

(2015) 11 KAR CK 0013

In the Karnataka High Court

Case No : R.S.A. Nos. 591 and 425/2007 (RES)

K. Manjunath and Others

APPELLANT

Vs

G. Avalappa and Others

RESPONDENT

Date of Decision : 27-11-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 35, 100, 144, 151, 96

Citation : (2015) 11 KAR CK 0013

Hon'ble Judges : A.V. Chandrashekara, J.

Bench : Single Bench

Advocate : S. Susheela, Advocate, for the Appellant

Judgement

A.V. Chandrashekara, J.—The main appeal bearing RSA No. 425/2007 came to be filed by Krishnappa, the 2nd defendant in the original suit bearing No. 50/1970 which is pending on the file of the then Court of Munsiff at Kolar. A suit for the relief of declaration of title and permanent injunction had been filed by Sri G. Avalappa - father of R-1 to R-5 herein before the said court. R-6 and R-7 in RSA No. 425/2007 are the sons of deceased appellant Krishnappa who was the defendant the original suit.

2. The connected appeal bearing No. 591/2007 is filed by Sri K. Manjunath and his brother Sri K. Jagannath as the sons of Krishnappa being aggrieved by the Order passed on 16.06.2004 in Execution Petition No. 49/2001 and the affirmation of the same in Regular Appeal Nos. 23 and 24 of 2004 which were passed by the learned Judge on the file of Presiding Officer, FTC-III at Kolar dated 26.10.2006.

3. During the pendency of the main appeal RSA No. 425/2007, Krishnappa - appellant died and his legal representatives namely his wife Parvathamma, two daughters by name Venkatalakshamma & Radha have come on record as Appellant Nos. 1(A) to (C).

Similarly in RSA 591/2007 filed by Sri K. Manjunath and K. Jagannath who are

the sons of Late Krishnappa, the wife and two daughters of Late Krishnappa have been shown as LR's of Late Krishnappa as Respondent Nos. 6(a) to (c).

4. The facts leading to the filing of these two appeals before this courts are as follows;

One person by name Sri G. Avalappa - the deceased father of R-1 to R-5 in the main appeal, chose to file the suit for relief of declaration of title and permanent injunction before the then Munsiff Court at Kolar in respect of 8 items of agricultural land bearing Sy. Nos. 49/7 measuring 013 guntas, 230/4 measuring 0-15 guntas, 230/6 measuring 0-24 guntas, 354 measuring 0-03 guntas, 48/8 measuring 0-10 guntas, 48/3 measuring 0-16 guntas, 274/3 measuring 0-06 guntas and 277/1 measuring 0-17 guntas situated at Nekkundi Village, Kasaba Hobli, Chintamani Taluk. The said suit was filed by Sri G. Avalappa against Sri Krishnappa - the deceased appellant and one Narayanappa. The original suit bearing No. 587/1968 subsequently numbered as O.S. No. 50/70 was decreed in favour of the plaintiff G. Avalappa declaring him as the absolute owner in possession of the suit schedule property.

5. The 2nd appellant Krishnappa alone chose to file an appeal in terms of Section 96 of CPC in RA No. 9/1977 before the District Court at Kolar and the said appeal was allowed in part dismissing the suit against Krishnappa in respect of items 3, 4, 7 and 8. Against the said judgment and decree passed in RA No. 9/1977, a regular second appeal was filed before this court in RSA No. 1167/1978 by the plaintiff G. Avalappa and was allowed in entirety and thus the judgment and decree passed by the Trial Court in O.S. No. 50/70 was restored.

6. Against the said judgment and decree passed by this court in RSA No. 1167/1978, a Spl. Leave Petition was filed before the Hon'ble Supreme Court and the matter was remanded to this court for fresh consideration. Even after the matter was remanded to this court, the second appeal was allowed and the judgment and decree passed in O.S. No. 50/70 was restored. Sri G. Avalappa - deceased plaintiff chose to file execution petition before the court of Civil Judge (Sr. Dn.) at Kolar in Execution Petition No. 49/2001 in respect of Item Nos. 3, 4, 7 & 8 making Krishnappa as the only Judgment Debtor. Two Sons of Krishnappa who are appellants in the connected appeal got them impleaded voluntarily in the Execution Petition No. 49/2001 on the ground that they were in actual possession of these four items of properties i.e., Item Nos. 3, 4, 7 and 8. Thereafter, Sri Krishnappa chose to file a Memo in Execution Petition No. 49/2001 stating that he was not in possession of any of the suit schedule property and that he was in possession of a house property and that house was not situated the suit schedule property and is not subject matter of the original suit. A delivery warrant was issued by the Execution Court in Ex. P. No. 49/2001 against Krishnappa and his two sons and possession was taken over through the Court Ameen and house in which Krishnappa resided was also handed over by the Court Ameen to the Decree holder.

