

(2015) 07 KAR CK 0345

In the Karnataka High Court

Case No : Regular First Appeal No. 835 of 2014

M.A. Keerthi Prasad and Others

APPELLANT

Vs

Bharuka Power Corporation Ltd. and Others

RESPONDENT

Date of Decision : 22-07-2015

Acts Referred:

Citation : (2015) 07 KAR CK 0345

Hon'ble Judges : N. Kumar, J;B. Sreenivas Gowda, J

Bench : Division Bench

Advocate : B.S. Basavaraju, for the Appellant

Final Decision : Dismissed

Judgement

N. Kumar, J—This is a plaintiffs' regular first appeal challenging the judgment and decree of the Trial Court dismissing the suit of the plaintiffs, which was filed for a declaration that the gift deed dated 12.12.2002 and sale deed dated 28.05.2007 pertaining to "B" Schedule Property are null and void and for a direction to defendant No. 1 to deliver vacant peaceful possession of the "B" Schedule property and deliver vacant peaceful possession of "A" schedule property and for payment of mesne profits.

2. For the purpose of convenience, the parties are referred to as they are referred to in the suit.

3. The subject matter of the suit is land bearing Sy. No. 425/170 and Sy. No. 425/679 which are more particularly described as "A" and "B" Schedule properties in the schedule to the plaint and which are hereinafter referred to as the schedule properties. The 1st plaintiff is the brother and 2nd plaintiff is the sister. They are the children of late M.V. Appaswamy Naidu and late Rukminiamma. The 1st plaintiff is a resident of Kushalnagar and 2nd plaintiff is a resident of Mysore. They are only legal heirs of their parents. During the life time of Smt. R.B. Rukminiamma, she acquired 2 acres of land in Sy. No. 427/170 of Karike village by grant from the Government of Karnataka by an order dated

22.08.1956. Saguvali Chit was also issued in her favour. She was put in possession and she was enjoying the same. The Revenue records were changed in her name. On 02.11.1963 she entered into an agreement of sale in respect of the said property with one Sripathi Achar for a sale consideration of Rs. 450/-. Sripathi Achar paid advance sale consideration amount of Rs. 200/-. He agreed to pay the balance sale consideration at the time of execution and registration of the sale deed. However, the said Sripathi Achar failed to perform his part of the contract and did not take a registered sale deed from the said Rukminiamma. However, he was put in possession of the schedule property in terms of the agreement. Defendant No. 5 - V. Venkataramana Upadaya, mislead Smt. Rukminiamma and took the sale deed registered from her in respect of the schedule property under a registered deed dated 24.06.1994 by misrepresenting and by taking undue advantage of the innocence of Rukminiamma and obtained the sale deed, which is forged and fabricated. Even though, he was not in possession of the property, a rectification deed also came to be executed on 14.07.1964 which is also forged one. On the basis of the said forged sale deed, he filed an application for mutation and also for transfer of Jamabandhi in M.C. No. 40/64. When Smt. Rukminiamma opposed the said mutation proceeding, the said application of the 5th defendant was rejected. He has not preferred an appeal against the said order. In the meanwhile. Sripathi Achar filed a suit for specific performance of the agreement of sale and cancellation of the sale deed dated 26.04.1964 on the file of the Civil Judge, Madikeri in O.S. No. 155/65 against defendant No. 5. The suit came to be dismissed on 24.02.1968. Against the said judgment and decree, Sripathi Achar preferred an appeal in R.A. No. 32/68. It was allowed and it was declared that the sale deed dated 24.06.1964 is void and directed Smt. Rukminiamma to execute the sale deed in favour of Sripathi Achar within four months and also granted an injunction in favour of Sripathi Achar protecting his possession over the said property. Defendant No. 5 preferred R.S.A. No. 307/1971 which was dismissed. In spite of all these proceedings, the defendant No. 5 falsely misrepresenting and committing fraud on the revenue authorities, got changed the katha in his name without notice to Rukminiamma or without calling any objection from anybody. In the year 1989, Rukminiamma approached Sripathi Achar and requested and demanded for balance sale consideration. Sripathi Achar expressed his unwillingness to purchase the property from Rukminiamma as per the agreement dated 02.11.1963. Therefore, by mutual consent between Sripathi Achar and Rukminiamma, the possession of the property was delivered back to Rukminiamma by Sripathi Achar and since then Smt. Rukminiamma was in peaceful possession and enjoyment of the said property. She used to visit the property personally till 1999. Plaintiff No. 1 was taking the income and profits from the property, as Smt. Rukminiamma due to her ill-health was not in a position to look after and maintain the suit property. Therefore, in good faith, Smt. Rukminiamma requested defendant No. 5, who is the owner of the adjoining land to look after the property and to give profits to her and her son plaintiff No. 1. Since 1999 the defendant No. 5 used to maintain and look after

