

(2013) 12 KAR CK 0202

In the Karnataka High Court

Case No : Regular First Appeal No. 1429 of 2006 and R.F.A. CROB No. 2 of 2011

Champalal Chetan Prakash @ Chetan Prakash and Shantilal, APPELLANT
Represented by their Duly Constituted Agent and Power of
Attorney Holder

Vs

T. Krishnappa, Since Deceased by his Legal Representatives RESPONDENT
(Smt. Gayatri and Others), Smt. Neelamma and
Brahmananda
 T. Krishnappa Since, Dead by his Legal
Rep. (Smt. Neelamma and Others) and Sri Brahmananda Vs
Sri Champalal Chetan Prakash @ Chetan Prakash and Sri.
Shanthilal

Date of Decision : 09-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0202

Hon'ble Judges : K.L. Manjunath, J;A.V. Chandrashekara, J

Bench : Division Bench

Advocate : D.L.N. Rao for Smt. S.R. Anuradha, in R.F.A. No. 1429/2006 and K.H. Jagadish in R.F.A. CROB No. 2/2011, for the Appellant; G.G. Shastri for R1(A-F), R2 and R3 in R.F.A. No. 1429/2006 and Sri D.L.N. Rao, Counsel for Smt. S.R. Anuradha for R1 and R2 in R.F.A. CROB No. 2/2011, for the Respondent

Judgement

K.L. Manjunath, J.—RFA No. 1429/2006 is filed by the plaintiffs in O.S. No. 3828/1994 on the file of XXV Addl. City Civil Judge, Bangalore, being not satisfied with the judgment and decree dated 28.03.2006. Cross-objection No. 2/2011 is filed by the defendants, aggrieved by the decree passed by the Trial Court partially in favour of the plaintiffs. Heard Sri D.L.N. Rao, learned Senior Counsel appearing for the appellants, Sri K. Jagadish for the cross-objections cum respondents in the main appeal.

2. The facts leading to this appeal are as hereunder:

The suit is filed by the plaintiffs to declare them as full and absolute owner of Item Nos. 1 and 2 of the plaint schedule property and also to direct the defendants to put them in possession of the property and further direct the

defendants from interfering with the peaceful possession and enjoyment of the same. First schedule is site Nos. 7 to 10. Second item of the property is site Nos. 11 to 14. Each of the sites measures 30 x 40 ft. and both the schedule are in compact block bounded on the East by 20 ft. road, West by Bannerghatta Main Road, North by Site Nos. 5 and 6, South by site Nos. 15 and 16.

3. According to the plaint averments, sites 7 to 10 were purchased by the plaintiffs under registered sale deed dated 01.07.1964 and, site Nos. 11 to 14 were purchased on the same date under a different sale deed. Thereafter mutation entries were made in the name of the plaintiffs in the year 1964. In the year 1989, they learnt that the defendants were trying to interfere with their possession. Therefore they approached the Corporation of City of Bangalore to change the khata to their name and an endorsement came to be issued by the Corporation of City of Bangalore that they have to get their title adjudicated from a Civil Court. In the year 1994, the plaintiffs noticed that the defendants without any right, title or interest started putting up a construction. When the same was questioned by them, they learnt first defendant had filed a suit in O.S. No. 3237/1986 against the first plaintiff. Thereafter, the first plaintiff appeared before the Court and made an application for framing of an additional issue in regard to title to the property and thereafter the present suit is filed for comprehensive relief.

4. The defendants contested the suit. They denied the existence of the plaint schedule property. According to them, the documents relied upon by the plaintiffs are got up and concocted. It is also their case that Sy. No. 53/4 was later phoded as Sy. No. 53/4A which was measuring 1 acre 2 guntas without any kharab, Sy. No. 53/4B was measuring 38 guntas with 1 gunta of kharab, Sy. No. 53/4C measuring 1 acre 30 guntas with 34 guntas of kharab. One Muniswamappa was the owner of 1 acre 18 guntas along with kharab attached to Sy. No. 53/4. According to them, 30 guntas of land was sold by Muniswamappa along with 12 guntas of land karab under registered sale deed dated 04.06.1964. Likewise, they set up a title on their own. They denied that they were in unlawful possession of the plaintiffs property. In the circumstances, they requested the Court to dismiss the suit.

5. Based on the pleadings, the following issues were framed by the Trial Court:

Issues

1. Whether the plaintiffs prove that they are the owners of the suit schedule properties?
2. Whether the Court fee paid on the plaint is not sufficient?
3. Whether the suit is barred by limitation?
4. Whether the plaintiffs are entitled to possession of the suit schedule properties?

5. What order or decree?

Additional Issues

1. Whether the suit is barred by time?

2. Whether the plaintiffs are entitled to the relief's sought against the 3rd defendant also regardless of the compromise decree of partition passed in O.S. 1203/96?

