavva

RESPONDENT

Date of Decision : 26-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 7
Karnataka Land Revenue Act, 1964 — Section 49, 63

Citation : (2011) 1 KCCR 738

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : Lokesh Malavalli, for the Appellant;

Judgement

Ram Mohan Reddy, J.—This second appeal is by the Plaintiff calling in question legality and validity of the divergent findings of the lower appellate Court.

2. Lands measuring 1 acre 11 guntas in Re-Sy. No. 44/5 of Halolli village, Ramdurg Taluk, Belgaum District was owned and possessed by the

Appellants' father by name Shivappa Balappa Manoji who died on 25-03- 1980 while Hanamantappa Shivappa Manoji, the brother having

remained unmarried and issueless, predeceased his father on 19-02-1976, hence the Appellant succeeded to the said immovable property. On the

allegation that the revenue authorities though mutated the Appellants name in ME 426 in the mutation register, nevertheless deleted the Appellant's

name and incorporated the name of Respondent in the mutation register as entry No. 461, in respect of the lands in question, instituted O.S. No.

86/2005 before the Civil Judge, Jr. Dn, Ramdurga for the following reliefs:

3. The Respondent arraigned as Defendant, on notice, entered appearance,

resisted the suit by filing written statement inter alia claiming to be the legally wedded wife of Hanumantappa Shivappa Manoji -- brother of the Appellant and from out of wedlock begot two children by name Yellavva and Bhimavva, while Yellavva died as a child, Bhimavva was given in marriage to Bharmappa Kulgod and on the death of Hanumantappa, being his wife, claimed to be entitled to an equal share in the suit property. It is the Defendant's allegation that the Plaintiff secured an entry in the mutation register as M.E. No. 426 without notice to the Defendant and on coming to know of the same, filed objections over the said entry and had her name entered in the mutation register as M.E. No. 461 on 9-10-1982. It is further contended that the suit was barred by limitation and bad for non-joinder of necessary parties.

4. In the premise of pleadings of parties, the Trial Court framed the following issues:

(1) Whether the Plaintiff proves that he is the owner in possession of the Halolli R.S. No. 44/5 measuring 1 acre, 11 guntas assessed at Rs. 1.25

ps on the death of one Shivappa Balappa Manoji and brother Hanamantappa Shivappa Manoji died unmarried on 19-2-1976?

(2) Whether the Plaintiff further proves that M.E. No. 461 effected in the name of the Defendant liable to be set aside?

(3) Whether the suit is bad for non joinder of the necessary party?

(4) Whether the suit is barred by law of limitation.

(5) What order or decree?

5. The Trial Court recorded the depositions of the Plaintiff and one witness as P. Ws. 1 and 2, marked 10 documents as Exs.P-1 to P-10 while

the Defendant was examined as D.W. 1 and one document was marked as Ex.D1. The Trial Court having regard to the material on record

including both oral and documentary, answered issue Nos. 1, 3 & 4 in the negative while issue No 2 in the affirmative and decreed the suit setting

aside M.E. No. 461 and directing the Tahsildar, Ramdurg to mutate the name of Plaintiff in respect of the suit property by the judgment and decree

dated 7-9-2006.

6. Aggrieved by the judgment and decree, the Defendant filed R.A. No. 24/2007 before the Civil Judge (Sr. Dn), Ramdurg hence the following

points for consideration were framed.

(1) Whether the Trial Court is justified in holding that the Plaintiff is the owner in possession of suit property?

(2) Whether the Trial Court is justified in holding that suit is not bad for non-joinder of necessary party and it is not barred by law of limitation?

(3) Whether the Plaintiff is entitled for the relief sought for in the suit?

(4) Whether the judgment and decree passed by the Trial Court warrant interference?

(5) What order?

