

(2012) 08 KAR CK 0185
In the Karnataka High Court
Case No : Regular First Appeal No. 2558 of 2007

Dr. Anitha C

APPELLANT

Vs

Sri Gunashekar. V.G, Sri K. Shantharaju and Others

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, 151
Mysore Court-fees and Suits Valuation Act, 1958 — Section 66

Citation : (2012) 08 KAR CK 0185

Hon'ble Judges : H. Billappa, J

Bench : Single Bench

Advocate : V.K. Naik Counsel for M/s. GSV Assts. in R.F.A. No. 2558/2007 and Sri. B.V. Malla Reddy, in RFA. CROB. No. 15/2008, for the Appellant; B.V. Malla Reddy, for R1, Sri. G. Devaraj and G. Arun Counsels for R2 (a to d), Sri. Keshav R. Agnihotri Counsel for R3, for the Respondent

Judgement

H. Billappa

1. The appellant Dr. Anitha. C., the first respondent Sri. V.G. Gunashekar, Sri. Ashok the Power of Attorney holder of the respondents 2(a) to (d), and Sri. Sridhar Koujalagi the respondent No. 3 and the learned counsel for the parties are present before the Court. They have filed a compromise petition along with sketch under Order XXIII Rule 3 r/w. section 151 of CPC, which reads as under:

COMPROMISE PETITION

UNDER ORDER 23 RULE 3 R/W Sec. 151 OF THE CODE OF CIVIL PROCEDURE

The Parties to the above suit submit as follows:

1. The ranks of the parties are hereby referred as stood in the Appeal in RFA. No. 2558/2007.
2. The Respondent No. 2(a) to (d) are representing through their power of attorney holder as the Respondents No. 2(a), (b) and (d) have executed the

Special Power of Attorney dtd.31-07-2012 and the Respondents No. 2(c) has executed the General Power of Attorney dtd. 30-07-2009 in favour of one Ashoka to act on behalf of them and as per the power given under the said power of attorneys, the said PA holder has participated in the above Appeal and this compromise petition.

3. That the parties, at the intervention of their relatives, friends and well wishers have reached settlement and accordingly they have entered into this compromise.

4. It is admitted by all the parties that the total measurement available towards North to South direction of the Sites No. 235, 236 and 237 is 148 ft and actually sold by the Respondent No. 2 is 160 ft towards North to South direction to the Appellant, Respondent No. 1 and 3 and therefore the dispute has been arisen between the parties in respect of the measurement of North to South direction and therefore the suit in O.S. No. 7008/2002 has been filed by the Respondent No. 1 on the file of the Addnl. City Civil Judge (CCH-38), at Bangalore City for the relief of declaration and other consequential reliefs. The same has been decreed in his favour by a Judgment and decree dtd.20-11-2007 and by challenging the said judgment and decree the Appellant has filed the above Appeal and the Respondent No. 1 has filed the above Cross Appeal by challenging the findings given on the issue No. 4 and 5. It is admitted by all the parties that the misdeeds/acts of the Respondent No. 2 resulted in filing of the afore said disputes as he has sold non existing land of 12ft towards North to South direction of the said sites. Respondent No. 2 has also confirmed in his written statement that part 12 ft of southern portion of site No. 237 has been taken to form the southern side road and he has requested all three registered owners to settle the matter amicably with available land there. The court commissioner's report corroborates these facts and in fact the North to South measurement given by Court Commissioner is 150" 7". The BBMP has utilised 2" 7" on southern side of site No. 237 for the forming of drainage and hence the available extent from North to South is physically 148 feet now.

5. As per the terms and conditions agreed between the parties the sketch showing the alignment of site numbers 235, 236, 237 at the site "SAI ENCLAVE" in Survey No. 88, Kothanur Village, JP Nagar 7th Phase has been prepared by the Government approved Civil Engineer in the presence of all the parties and which showing the Actual measurements and boundaries of the vacant site No. 235, 236 and 237. On the basis of actual measurement available in the spot the said sites have been demarcated and pursuant to which the sketch has been prepared and the Blue Print is annexed to this compromise petition and the same has been treated as part and parcel of this compromise petition. The Respondents No. 2(a) to 2(d) here by declare and confirm that the arrangement shown in this sketch will prevail over any previous arrangements either physically or through any available layout plans.

