
(2014) 09 KAR CK 0226

In the Karnataka High Court

Case No : Regular Second Appeal No. 697 of 2011

Mallikarjunaiah

APPELLANT

Vs

M. Mahadevaiah

RESPONDENT

Date of Decision : 04-09-2014

Acts Referred:

Citation : (2014) 09 KAR CK 0226

Hon'ble Judges : A.S. Pachhapure, J

Bench : Single Bench

Advocate : Prakash T. Hebbar, Advocate for the Appellant; L.V. Aparna Reddy, Advocate for V. Srinivas, Advocate for the Respondent

Final Decision : Allowed

Judgement

A.S. Pachhapure, J.—The appellant has challenged the judgment and decree of "the First Appellate Court, setting aside the dismissal of suit filed by the respondent and allowing his appeal by granting a decree of declaration and injunction.

2. The facts reveal that the respondent instituted suit for the relief of declaration that he is the absolute owner of the suit property i.e., agricultural land bearing Sy. No. 154/5 measuring 27 guntas described in the schedule of the plaint claiming that it fell to his share in a partition. As there was an obstruction to his possession and litigations before the Revenue Authorities, he approached the Trial Court for the relief of declaration that he is the absolute owner of the suit property and also sought injunction to restrain the appellant from causing obstruction to his peaceful possession and enjoyment of the suit property.

The appellant who is the defendant, remained ex-parte in the Trial Court and therefore, the respondent examined himself as PW. 1 and two other witnesses as PW. 2 and-PW. 3 and in their evidence, the documents Exs. P1 to P8 were marked. The Trial Court on appreciation of the material on record, held that the aforesaid documents are insufficient to grant the relief of declaration and

injunction, therefore, dismissed the suit. Aggrieved by the judgment and decree of dismissal, the respondent approached the First Appellate Court in R.A. No. 47/2009. The First Appellate Court allowed the appeal and granted a decree as prayed for. Aggrieved by the judgment and decree of the First Appellate Court, the present appeal is filed.

3. The following substantial question of "law arises for consideration:

"When the Trial Court dismissed the suit of respondent filed for the relief of declaration and injunction holding that the material placed on record is insufficient to grant the relief and assigned reasons for its conclusion, whether the First Appellate Court was justified in reversing the judgment and decree of the trial Court and in doing so, did not assign appropriate and valid reasons to overcome the findings of Trial Court and thereby committed an illegality in the impugned judgment and decree?"

4. Heard the learned Counsel for appellant and also learned Counsel for the respondent.

5. Learned Counsel for the appellant submits that the evidence placed on record by the respondent is insufficient to grant the relief of declaration and for this reason that the Trial Court did not grant a decree and rightly dismissed the suit. He submits that the record of rights stood in the name of appellant as on the date of suit. He also submits that the suit property fell to the share of his father and his father's name was appearing in the records. It is also his contention that when the respondent sought for the relief of declaration of title over the suit property, in the absence of material evidence, such a relief cannot be granted.

6. On the other hand, learned counsel for the respondent supported the judgment and decree of the First Appellate Court.

7. Ex. P1 is the mutation entry bearing MR No. 5/1982-83. It is in pursuance of this mutation entry that the name of father of appellant was entered in the records. Exs. P2 and P4 are the record of rights, wherein the name of defendant was shown as the owner in possession of the suit property alongwith the name of one Sri. Rajashekaraiah. Ex. P5 is the record of rights of the year 2007-08 and it discloses the name of appellant entered in the records. Exs. P6 and P7 are the record of rights for the period prior to the institution of suit. There was a litigation between the parties and the plaintiff had preferred an appeal before the Assistant Commissioner in RA (LKP) No. 98/2003-04 challenging the mutation entry relating to the entry of name of appellant in the records of the suit property and the learned Assistant Commissioner dismissed the appeal of respondent and confirmed the entry of the name of appellant in the records directing the parties to approach the Civil Court.

8. Perusal of the order at Ex. P8 reveals that there was an averment regarding the partition and the entry of name of the appellant in the records in pursuance of the said partition. So as could be seen from the records which have been

produced, there was a partition in the year 1982-83 and Ex. P1 is the mutation entry relating to the said partition. Subsequently, though the name of appellant was entered in the records and the entry was affirmed by the Assistant Commissioner having been done in pursuance of the procedure laid down by the Karnataka Land Revenue Act, anyhow, the Assistant Commissioner directed the parties to approach the Civil Court. From this order at Ex. P8, it is clear that the name of appellant was also entered in the records in pursuance of the partition and the said entry was held to be valid by the revenue authorities. Therefore, there are conflicting mutation entries in relation to the partition and in the circumstances, except the oral evidence which has been placed on record by way of affidavit of the respondent and his witnesses, there is no material evidence to grant the relief of declaration of title to the respondent. It is for this reason that the Trial Court had dismissed the suit.

9. The Appellate Court has accepted the oral evidence of plaintiff and his witnesses. It is relevant to note that both two witnesses examined by the appellant are his relatives. This much of evidence appears to be insufficient so as to grant the relief of declaration in the context of mutation entry entering the name of appellant in the records having been affirmed by the revenue authorities. That apart, the appellant was placed *exparte*. He did not have any contention before the Trial Court.

10. Taking into consideration the aforesaid facts and circumstances, the interest of justice would be met, in case, if the matter is remitted back to the Trial Court to afford an opportunity to the parties to produce the material evidence so that the Trial Court can appreciate the same and grant appropriate relief to the parties. As the Trial Court in fact had given proper reasons for its conclusion, the First Appellate Court committed an error in reversing the findings. That apart, an opportunity is needed for the parties to produce the material evidence, hence, it is just and proper to set aside both the decrees of Courts below. Hence, I answer the substantial question of law in Affirmative.

Consequently, the appeal is allowed. The judgment and decree of the Courts below are set aside. The matter is remitted back to the Trial Court to afford an opportunity to the parties to put forth their pleadings, then to frame issues and permit the parties to produce their evidence and dispose of the case in accordance with law.

As the matter in the Trial Court is of the year 2007, to avoid delay, both the parties are directed to appear before the Trial Court on 06.10.2014 without waiting for any summons.