

(2012) 08 KAR CK 0288

In the Karnataka High Court

Case No : Regular Second Appeal No. 844 of 2010

N. Ganganna

APPELLANT

Vs

Ramakka Since Dead by LRs. (A. Nagendrappa, Adopted S/o.
Bheemappa, Retired Employee

RESPONDENT

Date of Decision : 08-08-2012

Acts Referred:

Citation : (2012) 08 KAR CK 0288

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

Bench : Single Bench

Advocate : R.B. Deshpande and Sri. P.P. Hegde, for the Appellant; Manjula N.V.
and Sri. Revanna Bellary for C/R2, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Pachhapure

1. The appellant has challenged the Judgment and decree of injunction granted by the first appellate Court setting aside dismissal of the suit filed by

the respondent herein. The facts relevant for the purpose of this appeal are as under:

The parties are referred to as they were referred in the original proceedings, for the sake of convenience.

The appellant herein is the defendant, whereas deceased respondent No. 1 and respondent No. 2 were the plaintiffs, who instituted the suit for

injunction to restrain the appellant from causing obstruction to his peaceful possession and enjoyment of the suit property bearing kaneshumari No.

113 with Khata No. 75 as described in the schedule.

Plaintiff No. 1 is said to be the adopted mother of the plaintiff No. 2. Plaintiff No. 1 purchased the suit property referred to supra under a

registered Sale Deed, dated 17.02.1963 for a consideration of R:-...500-00 and since then, they claimed to be in possession and enjoyment of the

suit house with the *vacant space. There is a tamarind tree in the vacant area. The plaintiffs have also given a rough sketch. As the defendant tried

to encroach upon the suit property on the northern side, the plaintiffs instituted the suit for injunction.

The defendant appeared and filed his written statement denying the allegations made. He disputed the relationship of adoptive son and mother

between the plaintiffs. In para 8 of the written statement, the defendant contended that suit property is on the side of the property purchased by

him and the suit is instituted with a mala fide intention to encroach the property purchased by him and therefore, sought for dismissal of the suit.

The trial Court framed the issues and recorded the evidence of P.Ws.1 and 2 and documents Exs.P1 to 6 were marked in their evidence. D.Ws.1

and 2 were examined and documents Exs.D1 to 7 were marked in their evidence. The trial Court after hearing learned counsel for the parties and

on appreciation of the material on record, dismissed the suit. Aggrieved by the Judgment and Decree, the plaintiffs preferred R.A. No. 53/2008.

The said appeal came to be allowed by the Judgment and Decree dated 04.01.2010 by the first appellate Court, granting injunction as prayed for`.

Aggrieved by the Judgment and Decree by the first appellate Court, the present appeal has been filed.

2. This Court while admitting the appeal on 18.02.2011, raised the following substantial questions of law for consideration:

1) Whether the suit for permanent injunction without seeking declaration of title is maintainable?

2) When plaintiff is not in possession, whether suit for bare injunction is maintainable in law?

3. This Court vide Order dated 08.08.2012, as substantial question of law No. 2 is incorporated in substantial question of law No. 1 raised and as

the question of possession is a finding of fact, retained substantial question of law No. 1 by deleting substantial question of law No. 2.

4. It is the contention of learned counsel for the appellant that the respondents are not the owners of the suit property and though they were not in

possession, the first appellate Court committed an error in granting a decree for injunction. It is his further contention that the suit for injunction is

not maintainable and the plaintiffs have to seek a relief of declaration. So also, he contends that plaintiff No. 2 is not the adoptive son of plaintiff

No. 1 and therefore, the suit cannot be maintained.

Per contra, learned counsel for the respondent supported the Judgment and Decree of the first appellate Court.

5. Plaintiff No. 2 is examined as P.W.1. He has produced certified copy of the Sale Deed at Ex. P1 and it reveals that plaintiff No. 1 purchased

the said house and vacant space on 17.02.1963 for a consideration of Rs.500-00 from its erstwhile owner. Ex.P2 is the extract of the assessment

register, wherein the name of Agasara Narasimhappa bin Ajjappa is mentioned in the possessor's column. Exs.P3 and 4 are receipts regarding

payment of tax. The evidence reveal that the natural father of plaintiff No. 2 is Agasara Narasimhappa. It is no doubt true that the plaintiffs have not

produced the extract of assessment register, maintained by the village panchayat, showing the name of the plaintiffs in the records. But, as could be

seen from the written statement filed by the defendant, in para 8, the defendant admits that the suit property is adjoining property. purchased by

him from one G.Prakash under Sale L)eed-Ex.D1 and the suit has been filed with an intention to encroach upon the property of the defendant. So,

the perusal of this contention in the written statement, the defendant admits the existence of the suit property and even as could be seen from the

description of the boundary, the house of the defendant and the property of the defendant is on the eastern and northern side of the suit property.

So, the perusal of the Sale Deed-Ex.P1 reveals that plaintiff No. 1 has purchased the suit property for a valuable consideration under a registered

document and the defendant does not dispute this fact in his written statement and in para 8 admits the existence of the suit property and the

intention of the plaintiffs to encroach upon his property. So, this material placed on record would establish the plaintiffs' possession over the suit

property. When the plaintiffs have produced the Sale Deed-Ex.P1, I do not find that there is any necessity for the plaintiffs to institute a suit for

declaration. When there is material on record to establish the title of the plaintiffs, there is no necessity -For them to seek a declaration.

6. So far as the relationship between the plaintiffs is concerned, the defendant is a third party and has no authority to question the relationship

amongst the plaintiffs as the adoptive mother and the adoptive son. Learned counsel for the appellant has placed reliance on the decision reported

in G. Venkataramaiah and Another Vs. C. Kempaiah (deceased) by L.Rs., wherein it has been held that in a suit for bare injunction, where there is

encroachment, the Court cannot grant possession unless there is such a prayer. This principle is not applicable to the facts on hand. In the

circumstances, the substantial question of law is answered in affirmative as the plaintiffs are in possession of the suit property and there is a title

deed to prove the same. The first appellate Court was justified in granting the decree of injunction.

In the result, the appeal fails and it is dismissed. No costs.