6. Originally one Arun Kumar has purchased the site No. 235, Khatha No. 111, Assessment No. 88, measuring East to West 50 Ft. and North to South 80 Ft.,

formed in the land in Sy. No. 88 of Kothanur Village, Bangalore South Taluk, from the Respondent No. 2 Shantharaju under the registered sale deed dtd.29-08-1997 and the said Arun Kumar has in turn sold the same to the Appellant under the registered Sale Deed dtd.28-03-2001.

As agreed between all the parties, the Appellant is restricting the measurement of the said site No. 235 North to South 68 Ft. instead of 80 feet and the Appellant is moving 10 ft x 68 ft towards eastern side of her site as the said unsold land belongs to the second respondent and thereby measurement of the said site East to West 60 feet instead of 50 feet and after the modification of the measurements no loss in the total area of the said site. The said modified measurements and the description of the said site is morefully described in the schedule to this compromise petition and hereunder and hereinafter called as Schedule-A property.

7. Originally one Smt. Seema and Smt. Suvarna have purchased the vacant site No. 236, Khatha No. 111, Assessment No. 88, measuring East to West 60 Ft. and North to South 40 Ft., formed in the land bearing Sy. No. 88 of Kothanur Village, Uttarahalli Hobli, Bangalore South Taluk from the Respondent No. 2 Shantharaju under the registered sale deed dtd. 13-01-1998 and the said Smt. Seema and Smt. Suvarna have inturn sold the same to the Respondent No. 1 under the registered Sale Deed dtd. 15-5-2002 for the value and valid sale consideration.

As per the terms and conditions agreed between the parties the northern boundary of site No. 236 starts after 68th feet leaving 68 ft vacant space for the site No. 235 from north side 30 ft road and the said site has a measurement of North to South 40 feet and East to West 60 ft and it is adjacent to the Site No. 235 and the Respondent No. 1 is retaining the same measurements and total area of the site as stood in his absolute Sale Deeds dtd. 15-5-2002 and 13-01-1998. The description of the said site belongs to the Respondent No. 1 is morefully described in the schedule to this compromise petition and hereunder the hereinafter called as Schedule-B property.

8. The Respondent No. 3 has purchased the vacant site No. 237, Khatha No. 111, Assessment No. 88, measuring East to West 60 Ft. and North to South 40 Ft., formed in the land bearing Sy. No. 88 of Kothanur Village, Uttarahalli Hobli, Bangalore South Taluk, under the Sale Deed dtd. 16-01-1998. As per the terms and conditions agreed between the parties the northern boundary of site No. 237 starts after 108th Feet leaving 68 ft vacant space for the site No. 235 and 40 ft for site No. 236 from the north side 30 ft road and the said site No. 237 measurement of North to South 40 feet and East to West 60 ft and it is adjacent to the site No. 236 and the Respondent No. 3 is retaining the same measurement and total area of the site as stood in his absolute Sale Deed dtd. 16-01-1998. The description of the said site belongs to the Respondent No. 3 is morefully described in the schedule to this compromise petition and hereunder and hereinafter called as Schedule-C property.

9. The Respondent No. 2 has sold the Schedule-A, B and C properties in the name and favour of the Appellant, Respondents No. 1 and 3 respectively. During the pendency of the above appeal the Respondent No. 2 died leaving behind the Respondents No. 2(a) to 2(d) and his legal representatives. The Respondents No. 2(a) to 2(d) are in the place of Respondent No. 2 the original owner of the land in Sy. No. 88 of Kothanur Village. The Respondents No. 2(a) to (d) are hereby making good the title of the Appellant, Respondents No. 1 and 3 in respect of the Schedule properties. In between the Schedule properties if there is any unsold land is available the Respondents No. 2(a) to (d) are giving up their right, "title and interest to the Appellant, Respondents No. 1 and 3 to perfect their right, title and interest over the Schedule properties and further they hereby ratify and confirm the title and possession of the Appellant, Respondents No. 1 and 3 over the Schedule properties by relinquishing/releasing their rights if any.

10. As agreed between the parties, the Sale Deeds of the parties in respect of the Schedule properties stands modified to the extent agreed in this compromise petition. The parties are at liberty to get Rectification of their respective sale deeds as modified in this compromise petition.

11. All the parties have admitted and hereby confirming that they are absolute owners in possession and enjoyment of their respective sites as mentioned in this compromise petition.

12. The Respondent No. 1, Respondents No. 2(a) to (d) and Respondent No. 3, are hereby declaring that the Appellant is the absolute owner in possession and enjoyment of the Schedule-A property and in future they shall not claim any rights, interest and title over the Schedule-A property.

