

(2014) 09 KAR CK 0067
In the Karnataka High Court
Case No : C.R.P. No. 165/2012

K. Muddanna Shetty

APPELLANT

Vs

B.K. Narayana Shetty

RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

Citation : (2014) 09 KAR CK 0067

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : S. Shankar Shetty, Advocate for the Appellant; K. Chandranath Ariga, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Aravind Kumar, J.—Decree holder in Execution Petition No. 29/2003 has called in question the order dated 11.01.2012 passed by Civil Judge (Jr. Dn), Karkala whereunder the decree holder has been directed to hand over possession of agricultural land measuring 0.30 cents situated in Sy. No. 5/11E, Karabettu Grama, Karkala Taluk, Udupi District to respondent No. 8 herein.

2. I have heard the arguments of Sri. S. Shaker Shetty, learned Advocate appearing for petitioner/decreed holder and Sri Chandranath Ariga, learned Advocate appearing for respondent No. 8. Respondents - 1 to 7 are served and unrepresented.

3. Parties are referred to as per their rank before the Executing Court.

4. A deed of settlement came to be executed by Sri Sanjeeva Sooda, father of decree holder in favour of his children on 24.06 1974 by settling his properties in their favour with a condition that they should pay annual maintenance to him. On account of non-payment of annual maintenance, he filed a suit for recovery of maintenance in O.S. No. 100/1978. Said suit came to be decreed on 08.02.1980. In order to enjoy the fruits of decree, he filed a Execution Petition No. 271/1983 against his children for recovery of maintenance and for sale of the immovable

properties which he had settled in favour of his children. On 06.07.1984 the land bearing Sy. No. 5/11E measuring 0.30 cents was sold by said Sri Sanjeeva Sooda during the pendency of execution proceedings. An auction sale came to be conducted on 07.08.1984 in Execution Petition No. 271/1983 and said Sri Sanjeeva Sooda purchased in Court auction all the properties which he had settled in favour of his children under the settlement deed. The said sale was confirmed in his favour on 26.11.1984 and possession of properties auctioned in his favour was delivered to him. Thereafter, on 22.12.1984 he sold 5 acres 36 cents to Smt. Susheela Pai.

5. The decree holder herein who is the son of said Sri Sanjeeva Hooda filed a suit O.S. No. 249/1986 to set aside the auction sale and same was withdrawn by him on 10.02.1999. During the interregnum period, he filed Misc. petition No. 6/1986 for setting aside the auction sale and for re-delivery of properties. Said petition came to be allowed on 16.11.2002 and redelivery of the properties sold in Court auction was ordered. As such, decree holder filed the present execution petition on 25.03.2003 seeking re-delivery of properties that had been auctioned by Court on 07.08.1984.

6. Judgment debtors-4, 5, 6 & 7 filed Misc. Appeal No. 1/2005 challenging the order dated 16.11.2002 passed in Misc. No. 6/1986 and said Misc. Appeal came to be dismissed on 31.05.2006. Being aggrieved by this order, they filed a Civil Revision Petition No. 361/2006 before this Court and by virtue of a compromise petition filed, same came to be disposed of by order dated 06.03.2009. On disposal of the CRP No. 361/2006, decree holder sought for delivery of possession of the immovable properties as described in Execution petition No. 29/2003 from the judgment debtors - 1 to 8 which proceedings was pending. Delivery warrant came to be issued by the Executing Court on 26.07.2011. A memo came to be filed by 8th judgment debtor on 05.07.2011 contending thereunder that decree holder is attempting to take delivery of the property belonging to her illegally. A report came to be filed by the Bailiff on 17.08.2011 whereunder the property bearing Sy. No. 5/11E measuring 0.30 cents in occupation of 8th judgment debtor, was said to have been delivered to the decree holder. The 8th judgment debtor filed her objection to the delivery report of Bailiff dated 17.08.2011 contending inter alia that bailiff had not visited the said property and had not delivered possession of the property in her occupation to decree holder namely, Sy. No. 5/11E measuring 0.30 cents and as such, she sought for rejection of the delivery report submitted by the Bailiff. The said objections along with memo that had been filed by 8th judgment debtor came to be examined by the Executing Court and by order dated 11.01.2012 held possession of property in question which has been taken from 8th judgment debtor as per Bailiffs report dated 17.08.2011 be re-delivered to her. It is this order which has been questioned in the present revision petition by decree holder.

