

(2010) 03 KAR CK 0254

In the Karnataka High Court

Case No : Regular First Appeal No. 1944 of 2005

Chandrashekar Bidari

APPELLANT

Vs

Basalingappagouda Dhannur, Somawwa Dhannur,
Sidramappa Gurammanavar and Sangawwa Gurammanavar

RESPONDENT

Date of Decision : 02-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10 (2)
Karnataka Prevention of Fragmentation and Consolidation of Holdings Act, 1966 —
Section 40

Citation : (2010) 03 KAR CK 0254

Hon'ble Judges : Ajit J Gunjal, J

Bench : Single Bench

Advocate : Suresh Kataki and R.S. Lagali for K. Shashikiran Shetiy, for the
Appellant; R.M. Kulkarni for G.S. Kannur for R-1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Ajit J Gunjal, J.—The Defendant No. 1 is in appeal. Respondent Nos. 1 and 2 are the Plaintiffs. Respondents 3 and 4 are Defendants 2 and 3.

2. During the course of the judgment, the parties will be referred to as per their ranking in the trial Court.

3. Facts in brief are that according to the Plaintiffs the land in question in its entirety would measure about 3 acres 11 guntas. The Plaintiffs claim to have purchased an extent of 18 guntas of the said land. It is renumbered as Sy. No. 21/A/IA/I of Mahalbagayat and is converted into non-agricultural land. Suit is filed for declaration of title and also for consequential relief of injunction to restrain the Defendants from interfering with the peaceful possession and title to the said extent of 18 guntas. Incidentally it is to be noticed that the suit was initially filed by Plaintiff No. 1 and during the pendency of the suit an application was made under Order I Rule 10(2) of the CPC to implead Plaintiff No. 2 inasmuch as she is the mother of the original purchaser. On contest the said

application is granted and she has come on record as Plaintiff No. 2. The suit property came to the Plaintiffs from their son Ramanagouda since deceased pursuant to a mutation entry No. 9461 and they are in actual possession. Their case is that their son Ramanagouda died as a bachelor and without any issues. The suit property originally belonged to Defendant No. 2 who made a gift of the property to an extent of 18 guntas pursuant to two registered gift deeds on 23.11.1966 and 25.11.1966 respectively in favour of one Gurumadiwalswamy Anandmath. The said Anandmath accepted the gift and his name was entered as the owner in the concerned revenue records. He continued to be the owner till his death and after his death his widow Smt. Siddawwa inherited the same and continued to make vahivat of it as owner till 17.12.1991. On the said date i.e., on 17.12.1991 the said Siddawwa sold the property in favour of the Plaintiff's son pursuant to a registered sale deed for a consideration of Rs. 1,00,000/- (Rupees One Lakh only). The Defendant No. 1 has his property to the south of the property which he claims to have purchased from Defendant No. 3 on 7.4.1970. The servants of Defendant No. 1 were putting up fence around the site of Defendant No. 1 all along the southern side, and trespassed in the site of the Plaintiff. Plaintiffs protested, nevertheless the high-handed action continued. Hence in the circumstances the present suit is filed for the aforesaid relief of declaration of title and injunction. According to the Plaintiffs the cause of action arose on 22.02.1997 and the suit is filed well within time. Defendants 3 and 4 remained ex-parte and they were placed accordingly. The contesting Defendant is Defendant No. 1. He files his written statement inter alia contending that the suit is not maintainable and further one Sayabanna Gavali was the owner of Sy. No. 21/1 and he sold it in favour of one Yellappa s/o Shivappa Gavali, for Rs. 350/- and accordingly the name of Yellappa was shown in the revenue records on 15.10.1941. Thereafter the said Yellappa sold the property in question in favour of Defendant No. 2 for a consideration of Rs. 600/-. This has been reflected in the mutation entries. The first Defendant admits the execution of the gift deed, but however would contend that the two gift deeds are void under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, (for short the Bombay Act). According to the Defendant No. 1 by the execution of the gift deed in respect of 6 guntas and 12 guntas a fragment is created which certainly contravenes the Bombay Act. Hence the sale itself is hit by the said Fragmentation Act. No. title passes on to the Plaintiffs. He would further contend that notwithstanding the fact that the contravention can be validated, the sale is not validated by paying requisite fee. The case of the first Defendant is that he makes an application to the competent authority namely the Deputy Commissioner seeking permission to alienate as well as purchase the land to an extent of 1 acre 20 guntas inasmuch as according to him it would create a fragment. The necessary permission is accorded by Deputy Commissioner and Defendant No. 2 has executed a sale deed in favour of the first Defendant on 7.4.1970 for a consideration of Rs. 12,000/-. Pursuant to the registered sale deed dated 7.4.1970, the name of Defendants 2 and 3 i.e., the son and mother was deleted and that of the Defendant No. 1 was entered in the revenue records.