the said property and Rukminiamma and plaintiff No. 1 used to collect rent and profit from defendant No. 5. Due to personal and health problems, Smt. Rukminiamma could not visit the property and she shifted her residence to Mysore for medical treatment. She started to live with plaintiff No. 2. Plaintiff No. 1 used to collect rent and profit from defendant No. 5. On 04.10.2007 Smt. Rukminiamma died at Mysore. Thereafter, the plaintiffs thought of concentrating upon the suit schedule property and they verified the Revenue records. Then they came to know that on 12.12.2002, defendant No. 5 illegally executed a Gift Deed by suppressing the material fact in favour of his brother defendant No. 3 by relying on the forged sale deed dated 24.06.1964 which was declared as void, without any authority or legal right and subsequently defendants 3 and 5 along with other family members entered into a partition deed on 05.01.2004. Again the said property was allotted in favour of defendant No. 3. Defendant No. 3 also executed a registered sale deed dated 16.12.2006 in respect of 25 cents out of 2 acres, in favour of defendant No. 2. After purchase, again defendant No. 2 sold the same to defendant No. 1 by registered sale deed dated 28.05.2007. It has been assigned as Sy. No. 427/679 and revenue records are transferred in the name of defendant No. 1 in spite of the fact that defendant No. 1 is not an agriculturist, but a limited company who is not entitled to possess agricultural property. Now "A" schedule property is in illegal possession of defendant No. 3 and "B" schedule property is in possession of defendant No. 1, though plaintiffs are the absolute owners of the said properties and plaintiff No. 1 visited the suit schedule property in the first week of January 2009, and therefore, he came to know that the transaction was illegal through bogus and fabricated documents. The plaintiffs are entitled for recovery of possession of property. They further contend that those registered documents are not binding on the plaintiffs. Hence, the plaintiffs have filed the suit for the aforesaid reliefs.

4. After service of notice, defendant No. 1 entered appearance. The 1st defendant has filed detailed written statement. They contended that they have purchased 25 cents in Sy. No. 425/170 of Karike village from defendant No. 2. After verifying the title deeds pertaining to the said property and scrutinizing it, they purchased the same having come to understand that defendant No. 2 had valid clear marketable title over the said property and revenue records are changed in their name. Now it is the absolute owner in possession of the said property. Suppressing the material fact that property in Sy. No. 425/170 was agreed to be sold to one Sripathi Achar under an agreement dated 02.11.1963 and after having received the advance amount, the said Rukminiamma sold the property to defendant No. 5 through registered sale deed. Thereby Rukminiamma lost her title over the said property. In O.S. No. 155/65 Rukminiamma was only a formal party. Even the sale deed in favour of respondent No. 5 is declared to be void. Rukminiamma had no title over the property and said decree was in favour of Sripathi Achar. She is entitled to get only the balance sale consideration amount due under the agreement dated 02.11.1963. She had no ownership right, title over the property and she was in

no time in possession of the suit schedule property. Even Sripathi Rao was also not in possession of the suit schedule property. The plaintiffs have filed false suits by making false allegations. The gift deed executed by defendant No. 5 in favour of defendant No. 3 is valid. At the time of purchase of "B" Schedule property, there was rubber plantation and defendant No. 1 was entitled to purchase the rubber plantation. There is no legal bar for the said purchase. Defendant No. 1 is not in illegal possession of the schedule property and it is a bona fide purchaser and is not making any illegal construction and the plaintiffs are not entitled to recover possession of "B" schedule property. It has started construction work in the year 2007. There is no cause of action for the suit.

