

(2000) 07 KAR CK 0101

In the Karnataka High Court

Case No : Civil Revision Petition No. 3915 of 1998

H.T. Govinda Gowda

APPELLANT

Vs

Secretary B. Hosur Grama Panchayath

RESPONDENT

Date of Decision : 11-07-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8
Karnataka Panchayat Raj Act, 1993 — Section 211, 295
Specific Relief Act, 1963 — Section 38

Citation : (2000) 4 KCCR 2930

Hon'ble Judges : Mohammed Anwar, J

Bench : Single Bench

Advocate : S.P. Kulakarni, for the Appellant; B.J. Somayaj, for the Respondent

Final Decision : Allowed

Judgement

Mohammed Anwar, J.—Heard the arguments of learned Counsel on both sides.

2. This Plaintiff's revision is directed against the order of the trial Court dismissing the suit in O.S. No. 76 of 1996, which was instituted for the bare relief of permanent injunction against the Respondent-Defendant. Parties hereinafter referred to as according to their rank in their said original suit i.e. O.S. 76 of 1996.

3. The relief of permanent injunction for which the said suit was instituted by the Plaintiff, as prayed in the plaint reads thus:

Wherefore, the Plaintiff prays that this Honourable Court be pleased to pass a judgment and decree in his favour:

(a) for permanent injunction restraining the Defendants, their servants or agents or anybody else from interfering with the possession of the Plaintiff.

(b) for Court costs and such other relief/s as the Hon'ble Court deems fit to grant under the circumstances of the case.

4. The suit property described in the plaint is a vacant house and the Plaintiff claimed a decree for permanent injunction stating that the suit property is an ancestral property, which had been in actual possession and enjoyment of his ancestors and after the death of his father, he continued to be in possession thereof; that the Defendant-Gram Panchayat, who had no manner right and title to the property attempted to claim the property as belonged to it and was disturbing the Plaintiff's peaceful possession and enjoyment thereof. On appearance in the suit, written statement was filed on behalf of the Defendant-Gram Panchayat denying the plaint averments in toto and contending that the suit property was infact the property of the Gram Panchayat, where certain school building etc., had been constructed. It was further contended in the written statement that the Plaintiff's suit was not maintainable in view of the bar created under Sections 211 and 295 of the Karnataka Panchayat Raj Act, 1993 (hereinafter referred to as the "Act").

5. In view of the respective material pleadings of the parties, necessary issues were raised by the trial Court, out of which Issue No. 3 was;

Whether the suit is not maintainable in view of the provision of Panchayat Raj Act?

The Trial Court proceed to hear Issue No. 3 as a preliminary issue and has passed its impugned order that by reason of Sections 211 and 295 of the Act, the Plaintiff's suit was not maintainable. Accordingly, the suit has been dismissed by its impugned order.

6. Learned Counsel for Plaintiff Mr. S.P. Kulkarni argued that Plaintiff's suit being the one filed for the relief of permanent injunction alone, the provision of Sections 211 and 295 of the Act would not be attracted and applicable and on the other hand it is Sub-section (4) of Section 289 which governs the Plaintiff's suit. Therefore, he argued that the impugned order of the Court below is vitiated by patent illegality and cannot be sustained.

7. Per contra, learned Counsel for Defendant Mr. B.J. Somayaji vehemently argued upholding the validity of the order under revision. Support for his contention was sought to be drawn from the decision of the Supreme Court in Ram Singh and Others Vs. Gram Panchayat Mehal Kalan and Others, .

8. On consideration of rival contentions put forward by both sides, I find sufficient force and substance in the argument of S.P. Kulkarni, learned Counsel for Plaintiff. To appreciate the contentions of both sides in the proper perspective, it is essential to advert to the provision of Sections 211, 295 and 289 of the Act. Since Sections 211 and 295 are extracted in the impugned order of the Court below, they need not be reproduced over again. Section 211 deals with the decision of claims to property by or against Grama Panchayath. It contemplates that in the event of any person intending to enforce his claim to any property or any right on or over any property which is stipulated in this provision, as against gram panchayat or if any gram panchayat intends to enforce its claim with

respect to the property against any person, then, the Assistant Commissioner shall be the lawful authority to decide such claims. Furthermore, Sub-section (2) of Section 211 confers a right on the aggrieved party to appeal before the Deputy Commissioner against the decision of the Assistant Commissioner.

