

(2013) 06 KAR CK 0204
In the Karnataka High Court
Case No : Regular First Appeal No. 76 of 2010

M. Kumar

APPELLANT

Vs

S.C. Vijaykumar

RESPONDENT

Date of Decision : 11-06-2013

Acts Referred:

Citation : (2014) 2 AKR 121 : (2013) 5 KarLJ 104 : (2014) 2 KCCR 1632 :
(2013) 4 KCCR 3298

Hon'ble Judges : H. Billappa, J

Bench : Single Bench

Advocate : B. Srinivas, for the Appellant;

Final Decision : Dismissed

Judgement

H. Billappa, J.—This appeal by the defendant is directed against the judgment and decree, dated 26-8-2009, passed by the XIV Additional City Civil Judge, Bangalore, in O.S. No. 1865 of 2003. By the impugned judgment and decree, the Trial Court has decreed the suit of the plaintiff and has directed the appellant-defendant to demolish the construction put up in the suit "B" Schedule property and to deliver vacant possession of the suit "B" Schedule property to the plaintiff within three months.

2. Aggrieved by that, the appellant-defendant has filed this appeal.

3. Briefly stated, the facts are:

The respondent-plaintiff filed suit in O.S. No. 1865 of 2003 for mandatory injunction to remove the construction put up in the suit "B" Schedule property and deliver vacant possession. The case of the appellant-respondent was that he is the owner of the suit schedule property i.e., site bearing No. 48 formed in Sy. No. 5 of Saneguruvanahalli Village measuring East-West 40 feet and North-South 30 feet. The plaintiff purchased the suit schedule property from Gayathrinagar House Building Co-operative Society Limited, Bangalore. The plaintiff came to know that the defendant has put up construction by encroaching to an extent of

East-West 16 feet and North-South 7 feet on the North-East corner of the suit schedule property. The defendant has no right, title or interest in the suit schedule property. Therefore, the plaintiff has prayed for mandatory injunction directing the defendant to remove the construction put up in the suit "B" Schedule property and to deliver vacant possession.

4. The defendant has remained absent and he was placed ex parte. Thereafter, in the year 2008, when the plaint was amended, notice has been sent to the defendant. The defendant has appeared through his Counsel, but has not filed his written statement. Thereafter, when the case was posted for judgment, the defendant has filed an application for permission to file written statement. It has been rejected. Thereafter, the suit has been decreed.

5. Aggrieved by that, the appellant-defendant has filed this appeal.

6. The learned Counsel for the appellant contended that the impugned judgment and decree cannot be sustained in law. He also submitted that the Trial Court has failed to consider the evidence on record in proper perspective. Further he submitted that there was no opportunity for the defendant to effectively participate in the proceedings and therefore the impugned judgment and decree cannot be sustained in law. He also submitted that an opportunity may be given.

7. I have carefully considered the submission made by the learned Counsel for the appellant. I do not find any merit in the submission of the learned Counsel for the appellant. The suit is for mandatory injunction to remove the structure put up in the suit "B" Schedule property and to deliver possession. The plaintiff contends that he purchased the suit schedule property from Gayathrinagar House Building Co-operative Society Limited, Bangalore. The plaintiff has produced Exhibits P. 1 to P. 6 i.e., irrevocable GPA, certified copy of the sale deed, possession certificate, legal notice, copy of the sketch and undelivered postal cover. The plaintiff has deposed that the defendant has encroached upon the suit "B" Schedule property and put up construction. The documents produced by the plaintiff and the oral evidence clearly establish that the plaintiff has purchased the suit property and the defendant has encroached upon the suit "B" Schedule property and put up construction. The defendant has neither filed written statement nor cross-examined the witness. The judgment indicates that the defendant has not availed the opportunity given to him. Therefore, the impugned judgment and decree does not call for interference. There is no merit in this appeal and therefore, it is liable to be dismissed.

Accordingly, the appeal is dismissed.