

(2003) 11 KAR CK 0079

In the Karnataka High Court

Case No : Regular First Appeal No. 846 of 2002

K. Gopala Reddy (deceased) by L.Rs.

APPELLANT

Vs

Suryanarayana and Others

RESPONDENT

Date of Decision : 19-11-2003

Acts Referred:

Citation : (2004) 1 KCCR 662

Hon'ble Judges : K.L. Manjunath, J

Bench : Single Bench

Advocate : G.S. Visweswara, for the Appellant; V.B. Shivakumar, for the Respondent

Final Decision : Allowed

Judgement

K.L. Manjunath, J.—This is the Defendant's appeal. Plaintiffs filed a suit against the Defendant to declare them as absolute owners of the site bearing Khaneshmari No. 258 in khata No. 195/1 measuring east-west 45" and north-south 25" situated in Agaram village, bounded by east-Therumane, west by drain leading to the tank, north by Krishna Reddy's land and south by road and also to grant a decree for perpetual injunction to restrain the Defendant or his agents or servants or anybody claiming through him from interfering with the peaceful possession and enjoyment of the suit schedule property.

2. According to the plaint averments, one Neela Shetty son of Chikka Munisetty was the owner of the suit schedule property and that he gifted the property in the year 1975 in favour of the Plaintiff's mother Pillamma and thereafter khata was changed in the name of Pillamma and that at present Khaneshmari number stands in the name of Pillamma. During the life time of Pillamma she was paying taxes to the plaint schedule property and that she had also obtained license from the village panchayat in order to put up a construction on the schedule property and that Pillamma died on 16.12.1983 leaving behind her the Plaintiffs and others as sole legal heirs. When the Plaintiffs collected the building materials to construct the building, Defendant made an attempt to interfere with the

possession of the suit property. Therefore, Plaintiffs filed a suit initially for Judgment and decree of perpetual injunction, later on converted the same into one for declaration of title.

3. Defendant filed a detailed written statement denying the rights of Neela Setty in gifting the property to the Plaintiff's mother Pillamma and he has also denied granting of license by the village panchayat in favour of Pillamma and even if such license was granted to her, same has been concocted one. According to him, Plaintiffs by giving false Khaneshmari number is trying to lay claim on his property. Khaneshmari No. 259 in khata No. 97/A which was standing in the name of his father Krishna Reddy and that in a family partition Khaneshmari No. 229 present No. 259 fell to the share of the Defendant in a memorandum of partition drawn on 5.6.1969 and that he continued to be in possession of the property and that he has also laid foundation in order to put up construction on the property. He has denied that the Plaintiff's mother having any property next to his property bearing Khaneshmari No. 259. According to him, by concocting the revenue records, Plaintiffs are making an attempt to claim Defendant's property. Defendant also contended that the Plaintiffs have no title or possession in respect of the property in question and that the Defendant is enjoying his property bearing No. 259 out of which Plaintiffs are laying claim by showing different boundaries as plaint schedule property.

4. Based on the above pleadings, trial Court framed the following issues:

1. Does Plaintiffs prove her lawful possession of the suit property as on the date of suit ?
2. Has Plaintiff given correct and proper description of the suit and does property as per its description given in the plaint exists ?
3. Is the suit for mere injunction without Plaintiff seeking declaration of the title maintainable in view of the contentions of the Defendant in para-5 of the written statement ?
4. Is the suit the result of collusion between Plaintiff and her relations who own Khaneshmari No. 258, khata No. 195/1 ?
5. Does Plaintiff prove that he had a right to commence construction on the suit property and while doing so was interfered with unlawfully by the Defendant ?
6. Is the Plaintiff entitled to the injunction sought for ?
7. To what other relief of reliefs is Plaintiff entitled to ?
8. What decree or order ?

Additional Issues:

9. Whether the Plaintiff proves his title as owner of the suit schedule property ?
10. Whether the Court fee paid is not sufficient ?