9. As indicated above, in the instant case, the Plaintiff has not prayed for the relief of any declaration of title to the suit property. He merely claims the decree for permanent injunction against the Defendant-Gram Panchayat mainly on the ground of he having acquired exclusive possession of the property as his ancestral and he was enjoying the peaceful possession thereof. In other words, he claims to be in a settled possession and enjoyment of the property for the relief of permanent injunction. Section 211 confers power on the Assistant Commissioner to decide claim of any person against gram panchayat to any right or interest towards the property stipulated thereunder which the right of ownership or right to enjoy the same as a tenant etc. Likewise, the decision of gram panchayat, claim to such rights by the Assistant Commissioner is also contemplated by Section 211. This provision does not confer any power on the Assistant Commissioner to grant the equitable relief of permanent injunction in favour of any continuing party. Therefore, it cannot be stated that Section 211 is attracted to the Plaintiff's case for permanent injunction, as has been held by the Court below. The decision of Supreme Court in Ram Singh and Others Vs. Gram Panchayat Mehal Kalan and Others, relied on by the learned Counsel for Respondent also of little avail to uphold the validity of the impugned order. In that case, it is specifically pointed out in the preamble portion of the judgment that the suit instituted against Grams Panchayat by the Plaintiff therein was a suit in representative capacity under Order 1, Rule 8 of CPC and the relief prayed for was the relief of declaration that the Plaintiffs were the owners in possession of the suit land along with some others. It is in view of the specific relief of declaration prayed in that suit and in view of the defence plea, inter alia, of Gram Panchayat, in its written statement, that the suit property was its own property and the Plaintiff had no right or interest whatever therein, the Supreme Court concluded that in the light of the provision u/s 11 of the Punjab Village Common Land (Regulation) Act, 1961, the power to decide such claims was exclusively vested with the Collector and therefore, the Civil Court's jurisdiction to entertain such suit was expressly ousted by Section 13 of the said Act. No doubt, Section 295 of the Karnataka Panchayat Raj Act creates a bar for suits in respect of the actions envisaged thereunder. Sub-section (1) of Section 295 states that "No Civil Court shall entertain a suit objecting to an assessment demand or charge made or imposed under this Act, or for the recovery of any sum of money collected under the authority of this Act, or for damages on account of any assessment or collection of money under the said authority, if the provisions of this Act have been in substance and effect complied with"; which is not applicable to the facts of the present case. Sub-section (2) of Section 295 states that "No suit or other legal proceeding shall lie against a Chief Executive Officer or Executive Officer or Secretary or any other officer of the Government or a

Grama Panchayat or Taluk Panchayat or Zilla Panchayat or any member, officer, servant..."etc., envisaged therein" in respect of anything done or purporting to have been lawfully done and in good faith under the Act or any rule, regulation, bye-law or order made thereunder except with the previous sanction of the Zilla Panchayat or such officer as the Zilla Panchayat may specify". Sub-section (3) of Section 295 creates a bar for suit for any legal proceedings against the Government in respect of anything done under the Act or any Rule, Regulation or bye-law made thereunder.

10. A combined reading of the above mentioned Sections clearly brings it to the fore that they do not expressly ousted the jurisdiction of the regular Civil Court from entertaining the suit filed by any person against the Gram Panchayat to enforce his claim to any property which the Gram Panchayat chooses to claim as belonging to it. No other provision expressly taking away jurisdiction of a regular Civil Court from entertaining or trying such claims against the Gram Panchayat is pointed out to me. An ordinary jurisdiction of the competent Civil Court was expressly ousted by Section 13 of the Punjab Village Common Land (Regulation) Act, 1961. There being no similar provision to be found in the Act it cannot be stated that the court below i.e., Civil Court had lost its jurisdiction to entertain the Plaintiff's suit by implication in view of Section 211 and 295 of the Panchayat Raj Act, 1961.

11. Mr. Somayaji seeking to take shelter under Sub-section (3) of Section 295, submitted that the order under revision is entitled to be upheld. This provision under Sub-section (3) of Section 295, as indicated, prohibits institution of the suit if any other legal proceeding against the Government in respect of anything done under this Act or any Rule thereunder. Obviously, the present suit not being filed against the Government, this provision will have no role to play and therefore, the objection of Mr. Somyaji is untenable.

12. On the other hand, as rightly submitted by Mr. S.B. Kulkarni, learned Counsel for Plaintiff, it is Section 289 of the Act which has relevance to the case in hand. This provision envisages certain restrictions with respect to institution of suits against the panchayat. But Sub-section (4) thereof declares that:

Nothing in the Section shall be deemed to apply to any suit instituted u/s 38 of the Specific Relief Act, 1963 (Central Act 47 of 1963).

Thus, Sub-section (4) of Section 289 exempts applicability of the restrictions envisaged under Sub-sections (1) to (3) thereof with respect to institution of suits for the reliefs stipulated in Section 289(4). Section 38 of the Specific Relief Act relates to the relief of perpetual injunction.

13. Therefore, the right to relief of permanent injunction is not a special right created under the Act. It is a pre-existing right at common law. In that view of the matter also, the trial Court's impugned finding cannot be sustained.

14. Therefore, for the reasons discussed and stated above, affirmative finding of

the trial Court recorded on Issue No. 3 has to be substituted with a negative finding, holding that the Plaintiff's suit before the Court below was maintainable and was not barred by reason of Sections 211 and 295 of the Act.

15. Therefore, the revision is allowed. Impugned order is set aside with a direction to the Court below to proceed further with the suit proceedings in accordance with law.