(2013) 02 KAR CK 0041

In the Karnataka High Court

Case No : Regular Second Appeal No. 164 of 2011

N. Sidda Reddy APPELLANT

Vs

T.V. Ramakrishna Reddy RESPONDENT

Date of Decision : 28-02-2013

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 128, 129, 133, 61

Citation : (2013) 4 KarLJ 327

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : S.M. Chandrashekar, for Sri K. Suman, for the Appellant; C.M. Nagabushana and Sri P.V. Chandrashekar, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Patil, J.—The suit filed by the plaintiff seeking declaration of his title and for permanent injunction in respect of the land to an extent of 01 acre 09 guntas including 01 gunta of phot kharab in Survey No. 47/1B of Kudlu Village, Sarjapura Hobli, Anekal Taluk was dismissed by the Trial Court. The appeal preferred against the said judgment also came to be dismissed by the learned Judge of the Fast Track Court II of Bangalore Rural District thereby, confirming the judgment and decree passed by the Trial Court. Therefore, aggrieved by the concurrent findings of both the Courts below, this regular second appeal is filed by the plaintiff. The case of the plaintiff was that he purchased the suit land under Ex, P. 1-sale deed dated 22-11-1965 from one Chinnaiah alias Arasappa. His vendor, it was urged, had purchased the same under Ex. P. 22-registered sale deed dated 12-5-1958 from one Muninarasamma. Muninarasamma in turn had purchased the same from her vendor Channappa and Yellappa vide registered sale deed dated 15-5-1957 (Ex. P. 21). Title of Chinnappa and Yellappa was traced under Ex. P. 20-sale deed dated 22-5-1951 from their vendor Sri Kullappa. Kullappa''s title in turn was traced to the sale deed dated 10-4-1939 vide Ex. P. 19 whereunder he purchased the land from one Kalu Muniga. It is thus clear from the case of the plaintiff, as made out in the plaint and in his evidence that the original owner of the land was one Kalu Muniga from whom after it changed various hands finally came to be purchased by the plaintiff as per Ex. P. 1-registered sale deed dated 22-11-1965 from one Channayya alias Arasappa. It has to be noticed, at this stage, that the property purchased by Muniga vide Ex. P. 19-sale deed dated 10-4-1939, the original owner to whom the ultimate title of the land is traced, is described in terms of yards and the survey number of the property has not been mentioned in the mother deed. It only describes it as measuring East-West 23 yards and North-South 173 Yards. When the first purchase was made by Kullappa on 22-5-1951, the extent of land was described as 0.22 guntas and for the first time the survey number has been mentioned as 201/2 with certain specified boundaries. When the land changed several hands upon purchase by Chinnappa and Yellappa vide Ex. P. 21 dated 15-5-1957 the measurement/extent of the land was shown as 0.34 guntas and survey number has been mentioned as 201/2 with certain specified boundary. When the vendors of the plaintiff Channayya alias Arasappa purchased the property under Ex. P. 22 vide sale deed dated 12-5-1958, the extent of land was mentioned as 0.34 guntas in Survey No. 201/2. The present plaintiff-N. Sidda Reddy claims to have purchased the land under Ex. P. 1-sale deed on 22-11-1965 wherein it has been described as Sy. No. 201/2. But, in the plaint schedule the property in question has been described as under:

Sy. No. 47/1B measuring 01 acre 08 guntas situated at Kudlu Village, Sarjapura Hobli, Anekal Taluk along with standing coconut trees and mango trees thereon facing eastern side, bounded on the:

East by : Defendant''s property

West by : Plaintiffs property

North by : Plaintiffs property and land belong to Eramma

South by : HAL Society property.

2. It is therefore clear that there is variance in the extent of land for which the suit is filed seeking declaration and injunction and the extent of the property, the plaintiff claims to have purchased vide sale deed-Ex. P. 1. Even the extent of the land mentioned in the title deeds of the predecessor in title of the plaintiff is also not in conformity with the description or the measurement given in the plaint. It is in this background, both the Courts below have found that there was no acceptable explanation forthcoming from the plaintiff as to how the measurement of the land was described as 01 acre 08 guntas which was different from the original description mentioned in the various earlier sale deeds produced at Exs. P. 1, P. 22, P. 21, P. 20 and P. 19.

3. Both the Courts below have found that while in the registered sale deed of the plaintiff vide Ex. P. 1 and that of his vendor/predecessor in title, the survey number of the land has been described as Sy. No. 201/2, in the plaint, the

plaintiff has laid his claim in respect of Survey No. 47/1B, although he was tracing his title to the said sale deeds without offering any acceptable explanation for his assertion that the property in question comprised Survey No. 47/1B was indeed carved out of the original Survey No. 201/2.

4. The case pleaded by him was that, as the katha of the land bearing Survey No. 201/2 purchased by him had not been transferred even in the name of his vendors, he had applied for change of katha and at that point of time, the land purchased by the plaintiff under Ex. P. 1 was found to be a part of Survey No. 47/1B. It was his further case that there was a re-survey conducted and a survey sketch was prepared afresh, as a result whereof the land bearing Survey No. 47/1 which was indeed part of Survey No. 201/2 was sub-divided and re-survey numbers were assigned as Survey Nos. 47/1A and 47/1B.

