

(2014) 09 KAR CK 0256
In the Karnataka High Court
Case No : R.F.A. No. 1421/2011

Durgappa

APPELLANT

Vs

A.K. Mallappa

RESPONDENT

Date of Decision : 04-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 27, 30, 80, 96
Karnataka Land Revenue Act, 1964 — Section 133, 45

Citation : (2014) 09 KAR CK 0256

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

Bench : Division Bench

Advocate : R. Gopal, Advocate for the Appellant; P.N. Harish, Advocate and B.P. Radha, GP, Advocate for the Respondent

Final Decision : Dismissed

Judgement

A.V. Chandrashekara, J.—This is a regular appeal filed u/s 96 of CPC by the plaintiffs of an original suit bearing O.S. No. 92/2003 which was pending on the file of the Court of I Addl. Civil Judge (Sr. Dn.), at Shimoga.

2. Suit filed for the reliefs of declaration of title and permanent injunction has been dismissed after contest vide judgment dated 13.01.2010. The property in respect of which suit had been brought before the Trial Court measures 12 acres 6 guntas in Sy. No. 62 of. Haramaghatta Village, Shimoga Taluk of Shimoga District. A portion of the land in the suit schedule property has been alienated by the sale deeds dated 20.03.1968, 21.07.1969 and 13.03.1975 respectively by the first defendant. One of the main reliefs sought is to the effect that the sale deeds so effected are null and void and do not bind them. Further relief has been sought that the revenue entries effected vide P.D.A. No. 80/2001-02 is not in accordance with law and for the consequential mandatory injunction directing the second defendant to collect the award amount which was illegally disbursed in favour of defendants 1 to 4 and for the consequential relief of permanent injunction to restrain defendants 1 to 4 from interfering with their peaceful

possession of the schedule property.

3. Facts leading to the filing of the present suit are as follows:

First plaintiff claims to be the son of one person by name Hanuma was also called as Hanumanthappa. According to the plaintiffs, the land in question was granted in favour of Sri Hanuma @ Hanumanthappa @ Karihanumappa, S/o. Guthyamma. The said Hanuma was having two male children i.e., plaintiff No. 1 and Adivappa father of plaintiffs 2 to 4 and the said Adivappa is stated to have died two years prior to the filing of the suit. Smt. Guthyamma was stated to be a Devdasi. According to the plaintiffs, the grant was made in favour of Hanuma @ Hanumanthappa, since he belonged to Scheduled Caste i.e., Adidravida community. According to the plaintiffs, Hanuma @ Hanumanthappa, was the son of Guthyamma and that the said Guthyamma pre-deceased his son. Hanuma @ Hanumanthappa, the father of the first plaintiff is stated to have died on 20.06.1950. The said Hanuma @ Hanumanthappa, was stated to be personally cultivating the schedule property and after his death the first plaintiff and his brother Adivappa started cultivating the land and that they were ill-literates.

4. Plaintiffs are class-I heirs of deceased Hanuma @ Hanumanthappa, and second plaintiff is stated to be managing the entire affairs of the joint family and hence, he has been looking after the schedule property. Second plaintiff is stated to have come to know about the land acquisition proceedings when a channel was being dug in the schedule property for Upper Tunga Project. Plaintiffs were under the impression that the land acquisition authorities would issue notices to them. However, no notices were given to them and defendants 1 to 3 somehow got the award amount to the seventh defendant by misrepresenting the facts. Since the seventh defendant did not make any proper enquiries before disbursing the award amount, they had to file a writ petition in W.P. No. 46161/2002 with a direction to the seventh defendant to recover the amount of Rs. 2,11,113/- from the first defendant and for a reference of the dispute u/s 30 to the jurisdictional Reference Court.

5. Plaintiffs approached some literate persons in the Village and they were advised to file an application in Form No. 7 before the Land Tribunal, Shimoga, and since the matter was not taken up by the Land Tribunal, a writ petition was filed in W.P. No. 35596/2001 for a direction to the Land Tribunal to dispose the case bearing LRF(T) ISA No. 11011/2011:91-92. Defendant No. 1 is stated to have unauthorisedly got his name entered in the revenue records though his father was not in anyway concerned with the schedule property. Revenue authorities dismissed their appeal in PDA No. 80/2001-03, merely on the ground that plaintiffs had filed a writ petition in W.P. No. 35596/2001 in regard to claiming tenancy rights. Hence, those proceedings do not bind them, is their assertion.