5. Defendant No. 3 also filed a written statement denying the plaint averments. They admit the legal proceedings referred to in the plaint. Even after the judgment in R.S.A. No. 307/1971 defendant No. 5 continued to be in possession and enjoyment of the same openly, continuously without any obstruction and it was adverse to the interest of Rukminiamma and Sripathi Achar. Hence, defendant No. 5 has perfected his title by adverse possession and Rukminiamma received the entire sale consideration from defendant No. 5. Hence, she did not question the possession and enjoyment of the property by defendant No. 5. Plaintiffs cannot take undue advantage of judgment in R.F.A. No. 307/71. The said judgment was not against defendant No. 5. When Sripathi Achar did not execute the decree, it does not mean that Rukminiamma could take back the property. The plaintiffs have no right to claim under Rukminiamma and there is no cause of action for the suit.

6. Defendant No. 5 filed a memo stating that they would adopt the written statement of defendant No. 3. Defendants 2 and 4 remained absent in spite of service of summons. Hence, they were placed ex parte.

7. On the basis of the aforesaid pleadings, the Trial Court framed the following points for consideration:

1. Whether the plaintiffs prove that, Gift Deed dated 12.12.2002 is null and void?
2. Whether the plaintiffs prove that, sale deed dated 28.05.2008 pertaining to the "B" Schedule property is null and void?
3. Whether the plaintiffs are entitled to possession of A and B schedule properties?
4. Whether the plaintiffs are entitled for mesne profits?
5. Whether the plaintiffs prove that, they are entitled for relief of permanent injunction as prayed for?
6. Whether the defendant No. 1 proves that, he is the bona fide purchaser of the suit "B" Schedule property?
7. Whether the defendant No. 3 proves that defendant No. 5 had perfected his title by way of adverse possession over the said property?

8. Whether the plaintiffs are entitled for the reliefs as prayed for?

9. What order or decree?

8. In order to substantiate their claim, the 1st plaintiff was examined as P.W. 1 and they produced 22 documents, which were marked as Ex. P1 to Ex. P22. On behalf of the defendants one Somashekar was examined as D.W. 1 and the 3rd defendant - V.K. Anantharama Rao was examined as D.W. 2. They did not produce any documents.

9. The Trial Court, on appreciation of the aforesaid oral and documentary evidence has held that the plaintiffs have failed to prove that the gift deed dated 12.12.2002 is void. Similarly the plaintiffs failed to prove that the sale deed dated 28.05.2008 pertaining to "B" schedule property is null and void. It held that the plaintiffs are not entitled to possession of "A" and "B" schedule properties and also they are not entitled for mesne profits. Further, they are not entitled for order of injunction. The 1st defendant has proved that he is the bona fide purchaser of "B" Schedule property for valuable consideration. It also negated the contention of the 3rd defendant that the 5th defendant has perfected his title to the schedule property by adverse possession. Accordingly dismissed the suit of the plaintiff.

10. Aggrieved by the said judgment and decree of the trial court, the plaintiffs are in appeal.

11. The learned counsel for the plaintiffs submitted that admittedly, the sale deed in favour of the 5th defendant, which was executed on 24.06.1994 is declared to be null and void by a Competent Civil Court and consequently Rukminiamma continues to be the owner as the decree holder did not execute the decree for specific performance. After the decree, the 5th defendant was in possession of the schedule property as he was the adjoining land owner as a licensee, in view of the permission granted by Smt. Rukminiamma. Therefore, the 5th defendant has no right over the property and the gift deed executed by him does not convey any title to the 3rd defendant and the sale deed executed by the 3rd defendant in favour of the 2nd and 1st defendant did not convey any title to them and therefore, the Trial Court committed serious error in not appreciating these facts.

12. In view of the aforesaid submission, the question for consideration is:

Whether the plaintiffs have a right to challenge the gift deed executed by 5th defendant in favour of the 3rd defendant and the sale deed executed by the 3rd defendant in favour of 1st defendant and whether they are entitled for injunction and declaration as prayed for?

