
(2013) 07 KAR CK 0154

In the Karnataka High Court

Case No : Regular First Appeal No. 1444 of 2012

Mathew Arimalil and Smt. Elizabeth Mathew

APPELLANT

Vs

Nirmala and Others

RESPONDENT

Date of Decision : 04-07-2013

Acts Referred:

Karnataka Court-fees and Suits Valuation Act, 1958 — Section 64

Citation : (2013) 07 KAR CK 0154

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : S. Sudarshana Reddy, for the Appellant; N. Bayya Reddy, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—This appeal coming on for admission is heard for final disposal in the facts and circumstances of the case. Hence, the appeal is admitted to file. The appellants were the defendants before the Trial Court. The suit was initially filed for bare injunction and later converted into one for declaratory relief of possession and mandatory injunction. The plaintiffs claim that they are the lawful owners of plaint `A" schedule property, which was an extent of 37 guntas of land and what was described as `B" schedule property is, the house constructed by these appellants and they have been residing in it during the pendency of the suit. The suit was contested.

2. It was contended by the appellant-defendants in the written statement that Chennappa Reddy was the original owner of the suit property and the defendants had inherited the property, by succession. Chennappa Reddy had executed a General Power of Attorney in favour of one Jabeer Sharief, for portion of the suit property bearing site No. 1 measuring. East-West 40 feet and North-South 30 feet on 01.09.1989 and it was also acknowledged that he had received Rs. 30,000/- towards the said property, as acknowledged by his affidavit. The said General Power of Attorney Holder had executed a sale deed in favour of one Smt.

Azeema Bi on 16.01.1991 for valuable consideration and Smt. Azeema Bi in turn had sold the same in favour of one P.J. Davies under a sale deed dated 26.02.1993 and through his General Power of Attorney one Elasamma Thomas, the property was sold to the defendants on 15.11.2000. Therefore, the defendants claim to be in physical possession from 01.09.1989 onwards and that the plaintiffs had set up a false case in O.S. No. 6215/1998 to which, the present appellants were not parties and that the defendants-appellants were putting up construction after obtaining loan from a Bank and the question of trespass over the suit schedule properties did not arise.

3. On the basis of the said pleadings, the Court below had framed several issues and answered all of them in the affirmative.

4. During the pendency of the suit, according to the appellants, they were misled into thinking that the matter would be settled amicably and therefore since the 1st appellant was residing abroad and since the 2nd defendant had assured that the suit would be withdrawn, the appellants did not seek to pursue the pending proceedings and it is in that background that the suit has been decided on the one sided evidence of the respondents-plaintiffs and therefore, the present appeal is filed challenging the judgment and decree in favour of the plaintiffs as the pleadings, without the evidence of the defendants, have been ignored. Though they were represented, the defendants had failed to tender evidence for the reason aforesaid and hence would submit that if, an opportunity is granted to the appellants-defendants, they would tender evidence in support of their case to establish the falsity of the claim of the plaintiffs and the denial of a legitimate right of the defendants and if the defendants are not given this opportunity, it may lead to a miscarriage of justice, in the true facts not being brought on record. The fault on the part of the appellants-defendants be condoned on such terms as this Court may deem fit. And it is contended that the matter be remanded on this note while affording opportunity to the appellants-defendants to tender their evidence.

5. The learned counsel appearing for the respondents-plaintiffs would, however, vehemently oppose any such consideration. The allegation that there was misrepresentation as to settlement and that the appellants were misled is denied. It is their self-serving contention. No such circumstances are forthcoming from the record and would oppose any consideration in favour of the appellants-defendants at this stage. The matter has run its course in accordance with law and procedure and the claim that there will be a miscarriage of justice, is not tenable. It was for the appellants to establish their case at the appropriate time. Now the appellants cannot be permitted to urge that there is a miscarriage of justice when the fault was on their part in not having been diligent in following the case.

6. In the above background, it is evident that the defendants have not tendered their evidence though there are strong pleadings on their behalf and the same has not been established by the defendants by tendering evidence. The fact that

the 1st appellant is residing abroad even now, is not in serious dispute.

7. Therefore, there is a semblance of a ground made out insofar as the reason for not tendering evidence on their part is concerned. No doubt this would cause inconvenience and hardship to the respondents in having to contest the matter, if the same is remanded to the Trial Court even now. The suit was of the year 2001 and therefore, if they would go through a further trial at this point of time, it would certainly cause hardship to the respondents-plaintiffs. However, in the interest of justice, it is necessary that the evidence, which the appellants-defendants claim to possess should be part of the record in order to adjudicate the matter completely and hence, hardship that may be caused to the respondents can be adequately compensated by imposing costs, while remanding the matter for a fresh consideration. Accordingly, as issues have been framed in the suit and the plaintiffs have tendered their evidence, it would be appropriate that the appellants herein are permitted to tender their evidence and also allow the respondents to tender such rebuttal evidence, if any, at a later point of time and to proceed in accordance with law thereafter. This shall be subject to the appellants paying to the respondents, at the next date of hearing before the Trial Court, a sum of Rs. 50,000/- (Rupees Fifty thousand) as costs. Accordingly, the appeal is allowed.

The judgment of the Court below is set-aside and the matter is remanded for a fresh consideration in terms as stated above.

The parties shall appear before the Trial Court without any further notice from the Trial Court on 1st of August, 2013.

The office shall refund the Court fees paid by the appellants in terms of Section 64 of the Karnataka Court Fees and Suits Valuation Act, 1958.

Having regard to the fact that the suit is of some vintage, the Trial Court is directed to dispose of the suit expeditiously, in any event, within six months from the date of receipt of a copy of this judgment.