7. It is the contention of Sri Shaker Shetty, learned Advocate appearing for the decree holder that Executing Court having found that judgment and decree

passed in O.S. No. 100/1978 and auction conducted on 07.08.1984 had been set aside, could not have ordered for re-delivery of possession in favour of 8th judgment debtor. He would also contend that as on the date of auction sale on 07.08.1984, decree holder was in possession of the property and not 8th judgment debtor and she had no title whatsoever to the property in question. He would also submit that compromise entered into between the decree holder and judgment debtors - 4 to 7 in CRP No. 361/2006 was in respect of the property bearing Sy. No. 3/1 (old) new No. 3/4 as described under the schedule to the said compromise petition and as such, 5th respondent therein i.e., 8th judgment debtor can never claim benefit of the said compromise petition. He would also submit that when entire properties sold in auction in favour of Sri Sanjeeva Sooda having been set aside, 8th judgment debtor cannot claim that said order setting aside the same is not binding on her. He would elaborate his submission by contending that compromise in CRP No. 361/2006 was restricted to only Sy. No. 3/1 (old), New No. 3/4 measuring 0.90 cents and nothing more or nothing less. He also contends that when possession has been delivered by the Executing Court as per the Bailiff report dated 17.08.2011, question of re-delivery does not arise and remedy for 8th judgment debtor if any, is to file a separate suit and not seeking for re-delivery of possession.

8. He would also submit that final order passed in CRP No. 361/2006 dated 06.03.2009 does not indicate about Sy. No. 5/11E being the subject matter for consideration thereunder and as such, 8th judgment debtor ought to have sought for clarification or review of the said order and by default 8th judgment debtor cannot claim that benefit of compromise would accrue to her under the said order since there is no reference to Sy. No. 5/11E.

9. Per contra, Sri Chandranath Ariga, learned Advocate appearing for 8th judgment debtor would support the order passed by Executing Court and submits that when there was no actual delivery of possession of property in question to decree holder and 8th judgment debtor having objected to the report of the Bailiff dated 17.08.2011 and same having been examined by the Executing Court and found that there was no delivery of actual and physical possession, it has rightly ordered for re-delivery of possession since the report of Bailiff indicated possession of property bearing Sy. No. 5/11E measuring 0.30 cents having been delivered to the decree holder and contends that there is no infirmity whatsoever in the order passed by the Executing Court. Hence, he prays for dismissal of the revision petition.

10. Having heard the learned Advocates appearing for parties and on perusal of the order under challenge and also records secured from the Courts below, I am of the considered view that following points would arise for my consideration:

(1) Whether order dated 11.01.2012 passed by the Executing Court in Execution Petition No. 29/2003 directing re-delivery of possession of property bearing Sy. No. 5/11E measuring 0.30 cents to 8th judgment debtor is to be affirmed or set aside?

(2) What order?

Re: Point No. (1):

11. Facts in detail has already been narrated herein above and as such, minimal facts required for adjudicating the points formulated herein above is discussed in the following paragraphs:

It is not in dispute that 8th judgment debtor purchased agricultural property bearing Sy. No. 5/11E measuring 0.30 cents from Sri Sanjeeva Sooda, father of decree holder under a sale deed dated 06.07.1984. As on the said date, said Sri Sanjeeva Sooda had already executed conditional settlement deed on 24.6.1974 settling his properties in favour of his children which also included the property sold to 8th judgment debtor. On account of non payment of maintenance to him, he filed a suit in O.S. No. 100/1978 which came to be decreed and in execution proceedings No. 271/1983 he purchased the properties which had been settled in favour of his children under settlement deed dated 24.06.1974 by way of auction purchase in a Court auction conducted on 07.08.1984. Auction sale in his favour was confirmed on 26.11.1984 and he took delivery of possession through Executing Court on 12.12.1984. Thus by applying the doctrine of feeding the estoppel by grant" the title of 8th judgment debtor got confirmed in respect of the property purchased by her from father of decree holder.

12. Though decree holder filed Misc. Petition 6/1986 to set aside the auction sale and for re-delivery of properties which ended in his favour by order dated 16.11.2002, said order was questioned before this Court by judgment debtors-1 to 4 arraying the 8th judgment debtor also as 5th respondent in CRP No. 361/2006. In the said revision petition order dated 16.11.2002 passed in Misc. Petition No. 6/1986 whereunder redelivery of the property had been ordered, had been stayed. In other words, decree holder herein never took possession of the property which was in possession of 8th judgment debtor. The said Revision petition came to be disposed of by virtue of a compromise entered into between the decree holder and respondent Nos. 1 to 4. The contents of said compromise petition reads as under:

"1. Upon intervention of well wishers and Mends of the parties, they have settled the dispute amicably.

