
(2015) 07 KAR CK 0194

In the Karnataka High Court

Case No : Regular Second Appeal No. 5907 of 2010

Bhimappa Siddappa Sunakuppi and Others

APPELLANT

Vs

Basagouda Bhimagouda Patil

RESPONDENT

Date of Decision : 21-07-2015

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 135

Citation : (2015) 07 KAR CK 0194

Hon'ble Judges : S. Sujatha, J

Bench : Single Bench

Advocate : M.G. Naganuri, for the Appellant; Sachin S. Magadam, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Sujatha, J—This appeal arises out of the judgment and decree of the lower appellate court confirming the judgment and decree of the trial court.

2. The facts in brief are:

- Respondents filed a suit against the appellant in O.S. 109/94 for permanent injunction in respect of a well and Matte way to draw water from the well. The suit was resisted by the defendants. After appreciating the material evidence on record, the trial Court decreed the suit of the respondent. Being aggrieved by the judgment and decree of the trial Court, an appeal was preferred by the appellants before the lower appellate court. The said appeal came to be dismissed confirming the judgment and decree of the trial Court. Aggrieved by the said judgment and decree of the lower appellate court, this second appeal is preferred by the defendants.

3. Learned counsel for the appellants

- firstly argued that the suit filed by the plaintiff for bare injunction is not maintainable in view of proviso to Section 135 of the Karnataka Land Revenue

Act. In the circumstances, it was appropriate for the Courts below to have relegated the plaintiff to a comprehensive suit for declaration of title, possession and injunction.

- secondly, it was canvassed that no arrangement was made between the plaintiff and the defendant for drawing water from the well. In the absence of evidence to that effect, decreeing the suit is totally against law.

- thirdly, the suit for injunction is not maintainable against a co-owner by a co-owner.

4. Learned counsel appearing for the appellants in support of his contentions relied on the following judgments:

(1) KRISHNAPPA vs. STATE OF KARNATAKA AND OTHERS (2011 (3) KLJ 363)

(2) Nagarwali Devi and Others Vs. Girjapati Tewari and Others, AIR 1982 All 80

(3) Eswaraiah Vs. B.S. Siddalingappa and Others

(4) Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs. and Others, AIR 2008 SC 2033 : (2008) 3 CLT 23 : (2008) 4 SCALE 718 : (2008) 4 SCC 594 : (2008) AIRSCW 4959

(5) B.P. Sadashivaiah Vs. Parvathamma, (1994) ILR (Kar) 2671 : (1994) 3 KarLJ 529

5. On the contrary, learned counsel appearing for the respondents supported the judgment and decree of the Courts below and argued that originally the suit property Sy. No. 37/1 measuring 5 acres 17 guntas in Yaragatti Village was the ancestral property belonging to the plaintiff and Sri Rudragouda Patil. There was a well and Matte way situated in the said land. As per the partition that effected between the plaintiff and Rudragouda Patil in the year 1967, northern side measuring 2 acres 33 guntas had fallen to the share of Rudragouda Patil and renumbered as Sy. No. 37/1A, southern side was allotted to the share of the plaintiff which measured 2 acres 24 guntas and was renumbered as 37/1B. At the time of partition, the well in the northwest side and Matte way were commonly used by the plaintiff and Rudragouda Patil. As per the recital in Ex. P. 3 - the existence and retaining half share in the said well and matte way by the plaintiff is well established and accordingly, mutation entry was changed. The said Rudragouda Patil sold the land fallen to his share in Sy. No. 37/1B to the 1st defendant by two registered sale deeds dated 19.4.1969 and 4.6.1971. In the said sale deeds - Exs. P. 5 and 6, it is specifically mentioned that the well existing in Sy. No. 37/1B and the Matte way has to be used commonly by the defendants along with the plaintiffs. The Court below after appreciating the evidence have rightly decreed the suit of the plaintiffs. Learned counsel has placed reliance on the following Judgments:

(1) Sidheshwar Mukherjee Vs. Bhubneshwar Prasad Narain Singh and Others, AIR 1953 SC 487 : (1954) 1 SCR 177

(2) Kailash Pati Devi Vs. Bhubneshwari Devi and Others, AIR 1984 SC 1802 : (1985) 82 PLR 20 : (1985) 1 SCC 405 : (1984) 16 UJ 833

(3) Nelli Narasimha Reddy Vs. Vadla Krishnaiah and Others, AIR 1975 AP 250 : (1975) 1 APLJ 106

(4) Ramdas Vs. Sitabai and Others, AIR 2009 SC 2735 : (2009) 8 JT 224 : (2009) 8 SCALE 654 : (2009) 7 SCC 444 : (2009) 9 SCR 1106 : (2009) AIRSCW 4365 : (2009) 4 Supreme 698

to contend that a purchaser cannot have a better title than what his vendor had. The defendant having purchased the land from the vendor could be having right at the most to the extent of half share in well and Matte way having stepped into the shoes of his vendor and could not be entitled for ownership and possession of the entire well and Matte way. The right of the defendant would be only to sue for partition of the property and ask for allotment to him which could have fallen to the share of the vendor whose share he had purchased.