6. First defendant is stated to have sold 3 acres of land to the second defendant through a registered sale deed dated 21.07.1969 and the had no authority to do

so and that his father Hanumappa S/o. A.K. Ningappa was not the owner of the schedule property at all. First defendant is stated to have sold 3 acres of land in the suit out of suit schedule property in favour of Surahonne Anandappa through a registered sale deed on 20.03.1968 and the said sale deed is also stated to be an invalid sale deed. Further, mutation entries effected on the basis of these two sale deeds are illegal entries, is the averment.

7. Another sale deed dated 13.03.1975 is also stated to be an illegal sale deed. Plaintiffs are stated to be in lawful possession of the entire schedule property, except the land acquired by the seventh defendant, even to this day and therefore, they had prayed for the reliefs of declaration of title and permanent injunction.

8. First defendant has filed detailed written statement denying all the material averments. First defendant has called upon the plaintiffs to prove the contents of the plaint strictly. The averment that one Hanuma @ Hanumanthappa, was the father of plaintiffs and that he was the grantee of the land in question has been specifically denied. The averment that father of the first plaintiff and grand father of plaintiffs 2 to 4 was in possession of the schedule property till his death and on plaintiffs succeeding to the same has also been specifically denied.

9. Suit of the plaintiffs is stated to be not maintainable either in law or on facts, more particularly, when the plaintiffs have admitted the title of the first defendant when they chose to file an application before the Land Tribunal seeking occupancy rights in their favour. According to them, Hanuma S/o. AK. Ningappa, was the father of the first defendant and he was also called as Hanuma @ Hanumanthappa. Entire 16 acres 6 guntas in Sy. No. 62 was purchased by the father of the first defendant in a darkast auction and he paid the auction amount vide challan No. 82/38-39 and he was put into possession of the same soon after the auction. Father of the first defendant was stated to be in lawful possession of the schedule property till his death. According to the first defendant, his father sold 3 acres out of 16.06 acres in favour of one Surahonne Anandappa, along with the first defendant through a registered sale deed dated 20.03.1968 for valid consideration and the said purchaser was put into possession of the same. It is further averred that the first defendant and his father sold 2 acres of land which is the schedule property in favour of second defendant Malleshappa by means of a registered sale deed dated 21.07.1969 and the second defendant was put into possession of 2 acres so purchased by him. After the death of Hanumappa S/o. Ningappa, first defendant, being the only son., inherited the remaining extent of land in Sy. No. 62, and later on, he sold an extent of 1 acre in favour of fourth defendant S.A. Manjappa on 13.03.1975 through a registered sale deed and further he is stated to be in possession of 11.06 acres. He was in possession of 11.06 acres of land till a portion of the land was acquired by the Government for excavating channel for Tungabhadra Project.

10. It is further averred that the first plaintiff and his brother Adivappa were greedy persons and they wanted to knock off this property by getting their

names, some how, inserted in revenue records without any basis. It is stated that plaintiffs had filed an application seeking occupancy right before the Land Tribunal in Shimoga and the said application was dismissed holding a preliminary enquiry. It is stated that the land in question was not an inam land and hence Form No. 7 was not applicable:. Against the said order passed on 19.04.1993 a writ petition was filed in W.P. No. 35596/2001 before this Court stating that they had filed an application in Form No. 7 and not in form No. 1. Ultimately the said application also came to be dismissed.

11. Seventh defendant is stated to have acquired a portion of the land from the first defendant for excavating a channel in the schedule property and that amount has been awarded in his favour and that he has lawfully received the compensation awarded by the Land Acquisition Officer.

12. It is further stated that plaintiffs had even gone to the extent of making an application before the Assistant Commissioner on the ground that the sale deeds executed by the first defendant were in contravention of the provisions of Karnataka SC/ST (Prohibition of Transfer of Certain Lands), Act, 1978, and that the said application was also dismissed holding that the land in question was not a granted land.

