

(2015) 11 KAR CK 0047

In the Karnataka High Court

Case No : Regular Second Appeal No. 277/2007

Lakshamma and Others

APPELLANT

Vs

R. Munidasappa

RESPONDENT

Date of Decision : 18-11-2015

Acts Referred:

Evidence Act, 1872 — Section 18

Citation : (2015) 11 KAR CK 0047

Hon'ble Judges : Rathnakala, J.

Bench : Single Bench

Advocate : T. Seshagiri Rao, Advocate, for the Appellant; P. Venkatesh Reddy, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rathnakala, J.—This is defendants' appeal aggrieved by the judgment and decree granted by the learned Civil Judge and confirmed by the District Court in a suit for permanent injunction filed against them by the respondent herein.

2. The case is admitted to adjudicate the following question of law:

"Whether the Courts below are justified in ignoring the admission made by PWs 1 and 2 during the course of their cross-examination in view of Section 18 of the Evidence Act?"

3. For the sake of convenience, the parties herein will be referred to as per their status before the Trial Court.

4. The plaintiff filed a suit for perpetual injunction in respect of the property bearing Assessment No. 184, V.P. Katha No. 85 measuring East to West 53 feet, North to South 14 feet, Hesaraghatta village, Bengaluru North Taluk. His case was, the above property was purchased by his father and his uncle Krishnappa under the registered Sale Deed dated 28.04.1955. After oral partition held between his father and uncle, katha of the suit property was transferred to the

name of his father. After the death of his father, the katha stands changed to his name. The oral partition between his father and uncle was effected 30 years back. Half of the northern portion of the property fell to the share of his father and southern portion to that of his uncle. After the partition, the brothers were residing in the property separately. After 12.08.1994, the plaintiff shifted his residence since the property was old and dilapidated. Now, the defendants are attempting to enter into the suit property without any right, title or interest.

5. Defendant No. 1 filed written statement contending that he has purchased the property bearing Kaneshumari No. 181 from Dasappa S/o Krishnappa for valuable consideration. Merely because name of the plaintiff finds place in the revenue records does not confer the right, title or interest for him. He has purchased the property in the year 1957, bounded on East to West by Road, North by Kuradeerappana Kempaiah's house, South by Kengeri Kempaiah's house. Father of the plaintiff was a witness to the sale deed. The plaintiff is estopped from contending otherwise than the recital of the sale deed. After purchase of the property, he has re-constructed the entire property by spending huge amount. He has put-up thorn fence around the property. He had sold the property once in favour of his mother-in-law Smt. Muniyamma in the year 1967 and she was in possession and enjoyment of the suit property. Said Muniyamma sold the property in favour of Smt. Laxmamma(his wife) in the year 1974. From then, Laxmamma is in possession of the suit property, as its owner. The plaint schedule is wrong. Laxmamma is paying kadayam to the property. There is no cause of action for the suit. Defendants No. 1 and 2 are residing in the property consisting of house and vacant land: Since the plaintiff is not in possession and enjoyment of the property, suit for mere bare injunction is not maintainable

6. During the pendency of the suit, defendant No. 1 expired. Defendant No. 2 though is one of the legal heirs, other Class-1 legal heirs were brought on record and they filed additional written statement in-line with the written statement filed by deceased 1st defendant. Defendant No. 2 has adopted the written statement of the other defendants.

The trial Court framed the issues. PWs 1 to 3 for plaintiff and DWs 1 to 3 for the defendants were examined. Documents at Exs.P1 to 8 and Exs.D1 to 4 were marked. After giving audience to both the parties, the suit is decreed and the same is confirmed by the trial Court.

7. Sri. T. Sheshagiri Rao, learned counsel for the appellants submits that it is a case where the title of the plaintiff to the suit property was disputed by the defendants. Under the circumstances, the plaintiff should have sought for relief of declaration of his title. In the light of the stand taken by the defendants, the oral evidence placed by the plaintiff admitting the case of the defendants is relevant.

Learned counsel emphasizes on the following statements of the witnesses:

"PW1 while concluding his examination-in-chief states "at present, the

defendants are in possession of the enjoyment of the half portion of the katha No. 85 and Assessment No. 184."

During his cross examination, he states "it is true that during the life time of the 1st defendant he was residing in the entire schedule property and after death of the 1st defendant his legal heirs are in possession and enjoyment of the same.

PW2 admits during cross-examination "it may be true that 1st defendant has been residing in the scheduled house since 1957. It is true that we plaintiff were not in possession and enjoyment of the schedule property during 1994-95".