6. After considering the rival submissions of both the parties and perusing the material on record, it is clear that defendants purchased the property bearing No. 37/1B through his vendor Rudragouda Patil by two registered sale deeds dated 19.04.1969 and 04.06.1971. The recitals of these sale deeds Exs. P. 5 and 6 categorically specifies that the well existed in Sy. No. 37/1B and it is the common well belonging to the plaintiff as well as to the defendant to be used by both the parties. It is the case of the appellant that as per the mutation entries being disputed by the defendants, the appeal was preferred by the defendant challenging the order of the Tahsildar and the Assistant Commissioner passed an order directing the parties to resolve their dispute before the appropriate Civil Court; Accordingly, plaintiff has filed the present suit for bare injunction, in view of the defendant having disputed the title of the well and the Matte way and as per the observations made by the Assistant Commissioner, the appropriate remedy would have been to file a comprehensive suit for declaration of title, possession and injunction more particularly, when a cloud is raised with respect to the title, suit for bare injunction is not maintainable.

7. In this context, learned counsel relied on the Judgment of the Apex Court in Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs. and Others, AIR 2008 SC 2033 : (2008) 3 CLT 23 : (2008) 4 SCALE 718 : (2008) 4 SCC 594 : (2008) AIRSCW 4959 and invited my attention to paragraph 17 of the judgment which reads thus:

"17. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential

injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in *Annaimuthu Thevar* (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case".

8. It is clear from this judgment that where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter. It is only when a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction is the remedy. In the present case, as per the recitals of the sale deeds - Exs. P. 5 and 6, it is well established that the plaintiff and defendant both were in possession of the suit property and there was no dispute of title over the well or the Matte way. Even as per Ex. P. 3 - in the partition effected between Rudragouda Patil and the plaintiff, it is made clear that the well and the Matte way situated to the northwestern side of the land bearing Sy. No. 37/1 has to be commonly used by the plaintiff and Rudragouda Patil. The defendant having purchased the lands from his vendor - Rudragouda Patil, the vendee will only step into the shoes of the vendor "Nemo dat Quod non habet" is

an often well quoted principle which is applicable to the present situation.

9. I have carefully perused all the judgments referred to by the appellant. These judgments are not applicable to the facts of the present case.

10. In the case of RAMDAS cited supra, the Apex Court has held thus:

"9. Even otherwise, we are of the considered opinion that the appellant herein having purchased only undivided share in the aforesaid property could not have purchased, owned and claimed for more than half share in the said property nor the appellant could have claimed possession in respect of the entire property".

A reference is also made to the case of Mamidi Venkata Satyanarayana Manikyala Rao and Another Vs. Mandela Narasimhaswami and Others, AIR 1966 SC 470 : (1966) 1 SCR 628 , wherein it is held as follows:

"Now, it is well settled that the purchaser of a co-parcener's undivided interest in the joint family property is not entitled to possession of what he had purchased. His only right is to sue for partition of the property and ask for allotment to him of that which, on partition, might be found to fall to the share of the coparcener whose share he had purchased."

11. In view of the judgments referred to above, there is considerable force in the arguments of the learned counsel appearing for the respondents. Accordingly, the first limb of the arguments advanced by the appellant that bare suit for injunction is not maintainable, is not worthy of acceptance.

12. Now, coming to the second contention raised by the learned counsel for the appellant regarding non-mentioning of the arrangement made between the parties for sharing the water from the common well, a categorical finding is given by the Court below, after appreciating the evidence of the parties that the plaintiff and Rudragouda Patil were commonly using the suit property before the alienation of the property - Sy. No. 37/1B and subsequent to the alienation, the plaintiff and defendant were sharing the water from the suit well on turn basis of 8 days each and thereby, plaintiff has grown crops like Sugarcane, Maize, Jowar etc. in land bearing Sy. No. 37/1A. This clinching evidence available on record cannot be discarded by the arguments now advanced by the learned counsel for the appellant, there being no corroborative evidence on record to discard the same by the defendant.

13. Regarding the contention that no suit for injunction filed by a co-owner against the co-owner is maintainable, it has to be observed that the said issue is totally misconceived by the appellants. The suit for injunction is filed by the co-owner only to protect his possession when there is a threat to use the well by the plaintiff. Certainly, one co-owner cannot physically prevent the other co-owner's right of ingress and egress to the suit well besides the use of the well. It is only to get the relief of enjoyment of the property without disturbance from the other co-owner, the plaintiff has filed the suit for injunction which is legally

maintainable and cannot be set-at-naught.

14. All these aspects of the matter are considered in extenso by the Courts below and after evaluating the evidence on record, rightly given a concurrent finding, decreeing the suit which cannot be found fault with.

15. In my view, no substantial question of law arises for consideration in this appeal. Accordingly, appeal is dismissed.