13. It is stated that the revenue authorities have properly dismissed the appeal of the plaintiffs upholding the incorporation of the first defendant and his purchasers and hence the suit is not maintainable.

14. Second defendant H.K. Malleshappa, has filed detailed written statement denying all the material averments and the defence taken up by the second defendant is on the basis of the written statement filed by his vendor the first defendant. Defendant Nos. 3 and 4 have also filed detailed separate written statements and the same is on the lines of the written statement filed by defendant Nos. 1 and 2. Defendant No. 6 has filed detailed written statement supporting the case of defendant Nos. 1 to 4 in regard to the incorporation of the revenue entries. Defendant Nos. 5 and 7 have adopted the written statement filed by defendant No. 6.

15. On the basis of the above pleadings following issues came to be framed on 06.01.2007:

1. Whether the plaintiffs prove that they are the absolute owners of the suit schedule property?.

2. Whether the plaintiffs prove that the sale Deed executed by the father of the defendant No. 1 dated 20.03.1968 and 21.07.1969 in favour of defendant Nos. 2 and 3 is null and void and it is not binding on the plaintiffs?

3. Whether the plaintiffs prove those entries under P.D.A. 80/2001-2002, is not in accordance with law?

4. Whether the plaintiffs prove that the Sale Deed dated: 13.03.1975 executed

by defendant No. 1 in favour of the 4th defendants is null and void and it is not binding on the plaintiffs?

5. Whether the plaintiffs prove that the defendant No. 7 in collusion with defendants 1 to 4 illegally disbursed award amount in favour of defendants 1 to 4 in respect of S. No. 62 of the Haramaghatta village?

6. Whether the plaintiffs prove that they are in possession and enjoyment of the remaining extent of land measuring 12 acres 6 guntas is S. No. 62 of Haramaghatta village, as on the date of the suit?

7. Whether the plaintiffs are entitled for the relief of declaration as prayed for?

8. Whether the plaintiffs are entitled for the relief of Mandatory Injunction as prayed for?

9. Whether the plaintiffs are entitled for the relief of permanent injunction for?

10. Whether the suit is not maintainable?

11. Whether the defendant No. 1 proves that his father purchased 16 Acres 6 guntas of land in S. No. 62 of Haramaghatta Village in Darkasth auction in No. ADL 3/38-39 and he was absolute owner and in possession of the said land?

12. Whether the suit is bad for mis joinder and non joinder of necessary parties?

13. Whether the suit is barred by the principles of Res-judicata?

14. Whether the suit is barred by limitation?

15. Whether the court fee paid is insufficient?

16. Whether this Court has no jurisdiction to try this suit?

17. Whether the suit is bad for non-compliance of mandatory provisions of section 80 of C.P.C. and under Sec. 27 of C.P.C.?

18. What Order of Decree?

16. Second plaintiff is examined as PW 1 and two witnesses have been examined on behalf of the plaintiffs. As many as 28 exhibits have been got marked on behalf of the plaintiffs. First defendant is examined as DW 1 and second defendant is examined as DW 2 and third defendant is examined as DW 3. In all 31 exhibits have been got marked on behalf of the defendants. Ultimately, the learned I Addl. Civil Judge (Sr. Dn.) & CJM, at Shimoga, has answered the issues 1 to 9, 13, 16 in the negative and remaining issues in the affirmative. Consequently, suit has been dismissed. It is this judgment and decree which is called in question on various grounds as set out in the appeal memo.

17. We have heard the arguments of the learned counsel appearing for the parties at length.

18. After going through the records and hearing the arguments, the following

points arise for our consideration:

- 1 Whether the Trial Court is justified in holding that the land in question was not purchased by the father of plaintiff No. 1 and grandfather of plaintiffs 2 to 4 but by the father of defendant No. 1?
2. Whether the alienations made by first defendant and his father bind the plaintiffs?
3. Whether plaintiffs are in lawful possession of the suit schedule property?
4. Whether any interference is called for by this Court and if so, what extent?

