

(1983) 03 KAR CK 0010
In the Karnataka High Court
Case No : RSA 600/76

Dasappa Setty, H.K. by Lrs.

APPELLANT

Vs

K.N. Thammanna Gowda and Another

RESPONDENT

Date of Decision : 11-03-1983

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 135
Limitation Act, 1963 — Article 113

Citation : (1983) 2 KarLJ 191

Hon'ble Judges : G. N. Sabhahit, J

Judgement

1. This appeal by the plaintiff is directed against the judgment and decree dated 13-11-1975 passed by the Civil Judge, Mandya, in RA No. 242 of 1973, on his file, allowing the appeal, on reversing the judgment and decree dt. 19-9-1973 passed by the Munsiff, Krishnarajapet, in OS No. 140 of 1971, on his file, decreeing the suit of the plaintiff as prayed for.

2. Plaintiff instituted a suit against the defendant praying for a decree that the land sold to the defendant in Sy.No. 267/1 of Krishnarajapet was only to the extent of 2 guntas and not 6 guntas and, consequently, be sought for a direction to the Revenue authorities in Krishnarajapet to make corrections in the Record of Rights and Index of Land Register etc. and also prayed for costs.

According to the plaintiff, the land bearing Sy. No. 267/1 situated in Krishnarajapet measuring 1 acre and 121/2 guntas belonged to the plaintiff. Out of the said extent 13 guntas were acquired for construction of A.K. Hostel and the plaintiff sold 2 guntas from north to one K.J. Boralinge Gowda and, immediately to the south of that, he sold 2 guntas to the defendant by a registered sale deed dated 19-5-1968. Though 2 guntas were actually sold, the defendant, in collusion with the Revenue Authorities, got managed to get an entry made for 6 guntas and, hence, the plaintiff instituted the suit.

3. Defendant denied the plaintiff averments by filing his written statement. While admitting the extent mentioned in the sale deed as 2 guntas, he contended that

the land was not actually measured at the time of sale, but boundaries were mentioned. Defendant constructed a house and an "Oppara" in the land sold to him to the knowledge of the plaintiff. Plaintiff accepted the said construction of the house and "Oppara" by taking mortgage of the land conveyed to defendant by the sale deed (Ex. P 1). The mortgage deed is at Ex. D 1. Hence, he asserted that plaintiff could not bring the suit for declaration and consequential relief.

4. The trial Court raised the following issues as arising from the pleadings.

(1) Does the defendant prove that what was sold to him under the registered sale deed is the entire extent within the boundaries?

(2) Does the plaintiff prove that he is entitled to get the entries in the Record of Rights Register rectified?

(3) Does the plaintiff prove that his suit is in time?

(4) What relief?

5. The trial Court, appreciating the evidence on record, answered Issue No. 1 in the negative and against defendant. It answered Issues Nos. 2 and 3 in the affirmative and in favour of the plaintiff and, in that view, the trial Court decreed the suit of the plaintiff as prayed for. Aggrieved by the said judgment and decree, the defendant went up in appeal before the Civil Judge, Mandya, in RA No. 242 of 1973, on his file. The learned Civil Judge, in the course of his judgment raised the following points, as arising from the arguments addressed before him, for his consideration in the appeal:

(1) Whether the plaintiff/respondent has sold the extent of 2 guntas or whether the land mentioned within the boundaries in the sale deed?

(2) Whether the suit is barred by time?

(3) Whether the plaintiff is entitled for declaration which he has sought for?

6. The learned Civil Judge, re-assessing the evidence on record, answered all the points against the plaintiff and, in that view, he allowed the appeal, set aside the judgment and decree of the trial Court and dismissed the suit of the plaintiff. Aggrieved by the said judgment and decree, the plaintiff has instituted the above second appeal before this Court.

7. During the pendency of this appeal, the appellant died and his legal representatives are brought on record.

8. The learned counsel appearing for the appellants strenuously urged before me that S. 135 of the Karnataka Land Revenue Act provides for a suit for declaration under S. 42 of the Specific Relief Act in case any person has grievance against the entry made in the Record of Rights and that he is at liberty to produce that decree and get the necessary rectification done in the Record of Rights Hence, he submitted that though the suit for consequential relief might not be tenable, the suit for declaration that the original plaintiff sold only 2 guntas of land under Ex.

P 1 to the defendant, was valid and maintainable. He further submitted that the Court below was not justified in holding that what was sold to defendant was not measured, as defendant himself admitted in the course of his cross examination that he was placed in possession of the land after measuring the same by "Kalu Dhapu"

Hence, he submitted that the Court below was not justified in rejecting the suit for declaration. He further submitted that the Court below was not justified in holding that the suit for declaration was barred by time.