7. The lower appellate Court recorded findings in the affirmative over points - 1, 2 & 4 and in the negative on point No. 3 while holding that the

Plaintiff was in possession of half of the suit property and Defendant the other half, entitled to possess the same until lawfully dispossessed, in the

light of the said fact of possession being admitted in the cross examination of the Plaintiff. While answering issue No. 3 the first appellate Court

observed that the suit was not for declaration of title but a declaration to cancel the mutation entry in the name of the Defendant. The lower

appellate Court following the decisions in *Tulasibai and Anr. v. Irappa Satteppa Chougale and Ors.* ILR 1975 (1) Ramajois Vs. Chief Secretary,

and *Om Prakash and others Vs. Ram Kumar and others*, allowed the appeal and dismissed the suit by judgment and order dated 29-6-2007.

8. The first contention of learned Counsel for the Appellant that the suit against Respondent who denied title is maintainable for the relief of

cancellation of the entry in the records of rights, more appropriately, mutation register maintained by the revenue authorities and for a direction to

the revenue authorities to amend the entry in accordance with the decree is without merit. The answer to this contention is no more res-integra in

the light of *Tulsibai's* case supra observing thus:

Section 135 of the Mysore Land Revenue Act, 1964 in express terms bars such a suit. It provides that no suit shall lie against the State

Government or any Officer of the State Government in respect of a claim to have an entry made in any record or register that is maintained or to

have any such entry omitted or amended. The proviso makes it clear that if any person is aggrieved as to any right of which he is in possession, by

an entry made in any record or register maintained under Chapter XI, he may

institute a suit against any person denying or interested to deny his title to such right, for a declaration of his right under Chapter VI of the Specific Relief Act, 1877; and the entry in the record or register shall be amended in accordance with any such declaration.

In Ramajois''s case supra, this Court having regard to Section 49 and Section 63 of the Karnataka Land Revenue Act, 1964 held thus:

The order in question having been issued by the Tahsildar who is a Revenue Officer subordinate to the Assistant Commissioner, an appeal lies

under Clause (a) of Section 49. The jurisdiction of Civil Courts to entertain any suit or other proceeding against the State Government on account

of any act or omission of the State Government or any Revenue Officer is barred u/s 63 of the Act, unless the Plaintiff first proves that prior to the

institution of the suit or other proceeding, he has presented all such appeals allowed by the law for the time being in force, within the period of

limitation. Section 63 is an express bar to the filing of a suit, unless the Plaintiff has exhausted the remedies provided under the Act by filing an

appeal. When there is an express bar in the Act, Section 9 of CPC will not come to the aid of the Appellant.

9. Applying the principles laid down in reported opinions to the facts of this case, the suit instituted by the Appellant for the relief of cancelling the

entry made in the mutation register maintained by the revenue authorities and directing deletion of the Appellant''s name to incorporate the name of

Respondent, in respect of land in question, was beyond the jurisdiction of Civil Court u/s 9 of Code of Civil Procedure, 1908, in view of the bar

u/s 49 read with Section 63 and Section 135 of the Karnataka Land Revenue Act, 1964.

10. The next contention of learned Counsel that the Trial Court is empowered to grant a declaration of title in the absence of a prayer, exercising

jurisdiction under Order 7, zRule 7 Code of Civil Procedure, does not arise for consideration since the Trial Court having recorded a finding on

issue No. 1 that the Appellant to the exclusion of Respondent was the owner of the suit property, nevertheless did not declare that Appellant was

the owner since no such relief was sought in the suit. Indeed the lower appellate Court repelled the said plea when advanced following the

observations of the Apex Court in Om Prakash''s case supra which reads thus:

A party cannot be granted a relief which is not claimed, if the circumstances of the case are such that the granting of such relief would result in

serious prejudice to the interested party and deprive him of the valuable rights under the statute. In an action by the landlord the tenant is expected

to defend only the claim made against him and if a cause of action arises to the landlord on the basis of the plea set up by the tenant, in such action,

it is necessary that the landlord seeks to enforce that cause of action in the same proceedings by suit at the amendment or by separate proceedings

to entitle the landlord to relief on the basis of such cause of action. The principle that the Court is to mould the relief taking into consideration

subsequent events is not applicable in such cases.

11. In my considered opinion, the conclusions arrived at by the lower appellate Court are supported by reasons and findings based on pleadings,

material on record including both oral and documentary, which are well merited, fully justified and do not call for interference. Since no substantial

questions of law arise for decision making, the appeal stands dismissed.