

(2016) 06 KAR CK 0108

In the Karnataka High Court

Case No : Regular Second Appeal No. 1855 of 2015 (DEC/INJ)

B.V. Srikumar

APPELLANT

Vs

The Chief Conservator of Forest

RESPONDENT

Date of Decision : 14-06-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Easements Act, 1882 — Section 13
Forest (Conservation) Act, 1980 — Section 2

Citation : (2017) AIR(Karnataka) 3 : (2017) 7 FLT 62 : (2016) 5 KantLJ 563 :
(2016) 4 KCCR 3110

Hon'ble Judges : B. Veerappa. J.

Bench : Single Bench

Advocate : Sri Leeladhar H.P, Advocate, for the Appellant; Sri Shivaprabhu S.
Hiremath, A.G.A, for the Respondents

Final Decision : Disposed Off

Judgement

B. Veerappa. J.—The unsuccessful plaintiff is before this Court as a last ditch attempt against the concurrent finding of facts recorded by the Courts below for the relief sought for in the plaint.

2. The plaintiff filed O.S. No. 329 of 1998 against the defendants-the Chief Conservator of Forests and the Research Range Forest Officer to declare that he has right of way in the suit schedule property and for permanent injunction, contending that he is the owner of the property bearing No. 43, measuring 3 acres 22 guntas situate at Vaderahalli of Anekal Taluk and there is a small strip of defendant's land on the western boundary of the plaintiff's land. The said strip of land is 300 ft. x 7 feet. There is no approach road to the plaintiff's land except small passage by 12 x 12 feet. The said passage was being used by the plaintiff from time immemorial after obtaining permission from the defendants through a letter dated 4-4-1991. When the things stood thus, the second defendant's official has suddenly started to put up fence across the said passage. Therefore,

the plaintiff was constrained to file the suit.

3. The defendants have filed the written statement. Except admitting the fact that the plaintiff in his property has established a resort by name Tulips Resort", have denied the entire case of the plaintiff and further contend that the plaintiff has not come to the Court with clean hands and suppressed the material facts of the case. It is the case of the defendants that, there is a huge entrance to the plaintiff's resort on the northern side of the resort and the plaintiff in order to grab the forest land by hook or crook has filed the suit and further contended that the plaintiff is carrying immoral and illegal activities in the suit schedule property and the suit property is a part of forest area and the Government has declared the same as a Reserved Forest Area through a notification. It is further contended that the suit schedule property contains experimental plots of eucalyptus clones, of Andhra Pradesh and the plaintiff has no right of way in the suit schedule property and the plaintiff is claiming the suit schedule property for non-forest use. The same is prohibited in view of provisions of Section 2 of the Forest (Conservation) Act, 1980 therefore, sought for dismissal of the suit.

4. Based on the aforesaid pleadings, the Trial Court has framed the followings issues:

"1. Whether the plaintiff proves that he is the absolute owner and in possession of the suit schedule property?

2. Whether the plaintiff proves that right of easement to use passage which was being used from time immemorial?

3. Whether the plaintiff proves that defendants are put up the fence and obstruct the passage?

4. What decree or order?"

5. In order to substantiate the case of the plaintiff, the plaintiff examined himself as P.W.1 and two witnesses as P.W. 2 and P.W. 3 and marked the documents-Exs. P.1 to P. 11. The second defendant examined himself as D.W. 1 and got marked the documents-Exs. D.1 to D. 6.

6. After considering both the oral and documentary evidence on record, the Trial Court recorded a specific finding that the plaintiff has failed to prove he is the absolute owner of the suit schedule property and failed to prove that he has right of easement to use passage, which was being used from time immemorial and ultimately, the Trial Court has dismissed the suit.

7. Aggrieved by the said judgment and decree of the Trial Court, the appellant filed R.A. No. 38 of 2007 before the III Additional District and Sessions Judge, Bengaluru Rural District. The Lower Appellate Court after hearing both the parties dismissed the appeal confirming the judgment and decree of the Trial Court. Against the said concurrent finding of facts recorded by the Courts below, the appellant has filed the present appeal.

