

(2013) 07 KAR CK 0306

In the Karnataka High Court

Case No : Regular Second Appeal No. 2901 of 2010

K.B. Rameshraje Urs @ Rakesh

APPELLANT

Vs

H.K. Shivegowda

RESPONDENT

Date of Decision : 10-07-2013

Acts Referred:

Citation : (2013) 07 KAR CK 0306

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : C.S. Prasanna Kumar, for M/s. Kumar and Kumar, for the Appellant;
G. Balakrishna Shastry, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Satyanarayana, J.—Plaintiff in O.S. No. 106/1999 on the file of Civil Judge (Sr. Dn.) & JMFC, Hunsur has come up in this appeal impugning the concurrent finding of both the Courts below in dismissing his suit for declaration, injunction and possession in respect of 5 acres 30 guntas of land in old Sy. No. 1/3 and re-survey No. 10/1 of Marur Kaval Village, Gavadagere Hobli, Hunsur Taluk and also a tiled house and tobacco barn measuring to an extent of 13" x 13" situate within "A" schedule property. In the said suit, plaintiff was claiming declaration, injunction and possession of suit schedule property based on the grant certificate that was issued in favour of his father in respect of land measuring 35 acres in Sy. No. 1. Admittedly, several transactions have taken place in respect of 35 acres of land that was originally granted in favour of plaintiff's father in which, some portions were allotted to the plaintiff and his brothers and some extents were also sold. It is also not in dispute that originally Sy. No. 1 of Marur Kaval village was measuring 200-300 acres and as such several resurvey numbers was granted to several portions of Sy. No. 1. Admittedly, the suit schedule property for which claim is set up is bearing old Sy. No. 1/3 i.e., portion of Sy. No. 1. However, it is stated that subsequently the said survey number is given re-survey number 10/1 for which, no cogent explanation or document was

produced, as to when it was given such number and it is not explained either in the plaint or in the evidence in original suit. In that view of the matter, the trial Court was not able to accept the pleadings and as well as evidence of the plaintiff to hold that he is the owner of the suit schedule property and as such, he is entitled for the relief of declaration, injunction and possession and accordingly, the said suit was dismissed.

2. When the same was taken up in appeal in R.A. No. 56/2010 on the file of Fast Track Court-II, Mysore, the lower appellate Court on re-appreciation of finding of the trial Court, in the light of grounds of appeal, oral and documentary evidence available on record has felt that the finding of the trial Court regarding the lacuna in the plaintiff's pleadings and evidence in demonstrating that the old Sy. No. 1/3 is new re-survey number 10/1 and that he is in possession of the same, was rightly not accepted and the judgment and decree passed by the Court below was confirmed. As against the concurrent finding of these two judgments, the present appeal is filed.

3. After hearing the learned counsel for the appellant, on going through the judgments impugned, this Court find that the finding of both the Courts below in dismissing the claim of plaintiff in accepting that re-survey No. 10/1 is part of old Sy. No. 1/3 and that he is in possession of the same appears to be correct, in the absence of acceptable document to show change of Sy. No. 1/3 to Sy. No. 10/1. In that view of the matter, this Court finds no substantial question of law arise for consideration in this appeal. Accordingly, the judgment and decree passed by both the Courts below is hereby confirmed and the second appeal filed by the plaintiff is hereby dismissed.