3. Whether the plaintiffs prove the location and identify of the suit schedule properties?

4. Whether the plaintiffs prove that defendants trespassed into suit schedule properties on and after 21-6-1994 and have constructed buildings in the suit properties?

6. In order to prove their respective contentions, on behalf of the plaintiffs, two witnesses R. Prakash and Krishnaiah, were examined as PW 1 and 2 and plaintiffs relied upon Exs. P1 to P58. First defendant T. Krishnappa was examined as DW 1. He relied upon Exs. D1 to D36. The Court Commissioner was examined as CW 1. Through him Exs. C1 to C12 were marked. The Trial Court, after appreciating the entire evidence, has held issue No. 1 in affirmative and answered all the issues in the negative. So far as additional issue No. 2 is concerned, the plaintiffs have been declared as owners of the suit schedule property against all the defendants and ultimately the suit came to be decreed in part declaring that plaintiff No. 1 as the owner of first schedule property in site Nos. 7 to 10. Second plaintiff has been declared as the owner of site Nos. 11 to 14. The relief sought for by the plaintiffs for possession has been rejected on the ground that the identity of the property has not been established.

7. Aggrieved by non-granting of a decree for possession and injunction the plaintiffs have filed the appeal. Similarly, cross-examination is filed with a long delay of 1175 days questioning the findings of the Trial Court in regard to title of the property of the plaintiffs. Therefore, these two matters are heard together.

8. After hearing the parties, the learned counsel appearing for both parties fairly concede that the plaintiffs, in order to get possession of the property, have to establish the identity of the property. Since the plaintiffs and defendants are trying to lay title under different documents, they fairly submit that the question of title need not be considered in this appeal and the parties would be satisfied if the relief sought for by the appellants-plaintiffs is considered by the Trial Court afresh by appointing a Commissioner in order to fix the boundaries as per schedule 1 and 2, wherein it is stated that the property schedule 1 and 2 are situated in between site Nos. 5 and 6 on the Northern side and Site Nos. 15 and 16 on the southern side and western side by Bannerghatta Main Road and on the eastern site 20 ft. road.

9. Admittedly the property claimed by plaintiffs and defendants are located in

different places though they are situated in Sy. No. 53. Identity of these two properties cannot be identified by a surveyor or Assistant Director of Land Records because the entire area has come within the purview of the Corporation City of Bangalore and several buildings have come up. Hence question of fixing the boundaries of the Survey number and locating sites claimed by each of them, is not possible. But the undisputed fact is that item Nos. 1 and 2 of plaint schedule property are situated in between Site Nos. 5 and 6 on the one side and Site Nos. 15 and 16 on the other side in one block.

10. Therefore, we are of the view that, to put an end to the litigation and to identify whether defendants have encroached any portion of the property in between site Nos. 5 and 6 and Site Nos. 15 and 16 and whether they have to be evicted by the Court based on the suit filed by the plaintiffs, the best way is to appoint a Commissioner and to fix the existence of site Nos. 5 and 6 and Site Nos. 15 and 16 and measure whether there exists a property 120 ft. x 80 ft. in between Bannerghatta Main Road and 20 ft. road. If the Court Commissioner files a report that there exists a property between site Nos. 5 and 6 and Site Nos. 15 and 16 and in that area if the defendants are in possession of the same, the defendants have to be dispossessed by directing them to handover possession of the plaintiffs. If the findings of the Court Commissioner would be adverse to the claim made by the plaintiffs, then the judgment rendered by the Trial Court in rejecting the prayer for possession and for grant of injunction has to be confirmed by the Trial Court afresh.

11. Accordingly, both the appeal and cross-objections are disposed of by condoning the delay in filing the cross-objections and confirming the title of the plaintiffs to the suit property and the matter is remanded to the Trial Court to appoint a Commissioner and find out the existence of the item Nos. 1 and 2 between site Nos. 5 and 6 and Site Nos. 15 and 16 as per the boundaries shown in the plaint schedule property. It is further ordered that if the defendants are in possession of the area to be identified between site Nos. 5 and 6 and site Nos. 15 and 16, the suit of the plaintiffs for delivery of possession has to be granted. With the above observations, the matter is remanded to the Trial Court. Parties are directed to appear before the Trial Court on 03rd February 2014, on which date, all the parties shall appear before the Trial Court, without any further intimation from the Trial Court. By hearing both the Advocates the Trial Court is directed to appoint Commissioner. It is open for the Commissioner to enquire with the owners of sites Nos. 5 and 6 and 15 and 16 to fix the boundaries and thereafter, the parties are at liberty to file memo of instructions so as to assist the commissioner.