8. I have heard the learned Counsel for the parties to the Its.

9. Sri Leeladhar H.P., learned Counsel for the appellant vehemently contended that there is a right of way to an extent of 12 x 12 feet in the suit schedule property forest land which belongs to the defendants-Government from time immemorial and the plaintiff has obtained formal permission to make use of the suit schedule property as a right of way through a letter dated 4-4-1991. It is his specific case that both the Courts below did not consider the right of way under the provisions of Section 13 of the Indian Easements Act, 1882. Therefore, he sought to set aside the judgment and decree of the Courts below.

10. Per contra, Sri Shivaprabhu S. Hiremath, learned Government Advocate sought to justify the impugned judgment and decree of the Courts below and strenuously contended that there is no dispute with regard to the fact that suit property is a forest land and in view of the provisions of Section 2 of the Forest (Conservation) Act, 1980, the appellant cannot claim easementary right in the reserved forest area. Therefore, sought to dismiss the appeal.

11. I have given my thoughtful consideration to the arguments advanced by the learned Counsel for the parties and perused the entire material on record carefully.

12. The plaintiff though claims easementary right of way from time immemorial, it is not in dispute that the suit property belongs to the Government/defendants which is a reserved forest area declared by the Government by issuing a notification at the relevant point of time. According to the plaintiff, the approach road to the small passage by an extent of 12 x 12 feet was being used by his forefathers. Except the oral evidence of P.Ws. 2 and 3, the plaintiff has not produced any material documents to show that he was allowed to use the passage of 12 x 12 feet of the suit property as a right of way for the purpose of reaching his land which was declared by the Government as Reserved Forest Area.

13. It is also not in dispute that the defendants have taken a specific contention in the written statement that there is a entrance to the plaintiff resort on the northern side of the resort and the plaintiff need not use the ingress and egress of the suit schedule property which a forest land. Even otherwise, it is not in dispute that the suit schedule property is a notified Reserved Forest Area. As per the provisions of Section 2 of the Forest (Conservation) Act, 1980, there is a restriction to use the forest land for non-forest purpose, which reads as under:

"2. Restriction on the dereservation of forests or use of forest land for non-forest purpose. - Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing. -

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof,

shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose;

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any" private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.

Explanation. - For the purpose of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for. -

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;

(b) any purpose other than reafforestation; but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, water holes, trench marks, boundary marks, pipelines or other like purposes."

14. A plain perusal of the said section makes it clear that no land or any portion thereof can be assigned by way of lease or otherwise to any private person or any authority, Corporation, agency or any other organisation not owned, managed or controlled by the Government, except with the prior approval of the Central Government. The provisions of clause (iii) of Section 2 of the Act are applicable to all forest land irrespective of the fact that such forest land has been declared as a reserved forest or not.

15. In the present case, the plaintiff failed to prove that he has obtained any such permission as contemplated from the defendants/forest authorities to use the suit schedule property as passage as a right of way. In the absence of any permission obtained by the plaintiff, the plaintiff cannot be allowed to use the forest land as a right of way for his personal use. The Hon'ble Supreme Court while considering Section 2 of the Forest (Conservation) Act, 1980 in the case of T.N. Godavarman Thirumulkpad v. Union of India and Others, AIR 1997 SC 1228, has held as under:

"In view of the meaning of the word "forest" in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any "forest". In accordance with Section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw mills of any kind including veneer or plywood mills, and mining of any mineral are non-forest purposes and are, therefore, not

permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest (Conservation) Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith."

The Hon"ble Supreme Court in the said case also held as under:

"The Forest (Conservation) Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest (Conservation) Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest (Conservation) Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in Ambika's case, supra, Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh, 1989 Supp. (1) SCC 504 and recently in the order dated 29th November, 1996 in W.P. (C) No. 749 of 1995, Supreme Court Monitoring Committee v. Mussorie-Dehradun Development Authority."

16. The Courts below after considering both the oral and documentary evidence recorded a specific finding that plaintiff has failed to prove that he is the absolute owner in possession of the suit schedule property and has failed to prove the right of easement to use the passage which was being used by him time immemorial and held that nothing is on record to believe that the plaintiff is the absolute owner of the suit schedule property and he has perfected his right of easement necessity over the suit schedule property from time immemorial. The Courts below further held that the plaintiff has utterly failed to prove that except the suit schedule property, he has no other alternative way to reach his property.