9. As against that, the learned counsel appearing for the respondent/defendant argued supporting the judgment and decree of the first appellate Court.

10. The points, therefore, that arise for my consideration in this appeal are:

(1) Whether the Court below was justified in holding that the suit was barred by time?

(2) Whether the Court below was justified in holding that the land was not sold after measurement?

(3) Whether the judgment and decree of the first appellate Court require to be modified or interfered with?

11. The suit, as I have stated above, is one for declaration that what was sold under Ex. P 1 to the defendant by the plaintiff was only 2 guntas of land in Sy. No. 267/1 of Krishnarajapet. The plaintiff has explained that the suit came to be filed because he found that, in collusion with the village officers, the defendant got entered his land as 6 guntas instead of 2 guntas, though, originally, it was entered as 2 guntas on the basis of the sale deed. He came to know of it recently and he instituted the above suit for declaration and for consequential relief. It is this suit which the first appellate Court has held as barred by time.

12. It is no doubt true that the period of limitation for such a suit falls under Art. 113 of the present Limitation Act, which was equivalent to Art. 120 of the old Limitation Act. Earlier, the limitation was 6 years. Art. 113 of the Limitation Act, 1963, reads:

"Description of suit:-Any suit for which no period of limitation is provided elsewhere in this Schedule.

Period of limitation:-3 years.

Time from which period begins to run.-When the right to sue accrues."

13. There have been judicial pronouncements as to when the cause of action accrues for suit for a declaration of title.

14. U.N. Mitra, on Law of Limitation and Prescription, Vol. I, Tagore Lectures, 1882, brought out in 1932, at page 101, speaking about accrual of cause of action, under corresponding provisions of the old Limitation Act, viz., under Art.

120, has observed thus:

"Onus in suits for declaration or possession.-As a general rule, a plaintiff (in a suit for a declaration of title or for ejectment) must not only show that he has a title, but that he has a subsisting title which he has not lost by the prescriptive sections of the Limitation Act. A "subsisting title" means that the title is not in any way transferred or extinguished or lost by adverse possession in favour of a stranger, Secretary of State v. Chelikani Rama Rao, LR 43 IA 192; ILR 39 Madras 617 (PC).....".

15. Thus, according to the learned Author, a suit for declaration of title could be brought so long as the title of the plaintiff was subsisting, unless the cause of action was compulsive.

16. Explaining the position, the Supreme Court of India, in the case Rukmabai v. Lala Laxminarayan, AIR 1960 SC 335, in para 31 of the judgment, has observed, inter alia, thus:

"The argument on the question of limitation is put thus: The plaintiff, respondent herein, had knowledge of the fraudulent character of the trust deed as early as 1917 or, at any rate, during the pendency of the partition suit between Rukmabai and Chandanalal Instituted in the year 1929, and the suit filed on 1940, admittedly after 6 years of the said knowledge, would be barred under Art. 120 of the Limitation Act".

After copying Art. 120 of the Limitation Act, his Lordship Justice Subba Rao, who spoke for the Bench, observed:

"This article was subject to judicial scrutiny both by the Judicial Committee as well as by the High Courts of various states. The leading decision on the subject is that of the Judicial Committee in Bola v. Mt. Koklan, 57 IA 325 at page 331: (AIR 1930 PC 270 at page 272). Therein Sir Benod Mitter observed:

"There can be no "right to sue" until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted"".

Further, the Supreme Court has observed in paras 32 and 33 of the judgment thus:

"32. The said principle was restated and followed by the Judicial Committee in Annamalai Chettiar v. Muthukuruppan Chettiar, (AIR 1931 PC 9), and In Gobinda Narayana Singh v. Shamlal Singh, (AIR 1931 PC 89). The further question is, if there are successive invasions or denials of a right, when it can be held that a person's right has been clearly and unequivocally threatened so as to compel him to institute a suit to establish that right. In Pothukutchi Appa Rao v. Secretary of State (AIR 1938 Mad. 193 at p. 198), a Division Bench of the Madras High Court had to consider the said question. In that case, Venkatasubba Rao, J., after considering the relevant decisions, expressed his view thus: "There

is nothing in law which says that the moment a person's right is denied, he is bound at his peril to bring a suit for declaration. The Government beyond passing the order did nothing to disturb the plaintiff's possession. It would be most unreasonable to hold that a bare repudiation of a person's title, without even an overt act, would make it incumbent on him to bring a declaratory suit".

He adds at page 199:

"It is a more difficult question, what is the extent of the injury or infringement that gives rise to, what may be termed, a compulsory cause of action".

"33. The legal position may be briefly stated thus: The right to sue under Art. 120 of the Limitation Act accrues when the defendant has clearly and unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right."