13. The facts are not in dispute. The schedule property was granted to Smt. Rukminiamma by an order of grant from the Government of Karnataka on 22.08.1956. Rukminiamma executed the sale deed in respect of the schedule property in favour of the 5th defendant on 24.06.1994. Smt. Rukminiamma did

not challenge the sale deed during her life time either on the grounds which are sought to be made out by the plaintiffs or on the ground of want of consideration. However, before executing the sale deed, she had entered into an agreement to sell the very same property with one Sripathi Achar on 02.11.1963 for a sum of Rs. 450/- and has received an advance of Rs. 200/-. The said Sripathi Achar on coming to know of the execution of the sale deed by Rukminiamma in favour of the 5th defendant, filed a suit in O.S. No. 155/1965 for specific performance of the agreement to sell. The said suit after contest came to be dismissed. The said Sripathi Achar preferred a regular appeal in R.A. No. 32/1968 challenging the order of the dismissal of the suit. The first Appellate Court allowed the appeal, decreed the suit for specific performance. The said judgment was challenged by the 5th defendant before this court in R.S.A. No. 307/1971. The said appeal came to be dismissed.

14. It is not in dispute that though Sripathi Achar got a decree for specific performance, neither he paid the balance sale consideration to Smt. Rukminiyamma nor deposited the amount in court and sought for execution of sale deed in his name either by the defendants in the suit or through the agency of court. The decree passed in RSA is dated 23.01.1974, Sripathi Achar should have executed the decree for specific performance on or before 23.01.1986. He did not initiate any execution proceedings at all. Therefore whatever right was accrued to him in the decree for specific performance was lost. Therefore, notwithstanding the fact that the sale deed in favour of the 5th defendant was held to be void, due to the expiry of the 12 years period as no sale deed was executed by him and Smt. Rukminiyamma, he continued to be the owner. At any rate, Smt. Rukminiyamma did not become the owner.

15. It is on record, Smt. Rukminiyamma requested 5th defendant to continue to cultivate the land as he was the adjoining land owner. Smt. Rukminiyamma did not challenge the judgment and decree of the Trial court or the first Appellate Court. On the contrary, his case is that Smt. Rukminiyamma, first plaintiff was collecting rent from the first defendant. Thus the possession of the first defendant over the schedule property is not in dispute.

16. Smt. Rukminiyamma died in the year 2007, i.e., on 28.05.2007. Till her death, she did not either challenge the sale deed executed by her in favour of the fifth defendant or the gift deed executed by the fifth defendant in favour of the 2nd defendant on 12.12.2002. It is only after the death of Smt. Rukminiyamma, the plaintiff thought of challenging these alienations. When Smt. Rukminiyamma herself had no right, title or interest over the schedule property, on her death, the plaintiffs having no right, title or interest over the suit schedule property have no right to maintain the suit and they have no right to challenge the gift deed as well as the sale deed as sought to be done in the suit.

17. The understanding of the plaintiff that once a Civil Court declares the sale deed as void, the fifth defendant who lost the property under the sale deed the title reverted back to Smt. Rukminiyamma is erroneous. Fifth defendant was

made a party to the suit for specific performance because, on the day the suit was filed, Smt. Rukminiyamma had no right or title vest with the fifth defendant. In pursuance of the decree for specific performance only the fifth defendant along with Smt. Rukminiyamma should have executed the sale deed. Fifth defendant would have lost the right if the sale deed had been executed. No such sale deed is executed, time prescribed in law for enforcement of decree for specific performance has lapsed. Notwithstanding the fact that sale deed in favour of the 5th defendant was declared to be void, fifth defendant continued to be the owner of the suit property. Therefore he has every right to make a gift and he has executed the sale deed in favour of the 3rd defendant. All these alienations are valid. The plaintiffs have no right or interest over the property. Therefore, we do not see any merit in this appeal. Accordingly, the appeal stands dismissed.

18. As we have dismissed the appeal on merits, we also do not find any sufficient cause for condoning the delay of nearly 594 days in preferring this appeal. It only shows that the appellants have accepted the judgment of the trial court. Probably at the instance of someone, they are trying to take a chance before this court by preferring this appeal. Therefore, there is no merit in the application. Application also stands dismissed.