

(2013) 12 KAR CK 0309

In the Karnataka High Court

Case No : Regular Second Appeal No. 7140 of 2012

Mohan

APPELLANT

Vs

Gram Panchayat

RESPONDENT

Date of Decision : 12-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0309

Hon'ble Judges : K.N. Keshavanarayana, J

Bench : Single Bench

Advocate : Ananth Shivajirao Jahagirdar, for the Appellant;

Final Decision : Dismissed

Judgement

K.N. Keshavanarayana, J.—This second appeal by the unsuccessful plaintiff in O.S. No. 147/2002 on the file of Civil Judge (Senior Division) at Chktapur is directed against the concurrent judgment of the Courts below dismissing the suit filed by him for the relief of declaration and injunction. The appellant/plaintiff filed the suit for the aforesaid relief inter alia contending that the land bearing Sy. No. 111 measuring 9 acres 5 guntas situated at Kalgi village of Chittapur Taluk was owned and possessed by one Dhavji, who under registered sale deed dated 20.08.2001 sold 3 acres of land to the plaintiff and placed the plaintiff in possession of the said extent of land and that since then the plaintiff has been in peaceful possession and enjoyment of the said extent of land purchased by him. It is further alleged that defendant/respondent-Gram Panchayat having no manner of right, title or interest over the suit schedule property, is trying to interfere with the possession and is also denying his title therefore, the plaintiff sought for declaration of his title to the suit schedule property and consequential relief of injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit schedule property.

2. The suit was contested by the respondent inter alia contending that the plaintiff is not the owner of the suit schedule property nor is in possession of the

same. It was further contended that some time prior to 1987 when the Government intend to construct High School building and other Government offices in Kalgi village of Chittapur Taluk and since there was no government land available for the said purpose, it requested "the; defendant/Gram Panchayat to provide some land and on the basis of such request, the Gram Panchayat Members requested Dhavji to give 2 acres of land and accordingly Dhavji acceded to the request of the Gram Panchayat and handed over 2 acres of land to Head Master, High School Kalgi on 20.11.1987 and subsequently, in the year 1990 Dhavji gave another two acres of land for construction of Nad Tahsildar Office and other Government offices and in that regard he also executed consent deed dated 10.07.1990 with a condition that the Gram Panchayat has to take steps for grant of compensation for the entire 4 acres of land. It is further contended by the defendant that on 03.07.1990 said Dhavji made representation to the Mandal Panchayat requesting to issue no objection certificate for conversion of remaining land measuring 5 acres 5 guntas, for which Mandal Panchayat issued no objection certificate and that though the Mandal Panchayat made its efforts by writing several letters to the Government officers for taking steps to award compensation to said Dhavji, it was not immediately acceded too. Nevertheless, it was contended that as on the date of the alleged sale, Dhavji was not in possession of the suit schedule property nor on the date of the suit plaintiff was in possession. Therefore, the defendant sought for dismissal of the suit.

3. The Trial Court on the basis of the pleadings of the parties framed the following issues:

- 1) Whether plaintiff proves his title and lawful possession over the suit property?
- 2) Whether plaintiff proves that defendants are denying his title and causing interference into his lawful possession over the suit property?
- 3) Whether plaintiff is entitled for judgment and decree as claimed?
- 4) To what order or decree?

4. In order to substantiate his contention, plaintiff examined himself as P.W. 1 and also examined his vendor Dhavji as P.W. 2. He relied on the documentary evidence marked as Exs. P1 to P13. On the other hand, Secretary of the Gram Panchayat was examined as D.W. 1 and the documentary evidence marked as Exs. D1 to D32 were relied upon by the defendant.

5. The Trial Court on appreciation of the oral and the documentary evidence though held that the plaintiff has proved that he is the owner of the suit schedule property measuring 3 acres in Sy. No. 111 of Kalgi village, he has failed to establish that he was in possession of the suit schedule property as on the date of the suit. The Trial Court further recorded a finding that, even on the date of the alleged sale deed purported to have been executed by Dhavji, Government buildings were in existence on the suit schedule property, therefore, Dhavji

himself was not in possession of the suit schedule property, as such, possession of the suit schedule property could not have been delivered to the plaintiff. Therefore, it was held that the plaintiff has utterly failed to prove that he is in possession of the suit schedule property as on the date of the suit. In that view of the matter, the Trial Court held that since the plaintiff is not in possession of the suit schedule property as on the date of the suit, further relief of permanent injunction sought by the plaintiff was not the proper relief and proper further relief which he ought to have sought was for possession in addition to the relief of declaration u/s 34 of the Specific Relief Act. Therefore, the Trial Court in the light of proviso to Section 34 of Specific Relief Act held that relief of declaration cannot be granted by the Court. In that view of the matter, the Trial Court dismissed the suit.

6. The Lower Appellate Court concurring with the findings recorded by the Trial Court dismissed the appeal filed by the plaintiff.

7. Aggrieved by the said concurrent judgment of the Courts below, the plaintiff is in appeal before this Court.

8. Having heard the learned counsel for the appellant and on perusal of the judgments under appeal, I am of the view that the appeal does not involve any question of law much less substantial question of law warranting consideration by this Court.

9. As noticed supra, the Courts below concurrently have recorded a finding that the plaintiff has utterly failed to prove that he is in possession of the suit schedule property as on the date of the suit. The Courts below having regard to the voluminous documents produced by the defendant have recorded a finding of fact that even prior to the date of the purported sale deed in favour of the plaintiff there were government buildings on the suit schedule property. This shows that the vendor of the plaintiff namely P.W. 2 - Dhavji himself was not in possession of the suit schedule property as on the date of the purported sale deed Ex. P1 dated 16.08.2001. In that view of the matter, though the sale deed Ex. P1 contains recitals regarding delivery of possession of the property sold, as rightly observed by the Courts below, possession in fact has not been delivered and could not have been delivered by the vendor since he was not in physical possession of the suit schedule property. Therefore, from the above it is manifestly clear that the plaintiff was never in possession of the suit schedule property which he purchased under Ex. P1 dated 16.08.2001 since long prior to that date, the Governmental authorities had constructed buildings and had occupied the same. Therefore, the plaintiff while filing the suit for declaration of title based on the sale deed was required to seek further relief of possession. However, plaintiff sought consequential relief of injunction only contending that he is in possession of the property. Section 34 of the Specific Relief Act, states that any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a

declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief. However, proviso to Section 34 directs that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. In other words, when plaintiff files a suit for declaration of his title in respect of a immovable property and if he is required to seek further relief than a mere relief of declaration of title and if he omits to seek such relief, the Court should not grant the relief of declaration. What is further relief which is required to be sought in addition to the relief of declaration of title, depends upon the facts and circumstances of each case. No doubt, relief of permanent injunction in a case where the plaintiff could establish his possession as on the date of the suit certainly would be a further relief. However, if a plaintiff files suit for declaration and further relief of permanent injunction contending that he is in possession of the suit schedule property and if he fails to establish that he was in possession of the property and that as on the date of the suit, he was out of possession, then the proper further relief which he ought to have sought is relief of possession and not relief of permanent injunction. In such cases, the Court having regard to the mandate of proviso to Section 34, cannot grant relief of declaration. For this view of mine, I draw sustenance from the decision of this Court in Sri Aralappa Vs. Sri Jagannath and Others, . In the light of the above discussion, I am of the considered opinion that the Courts below are justified in dismissing the suit of the plaintiff on the ground that the plaintiff has failed to prove that he was in possession of the suit schedule property as on the date of the suit. In this view of the matter, the appeal is devoid of any merit and it does not involve any question of law. Therefore, appeal is dismissed.