

(2015) 09 KAR CK 0279
In the Karnataka High Court
Case No : R.S.A. No. 5487/2012

Fakir and Others

APPELLANT

Vs

Durgappa and Others

RESPONDENT

Date of Decision : 02-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Electricity (Supply) Act, 1948 — Section 82

Citation : (2015) 09 KAR CK 0279

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : Jagadish Patil, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

B. Veerappa, J.—Shri Shivaraj P. Mudhol, learned counsel is directed to take notice for respondent Nos. 2 to 4.

2. This appeal is filed by the defendant Nos. 4 and 5 against the judgment and decree dated 10.02.2012 made in R.A. No. 52/2004 on the file of the Senior Civil Judge, Honnavar, sitting at Bhatkal, confirming the judgment and decree dated 30.08.2004 made in O.S. No. 19/1997 on the file of the Civil Judge (Jr. Da), Bhatkal, decreeing the suit and directed the defendant Nos. 1 to 3 to remove electric polls in Sy. No. 41/4 from the water channel and shift the polls to the road near the suit schedule property and connect the electricity to the defendant Nos. 4 and 5.

3. It is the case of the plaintiff that land bearing Sy. Nos. 17/A3 measuring 14 guntas, 17/6 measuring 8 guntas, 41/4 measuring 18 guntas, Sy. No. 34/16 measuring 8 guntas and Sy. No. 34/17 measuring 19 guntas of Heble Village, Bhatkal Taluk was granted by Land Tribunal, Bhatkal in favour of the plaintiffs and his father and brother one Doddahuduga Yane Manjappa, Durgappa Naik as joint owners. The said Doddahuduga Yane Manjappa and Durgappa Naik died

issue less and all the suit schedule properties are being cultivated by plaintiffs and they have paid premium amount to the Government and plaintiff filed the application before the Revenue Authorities to mutate his name in the records and it is also contended that there is a short compound all around the suit schedule properties which was made to walk around the properties and also there was a water channel to take the water into the suit land. The plaintiff got every right to use the openings of the suit schedule properties attached to the said channel and the suit schedule property having good irrigation facilities, the plaintiff is personally cultivating the land, the defendants have no manner of right, title or interest over the suit schedule properties. Defendant Nos. 1 to 3 without consent of the plaintiff at the instigation of defendant Nos. 4 and 5 had tried to put up electric poles and to draw electric live wires in and over the suit schedule properties as well as in the water channels. Further it was learnt that the said electric line proposes will lead to the ice plant to be constructed by the defendant Nos. 4 and 5. If it is done, plaintiff will not be able to cultivate the suit schedule properties, as he was cultivating previously and there is no free flow of water. Further, agricultural product grown in the suit land will be destroyed and it is not possible to irrigate or use bullocks for cultivation of the plaintiff. Further there will be a leakage of power short circuit etc., and it would cause huge damage to the plaintiff. Therefore, plaintiff issued legal notice to the defendant Nos. 1 to 3. In spite of notice, they were trying to put up electric line over the suit schedule properties etc. Therefore, the plaintiff filed the suit for injunction directing defendants to remove illegal electric connection supply in and over the suit schedule properties.

4. The defendant Nos. 1 to 3 filed written statement and contended that suit filed by plaintiff is bad without issuing notice under Section 80 of the Code of Civil Procedure, 1908 and suit filed by the plaintiff is opposed to Electricity Supply Act, 1985 and also contended that there is no electric poles in any area of the suit schedule property only electric line is drawn over head and it is all doubt of the plaintiff with unnecessary fears. Hence, suit is bad and the defendant Nos. 4 and 5 being set up ice plant long back before filing of the suit, the plaintiff has no good motive in filing the suit. He was asked to make non supply of power to the ice plants. Therefore, sought for dismissal of the suit.

5. The defendant Nos. 4 and 5 also filed the written statement and denied the entire plaint averments and contended that they have established the ice plants long back and it will not effect the right of the plaintiff. Therefore, sought for dismissal of the suit.