7. Therefore Krishnappa chose to file a Civil Revision Petition in CRP No. 66/2002 before this court questioning the very validity of the delivery warrant issued by the Execution Court on 06.09.2001 essentially on the ground that there was no decree for possession of the properties granted by the Trial Court in O.S. No. 50/1970. His sons were brought on record as R-7 and R-8. This court chose to allow CRP 66/2002 by setting aside the delivery warrant observing that if Krishnappa was dispossessed from the property other than the suit schedule property, it was open for him to seek any such appropriate relief before any appropriate forum in accordance with law. On the basis of the said observation and order passed in CRP No. 66/2002 by this court, Krishnappa filed an application (I.A. No. 11) under Section 144 of CPC in Ex. P. No. 49/2001 seeking restitution of house bearing No. 391/838 situated at 2nd Division, Station Road, Nekkundi Agrahara, Chintamani measuring 45" x 28". His sons chose to file another application under Section 144 of CPC seeking restitution of four items of agricultural lands and this was numbered as IA 12. These interlocutory applications Nos. 11 and 12 in Ex. P. No. 49/2001 filed by Krishnappa and his sons separately, were dismissed by common order passed on 16.06.2004.

8. Against the said common orders, separate appeals were filed in terms of Section 96 of CPC before the District Court at Kolar and both appeals have been dismissed. Hence, two separate appeals have been filed under Section 100 of CPC before this Court.

9. After hearing arguments by the learned counsel appearing for the appellant, this court has admitted both the appeals to consider the following substantial question of law formulated on 17.04.2009.

"(i) Whether the decrees passed by the Courts below are illegal, being based on no evidence?

(ii) Whether the Executing Court has erred in not granting opportunity of hearing to lead evidence in the application - I.A. No. 11 filed under Section 144 of the Code of Civil Procedure?

(iii) Whether the impugned decrees are opposed to the findings and observations in CRP No. 66/2002?"

10. On 09.09.2009, an order is passed in connected appeal in RSA 591/2007 treating the same three substantial question of law as applicable to the connected appeal also.

11. Heard the learned counsel Smt. S. Susheela representing appellants in RSA No. 591/2007 and Sri G. Balakrishna Shastry for the appellants in connected appeal No. 425/2007. Perused the original records of Execution Petition No. 49/2001.

12. Sri Krishnappa and his two sons K. Manjunath and K. Jagannath chose to challenge the very filing of Execution Petition No. 49/2001. The Order dated 10.08.2001 was called in question before this court in CRP No. 3365/2001. By

virtue of the order dated 10.08.2001 in Execution Petition No. 49/2001, Judgment debtors Krishnappa and his sons had been given an opportunity to obey the decree passed in OS No. 50/1970 filed by the LRs of deceased plaintiff - G. Avalappa and to obey the decree within a period of 15 days. This order dated 10.08.2001 was called in question before this court of by filing civil revision petition in CRP No. 3365/2001 by the two sons of Krishnappa only. The said CRP was dismissed after contest on 27.08.2001. What is held in para-3 of the order dated 27.08.2001 passed in CRP No. 3365/2001 is as follows:

"The executing court no-doubt rejected an application filed earlier under Section 151 of CPC, as per Order dated 11.06.2001. But that does not amount to enable the judgment-debtors to violate the decree that they have suffered. When the decree is for a permanent injunction, restraining the judgment-debtors from interfering with four items of the suit schedule properties as mentioned in the decree, the judgment-debtors continuing to be in possession or being in any way concerned with the suit schedule property to the detriment of the decree holder definitely amounts to the violation of decree and if so, at the instance of the decree-holders, the court has an occasion to pass an appropriate orders."

13. It is specifically held in the said order that the judgment debtor therein were bound by the decree and it was their duty to obey and respect the decree and any violation would attract appropriate action as per the provisions of CPC. This order which was passed not only against Krishnappa but also against his sons as remained unchallenged and attained finality.

14. The executing court issued delivery warrant under Order XXI Rule 35 of CPC against the Judgment Debtors 1 to 3 namely Krishnappa and his sons in respect of four items of properties returnable by 25.09.2001. This order was separately called in question by Krishnappa in CRP 66/2002 and his sons Sri K. Manjunath and Sri K. Jagannath in CRP No. 3691/2001 before this court. The CRP filed by them were separately came to be dismissed after contest on 14.09.2001 by this court. Ultimately, it is held in para-5 that decree holder has been in possession of the property and that the Judgment Debtors would not be entitled to resist the possession of the property.