5. Both the Courts below have found that the plaintiff has failed to establish his case as pleaded hereinabove. It is in this background, the suit filed by the plaintiff has been dismissed and such dismissal of the suit is confirmed by the First Appellate Court.

6. This appeal was admitted to consider the following substantial questions of law:

(i) Whether non-consideration of the material documents produced and the index of mutation records and the survey sketch by both the Courts below and also the decision thereon without raising relevant issue has resulted in dismissal of the suit?

(ii) Whether the finding of the Courts below in dismissing the suit without referring to the survey sketch and boundaries needs reconsideration or re-appreciation of the material evidence on record at the hands of this Court as non-consideration of the material documents results in failure of justice?

7. Learned Senior Counsel appearing for the appellant Sri S.M. Chandrashekar has contended that both the Courts below have failed to take note of the document produced as at Ex. P. 10 which disclosed that Survey No. 47/1 was sub-divided after conducting re-survey and the same was renumbered as Survey Nos. 47/1A and 47/1B as back as on 30-12-1981, whereafter the name of the appellant-Sri N. Sidda Reddy came to be entered in the RTC as per Ex. P. 2 for the year 1984-1985 to 1986-1987 and as per Ex. P. 3 for the year 1990-1991, showing him as owner and occupier to an extent of 01 acre 08 guntas in Survey No. 47/1B. He places strong reliance on the index of records produced as per Ex. P. 5 showing the name of the plaintiff in column (18), wherein a reference is also made to number ADLR. MR. 2/1982-1983, dated 11-8-1982.

8. It is relevant to note at this stage that the said ADLR. MR. 2/1982 is not produced. He also placed reliance on Ex. P. 9 which has been described as Hissa record as per the survey conducted wherein the name of the plaintiff is mentioned as Hissadar for the land to an extent of 01 acre 09 guntas in Sy. No.

47/1B. It is his submission that both the Courts below have ignored these vital revenue records which disclosed the title and possession of the plaintiff over the suit property. It is his further contention that when the revenue survey authorities have recorded the name of the plaintiff as Hissedar after conducting survey and when the name of the plaintiff is found in the Index of land and the RTC extracts in respect of the land in question, the Civil Court will have no jurisdiction to go into the correctness or otherwise of those revenue entries, because of the bar contained u/s 61 of the Karnataka Land Revenue Act, 1964. In this regard, he places reliance on the judgment of this Court in Patel Doddakempe gowda Vs. Chikkeere gowda, affirmed in the judgment in Sri Devidas and Others Vs. The Deputy Commissioner and Others, He further contends that though the judgment of the learned Single Judge in Patel Doddakempegowda''s case was overruled by a Division Bench in Rajasab Husseinsab Mulla Vs. Inayuthullakhan, the latter judgment in Devidas case would prevail, as per the ratio laid down by the Full Bench in the judgment in Karnataka State Road Transport Corporation and Others Vs. Smt. R. Maheshwari and Others,

9. Elaborating his submission, he further contends that, as the survey has been conducted as per the provisions of the Karnataka Land Revenue Act, and in the light of the judgments relied on by him, the dispute cannot be reopened before the Civil Court as the Civil Court cannot ignore these documents particularly, the document marked at Ex. P. 10, the Survey and the Index of land. In this connection he draws the attention of this Court to the provisions of Section 133 of the Karnataka Land Revenue Act, 1964 to contend that a statutory presumption is available in favour of the plaintiff regarding the correctness of the entries made in the revenue records and as long as the same is not rebutted, the Courts below could not have dismissed the suit of the plaintiff.

10. Learned Counsel appearing for the respondent Mr. C.M. Nagabhushan contends inviting the attention of the Court to the defence taken by the defendant that the suit schedule land is a portion of Sy. No. 47/1 which earlier measured 2 acres 6 guntas. Venkatappa Reddy was the original owner having purchased the same from one Kaveriga under a registered sale deed dated 26-1-1944 produced at Ex. D. 8. Plaintiffs grandfather and Venkatappa Reddy''s grandfather were brothers. There was a division of the family properties and in the registered partition deed dated 20-11-1964, Sy. No. 47/1 was not included as the same was the absolute property of Venkatappa, but the plaintiff was allotted another land in Sy. No. 47/2 in the said partition. He further invites the attention of the Court to the factual matrix to contend that after the death of Venkatappa alias Venkatappa Reddy, land bearing Sy. No. 47/1 measuring 2 acres 6 guntas and one residential site was allotted to the share of Eramma W/o. late Rama Reddy who was the younger brother of Venkatappa and the said Eramma and her daughter Kamala being the absolute owners in possession and enjoyment of the land sold the same to the defendant as per the registered sale deed dated 17-8-1990 -- Ex. D. 7. He draws the attention of the Court to the mutation entry effected in this connection in the name of the defendant as per

M.R. No. 2/1991-92 and the transfer of the same in the revenue records/RTCs. His contention is that the so-called phodi of Sy. Nos. 47/1 into 47/1A and 47/1B was not done by issuing notice to the predecessor in title of the defendant. At any rate, it is his contention that both the lands bearing Sy. No. 47/1A measuring 39 guntas and Sy. No. 47/1B measuring 1 acre 9 guntas are absolutely owned by the defendant. The boundaries and the extent of the land as claimed by the plaintiff have all been denied by the defendant.