6. Based on the pleadings, the Trial Court framed the following issues:

"i. Whether the plaintiff proves that the defendant No. 1 to 3 have illegally put up electric poles and to draw the electric lines in and over the suit property and if it is allowed he will not be able to cultivate the suit land as averred in para No. 5 of the plaint?

ii. Whether the defendant No. 4 proves that the electric poles have been installed near the water canal and it will not cause in any way hurdle to the adjacent agriculturists?

iii. Whether the defendant No. 3 proves that the suit is not maintainable without sanction as required that under Section 82 of Electricity Supply Act, 1948?

iv. Whether the plaintiff is entitled to the decree of mandatory injunction as well as permanent injunction as prayed in the plaint?

v. What decree or order?"

7. In order to establish the case, plaintiff examined himself as P.W.1 and other witness as P.W.2 and marked the documents as Exs. P-1 to P-16. Defendant in order to defend their case, examined themselves as D.Ws.1 to 3 and got marked the documents as Exs. D-1 to D-10. The Court Commissioner also examined as C.W.1 and marked documents as Exs. C-1 and C-1(a).

8. After considering the entire material on record, the Trial Court recorded a finding that the plaintiff prove that the defendant Nos. 1 to 3 have illegally put up electric poles to draw the electric lines in and over the suit property. If it is allowed, he will not be able to cultivate the suit land as averred in the plaint and also held that the 4th defendant failed to prove that electric poles have been installed near water channel and it should not cause any way hurdle to the adjacent agriculturists and the 3rd defendant failed to prove that the suit is not maintainable without sanction, as required under the provisions of Section 82 of the Electricity Supply Act, 1985 and therefore, the plaintiff is entitled the decree of mandatory injunction as well as permanent injunction, as prayed for and directed defendant Nos. 1 to 3 to remove the electric poles from Sy. No. 41/4 and shift to the road near the side of the land and enable to give power supply to the defendant Nos. 4 and 5.

9. Aggrieved by the said judgment and decree, the defendant Nos. 4 and 5 filed the appeal in R.A. No. 52/2004 before the Senior Civil Judge, Honnavar, who after hearing both the parties by the impugned judgment and decree dated 10.02.2012 dismissed the appeal and confirmed the judgment and decree of the Trial Court. Against the said judgment and decree of the Courts below, the present regular second appeal is filed.

10. It is relevant to state that the decree made by the Trial Court is against defendant Nos. 1 to 3 and the defendant Nos. 1 to 3 have not filed any appeal against the judgment and decree of the Trial Court. No decree is passed against the defendant Nos. 4 and 5 - appellants.

11. I have heard the learned counsel for the parties to the lis.

12. Shri Jagadish Patil, learned counsel for the appellants has contended that the Appellate Court has dismissed the appeal only on technical ground without going to the merits of the case. Therefore, the judgment and decree of the Trial Court

is liable to be set aside and also contended that the appellants have proved the fact that installation of poles near water channel do not cause any hurdle to the adjacent agriculturists. These aspects have not at all considered by both the Courts below. Therefore, he sought to set aside the judgment and decree of the Courts below.

13. Shri Shivaraj P. Mudhol, learned counsel for respondent Nos. 2 to 4 fairly submitted that the respondents have not challenged the judgment and decree of the Trial Court and fairly submitted that he will instruct his clients to obey the judgment and decree passed by the Trial Court.

14. I have given my thoughtful consideration to the arguments advanced by the learned counsel for the parties to the lis and perused the entire material on record.

15. In order to establish his case, plaintiff examined as P.W.1 and other witness as P.W.2 and marked documents Exs. P-1 to P-16. In order to disprove the case of the plaintiff, the 3rd defendant examined himself as D.W.1, defendant Nos. 2 and 4 examined as D.Ws.3 and 4 and marked the documents Exs. D-1 to D-10. The Court Commissioner also examined as C.W.1 and marked the documents as Exs. C-1 and C-1(a).