15. It is further held that the decree holder has taken 35 long years to obtain the decree and to execute the same and if the decree holder is directed to go to the civil court for possession of the property, it will also lead to unnecessary delay in peacefully enjoying his property. Unfortunately, this CRP 3691/2001 filed by sons of Krishnappa ought to have been brought to the notice of learned judge dealing with CRP No. 66/2002. Ultimately CRP No. 66/2002 came to be allowed with the following observation found in Para-14 of the Order:

"In the result, therefore, this Revision Petition filed by the petitioner is allowed. The impugned order made by the executing court dated 06.09.2001 is hereby set aside. It is however made clear that the petitioner herein is not entitled for the relief of restitution in respect of the suit properties. It is further made clear that

if according to the petitioner pursuant to the delivery warrant issued by the executing court in respect of the suit property, he has been dispossessed from the property other than the suit property, it is open to the petitioner to seek any such appropriate relief before any appropriate forum in accordance with law. The observations made herein will not come in the way of the petitioner seeking any such appropriate relief to which he may be entitled under law. The Revision Petition is accordingly allowed with the above observations."

16. What is argued before this court by the learned counsel representing Sri K. Manjunath and Sri K. Jagannath - sons of Krishnappa is that, when once the delivery warrant issued by the executing court is set aside by this court in CRP No. 66/2002, it was incumbent point to executing court to reconstitute four items of properties to the Judgment Debtors 2 and 3 and dismissal of their application was incorrect and illegal. It is further argued that the same could not have disposed of without recording the evidence of the contesting parties to the execution petition.

17. Sri G. Balakrishna Shastri, learned counsel for the judgment debtor deceased Krishnappa in the main appeal is that when a specific stand is taken by Late Krishnappa that the house in which he lived was not at all the part and parcel of said items 1 to 4, his application filed under Section 144 of CPC could not have been disposed of without holding enquiry. It is to be seen that Sri K. Manjunath and Sri K. Jagannath who assert that they were in possession of four items of properties in Execution Petition have already suffered an order dated 27.08.2001 in CRP No. 3365/2001 which has attained finality. Apart from that, Civil Revision Petition No. 3691/2001 filed by them also came to be dismissed after contest. Therefore, they cannot turn around and say at this stage that they have a right to lead evidence in the execution petition.

18. In the light of attaining finality of their grievance in two civil revision petitions i.e., 3365/2001 and 3691/2001, they cannot have any grievance and dismissal of their applications filed under Sections 144 of CPC is perfectly maintainable and no interference is called for.

19. In so far as the contention of deceased Krishnappa is concerned, the court should have held a limited enquiry to ascertain as to whether the house in which he lived is really a part and parcel of four items of properties in execution petition or not without giving an opportunity to the deceased Judgment Debtor to substantiate the same, the executing court could not have brushed aside his request and dismissed the application. This assumes importance in the light of CRP No. 66/2002 being allowed. What is held by this court in CRP No. 66/2002 is that he cannot have the relief of restitution under Section 144 of CPC for four items of the properties.

This Court has not stated anything about the house in which he lived and his dispossession from the said house through the Executing Court in Ex. P. No. 49/2001.

20. What is specifically held by this Court in CRP No. 66/2002 in Para-14 of the Order is that if the petitioner has been dispossessed from the property other than the suit property, it is open to the petitioner to seek any such appropriate relief before any appropriate forum in accordance with law. His grievance is that he has been dispossessed from a residential house which was not a part and parcel of four items of properties in execution petition. Nothing would have come in the way of executing court to give an opportunity to Sri Krishnappa to substantiate his stand that the house property was not a part and parcel of four items of properties taken over by filing execution petition.

To that extent, the order passed by the Executing Court under Section 144 of CPC is incorrect and improper and needs to be interfered with by this court.

In so far as the findings given by the Executing Court against two sons of Krishnappa, no interference is absolutely called for.

21. As stated earlier, sons of Krishnappa have suffered two adverse orders by this Court in CRP Nos. 3365/2001 and 3691/2001 and they have attained finality. What Krishnappa could not have achieved as Judgment debtor, his sons cannot have the same in any other manner. Accordingly, substantial question No. 1 is answered in "Affirmative in part" holding that rejection of IAs filed under Section 144 of CPC by Krishnappa without recording evidence is incorrect. Similarly, substantial question of law No. 2 answered in the negative. Substantial question of law No. 3 is answered affirmatively in part holding that the findings against two sons of Late Krishnappa are perfectly valid and do not called for interference.

22. In so far as the application filed by Late Krishnappa under Section 144 of CPC, it is to be considered afresh in the light of the observation made by this court giving his legal representatives an opportunity to substantiate as to whether the house in which Krishnappa was living was a part and parcel of four items of suit schedule properties in Ex. P. No. 49/2001 or not. To that extent, Execution petition shall be revised and it shall be disposed at the earliest and parties and counsel shall cooperate with the same.

In the facts and circumstances of the case, parties to bear their own cost.

Office to send the LCR to the Executing Court at the earliest.