

(2012) 02 KAR CK 0051

In the Karnataka High Court

Case No : Regular Second Appeal No. 712 of 2010 (INJ)

M Somaiah, Narayanappa and Venkateshappa

APPELLANT

Vs

Sri. Krishnappaa since deceased by L.Rs. Smt.
Saraswathamma

RESPONDENT

Date of Decision : 02-02-2012

Acts Referred:

Evidence Act, 1872 — Section 91

Karnataka Land Revenue Act, 1964 — Section 133

Citation : (2012) 02 KAR CK 0051

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : G.R. Mohan, for the Appellant; K. Varadarajan, Advocate for C/R, for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy

1. Respondents in R.A.34/2007 on the file of the I Addl. District and Sessions Judge, Fast Track Court-II, Bangalore Rural District aggrieved by the judgment and decree dt. 11.12.2009 reversing the judgment and decree dt. 8.11.2006 in 0.3.101/2001 of the Civil Judge (Jr.Dn) and JMFC, Hoskote dismissing the suit have presented this second appeal.

2. Respondents instituted O.S. 101/2001 for permanent injunction restraining the defendants/ appellants from interfering with the peaceful possession and enjoyment of the suit schedule property and to restrain them from cutting the eucalyptus trees thereon asserting that plaintiff-Krishnappa since deceased purchased the immovable property measuring 35 guntas in Sy.No. 62/1 of Jadigenahalli and the revenue records stood in his name having paid land revenue. while alleging that the appellant/defendants were interfering with the plaintiffs possession and are trying to cut and remove the standing eucalyptus trees. The appellants arraigned as defendants, on notice, entered appearance

and resisted the suit by filing written statement imerialia contending that ever since 15.11.1976 they are in possession and enjoyment of the suit schedule property when the plaintiff for want of money intended to sell the suit schedule property to one Munirudrappa of Jadigenahalli for Rs. 3,000/-, on advice of elders, the father of the defendants paid Rs. 3,000/- to the plaintiff, who in turn mortgaged the suit schedule property and handed over all original title deed with a condition that if the plaintiff wanted to secure return of the property, he should redeem the mortgage after 25 years by paying its market value.

3. In the premise of pleadings of parties, the trial court framed four issues, easting the burden on the plaintiff to prove lawful possession and interference by the defendants. The plaintiff by name Krishnappa having died during the pendency of the Suit, his two daughters being the legal representatives were permitted to come on record and prosecute the suit, whence Saraswathamma, 2nd legal representative of the plaintiff was examined as PW-1 and 5 documents marked as Ex.P1 to P5, while the 1st defendant/1st appellant was examined as DW-1 and 8 documents marked as Exs.D1 to D8. The trial court dismissed the suit on the premise that Krishnappa's signature was admitted on Ex.D1, a mortgage deed coupled with the admission of PW-1 that the defendants, during the past several years did cut and removed the eucalyptus trees.

4. The plaintiff having carried the judgment and decree in R.A.34/2007, the lower Appellate Court formulated issues for consideration and having re-appraised the material on record and evidence both oral and documentary held that the opinion of the trial court was not just and legal since the mere admission of the signature of Krishnappa and marking the same as Ex.D1 on the agreement, coupled with an indisputable fact that Krishnappa purchased the suit schedule property from one Venkatagiriappa on 27.12.1957 and the revenue records stood in the name of the said Krishnappa, which when not rebutted by evidence to the contrary, a presumption over the validity of the entries arose in law u/s 133 of the Karnataka Land Revenue Act, and accordingly disbelieved the entries in revenue records, Exs.D2 to D5, recording the name of Munishamappa. who was admittedly dead, as the person in possession to allow the appeal and decree the suit.

5. This appeal when admitted on 20.10.2010, the following substantial questions of law were framed:

1. Whether the appellant could claim under a registered mortgage deed when the mortgage deed itself did not disclose the possession of the property having been granted in favour of the appellant, and whether the lower appellate Court could have granted the relief of injunction on the basis that he was in possession of the land?

2. Whether the appellant could tender evidence in the light of Section 91 of the Evidence Act, 1872 in respect of an unregistered mortgage deed, which itself was not admissible.

6. Learned counsel for the appellant submits that though there is no dispute ever Krishnappa's title to the suit schedule property, nevertheless the said Krishnappa having entered into an agreement to mortgage in the year 1976 by receiving a premium of Rs. 3,000/- was entitled to redeem the mortgage and take return of the original title deeds after the expiry of 25 years therefrom, on payment of market value of the suit schedule property and having not done so, the suit for permanent injunction was justifiably dismissed by the trial court. According to the learned counsel the lower Appellate Court having failed to consider the terms and conditions in the agreement; of mortgage, without justification interfered with the findings of the trial court.

7. It is indisputable that the agreement of mortgage was not introduced nor marked in evidence except to confront PW-1 in cross-examination that it contained the signature of her father late Krishnappa marked as Ex.D1. in the absence of introducing the document being an unregistered Agreement of mortgage in evidence, the trial Court was not justified in appreciating its contents to decline the relief of injunction to the plaintiff.

8. It is next submitted that PW-1 in cross-examination admitted that the appellants during the past several years had cut, and removed the eucalyptus trees from the suit schedule property hence, a presumption that the defendants and not the plaintiffs, are in possession of the suit schedule property. This submission too in the fact situation is unacceptable, As noticed supra, the alleged delivery of possession of the suit schedule property to the defendants by deceased Krishnappa under the agreement of mortgage is not proved. The more cutting of trees by the defendants during the past several years, no presumption in law arises that the defendants were and continue to be in possession of the suit schedule property on the date of institution of the suit.

9. The submission that the entries in the revenue records made without the knowledge of the defendants leading to initiating proceedings before the Tahsildar, as asserted in paragraph-8 of the written statement, hence, the Lower Appellate Court was not justified in drawing a presumption in law over the said entries too, is without merit since a plea though put forth in paragraph 8 of the written statement of having filed an application before the Tahsildar, Hoskote, questioning the entries, nevertheless is not supported by evidence either oral or documentary.

10. Though the learned counsel advances a plea that u/s 91 of the Evidence Act, 1972 when terms of a contract, or of a grant, or any other disposition of the property is reduced in the form of a document, no evidence could be given in proof of such contract or disposition of property or of such matter, except the document itself or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions of the Act, I am afraid is inapplicable to the fact situation. I say so because the alleged unregistered agreement of mortgage which bears the signature of the deceased Krishnappa as the executant, in favour of appellants' father by name Munishyamappa, was neither

introduced in evidence, nor marked. Section 91 of the Evidence Act is applicable only when the terms of the contract or any disposition of the property is reduced to the form of document as required by law and introduced in evidence then the parties will not be permitted to adduce oral evidence contrary to the terms of the contract.

In the result, the substantial questions of law are answered against the appellants and the appeal dismissed.