16. The Trial Court after considering the entire material on record has come to the conclusion that the plaintiff has proved his ownership in respect of the suit schedule properties and also held that the defendant Nos. 1 to 3 without consent of the owner i.e., plaintiff has installed electric poles in his land which definitely obstruct his agricultural operations and also it creates short circuits, since electric poles installed in the water channel and the said finding is on the basis of the evidence of P.Ws. and C.Ws. and on the basis of the report Ex. C-1.

17. Further, the Trial Court also relied upon the dictum of this Court in case of Sri Puthu Poojary and Others Vs. The Deputy Commissioner and Others, , wherein this Court has held as under:

"The act of fixing poles and laying overhead electric lines in private property will be unauthorised in the absence of prior permission of the District Magistrate when the resistance is offered by the owner of private property "

18. Admittedly, in the present case, defendant Nos. 1 to 3 have not produced any documents to show that they have obtained prior permission from the Deputy Commissioner. Therefore, held that the plaintiff prove that defendant Nos. 1 to 3 have illegally put up electric poles and to draw electric lines in and over the suit schedule property and if it is allowed, he will not be able to cultivate the suit land as averred in para 5 of the plaint and the defendant No. 4 failed to prove that electric poles been installed near water channel and it will not cause anyway hurdle to the adjacent agriculturists and also held that the plaintiff has issued prior notice to the defendants. Therefore, the contention of the defendants cannot be accepted. Accordingly, suit came to be decreed.

19. Admittedly, the Trial Court decreed the suit only against the defendant Nos. 1 to 3 directing the defendant to shift the electric poles to the road side of the land and supply power to the ice plants of the defendant Nos. 4 and 5. Defendant Nos. 1 to 3 have not challenged the said decree and same is final and conclusive binding on the defendant Nos. 1 to 3. There is no decree against the defendant Nos. 4 and 5. Still defendant Nos. 4 and 5 filed the appeal even though they are not aggrieved parties.

20. The lower Appellate Court on re-appreciating the entire material on record, concurred with the finding of the Trial Court and has held that the judgment and decree passed by the Courts below is in accordance with law. No interference is called for and the decree passed by the court below will in no way affect the rights of defendants 4 and 5 since there is a decree directing defendants 1 to 3 to supply electricity to defendants 4 and 5 by shifting the electricity poles to the road near the suit land, in order to avoid any future loss of life and damage to the property of general public. It is further held that the electricity supply is not for public purpose and it is for private use of defendants 4 and 5 and during rainy season if the water canal in the plaintiffs land overflows and in the event of fall of electricity wire due to heavy rains, there is every chance of loss of life and property of the plaintiff as well as general public due to short circuit.

21. The entire case of the plaintiff is that defendants 1 to 3 without the consent of the plaintiff and at the instigation of defendants 4 and 5 have illegally installed the electric poles near the water canal passing through the suit property and drawn electricity lines in and over the suit schedule property and the said electricity lines will lead to ice plant to be constructed by defendants 4 and 5 and if it is done the plaintiff will not be able to cultivate the suit land and carry out agricultural activities. The said claim has been proved by the plaintiff by cogent, legal evidence on record and the decree passed by the trial court in favour of plaintiffs and against defendants 1 to 3 will in no way prejudice the rights of defendants 4 and 5. Both the courts below concurrently held that the plaintiff has proved that defendants 1 to 3 have illegally put up the electric poles in the water canal passing through the plaintiffs property and drawn electricity lines in and over the suit property and if such an illegal act of defendants 1 to 3 is allowed the plaintiff will not be in a position to cultivate the suit land and defendants 4 and 5 have failed to prove that the electricity poles installed near water canal of plaintiffs property will not in any way be harmful to the plaintiff and adjacent agricultural land holders. Such a finding of fact recorded by the courts below is based on legal cogent evidence on record and the same is in accordance with law.

22. The appellant has not made out any case to interfere with the impugned judgment and decree of the courts below and no substantial question of law is involved in the present appeal.

Accordingly, the RSA is dismissed at the stage of admission without reference to the respondents.

It is needless to observe that that defendants 1 to 3 shall take action to implement the decree of the trial court forthwith in accordance with law.

Ordered accordingly.