The sum and substance of the defence is that the Plaintiffs do not derive any title having regard to the fact that the sale is hit either by the Bombay Act or by the Karnataka Prevention of Fragmentation and Consolidation of Holdings Act, 1966 (for short the Karnataka Act).

4. The learned trial Judge on the basis of these pleadings has framed the following issues:

1. Whether the Plaintiff proves that the description of the suit property is true and correct?
2. Whether the Plaintiff proves that, that there is legal and valid gift by deft. No. 2 in favour of Madivaleshwar s/o Gurusangappa Andanimath Dt. 23.11.1966 and 25.11.1966?
3. Whether the Plaintiff proves that, Madivaleshwar Andanimath came in possession property in view of the Gift deed?
4. Whether the Plaintiff proves that, there is a legal and valid sale deed in favour of Ramanagouda who is the son of Plaintiffs and he came in possession of the property?
5. Whether the Plaintiff proves that, he and his wife are the joint owners of Sy. No. 21/A/1A/1 of Mahalbagayat Bijapur which bearing M.E. No. 8547 measuring 18 guntas ?
6. Whether the Plaintiff proves that they are in lawful possession of the suit property as on the date of suit ?
7. Whether the Defendant proves that the suit of the Plaintiff is time barred and it is not maintainable ?
8. Whether the Plaintiff proves that he is entitled for relief of declaration and injunction as prayed for ?
9. Whether the suit is valued properly and C.F. paid is sufficient ?
10. What order or decree ?

5. In support of their respective pleadings both the Plaintiffs as well as 1st Defendant have let in their evidence. The Plaintiff No. 2 was examined as PW.1 and in support of her contentions Exs.P.1 to P. 10 are marked. The first Defendant was examined as DW.1 and Exs.D1 to D12 are marked. The learned trial Judge having regard to the evidence let in by the Plaintiffs as well as Defendant No. 1 and the legal question raised by the Defendant No. 1 than the sale deed hit by prevention of either the Bombay Act or Karnataka Act has recorded a finding that the Plaintiffs' sale deed is not hit by both the Acts. The learned trial Judge has also recorded a finding that the first Defendant does not derive any title to an extent of 18 guntas inasmuch as when the property was sold by Defendants 2 and 3 in his favour they had lost title inasmuch as they had made a gift in favour of Anandmath on 23.11.1966 and 25.11.1966. Thus

decreed the suit as against which the first Defendant is in appeal.

6. Mr. Suresh Kataki, learned Counsel appearing for Defendant No. 1 submits with the aid of both the Acts that the sale having taken place in the year 1991, the gift made by the Defendant No. 2 in favour of Anandmath to an extent of 6 guntas and 12 guntas was clearly hit by the Bombay Act inasmuch as according to the definition of Bombay Act, the sale which creates a fragment would attract the Act and all such transfers are null and void. He further submits that notwithstanding the fact that the Karnataka Act having come into force and Section 40 of the Act which validates such sales which are in contravention of the Act can be validated if a sum of Rs. 100/- is given as penalty. He submits that the Plaintiffs have not paid the said penalty. Hence the sale is squarely hit by both the Acts. He further submits that the suit itself is barred by time inasmuch as a declaration is required to be sought within three years from the date of accrual cause of action. He submits that the suit is hit by Article 58 of the Limitation Act. In so far as the findings recorded by the learned trial Judge he would contend that the learned trial Judge was not justified in placing reliance on Sections 5 and 6 of the Bombay Act to hold that a notice was not issued which is required under the Act. The sale by itself cannot be held invalid.

7. Mr. R.M. Kulkarni, learned Counsel appearing for the Plaintiffs supports the judgment and decree passed by the trial Court. He submits that under the Karnataka Act, the sale cannot be hit by the Act on the ground that it creates fragmentation when the transfer itself was made when it was a fragment. He further submits that the Defendant No. 1 does not derive any title to an extent of 18 guntas when Defendants 2 and 3 had lost their title pursuant to the two gifts executed by them in favour of Anandmath. He further submits that the suit indeed is in time inasmuch as the cause of action arose when there was interference by the first Defendant. He further submits the pleading itself would disclose that prior to the application for impleadment the specific case made out by the first Plaintiff originally was that the Plaintiff and his wife are the co-owners of the suit property. He further submits that to avoid any technical defect the mother of the deceased was also added as a co-Plaintiff. Thus according to him the judgment and decree passed by the learned trial Judge on the basis of the evidence and the documents and the law does not warrant interference.