5. Thereafter, 1st Plaintiff has been examined as PW-1. One Palani Muthu has been examined as PW-2, one Krishnappa is examined as PW-3 and maternal uncle of the Plaintiffs Ramachandra Shetty has been examined as PW-4. Plaintiffs have relied upon documents Exs. P-1 to 21. On behalf of the Defendant, Defendant has been examined as DW-1 and has relied upon Exs. D-1 to 9. In addition to that, Court has marked three documents as Exs. C-1 to 3. Trial Court, after appreciating the oral and documentary evidence adduced by the parties, held issues 1 and 2 in the affirmative, issue No. 3 as does not survive for consideration, issue No. 4 in the negative, issues 5 and 6 in the affirmative, issue No. 9 in the affirmative and issue No. 10 in the negative and ultimately suit of the Plaintiffs has been decreed by holding that Plaintiffs have proved their title and the Defendant is also restrained from interfering with the peaceful possession and enjoyment of the plaint schedule property.

6. Being aggrieved by the Judgment and decree of the trial Court, present appeal is filed by the Defendant contending that though the Plaintiffs have not produced any documents to show that they are having title to the suit property has wrongly declared the Plaintiffs as absolute owners of the property, though the Plaintiffs have admitted the correctness of Ex. D-2 trial Court without considering Ex. D-2 has decreed the suit even though title deeds were not produced by the Plaintiffs, merely relying upon certain revenue entries which are not even standing in the name of Pillamma or in the name of the Plaintiffs has decreed the suit for declaration, which act of the trial Court as contrary to the Judgment of the Supreme Court and this Court. Trial Court has failed to consider the variation between the pleadings and the evidence. According to the plaint averments, Pillamma got the property under gift deed said to have been executed by her father Neela Setty. But according to PW-4, brother of Pillamma, property was given to his sister Pillamma in oral partition which is contrary to the pleadings of the Plaintiffs. It is also contended that though Ex. P-11 is said to have been issued by the village panchayat in the name of Pillamma, there is no material to show that such a license was obtained by her. Therefore, he requests the Court to set aside the Judgment and decree of the trial Court. To support his arguments, he has also relied upon the Judgment of the Supreme Court reported in State of Himachal Pradesh v. Keshav Ram and Ors. ILR 1998 Kar. 1. Per contra, learned Counsel for the Respondents/Plaintiffs contend that even though the Plaintiffs have not produced the documents of title, Plaintiffs have proved their ownership over the suit property by producing other revenue records and by leading oral evidence. According to him, Plaintiffs are claiming title through Pillamma and Pillamma was the daughter of Neela Shetty and that son of Neela Setty has been examined as PW-4 who has supported the case of the Plaintiffs. According to PW-4, site in question was given to his sister Pillamma in a oral partition by his father. According to him, Exs. P-1 to 21 produced by the Plaintiffs demonstrate that Pillamma was the owner of the suit property and after her death 1st Plaintiff being her son has been enjoying the suit property as an absolute owner and that Defendant who made an attempt to contend that

Plaintiffs are laying claim over his property bearing khameshmari No. 259 has failed to prove the measurement of his property. Therefore, he requests this Court to dismiss the appeal.

7. Having heard the Counsel for the parties, this Court has to consider the following points in this appeal:

- * Whether Plaintiffs have proved their title to the suit property ?
- * Whether Plaintiffs have proved their lawful possession over the suit property ?
- * Whether the Judgment and decree of the trial Court is based on proper appreciation of oral and documentary evidence adduced by the parties ?
- * Whether the Judgment and decree of the trial Court are require to be set aside ?

8. 1st Plaintiff has been examined as PW-1. In his evidence, he has deposed that khata of the suit schedule property stands in his mother's name and that she has paid necessary tax during her life time and that she has obtained license from the panchayat to construct a house. Exs. P-1 and 2 are the demand register extracts, Exs. P-3 and 4 are the tax paid receipts. Exs. P-5 to 10 are also tax paid receipts. Ex. P-11 is the license issued by the panchayat. Ex. P-11 is in respect of the property bearing No. 258 which is standing in the name of Neela Shetty, measurement of the property is not mentioned therein. Ex. P-2 is also a tax demand extract for the year 1982-83 fixing the tax as Rs. 4/-, it is in respect of khata No. 258. Ex. P-3 is dated 8.6.1987 which is subsequent to the filing of the suit. As per Ex. P-3 Plaintiff has paid tax of Rs. 6-50. Ex. P-4 is also tax paid receipt dated 1.5.1983. Ex. P-5 is dated 2.5.1981. Ex. P-6 is dated 10.11.1979. Exs. P-7 is for the year 1955-56 and Ex. P-8 is for the year 1954-55. Ex. P-11 is the license issued in the name of Pillamma on 6.2.1983. Exs. P-17 to 21 are the tax demand extracts for the years 1982-83, 1983-84, 1985-86, 1979-80 and 1987-88 respectively which are standing in the name of Neela Shetty and his sons Ramachandrashetty, Dwaraki Krishna and Ashwatha Narayana. Name of Pillamma does not find a place in Exs. P-17 to 21.