Re. Point Nos. 1 and 2:

19. Both these points are inter-related and hence they are taken up together for common discussion.

20. Case of the plaintiffs, as projected before the Trial Court in the plaint is that, one person by name Hanuma S/o. Hanumappa, was the father of the first plaintiff and paternal grandfather of plaintiffs 2 to 4 and the land in question was granted in his favour. In paragraph-2 of the plaint, it is averred that 16.06 acres in Sy. No. 62 of Haramaghatta Village in Shimoga Taluk, was granted in favour of Hanuma @ Hanumanthappa @ Karihanumappa S/o. Smt. Guthyamma and that he was the father of the first plaintiff and deceased Adavappa the father of plaintiffs 2 to 4. It is further averred that they belonged to Scheduled Caste i.e., Adidravida community and that Guttyamma died prior to her son Hanuma. The fact that Hanuma @ Hanumanthappa, father of plaintiff No. 1 and grandfather of plaintiffs 1 to 4 died on 20.06.1950 is not seriously disputed. What is disputed is the very alleged grant stated to have been made by the Government in favor of one person by name Hanuma @ Hanumanthappa @ Karihanumappa.

21. Plaintiff No. 2 is examined as PW 1. He has reiterated the contents of the plaint in the affidavit filed in lieu of examination-in-chief. What is asserted by him in examination-in-chief as well as in the cross-examination is that father's name was Adivappa and first plaintiff is the brother of his father. It is deposed in para-1 of his examination-in-chief that his paternal grandfather's name was Hanuma and he was also called as :: Hanumappa @ Karihanumappa. Admittedly, Adivappa father of second plaintiff i.e., PW 1 died two years prior to the filing of the suit. It is the specific case, as projected in paragraph-2 of affidavit filed in lieu of examination-in-chief is that the property in question was granted in favour of his paternal grandfather as he belonged to Scheduled Caste. Neither the grant certificate nor the saguvali certificate stated to have been issued in favour of the grantee are produced.

22. Ex. P1 is the genealogical tree of the family of plaintiffs given by the jurisdictional Village Accountant. Such a document cannot be considered as an acceptable document in the light of the very author as the Village Accountant being not examined. What is mentioned by the Village Accountant, the author of

Ex. P1 is that the said genealogical tree is prepared on the say of the second plaintiff Chandrappa. Ex. P2 is the record of rights of land bearing Sy. No. 62 and name of Hanumanthappa, is mentioned as the khatedar and the acquisition of title is passed on a darkasth auction which bears ADH No. 3/38-39 and challan No. 82/38-39. On the basis of the said darkasth, name of the bidder came to be incorporated in the mutation register bearing No. 421 dated 29.09.1938 which came to be executed by the jurisdictional Tahsildar on 03.11.1938. Ex. P3 is the index of land of Sy. No. 62 measuring 16.06 acres which bears the name of Anandappa and Malleshappa, the defendants as khatedar to an extent of 3 acres and 2 acres respectively. Ex. P4 is the pahani paisal patrika incorporating the name of Hanuma S/o. A.K. Ningappa, as the khatedar to an extent of 16.60 acres. This Ex. P4 is issued for the years 1959-60 and 1961-62. Similarly, Ex. P5 is the Hasalu patrika of Sy. No. 62 for the year 1957-58 in which the name of Hanumanthappa S/o. A.K. Ningappa, is mentioned as the person in possession.

23. Case of the plaintiffs, as projected in the plaint is that, the land bearing Sy. No. 62 measuring 16.06 acres was granted in favour of the father of the first plaintiff as he belonged to Adidravida caste, but the very document produced vide Ex. P2 would disclose that it was not a grant made in favour of Hanuma, but it was darkasth auction conducted in the year 1938. If really the land in question had been purchased by the father of the first plaintiff, nothing would have come in their way to produce the auction certificate issued by the authorities.