8. I have given my anxious consideration to the submissions made by the learned Counsel appearing for the Plaintiffs as well as Defendant No. 1. The short point which arises for consideration in this appeal is whether the sale in favour of Plaintiffs is hit by either the Karnataka Act or the Bombay Act.

9. The definition of fragment as defined in Bombay Act is found at Section 2(4) which reads as follows:

"(4) "Fragment" means a plot of land of less extent than the appropriate standard area determined under this Act:

Provided that No. plot of land shall be deemed to be fragment by reason of any

diminution in its area by division;

Indeed, Section 6 is in respect of entry in the revenue records. Sub-section (1) of Section 6 deals with the situation wherein a notification of standard area under Sub-section(3) of Section 5 for a local area all fragments in the local area shall be entered as such in the Record of Rights or where there is No. Record of Rights in such village record as the Government may prescribe.

Sub-section (2) of Section 6 is more relevant for our purpose in the case on hand wherein it contemplates notice of every entry made under Sub-section (1) shall be given in the manner prescribed for giving of notice in the Hyderabad area of the State, under the Hyderabad Record of Rights in Land Regulation, 1358 Fasli and elsewhere, under the relevant code, of an entry in the register of mutations.

10. Indeed, the learned Trial Judge has decreed the suit of the Plaintiff placing reliance on the said provisions inasmuch as a notice has not been issued by the concerned revenue authorities in respect of a fragmentation. The learned Trial Judge with reference to Section 6(2) has observed that issuance of a notice is a condition precedent to hold that the same would invalidate the said transaction. In the case on hand, it is noticed that No. such notice is issued u/s 6(2) of the Act to the 2nd Defendant-donor. Be that as it may once the transfer takes place, be it by sale, gift or will and if the said document is registered, a duty is cast on the Sub-Registrar to inform the concerned authorities regarding the said transaction. Indeed one can refer to Section 128 of the Karnataka Land Revenue Act, which would deal with the situation which is identical. Section 128 of the Karnataka Land Revenue Act, 1964 would deal with the acquisitions of rights to be reported. Sub-section (1) of Section 128 speak about a person acquiring by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any right as holder, occupant, owner, mortgagee, landlord or tenant of the land or assignee of the rent or revenue thereof, shall report orally or in writing his acquisition of such right to the Prescribed Officer of the village within three months from the date of such acquisition, and the said Officer shall at once give a written acknowledgment of the receipt of the report to the person making it.

11. Indeed, the said embargo cast on the document holder is averted by the second proviso to Section 128 wherein it indicates that the person acquiring a right pursuant to a registered document is absolved or exempted from the obligation to report to the prescribed officer. In the case on hand, it is to be noticed that the Defendant No. 2 had made a gift in respect of the two bits of lands i.e. 6 guntas and 12 guntas pursuant to two registered gift deeds. Indeed, the donee was not required to make an application to the concerned authority to enter their name. In fact a duty is cast on the prescribed authority to inform the concerned revenue authorities that such a document has been executed and they are required to enter necessary changes in the record of rights. Indeed, it appears such exercise has not been done for which neither the vendor of the Plaintiff can be faulted nor for that matter the Plaintiff. Indeed, the said

information were to be sent, the same would have been entered in the revenue records showing that it is a fragment assuming that it is so. In fact, this question need not detain us inasmuch as the scope and interpretation of Section 6 to 9 of the Bombay Act fell for consideration before this Court in the case of Pandappa Venkappa v. Bhimappa Ramappa Koppad and Ors. reported in 1966 Mys. L.J. 105. This Court while dealing with the scope of Section 6(2) R/w Section 6(1) of the Bombay Act has observed thus:

The transfer impugned in this case is not proved to be contrary to the provisions of the Act. Therefore, it cannot be held to be void. Before the transfer in question can be held to be void, it must be proved to have been effected contrary to the provisions of the Act, that transfer must be hit by Section 7(1). As seen earlier, there is No. contravention of Section 7(1) as there was No. notice u/s 6(2). In these circumstances, the trial Court was right in dismissing the suit. The burden of proving that the transfer in question was contrary to the provisions of the Act was undoubtedly on the Plaintiff. He has failed to discharge the burden.