9. PW-2 is one Palani Muthu who was working as a village accountant of Agara village. He has been summoned and examined only to produce these Exs. P-17 to 21 to show that the tax demand extracts are standing in the name of a particular person in respect of No. 258.

10. PW-3 is one Krishnappa. He has been examined to show that Neela Setty and been in possession of the property since his child-hood. PW-4 is one Ramachandrashetty, maternal uncle of the Plaintiffs and brother of Pillamma. According to this witness, in the year 1975 there was a family partition and in the oral partition site in question was given to the share of Pillamma. From Exs. P-1 to 21, details of the measurement of the property said to have been given to Pillamma has not been mentioned. Though Ex. P-11 license has been issued on 6.2.1983, khata was standing in the name of Neela Setty as per Ex. P-17. If

khata was standing in the name of Neela Setty in respect of Khaneshmari No. 258, Plaintiffs have not explained how license was issued to Pillamma by the village panchayat or if really khata was standing in the name of Pillamma and how the tax demand register has been maintained by the village panchayat in the name of Neelasetty. Even for the subsequent years, tax demand register shows the name of Neelasetty" sons as owners of khaneshmari No. 258. Trial Court, while considering the case of the Plaintiffs has held as hereunder:

It is true that in a suit for declaration of title, the Court has to mainly to be guided upon by the documents of title produced by both the parties. But there are also rare occasions where the parties may not be having their ancient documents of title, but still they continue in title for a long time and under such circumstances, it is the probability of circumstances that has to be considered by this Court.

Thereafter in paragraph-18, trial Court has also given certain illustrations how and under what circumstances in the absence of production of title deeds, declaratory relief can be granted to the Plaintiff. In paragraph-20, trial Court also held that the burden of proving the ownership of Neela Setty and gifting the property by Neela Setty in favour of Pillamma rests on the Plaintiffs. But considering the defence of the Defendant as one of denial and that the Defendant has taken the defence that Plaintiffs are making an attempt to lay a claim on his property, went on considering the case put-forth by the Defendant without considering the case pleaded by the Plaintiffs.

11. In the instant case, it is not the case of the Plaintiffs that Plaintiffs have no documents of title and that the documents of title have been lost by them and that they are not in a position to trace the same. In this background, it is relevant to note certain admissions made by PW-1 in his cross-examination:

Neelasetty has a sale deed evidencing the ownership of the suit schedule property. Even my mother has got a documentary evidence to prove that one Neelasetty has gifted the property. I can file the original documents pertains to the suit schedule property and also I have no difficulties to produce the Documents.

From this it is clear that the documents of title of Neelasetty and that of 1st Plaintiff's mother Pillamma are in the custody of the Plaintiffs and that there was no difficulty for the Plaintiffs to produce it. But unfortunately, Plaintiffs have not produced any one of these documents. Trial Court, without considering this piece of evidence, has started discussion on these issues as if the Plaintiffs have pleaded and proved that the Plaintiffs have lost the documents and are unable to produce the same. It is also the case of the Plaintiffs that in the absence of production of these documents, Plaintiffs can prove their title by producing other materials. Even if the case of the trial Court is accepted by this Court for the sake of arguments, then this Court has to consider whether documents produced by the Plaintiffs can be held to be sufficient to hold that Plaintiffs have proved

their title to the suit property. In the earlier paragraph, I have adverted to various documents produced by the Plaintiffs. There is nothing to show that khata of the property was transferred to the name of Pillamma either based on Palupatti as per the evidence of PW-4 or based on the gift deed said to have been executed by Neela Setty in favour of Pillamma. Even after issuance of license in favour of Pillamma for the subsequent years also, as per the tax demand extracts Exs. P-17 to 21, khata stands in the name of Neela Setty and his three sons. Therefore, the revenue records produced by the Plaintiff are of no assistance to hold that the Plaintiffs have proved their title in respect of the suit schedule property.