24. Ex. D6 is the certified copy of the application filed in Form No. 7 u/s 45 of Karnataka Land Revenue Act before the Land Tribunal, Shimoga, by Adivappa S/o. Karihanumanthappa, i.e., father of plaintiffs 2 to 4 seeking occupancy rights in his favour on the ground that he was in possession of the property for over a period of 40 years. He has mentioned the name of Hanumanthappa, S/o. A.K. Ningappa, as the khatedar-cum-owner of the land in question. The said application was taken up in case bearing L.R.F. (T) H.G.T. 9/76 and an order was passed on 03.07.1976 by the Land Tribunal, Shimoga, holding that no question of tenancy was involved. Application filed in Form No. 7 vide Ex. D6 by Adivappa father of plaintiffs 2 to 4 is a clear admission of the title of the father of first defendant as the owner. If Hanumappa S/o. AK. Ningappa, was not the owner of land in Sy. No. 62, his name would not have been shown as the owner in Ex. D6 the application filed by Adivappa.

25. Ex. D8 is the certified copy of the order passed by this Court in WP. No. 35596/2001 (LR) on a writ petition filed by Chandrappa i.e., plaintiff No. 2 and first plaintiff Durgappa making Land Tribunal and Mallappa as parties. They had sought for a direction in the nature of certiorari to set aside the order dated 19.04.1993 passed by the Land Tribunal in case bearing ISA 11011/11:91-92 and to consider the application so filed as one in Form No. 7. The said writ petition was allowed and a direction was issued to the Land Tribunal. Ultimately, the Land Tribunal chose to dismiss the said application on 19.04.1993 which is evident from Ex. D10 the certified copy of the order sheet maintained by the

Land Tribunal, Shimoga. It is specifically held that the land in question is a hiduvali land and not a tenanted land. Ex. D9 is the application filed by Adivappa before the Land Tribunal seeking occupancy right in respect of 4 acres of land in Sy. No. 62 showing deceased Hanumappa S/o. Ningappa, as the owner of the property in question. If the suit could be filed for the relief of declaration of title in respect of entire extent of land in Sy. Nos. 62/1, 62/D2 and 62/D3 out of Sy. No. 62 it is ununderstandable as to how it could be restricted to 8 acres in Ex. D6 the earlier application filed in Form No. 7 by Adivappa and in Ex. D10, in the subsequent application filed to an extent of 4 acres. Ex. D11 is the considered order dated 09.02.2004 passed by the Land Tribunal in I SA HRT 1/91-92 holding that application had been filed under the provisions of Karnataka Inams Abolition Act and that the same is not applicable as the land bearing Sy. No. 62 is a hiduvali land and not an inam land.

26. At one breath plaintiffs assert that the property in question was granted to Hanuma @ Hanumappa, by the Government. At another breath they state that they had filed application before the Land Tribunal seeking occupancy right on the ground that it was a tenanted land and subsequently, on the ground that it was an inam land of which they were tenants. This is nothing but blowing hot and cold together.

27. Incorporating the name of father of the first defendant as the owner in the applications filed before the Land Tribunal is nothing but a clear admission, as the same is made before a quasi-judicial authority. Right asserted by the first defendant is vindicated by the sale deed executed in favour of defendants 2 and 4 and the same being acted upon by the purchasers. The names of the purchasers have also been incorporated in the revenue records on the basis of registered sale deeds executed by the first defendant's father u/s 128 of Karnataka Land Revenue Act, 1962.

28. PW 1 has feigned ignorance as to why he chose to file an application before the land Tribunal seeking occupancy right in his favour pertaining to 4 acres of land. He has deposed that he might have filed such application on the say of some of the villagers. He has feigned ignorance about the name of the father of the first defendant being shown as the owner in the applications filed before the Land Tribunal and the writ petition filed in W.P. No. 46161/2002. He is also one of the petitioners in the said writ; but has feigned ignorance about the same. He has deposed that he had not gone to Bangalore to instruct advocates to file writ petition and that he had only sent some of his people to Bangalore. He has feigned ignorance about his father having filed an application before the Land Tribunal seeking occupancy right in his favour in the year 1991. Similarly, he has feigned ignorance about the dismissal of Revenue Misc. 34/200.2-03 by the Deputy Commissioner. He has admitted about the factum of compensation being given to the second defendant relating to the acquisition of 2 acres of land by the seventh defendant for Tungabhadra Project. He has even gone to the extent of denying the factum of filing application before the Land Tribunal seeking

Occupancy. Right to an extent of 4 acres.