By placing emphasis on the above admission, learned counsel would submit that finding given by the trial Court about the possession of the property without considering above admissions is perverse, illegal and the suit has to be dismissed by setting-aside the judgments of both Courts below.

8. Sri. P. Venkatesh Reddy, learned counsel for the respondent/plaintiff while substantiating the judgments of the courts below that so called admissions cannot be read in isolation, they shall be understood and inferred along with the overall evidence of the particular witness and also the pleadings on which the evidence of the party is built-up. On a proper and judicious appreciation of the evidence, the trial Court decreed the suit. The appellate Court has considered the material independently and has confirmed the judgment of the trial Court. The question of law raised before this Court and also in purview of the lower court and was rightly rejected, hence, the appeal is liable to be rejected.

9. It was always the case of the plaintiff that the suit property totally measuring Assessment No. 184, V.P. Katha No. 85, East to West 53 feet, North to South 14 feet, bounded on East by his own vacant site, West by government road, North by house of Kuraderappa and South by house of Krishnappa who is none other than his own uncle, was purchased under the sale deed as per Ex. P1. From the recital of the sale deed, said property has been assessed by the Village Panchayath for a sum of Rs. 2 and 8 annas. This document is the source on which title to the property is drawn by both the parties.

The plaintiffs uncle i.e. Krishnappa's son Dasappa has sold an extent of 28"x20" out of the entire property measuring 53"x28" which was purchased by the brother under ex.P1 in favour of the 1st defendant. As per the averments of the sale deed/Ex. D1, half portion of the property purchased by brother Krishnappa and Ramaiah is sold to the 1st defendant. The boundary of the property is sold under Ex. D1, East by Ramaiah's vacant land, West by Road, North by his property and South by Kengeri Kempaiah's house. The plaintiff while bringing forth to the above particulars, in his examination-in-chief, has stated that the defendants are in possession and enjoyment of the half portion of Katha No. 85 and Assessment No. 184. This statement is not in contradiction to his pleading, but in conformity with his pleading and also remaining portion of his sworn testimony. During cross-examination, though he admits that "It is true that during life time of the first defendant, he was residing in the entire schedule

property, in the next breath, he denied the suggestion that legal heirs of the first defendant are in possession and enjoyment of the entire schedule property measuring East to West 53 feet and North to South 14 feet", during his further cross-examination, he has denied the suggestion put to him on behalf of the defence.

PW2-M. Muniyappa, admits that "it is true that the 1st defendant had been residing in the schedule house since 1957 and previously the schedule house was small house and it was later constructed in bigger size about 4 to 5 years back". Before commencing on the piece of evidence, it shall be borne in mind that he is a rustic hailing from village area, so also PW1. The evidence adduced by them in Kannada is recorded in English. Hence it is to be genuinely doubted as to what was their perception of schedule property.

10. It was always the case of the plaintiff that his property, half of the suit schedule property which was purchased under Ex. P1 by his father and uncle. Nowhere in his evidence, he admits the case of the defendants that defendants/legal heirs are in possession of the entire schedule property. PW2 in his examination-chief has stated that plaintiff was residing in the schedule property which is adjacent to the house of the first defendant and thereafter, vacated the house. This statement is in conformity with the case of the plaintiff that since the house in his portion of the property was old and dilapidated, he moved to another house.

Relying on the judgment of the Apex Court, in the case of Chikkam Koreswara Rao Vs. Chikkam SubbaRao and Others, , wherein the Apex Court has held "The admission must be read along with evidence given by him in his chief examination", the Division Bench of this Court, in the case Parameshwari Bai Vs. Muthojirao Scindia, , held thus:

"The right of a party can be considered to have been defeated on the basis of alleged admission made by him, the implication of the statement made by him must be clear and conclusive. There should not be any doubt all ambiguity to examine whether there is ambiguity in the admission. It would be necessary for the Court to read other part of the evidence and stand taken by him in the pleadings."

11. On a reading of the entire cross-examination evidence of PW2, it would not make out a case that the first defendant is residing in the entire area measuring 53"x28". The learned District Judge has considered the contention raised by the defendants about the admission which is pointed out before this Court and has not appreciated the same and has taken the view that such statements may be due to confusion. Having considered the evidence adduced by both the parties filament by filament, the Courts below have recorded their findings with sound reasons and judgments do not call for interference.

12. In view of the above discussion, appeal is dismissed.

No order as to costs.