2. The petitioners shall jointly retain only 0-90 cents of property in Survey No. 3/1, now numbered as 3/4 Kerebettu Village, Karkala Taluk more particularly described in the schedule and hereinafter be referred to as the schedule property.

3. The petitioners have this day delivered all other properties other than the property sold by Sanjeeva Sooda and schedule property retained by the petitioners.

4. The parties hereby agree that the auction sale is hereby confirmed in respect of property sold by Sanjeeva Sooda and the schedule property retained by the petitioners herein. The petitioners have no objection to set aside the auction sale

in respect of rest of the properties sold in auction, accordingly it be set aside.

Wherefore the parties pray that this Hon"ble Court be pleased to dispose of the revision in terms of compromise in the interest of justice.

Schedule

Property to an extent of 0-90 cents in Survey No. 3/1, now 3/4 Kerebettu village, Karkala Taluk, consisting of House, cattle shed and well, with coconut trees and other trees bounded on the

East by: Remaining extent of property in Sy. No. 3/4

West by: Panchayath Road

North by: Remaining extent of property No. 3/4

South by: Government land"

13. It is not in dispute that 8th judgment debtor was also a party in the above said proceedings and was represented by her counsel. She has not objected for the said compromise petition being received and accepted. It is specifically mentioned in clause (3) of the compromise petition that petitioners namely, judgment debtors 1 to 4 have delivered possession of all other properties other than the properties sold by Sanjeeva Sooda and schedule property retained by the petitioners". This would clearly indicate that parties to the compromise petition were ad idem to the fact that what the decree holder would be getting possession of all the properties sold in auction except those properties sold by Sri Sanjeeva Sooda and property" described in the schedule to compromise petition retained by judgment debtors - 1 to 4. Hence, it cannot be construed that properties which were sold by Sri Sanjeeva Sooda (which includes the property sold in favour of 8th judgment debtor) was also agreed to be delivered to decree holder or decree holder was entitled for possession of the said property also. Contention raised by Sri Shaker Shetty, learned Advocate appearing for petitioner in this regard cannot be accepted for the reasons stated herein above and it stands rejected.

14. It is because of this precise reason, Executing Court found that report of the Bailiff as submitted on 17.08.2011 cannot be accepted in toto. As such, it has held that only on re-delivery of possession of Sy. No. 5/11E in favour of 8th judgment debtor, the report can be accepted. The said finding is in consonance with the records and there is no material irregularity that has occasioned calling for interference by this Court in exercise of revisional jurisdiction.

15. It is also required to be noticed by this Court that judgment debtors - 4 to 7 are none other than children of Sri Sanjeeva Sooda born through second wife Smt. Bhavani @ Tungamma and as such, all the properties which was belonging to Sri Sanjeeva Sooda has come back to the family itself except property sold by Sri Sanjeeva Sooda himself on 06.07.1984 in favour of 8th judgment debtor for valuable consideration and as such, even on equities, decree holder has failed to

establish that he is entitled for possession of the property in question.

16. Since there is no ambiguity in the terms agreed upon between parties under compromise petition filed in CRP No. 361/2006 and the parties having agreed to exclude the property sold by Sri Sanjeeva Sooda from being delivered in favour of decree holder, it cannot be said that 8th judgment debtor who was 5th respondent in CRP No. 361/2006 ought to seek review or clarification of the said order and same does not arise.

17. Yet another factor which also requires to be noticed is, that question of directing 8th judgment debtor to file a suit for declaration and possession to recover possession of subject property also does not arise inasmuch as, 8th judgment debtor having objected for accepting the report of delivery of possession submitted by Bailiff, has been partially accepted by the Executing Court and rightly so, since it has been found that a memo had already been filed by 8th judgment debtor before the Executing Court on 5.7.2011 objecting to attempts made by decree holder to take possession of subject property from her and as such, she was not divested of possession though Bailiff had made a report in this regard which was seriously objected to by 8th judgment debtor. Hence, directing the 8th judgment debtor to file a suit for declaration and possession does not arise.

Re: Point No. (2):

18. For the reasons aforesaid, I proceed to pass the following order:

(1) Revision petition is hereby dismissed.

(2) Order passed by the Civil Judge (Jr. Dn), Karkala in Execution Petition No. 29/2003 dated 11.01.2012 is hereby affirmed.

(3) No order as to costs.

(4) Registry is directed to re-transmit the records to jurisdictional Courts.