17. Therefore, it is clear that the plaintiff is not expected to rush to the Court at every innocuous denial; but, when he feels that title is jeopardized, he is to go to Court and his subsisting title at that time should not have been lost. Considered in that perspective, it cannot be said that the present suit is barred by time.

18. It is no doubt true that an entry was made by the Tahsildar in 1963, as can be seen in Ex. P 2. Mere entry, without more, would not give rise to a compulsory cause of action.

19. Plaintiff instituted the suit on 23-1-1969. On that day, it cannot be said that his subsisting title was lost because even the sale deed Ex. P 1 is dt. 19-5-1958. Therefore, 12 years have not elapsed even from the date of sale and there was no chance for the defendant to perfect his title by adverse possession and the title of the plaintiff was subsisting. Therefore, having in mind the salutary principles of law, as explained by the Supreme Court, I am constrained to hold that the suit is not barred by time and the finding to the contrary given by the first appellate Court is obviously erroneous and illegal. I set aside the said finding of the first appellate Court and hold, as stated above, that the suit is in time.

20. The lower Court has come to the conclusion that the land was not sold by measurement and, as such, it could not be said that what was sold was only 2 guntas of land. The learned counsel appearing for the appellants strenuously challenged this finding. He invited my attention to the deposition of the defendant wherein he clearly admitted in his cross-examination that the plaintiff showed him the land by measuring in "Dhapus" and put him in possession of the same.

21. This is what the defendant has stated in the course of his cross-examination;

"Plaintiff sold the area shown by "Kalu Dhapu". The plaintiff showed in the north-south direction 20 Dhapus and in the east-west direction he showed 13 Dhapus.

I am contractor even to-day. A Dhapu means 3 ft....."

22. Thus, there is a very clear and unambiguous admission of the defendant that the land was measured by "Dhapus" and that one "Dhapu" measures 3 ft. Thus, it is clear that the defendant was sold the land measuring 60" x 36" and it was on the north-south and east-west direction.

23. The learned counsel appearing for the respondent/defendant invited my attention to the plaintiff's averments and the reply statement of the plaintiff wherein he admitted that the land was not measured at the time of sale. The learned counsel appearing for the appellants explained this statement saying that thereby he only meant that it was not got measured by a Surveyor, though defendant was put in possession of the actual area by measuring it by "Dhapus".

24. It is not in dispute that 1 gunta measures 121 square yards. Having regard to that, it may safely be concluded that by measuring the land by "Dhapus", the defendant was put in possession of 2 guntas of land. There is absolutely no difficulty in coming to that conclusion.

25. It is necessary for me to explain why the boundaries, on the facts of the case, would not fix the identity of the land. In the sale deed (Ex. P 1), describing the boundaries of the land sold, it is stated thus:

East: Field of Kuluvadi Bomma;

West & South: Land belonging to him and

North: Land given to Boralinge Gowda.

So, it is clear that the lands to the west and south are the remaining lands of the plaintiff himself. That being so, it is not possible to fix the identity of the land sold with the help of the boundaries described in the deed. Hence, we have to necessarily take into consideration the area described in the sale deed which tallies with the description given by the defendant himself as 2 guntas. That being so, I am unable to bring myself to agree with the finding of the learned Civil Judge that the land sold was not measured and, hence, he could not fix it as 2 guntas, I am constrained to hold that the land was measured and 2 guntas of land was sold by showing the area to the defendant as admitted by him in his evidence. That is my answer to Point No. 2.

26. It is true that S. 135 of the Karnataka Land Revenue Act, 1964, states:

"Bar of suits: No suit shall lie against the State Government or any officer of the State Government in respect of the claim to have an entry made in any record or register that is maintained under this Chapter or to have any such entry omitted or amended: Provided that if any person is aggrieved as to any right of which he is in possession, by an entry made in any record or register maintained under

this Chapter, he may institute a suit against any person denying or interested to deny his title to such right, for a declaration of his right under Chapter VI of the Specific Relief Act, 1877; and the entry in the record or register shall be amended in accordance with any such declaration".

27. Thus, it is clear that though this Court cannot give a direction as such by way of consequential relief to the Revenue Officers to amend the entry, it is incumbent for the plaintiff to file a suit for declaration of his right and take steps in accordance with S. 135 of the Karnataka Land Revenue Act, 1964, if he so desires. Hence, the suit for declaration is maintainable.

28. In the result, therefore, the appeal is partly allowed. Plaintiff's suit is partly decreed. It is declared that what he has sold under Ex. P 1 in favour of the defendant is only 2 guntas of land. His prayer for consequential relief is hereby dismissed. The judgments and decrees of the Courts below are set aside to the extent the appeal is allowed.

There shall be no order as to costs of this proceeding throughout.