

(2015) 11 KAR CK 0238
In the Karnataka High Court
Case No : Regular Second Appeal No. 7101/2011

Mallanna

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 04-11-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 6, 100, 80

Citation : (2015) 11 KAR CK 0238

Hon'ble Judges : A.N. Venugopal Gowda, J.

Bench : Single Bench

Advocate : J. Augustin, Advocate, for the Appellant; Archand Tiwari, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopal Gowda, J.—This appeal is by the plaintiff. O.S. No. 87/2008, filed in the Court of Civil Judge (Jr. Dn.), Yadgir, was dismissed as per the judgment and decree dated 15.06.2010. R.A. No. 23/2010 filed there against, in the Court of Senior Civil Judge, Yadgir, was also dismissed as per the judgment and decree dated 29.11.2010. Assailing the said judgments/decrees, this second appeal was filed.

2. Suit was instituted to pass a decree of declaration of title and permanent injunction, directing the defendants not to store water in the suit land and not to use the suit property for the Tank purpose and for grant of consequential reliefs. The suit was contested. Written statement was filed by defendant No. 2 and was adopted by defendant No. 1, by filing a memo. Following issues were raised for trial:

"1. Whether the plaintiff proves that, he is the absolute owner and in possession of the suit property?

2. Whether the plaintiff further proves that, it is necessary to acquire the suit property for tank and to given compensation to him?

3. Whether the plaintiff further proves that, he is in lawful possession of the suit property as on the date of suit?
4. Whether the defendants there is no cause of action to the plaintiff suit?
5. Whether the defendant further proves that, the Tank was constructed during the period of Nijam Rule and the question of paying the compensation does not arise?
6. Whether the plaintiff is entitle for the relief as sought?
7. What order or decree?"

3. Plaintiff got himself examined as PW. 1 and marked Exs. P. 1 to P. 10. Defendant No. 2 got examined DW. 1. The learned trial Judge, on considering the entire evidence on record, oral and documentary, by a judgment and decree dated 15.06.2010, dismissed the suit. The first appellate Court after hearing the learned counsel for the parties and after consideration of the evidence, oral and documentary, on record and also the judgment and decree of the trial Court, raised following points for determination:

"1. Whether the trial Court is justified in holding that the plaintiff is not entitle for the relief sought for in the suit?

2. Whether the judgment and decree under appeal warrant interference?

3. What order?"

4. On independent assessment of record of the suit, the first point was answered in the affirmative and second point was answered in the negative and as a consequence, appeal having been found to be devoid of merit, was dismissed.

5. Sri. J. Augustin, learned counsel for the appellant submitted that this appeal is confined for declaration of title. Learned advocate submitted that the plaintiff/appellant gives up the relief with regard to decree of permanent injunction. Submission of the learned counsel stands recorded.

6. Sri. J. Augustin, contended that the Courts below have committed error and illegality in dismissing the suit in its entirety. He submitted that in view of findings recorded, the decree passed being not in accordance with Order XX Rule 6 of CPC, substantial question of law arises for determination and hence, appeal under Section 100 of CPC is maintainable.

7. Smt. Archana P. Tiwari, learned Additional Government Advocate, on the other hand supported the impugned judgments/decrees and submitted that the same having not given raise to any substantial question of law, this appeal is not maintainable.

8. Indisputedly, the respondents did not construct the Yadgir Doddakere and have not made any arrangements to store the water in the said tank situated in the suit land. Respondents have only been maintaining the said tank, which in

existence, for the benefit of the public. The plaintiff, who got examined as PW. 1, has admitted that nearly 70 years back, during regime of Nijam, Yadgir Doddakere was constructed and that the defendants have not constructed the Yadgir Doddakere. It is on account of the said categorical admission, the learned trial Judge has dismissed the suit.

9. The appellate Judge, on independent assessment of the evidence and finding that the trial Judge has correctly appreciated the evidence and come to the right conclusion and that there being no scope for interference, dismissed the appeal.

10. Yadgir Doddakere, concededly being in existence for more than 70 years, in order to create cause of action to institute the suit, notice under Section 80 CPC was served. Despite the factional reply, the suit was filed. The cause of action, if any, for the plaintiff has arisen in terms of his own admission more than 70 years back i.e., prior to institution of the suit. The tank is in existence for more than 70 years. Thus, the suit is barred by limitation.

11. Both the Courts below have correctly appreciated the record of the case. The impugned judgments are well considered judgments. Learned counsel for the appellant was unable to point out any perverse finding, been recorded by the Courts below. The contention with regard the decrees passed being not in conformity under Order XX Rule 6 of CPC, is also devoid of merit.

12. Jurisdiction in terms of Section 100 of CPC is limited. Interference with the concurrent findings of two Courts can arise, if a substantial question of law arises for consideration. Since, the impugned judgments have not give raise to any substantial question of law, there is no scope for exercising jurisdiction under Section 100 CPC to interfere with the impugned judgments and grant any relief to the appellant.

In the result, appeal sans substantial question of law, is not maintainable and stands rejected, accordingly.