13. The Appellant, Respondents No. 2(a) to (d) and Respondent No. 3 are hereby declaring that the Respondent No. 1 is the absolute owner in possession and enjoyment of the Schedule-B property and in future they shall not claim any rights, interest and title over the Schedule-B property.

14. The Appellant, Respondent No. 1 and Respondents No. 2 (a) to (d) are hereby declaring that the Respondent No. 3 is the absolute owner in possession and enjoyment of the Schedule-C property and in future they shall not claim any rights, interest and title over the Schedule-C property.

15. It is further agreed between the parties that there are no claims against each other from this day with respect to any portion of the Schedule properties and the parties hereby undertaking that they shall not interfere with the peaceful possession and enjoyment of each other's property.

16. It is agreed between the parties that after this compromise the parties are entitled to get the transfer of Khatha in the registers of Bruhath Bangalore Mahanagara Palike in their respective names with respect to their respective sites and further they are at liberty to get plan sanctioned and to obtain building licence and other permissions from the Bruhath Bangalore Mahanagara Palike

and other statutory authorities for constructing the buildings or other structure.

17. It is agreed between all the parties that in future for any reason if there is any loss of the measurement/area/portion of any schedule property the parties shall restrict their entitlement for the remaining area available in their respective schedule property and they shall not claim the said loss of measurement/area against each other's property.

18. It is agreed between all the parties that the contentions and allegations raised by all the parties against each other in the suit and in the above appeal and cross objection is hereby given up save in so far as the rights, title and interest as restricted herein by all the parties.

19. That all the Parties have collectively discussed and finalized the terms and conditions mentioned in this compromise petition and have clearly understood and contents of this compromise petition and have affixed their respective signatures and therefore it is irrevocable in nature.

Wherefore the Appellant, Respondents No. 1, 2(a) to (d) and 3 in the above case humbly pray that this Hon"ble Court may be pleased to record the above Compromise and dispose of the above Appeal and Cross Appeal in terms of the above compromise in the interest of justice equity and law.

SCHEDULE-A

All that piece and parcel of the property bearing vacant site No. 235, Khatha No. 111, Assessment No. 88, measuring East to West 60 Ft. and North to South 68 Ft., in the layout called "SAI ENCLAVE" formed in the land bearing Sy. No. 88 of Kothanur Village, Uttarahalli Hobli, Bangalore South Taluk and presently within the limits of BBMP Ward No. 195, J.P. Nagar, 7th Phase, Bangalore and bounded on the

East by

:

Site No. 234

West by

:

Road

North by

:

Road

South by

:

Site No. 236

SCHEDULE-B

All that piece and parcel of the property bearing vacant site No. 236, Khatha No. 111, Assessment No. 88, measuring East to West 60 Ft. and North to South 40 Ft., in the layout called "SAI ENCLAVE" formed in the land bearing Sy. No. 88 of Kothanur Village, Uttarahalli Hobli, Bangalore South Taluk and presently within the limits of BBMP Ward No. 195, J.P. Nagar, 7th Phase, Bangalore and bounded on the

East by

:

Site No. 233

West by

:

Road

North by

:

Site No. 235

South by

:

Site No. 237

SCHEDULE-C

All that piece and parcel of the property bearing vacant site No. 237, Khatha No. 111, Assessment No. 88, measuring East to West 60 Ft. and North to South 40 Ft., in the layout called "SAI ENCLAVE" formed in the land bearing Sy. No. 88 of Kothanur Village, Uttarahalli Hobli, Bangalore South Taluk and presently within the limits of BBMP Ward No. 195, J.P. Nagar, 7th Phase, Bangalore and bounded on the

East by

:

Site No. 232

West by

:

Road

North by

:

Site No. 236

South by

:

Road

The appellant, the first respondent, the Power of Attorney Holder of the respondents 2(a) to (d) and the respondent No. 3 who are present before the Court, admit the terms of compromise and its due execution.

2. The learned counsel for the parties submit that the compromise may be accepted and the appeal and the cross-objection may be disposed of, in terms of the compromise.

3. The compromise is in the best interest of the parties and therefore, accepted. Accordingly, the appeal and the cross-objection are disposed of in terms of the compromise. The judgment and decree passed by the Trial Court in O.S. No. 7008/2002 stands modified in terms of the compromise. Draw up the decree in terms of the compromise.

Office is directed to refund the court fee permissible u/s 66 of the Karnataka Court Fees and suit Valuation Act.

The decree may be registered as required under law.