

(2014) 09 KAR CK 0246

In the Karnataka High Court

Case No : Regular Second Appeal No. 2223/2008 (P. INJ)

Chetana Somasundara

APPELLANT

Vs

J. Krishnaiah Setty

RESPONDENT

Date of Decision : 04-09-2014

Acts Referred:

Citation : (2014) 09 KAR CK 0246

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : Ravishankar, Advocate for the Appellant; V. Vishwanath, Advocate for the Respondent

Final Decision : Allowed

Judgement

S. Abdul Nazeer, J.—This appeal is directed against the judgment and decree in R.A. No. 168/2006 dated 9.7.2008 on the file of the Civil Judge (Sr. Dn.), JMFC, Devanahalli.

2. J. Krishnaiah Setty, the respondent herein had filed O.S. No. 13/2001 on the file of the Civil Judge (Jr. Dn.) at Devanahalli for grant of permanent injunction restraining the defendant, his agents, servants, representatives, henchmen, supporters and anybody acting on his behalf from interfering or meddling with the suit schedule property in any manner or disturbing his peaceful possession and enjoyment thereof. The suit was filed against Sri Somasundaram. The suit schedule property measures 75 ft. x 40 ft. bearing katha No. 23, Khaneshumari No. 98, situated at Sadahalli Gramatana, Kasaba Hobli, Kannamangala Village Panchayath, Devanahalli Taluk, Bangalore Rural District consisting of a small building bounded on the east by plaintiff's shop, west by vendor's site, north by road and south by road and vendor's site. It is the case of the plaintiff that he is the absolute owner and in possession of the suit schedule property having purchased the same from the father of defendant through a registered sale deed dated 25.8.1981 and he was put in possession of the said property on the date of sale deed. Katha was mutated in his name and he has been paying tax regularly

to the Panchayath. After obtaining licence from the Panchayath, he constructed a small building in a portion of the suit schedule property and there is also an oil extracting unit (gana) in the suit schedule property run by him. On 17.12.2000, the defendant made hectic attempts to trespass into the suit schedule property and to interfere with his possession. He filed a complaint before the Jurisdictional Police, who refused to register the case on the ground that the dispute is of civil nature. Therefore, he has filed the suit for the aforesaid reliefs.

3. The defendant filed his written statement contending that his father had sold land measuring 25 ft. x 40 ft. in favour of the plaintiff and not 75 ft. x 40 ft. under the registered sale deed dated 25.8.1981 and retained the remaining land in the same katha number. The plaintiff taking undue advantage of the words written in Kannada language altered to in the original sale deed. Basing on the altered document, the Panchayath issued katha in the name of the plaintiff. The defendant filed objections before the Kannamangala Panchayath on 8.11.2000. The Village Accountant after perusing the original records, cancelled the katha, which was transferred in favour of the plaintiff and issued a letter dated 11.12.2000 to that effect. The encumbrance certificate also shows that plaintiff has purchased only 25 ft. x 40 ft. and not 75 ft. x 40 ft. The plaintiff has approached the Court with unclean hands by suppressing true facts and therefore is not entitled for the relief of permanent injunction.

4. On the basis of the pleadings of the parties, the trial Court has framed the following issues:

"(1) Whether the plaintiff proves that he is in lawful possession and enjoyment of the suit schedule property as on the date of filing of the suit?

(2) Whether the plaintiff proves the alleged interference by the defendant?

(3) Whether the plaintiff is entitled for the relief of permanent injunction?

(4) What order or decree?"

5. The plaintiff got himself examined as P.W.1 and a witness was examined as P.W.2. The documents at Ex. P1 to Ex. P11 were marked through P.W.1. The defendant got himself examined as D.W.1. Ex. D1 to Ex. D4 were confronted to the plaintiff during cross-examination. Ex. D5 to Ex. D17 were marked through D.W.1.

6. On appreciation of the materials on record, the trial Court has dismissed the suit.

7. Feeling aggrieved, the plaintiff filed an appeal before the Civil Judge (Sr. Dn.) at Devanahalli in R.A. No. 168/2006. The first appellate Court has reconsidered the matter and has set aside the judgment and decree of the trial Court.

8. This Court has admitted the appeal to consider the following substantial question of law:

"Whether the first appellate Court was justified in shifting the burden of establishing that Ex. P1 was a tampered document in the fact of positive finding by the trial Court in this regard.?"

9. I have heard the learned Counsel for the parties in relation to the substantial question of law. I am of the view that the proper substantial question of law is "whether the first Appellate Court is justified in holding that the sale deed at Ex. P1 is not a tampered document"?

10. Learned Counsel for the appellants has taken me through the pleadings, evidence and also the documents produced by the parties before the trial Court. Since there was a dispute as to whether the word has been tampered or not, this Court by order dated 9.9.2011 has summoned the original register from the office of the Sub-Registrar, Devanahalli, in which Ex. P1 was registered. Thus, the original register is available on record.