29. Name of Malleshappa finds a place included in Col. No. 9 and 10 also in Col. No. 12(2) of RTCs ever since he purchased the suit schedule property and this is evident from Ex. D19 the RTC. He has paid land revenue to the land purchased by him in Sy. No. 62 and that is evident from the entries found in patta book marked as Ex. D18 and the payment of tax is evidenced from tax paid receipts. If a person is not possession, question of paying of tax would not arise. Similar is the case with another purchaser. The names of the purchasers have been mutated in the revenue records consequent upon the sale deeds and they are forthcoming from Ex. D28 and 29. The learned Judge, on an overall assessment of oral and documentary evidence, has come to the conclusion that first defendant and his father have asserted their right pursuant to the purchase made way back in the year 1938 conducted by the Government. Even Surahonne Anandappa's name is also found in the RTC marked as Exs. P11 to P13 since he is one of the purchasers from the first defendant and his father.

30. The learned Judge has analysed the entire oral and documentary evidence in right perspective and has come to the conclusion that the plaintiffs have thoroughly failed to prove that the land in question bearing Sy. No. 62 was granted in favour of the father of the first plaintiff i.e., grandfather of plaintiffs 2 to 4. Consequently, the plaintiffs have not been able to substantiate even remotely about assertion of title by the first defendant and his father and the alienations made through registered three sale deeds. Nothing has been culled out from the mouth of defendants 1 to 3 to discredit their deposition. The learned Judge has assessed the entire evidence on the touchstone of intrinsic probabilities. The learned Judge has taken into consideration the inconsistent stand taken by the plaintiffs in their plaint vis-?-vis evidence adduced before the Court. The inherent inconsistencies have been assessed in the light of assertion of title by first defendant and consequently, alienation made through three registered sale deeds. Suffice to state that the Trial Court has adopted right approach to the real state of affairs. Hence, point Nos. 1 and 2 are answered in the affirmative.

Re. Point No. 3:

31. Plaintiffs averred that they are in lawful possession and enjoyment of the suit schedule property. In a case like this, documentary evidence prevails over the oral evidence. Evidence produced by the defendants amply prove the possession of not only the first defendant in respect of the remaining area but also about the possession of area held by the purchasers i.e., Surahonne Anandappa and Malleshappa the purchasers. The names of the purchasers are incorporated not only in Col. No. 9 also in Col. No. 12(2) of RTC, a column earmarked for incorporating the names of the persons who are in possession of the agricultural land. Apart from this, the first defendant as well as the purchasers have paid land revenue to the Government regularly and they are evidenced by documents which are marked as exhibits. We do not find anything in regard to the averment

made by the plaintiffs that they are in possession except an assertion in the examination-in-chief. The factum of possession is not substantiated in any manner by the plaintiffs. On the other hand, the defendants have been able to effectively prove that they are in possession of the suit schedule properties. In view of the incorporation of the names of the first defendant and the purchasers and in the land revenue records, presumption will have to be drawn u/s 133 of Karnataka Land Revenue Act, 1964. Those entries are genuine entries and there is nothing to disbelieve the authenticity of the same. Viewed from any angle, plaintiffs have thoroughly failed to prove that they are in possession of the property.

32. It is in this regard, the Trial Court has specifically held that the suit of the plaintiffs is barred by time. If a person is in possession of the land and only challenges the sale deed, the relief of declaration will have to be sought within three years from the date of the right to suit. Admittedly, plaintiffs are not at all in possession of the schedule property and on the other hand, the defendants are in possession of the schedule property. The suit is not filed within 12 years from the date of alleged dispossession and even on that ground also the suit is specifically barred by time. Hence, point No. 3 is answered in the affirmative.

Re. Point No. 4:

33. In view of the findings on point Nos. 1 to 3, absolutely no interference is called for by this Court and the appeal is liable to dismissed.

ORDER

Appeal filed u/s 96 of CPC is dismissed by upholding the judgment and decree of the Trial Court passed in O.S. No. 92/2003 on the file of Court of I Addl. Civil Judge (Sr. Dn.), at Shimoga, with costs.