17. It is the specific defence of the defendants in the written statement that the plaintiff after purchase of his property has put up a resort in his property and thereafter, started to pollute the entire forest land by dumping the hotel waste, used bulbs and other waste plastic into the forest area, the entire forest land is polluting and the plaintiff started to conduct illegal and immoral business in his resort. Therefore, the defendants cancelled the permission temporarily granted to the plaintiff and have fenced the entire forest property. It is also stated that the permission granted by the second defendant earlier on 4-4-1991 is without consent and permission from the Central Government as contemplated under Section 2 of the Forest (Conservation) Act, 1980.

18. Both the Courts have concurrently held that the suit schedule property in which the plaintiff is claiming easementary right to passage by an extent of 12 x 12 feet is a notified forest land belonging to the State Government and the plaintiff has no title or interest in the suit schedule property and without prior approval of the Central Government as contemplated under Section 2 of the Forest (Conservation) Act, 1980, it is not permissible for the plaintiff to use the forest land notwithstanding the provisions of Section 13 of the Indian Easements Act, 1882.

19. At this stage, it is appropriate to ascertain the meaning of expression "assigned by way of lease or otherwise". In the context of the statutory provisions, the word "assign" would mean "to make over a right or interest to another" (See Mozley's and Whiteley's Law Dictionary). According to Black's Law Dictionary as well, the word has the same meaning for the present purposes. Therefore, the restrictive Section 2 of the 1980 Act will apply to making over of a right or interest by the State Government or other authority, by way of lease or otherwise to any private person including a company in or over any forest land or in portion thereof. In the said sense, interest in an immovable property can be assigned by way of conveyance by any of the modes recognised under the Transfer of Property Act, 1882 namely, sale, lease, mortgage, charge, ascent, gift, disclaimer, release or any other assertion of property or any interest therein by an instrument except a Will. The other two types of assignment of rights in an immovable property have been recognised under the Indian Easements Act, 1882. These are easementary rights and rights as a licensee. These rights have been defined in the following manner:

"4. "Easement" defined. - An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent from something being done, in or upon, or in respect of, certain other land not his own.

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52. "Licence" defined. - Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful and such right does not amount to an easement or an interest in the property, the right is called a licence."

20. From the above, it is clear that in view of the provisions of Section 2(iii) of the Forest (Conservation) Act, 1980 restricts right of the State Government to transfer or create any right in or over a forest land or a portion thereof either by a lease or otherwise. The expression otherwise "will include the assessment of rights even by way of easement or licence". There is an absolute prohibition on the grant of such rights under Section 20 read with Section 35(3) of Wild Life (Protection) Act, 1972. As such the plaintiff has no right to seek easementary right in the forest land invoking the provisions of Section 13 of the Indian

Easements Act, 1882 as contended by the learned Counsel for the appellant. The provisions of Section 2 of Forest (Conservation) Act, 1980 starts with non obstante clause that notwithstanding anything contained in any other law for time being in force in a State, no State Government or other Authority shall make except with the prior approval of the Central Government, the forest area into non-forest area includes right of easement. Therefore, Section 2 of the Forest (Conservation) Act, 1980 has overriding effect on the provisions of the Indian Easements Act.

21. It is an undisputed fact that the plaintiff is claiming easementary right of way by an extent of 12 x 12 feet notified forest land belonging to the State Government and in view of the provisions of Section 2 of the Forest (Conservation) Act, 1980 and the law declared by the Hon'ble Supreme Court in the case of T.N. Godavarman, both the Courts considering the oral and documentary evidence on record concurrently held that the plaintiff has violated the provisions of Section 2 of the Forest (Conservation) Act, 1980 and used the forest land as a easementary right of way in utter violation of Section 2 the Forest (Conservation) Act, 1980 and concurrently held that the plaintiff has failed to prove that he is the absolute owner in possession of the suit schedule property and failed to prove the right of easement to use the passage in the forest land. Accordingly, dismissed the suit for declaration of title and permanent injunction based on sound legal evidence on record. No substantial question of law is involved in the present appeal. Accordingly, the appeal is dismissed at the stage of admission.

22. At this stage, learned Counsel for the appellant filed a memo to withdraw the appeal with liberty to file a fresh suit. Since, this Court dismissed the regular second appeal on merits, question of considering the said memo does not arise. However, it is open for the appellant to pursue the remedies before the Appropriate Authority as contemplated under the provisions of Section 2 the Forest (Conservation) Act, 1980, if permissible in accordance with law.

23. In view of disposal of the appeal. I.A. No. 1 of 2015 does not survive for consideration. .