Learned Counsel for the appellants has also taken me through the original register. It is his submission that the word has been tampered and made into look as in the original sale deed. Though the property sold by the father of the defendant is 25 ft. x 40 ft., it is made to look as if the area measuring 75 ft. x 40 ft. has been sold because of the tampering. It is submitted that the plaintiff has obtained a certified copy of the sale deed from the Sub-Registrar, which is marked as Ex. D3. It also discloses that the property sold by the father of the defendant in favour of the plaintiff is 25 f. x 40 ft. The encumbrance certificate at Ex. D5 also reflects the same. Though the plaintiff has obtained licence for putting up construction, it was cancelled by the Kannamangala Grama Panchayath by order at Ex. D1 dated 9.11.2000. This was followed by a show cause notice issued by the Panchayath to the plaintiff calling upon him to show cause as to why criminal proceedings should not be initiated against him for tampering of the documents.

11. On the other hand, learned Counsel appearing for the respondent/plaintiff sought to justify the impugned judgment and decree of the first appellate Court. It is his submission that there was no tampering of the document whatsoever. He has taken me through the entire document and submits that in the document, the word has been used and the same has not been tampered. It is his submission that he has put up construction on the property. Therefore, the suit for permanent injunction is not maintainable.

12. I have carefully considered the arguments of the learned Counsel made at the Bar and perused the materials placed on record.

13. The contention of the plaintiff is that he has purchased the property measuring 75 ft. x 40 ft. under a registered sale deed dated 25.8.1981. The original of the sale deed is marked at Ex. P1. On Perusal of the said sale deed, it is seen that the extent of the property has been altered by changing to . Normally, seventy-five is always written with the starting word and not . However, the description of the schedule in the document as also in the plaint

would clearly disclose that on the western side, a vacant land of the vendor is situated. So also on the southern side, the vendor's site is situated after the road. Except this property, on the western side, there is no other property belonging to the defendant. According to the plaintiff, he has put up construction in a portion of the property measuring 20 ft. x 12 ft. after obtaining licence at Ex. P7. However, the defendant has opposed for issue of licence. Therefore, the licence has been cancelled and an endorsement has been issued to that effect under Ex. D1. It is not the case of the plaintiff that he has challenged the endorsement at Ex. D1 cancelling the licence issued to him earlier. The Panchayath has also issued a show cause notice under Ex. D2 dated 11.12.2000 calling upon the plaintiff as to why he should not be prosecuted for tampering of the sale deed at Ex. P1. Ex. D3 is the certified copy of the sale deed obtained by the defendant from the Sub-Registrar's office. This document would clearly indicate that the property sold to the defendant is 25 ft. x 40 ft. and not 75 ft. x 40 ft. The encumbrance certificate at Ex. D4 would also disclose the same. The defendant has also produced tax paid receipt, which establishes that he has paid tax in respect of the unsold portion of the property.

14. As noticed above, on 9.9.2011, this Court has secured original register from the office of the Sub-Registrar, Devanahalli, in which Ex. P1 was registered. The said register would also clearly indicate that the property sold in favour of the plaintiff measures 25 ft. x 40 ft. and not 75 ft. x 40 ft. It is thus crystal clear that the property sold by the father of the defendant in favour of the plaintiff is 25 ft. x 40 ft. and that the original Ex. P1 has been tampered to make it look as instead of . The word has been used in the certified copy of the sale deed Ex. D3 as also in the original register of the office of the Sub-Registrar, Devanahalli, wherein Ex. P1 was registered. Therefore, I am of the view that the first appellate Court is not justified in holding that the sale deed at Ex. P1 is not a tampered document. The substantial question of law is answered accordingly.

15. It is also clear that the plaintiff had obtained licence for putting up construction on the land measuring 20 ft. x 12 ft. No doubt, the said licence was cancelled later. It is also clear that the plaintiff is only in possession of the property sold in his favour, namely, 25 ft. x 40 ft. and the defendant is in possession of the balance of the property measuring 50 ft. x 45 ft. In my opinion, the first appellate Court is therefore not justified in upsetting the judgment and decree of the trial Court.

16. In the result, the appeal succeeds and it is accordingly allowed. The judgment and decree in R.A. No. 168/2006 dated 9.7.2008 on the file of the Civil Judge (Sr. Dn.) & JMFC, Devanahalli is hereby set aside and the judgment and decree in O.S. No. 13/2001 dated 3.7.2006 on the file of the Civil Judge (Jr. Dn.) & JMFC, Devanahalli is restored to file. No costs. Draw the decree accordingly.

Registry is directed to return the original register to the office of the Sub-Registrar, Devanahalli, forthwith.