12. Hon"ble Supreme Court in State of Himachal Pradesh v. Keshav Ram and Ors. ILR 1998 Kar. 1 held as hereunder:

But at any rate such an entry in the Revenue papers by no stretch of imagination can form the basis for declaration of title in favour of the Plaintiffs. To our query as to whether there is any other document on the basis of which the Plaintiffs can claim title over the disputed land, the learned Counsel for the Plaintiffs-Respondents could not point out any other document apart from the alleged correction made in the register pursuant to the order of the Assistant Settlement Officer. In our considered opinion the Courts below committed serious error of law in declaring Plaintiffs title on the basis of the aforesaid order of correction and the consequential entry in the Revenue Papers.

From this it is clear that Hon"ble Supreme Court has held that mere entries in the revenue records cannot be a basis to declare title of a person in respect of any Immovable property. Therefore, it has to be held that Plaintiffs have failed to prove their case in regard to their title to the suit property.

13. Trial Court without considering the pleadings of the parties and evidence let in by them, only considering the evidence of the Defendant has decreed the suit in favour of the Plaintiffs. The general principle of law is that whenever a party approaches the Court for a relief, based on the pleadings and issues, he has to prove his case. But in the instant case, though the burden of proving the issues was on the Plaintiffs, trial Court has found fault with the Defendant. In the present case, Court has to hold whether the Plaintiffs have title to the suit property or not. Defendant has not approached the Court to grant a declaratory relief in his favour. Even though the documents in possession of the Plaintiffs are not produced, trial Court without drawing an adverse inference against the Plaintiffs, has granted a decree in favour of the Plaintiffs by relying upon the revenue entries even though such revenue entries are also not proved by the Plaintiffs. Therefore, in the circumstances, it has to be held that the trial Court has committed an error in decreeing the suit of the Plaintiffs without considering the evidence and the pleadings.

14. Then this Court has to consider whether the Plaintiffs were in lawful possession of the property on the date of the suit to restrain the Defendant from

interfering with the peaceful possession and enjoyment of his property.

15. In the cross-examination of the 1st Plaintiff, Defendant has produced and confronted a sketch which is marked as Ex. D-2. Correctness of the sketch has been admitted by 1st Defendant. Even according to the case of the Plaintiffs, to the north of the plaint schedule property there is a property of Krishna Reddy (father of the Defendant). Plaintiffs are not disputing the ownership of the Defendant in respect of Kaneshmari No. 259 and it is also admitted that Therumane is having kaneshmari No. 260 and 259 and 260 are situated side by side. In Ex. D-2 existence of kaneshmari No. 258 is shown at a different place. When the Plaintiffs have accepted the correctness of Ex. D-2, it has to be held that the property bearing No. 258 situated elsewhere and not adjacent to 259 which is claimed by the Defendant. Main contention of the learned Counsel for the Respondents/Plaintiffs is that the Defendant has failed to make out measurement of his property bearing kaneshmari No. 259. He has also relied upon certain paragraphs in the Judgment of the trial Court to show that the trial Court has decreed the suit mainly relying upon the evidence of the Defendant. But unfortunately, trial Court has forgotten that a suit has to be decided based on merits and de-merits of the parties who approaches the Court. Weakness of the Defendant cannot be considered as a trump card for the Plaintiff. Trial Court was required to consider whether the Plaintiffs are entitled for the relief of injunction or not. Nowhere Defendant has admitted possession of the Plaintiffs. According to him, he is enjoying the property bearing No. 259 and that the Plaintiffs are laying claim over his property by giving wrong boundaries and measurements. Since the Plaintiffs have failed to prove their title and to establish the identity of the property, question of granting injunction in favour of the Plaintiffs will not arise at all.

16. For the reasons stated above, this Court has to hold that the trial Court has not considered oral and documentary evidence including the pleadings of the parties properly and Judgment and decree has been passed by the Court below by wrong appreciation of evidence. Therefore, in the circumstances, Judgment and decree of the trial Court are required to be set aside.

17. In the result, appeal is allowed. Judgment and decree of the trial Court are hereby set aside. Suit of the Plaintiffs-Respondents is hereby dismissed. Considering the nature of the case, parties are directed to bear their cost.