12. In the case on hand, it is to be noticed that the burden is essentially on the Defendant No. 1 to prove that the sale is hit by the provisions of Bombay Act or for that matter, Karnataka Act. It is to be noticed that the first Defendant has failed to discharge the burden. Even otherwise, as observed in the aforesaid ruling, a notice is a must u/s 6(2) before holding that the sale is hit by the Fragmentation Act.

13. Another decision was pressed into service by the learned Counsel appearing for the Plaintiff in the case of Ninge Gowda v. Jayamma and Ors. reported in 1980 Kar.L.J. 25, wherein the Karnataka Act fell for consideration. This Court with reference to Section 6 of the Act has observed thus:

It is clear from the above provision that what has been prohibited is a transfer or partition or a sub-division so as to create a fragment. If the land was already a fragment, Section 6 cannot be a bar. This may sound illogical, but law is not logic. That is also the view taken by a Bench of this Court in Chayappa Santammappa v. Mohammad Hasan. There is also another reason in support of the alienation. The land as a fragment was not notified as required u/s 4(2) so as to fall within the scope of Section 5 of the Act. Therefore, the alienation cannot be found fault with.

(emphasis supplied)

14. In fact, these two decisions would answer the contentions of the learned Counsel appearing for the Defendant No. 1. Indeed this Court had an occasion to deal with the amendment which was brought to the Karnataka Act pursuant to the Karnataka Prevention of Fragmentation and Consolidation of Holdings (Amendment) Act, 1983 with reference to Section 4. Indeed, Section 4 of the Amended Act would read as under:

Notwithstanding anything contained in any law or in any judgment, decree or

order of any Court or other authority, any transaction, including transfer, partition or sub-division of any land, entered into or effected and any action or thing taken or done in relation to land before the commencement of this Act and in contravention of the provisions of the Principal Act, shall notwithstanding anything contained in the Principal Act, be not deemed to be void merely on the ground of such contravention.

15. This Court interpreting the said provision in the case of Shivasharnappa Vs. The Deputy Commissioner, Gulbarga and Another, has observed thus:

The essence of both such provisions would be that the transaction would continue to be valid, the violation of the provisions of the Principal Act notwithstanding. It was indeed possible for the legislature to express its intention in slightly different terms as suggested by Mr. Raikote, but the fact that the expressions suggested by Mr. Kumar were not chosen by the legislature does not mean that those actually used by it in Section 4 does not sufficiently convey its intention. The purpose underlying Section 4 clearly is that transactions which had taken place before the commencement of the amending Act shall not be void merely on the ground that any such transaction was contrary to any provisions of the Principal Act. So long as that is so, it is immaterial whether the object of the amending Act could be achieved by use of one or the other expression.

16. Having regard to the law laid down by this Court as well as with reference to the relevant statute and provisions, I am of the view that the gift in favour of Anandmath, the vendor of the Plaintiff is not hit either by the Bombay Act or by the Karnataka Act.

17. Once it is held that the sale is not hit by the Fragmentation Act, the question would be whether the first Defendant derives any title to an extent of 18 guntas. It is not in dispute that the 2nd Defendant had made a gift of 6 guntas and 12 guntas totaling to 18 guntas in favour of the vendor of the Plaintiffs. The gift was made in the year 1966. The 2nd Defendant has lost his title to an extent of 18 guntas in the year 1966. Obviously once the 2nd Defendant has lost his title to the said 18 guntas, the question of he conveying the said area in favour of the Defendant No. 1 does not arise.

18. In so far as the contentions raised by the learned Counsel appearing for the Defendant No. 1 that the suit is barred by limitation under Article 58 of the Limitation Act is concerned, it is to be noticed that Article 58 contemplates filing of a suit seeking declaration within a period of three years when the right to sue first accrues. A perusal of the pleadings and the cause of action would clearly indicate that the cause of action arose on 22.2.1997 when the first Defendant's servant went and trespassed upon the suit property and the suit is filed on 24.2.1997. To my mind, the cause of action accrued on 22.2.1997 when the servants of the Defendant No. 1 tried to interfere. Hence the suit is well within time.

19. Having given my anxious consideration to the submission made and also the

finding recorded by me on the contentions urged, I am of the view that the finding recorded by the learned Trial Judge on all the issues cannot be faulted. No. merit. The appeal stands dismissed.