

(2011) 03 KAR CK 0282

In the Karnataka High Court

Case No : Regular First Appeal No. 819 of 2010

B.K. Mohan Kumar

APPELLANT

Vs

Smt. Kempamma and Others

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (2011) 03 KAR CK 0282

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : P. Dhananjaya, for the Appellant; C.H. Manjunatha, for R-1 to R-3 and Manjunatha Murtugudde, for R-4 to R-5, for the Respondent

Judgement

Ashok B. Hinchigeri, J.—This appeal is preferred against the judgment and decree, dated 4.9.2008 passed by the Court of the I-Additional City Civil Judge, Bangalore in O.S. No. 7652/05.

2. The Appellant's case in brief is that Byrappa, the propositus had two wives, namely, Bayamma and Kempamma. In the wedlock between Byrappa and Bayamma, two sons, namely, B. Krishnappa and B. Shankarappa were born. In the wedlock between Byrappa and Kempamma, three sons, namely, B. Munirajappa, B. Munishamappa and Venkatesh were born. Krishnappa, Shankarappa and Munishamappa are dead. The Appellant is the son of B. Krishnappa. On the execution of the sale deed by Byrappa's second wife, Kempamma (the Respondent No. 1 herein) in favour of the Respondent Nos. 4 and 5, the Appellant filed the suit seeking the relief of partition, separate possession and declaration that the two sale deeds, dated 6.9.2004 and 9.9.2005 executed in favour of the Respondent Nos. 4 and 5 are not binding on him. The Respondent Nos. 1 to 3 and the Respondent No. 5 remained expert. The Respondent No. 4 appeared through an advocate, but however did not choose to file the written statement. The Appellant got himself examined as PW1 marking the documents at Ex.P1 to P37. Based on the pleadings, oral and

documentary evidence placed on its record, the Trial Court answered the solitary issue of whether the Appellant is entitled to the grant of reliefs prayed for in the plaint against the Appellant and dismissed the suit.

3. Sri P. Dhananjaya, the learned Counsel for the Appellant submits that the Appellant is a member of the joint family. He is the grandson of propositus Byrappa. He is entitled to the 1/6th share in the suit schedule property. That the case of the Appellant has not been considered properly is the grievance of Sri Dhananjaya. He prays for the remand of the matter to enable the Appellant to implead the additional parties for the full adjudication of the suit. He also wants to produce some more documents before the Trial Court. He would therefore pray for the setting aside of the judgment and decree and for the remand of the matter to the Trial Court.

4. My perusal of the impugned judgment and decree reveals that no independent witness has been examined by the Appellant. It is not in dispute that the occupancy rights in respect of the lands in question were granted in favour of the Respondent No. 1 way back in 1978-79. It is also not in dispute that both the Appellant's grandfather (Byrappa) and father (Krishnappa) were alive at that time. They have not challenged the order granting the occupancy rights in favour of the Respondent No. 1.

5. Byrappa and his son Krishnappa passed away on 3.11.1991 and 14.3.1982 respectively. Their not challenging the order granting the occupancy rights in favour of the Respondent No. 1 is indicative of one of the two things: a) they had no claim over the land in question and; b) or they had no objection to the granting of the occupancy rights in favour of the Respondent No. 1.

6. Further, the Appellant also has not chosen to challenge the order granting occupancy rights on attaining the age of majority.

7. The suit is also liable for rejection on the short ground of non-joinder of necessary parties. The Appellant has not made the L.R.s Shankarappa (Krishnappa's brother and Appellant's uncle) as parties to the suit. The sale deeds at Ex.P36 and 37 are executed by one Sri Narasimha Shastry represented by his General Power of Attorney Holder, Smt. Kempamma. The said Narasimha Shastry himself is not made a party, but only his agent is made a party.

8. No application for the production of additional evidence invoking Order XLI Rule 27 of CPC is made in the appeal proceedings. Therefore this Court is not inclined to remand the matter on the ipse dixit of the Appellant that he wants to produce additional documents.

9. It is also not in dispute that on the granting of the occupancy rights in respect of the lands in question in favour of the Respondent No. 1, it is she who remitted the necessary charges to the Government. It is not the case of the Appellant that he paid the charges to the Government. It is not his case that he was cultivating the lands in question either on his own or in commonality with the Defendants.

Thus, the Appellant's case is full of loose ends, which have remained unplugged. For the evidence placed on the Trial Court's record, the suit is certainly not decreeable. The Trial Court has rightly dismissed the suit. This appeal is absolutely meritless. I therefore dismiss it.

10. While dismissing this appeal, one observation is required to be made. If the sale transactions in Question violate any provision of the law, it is always open to the Government to take necessary steps in accordance with law. As the Government is not one of the parties to the suit, I do not propose to express any opinion on whether the sale deeds in question violate any condition of the order granting the occupancy rights.

11. At this juncture, Sri Dhananjaya submits that subsequent to the passing of the judgment and decree under appeal, a demand is made on the Appellant - Plaintiff for the payment of the deficit court fee. As the same is not the subject matter of this appeal, this Court refuses to entertain that controversy.

12. This appeal is dismissed. No order as to costs.

13. Now that the main matter itself is dismissed, nothing survives for any consideration of Misc. Cvl. 21060/10 for stay. It is therefore dismissed as having become unnecessary.