11. It is urged by them that no presumption u/s 133 would arise by virtue of Exs. P. 2 to P. 6, unless it is shown that the entries in the revenue records as per Exs. P. 2 to P. 6 were effected lawfully and that they will be lawful only if they are effected as per the provisions of Sections 128 and 129 of the Karnataka Land Revenue Act, 1964. Elaborating this contention, he urges that there is no mutation for recording the name of the plaintiff in the revenue records vide Exs. P. 2 to P. 6. He invites the attention of the Court to Ex. P. 28-appeal memo filed by the plaintiff before the Assistant Commissioner to contend that admittedly the names of both the plaintiff and defendant were found in the pahanies.

12. He further urges that Sy. No. 201/2 still continues to be in existence and that there is no connection between Sy. No. 47 and Sy. No. 201/2 as they have nothing to do with each other. He urges that title to the property should be on the basis of title deeds and not by mutation entries and that merely on the basis of mutation entries, a person cannot be held to be the owner of the land in question. In this regard, he has placed reliance on the judgment of the Apex Court in the cases of Durga Das Vs. The Collector and others, ; Navalshankar Ishwarlal Dave and another Vs. State of Gujarat and others, and State of Himachal Pradesh Vs. Keshav Ram and others,

13. On careful consideration of the contentions urged by the learned Counsel for both sides and the findings recorded by the Courts below, it is clear from the materials on record and the concurrent findings recorded by both the Courts below that admittedly plaintiff has purchased land bearing Sy. No. 201/2 as per Ex. P. 1-sale deed dated 22-11-1965. Not only that the survey number mentioned in Ex. P. 1 has nothing to do with Sy. No. 47/1, but also that the extent of land mentioned is 35 guntas which is far less than what the suit schedule property measures. It is also the admitted case of the plaintiff that the name of the vendors had not been recorded in the revenue records. Nor was the name of the plaintiff entered even after purchase by him for Sy. No. 201/2. His case is, that at that time a survey was conducted as reflected in Ex. P. 10 and the land bearing Sy. No. 201/2 was phoded into Sy. Nos. 47/1A and 47/1B and that Sy. No. 47/1B is nothing but a portion which formed part of Sy. No. 201/2.

14. The question is whether the plaintiff has proved his assertion that Sy. No. 47/1B over which he lays claim was carved out of Sy. No. 201/2 purchased by him. The documents relied upon for this purpose are Exs. P. 10 and P. 2 to P. 6. Ex. P. 10 is considered by the Courts below, particularly the lower Appellate Court to hold that there was no material whatsoever produced to show that Sy.

No. 201/2 was assigned sub-numbers as Sy. Nos. 47/1A and 47/1B as alleged by the plaintiff. There is nothing to show that any notice was given to the predecessors in title of the defendant. Both the Courts have held that the said division is not evidenced by any mutation entry or any order passed by the Competent Revenue Authorities. There is nothing to show that by virtue of any legally instituted proceedings before the revenue authorities, the land which was earlier assigned Sy. No. 201/2 was converted into Sy. No. 47/1 and phoded into Sy. Nos. 47/1A and 47/1B and that Sy. No. 47/1B was relatable to the land bearing Sy. No. 201/2. Ex. P. 10 only speaks about division of Sy. No. 47/1 into Sy. Nos. 47/1A and 47/1B. There is nothing to show that Sy. No. 47/1 itself was part of Sy. No. 201/2. Unless this link is established by the plaintiff, he cannot claim that Sy. No. 47/1B came to be entered in his name as it was carved out of Sy. No. 201/2. There is total lack of connection between Sy. Nos. 201/2 and 47/1. Unless revenue records that have come into existence in accordance with law are placed before the Court to'' evidence this important factor, as rightly pointed out by the learned Counsel for the respondent, no presumption can be drawn from Ex. P. 10 to conclude that Sy. No. 201/2 was part of Sy. No. 47/1 and the same was sub-divided into Sy. Nos. 47/1A and 47/1B.

15. As rightly pointed out by the learned Counsel for the respondent referring to the judgments of the Apex Court, a revenue record cannot form basis for the title to the property. In the instant case, what is worse is that the revenue entries in Ex. P. 10 on which reliance is placed by the appellant are not preceded by any mutation proceedings and the entries are not certified mutation entries. Such revenue records do not warrant presumption as per Section 133 of the Karnataka Land Revenue Act. Only those entries which have been lawfully entered will have statutory presumption. Both the Courts below while recording the finding that the plaintiff had failed to establish his case, have categorically found that the defendant having produced documents at Exs. D. 1 to D. 24, has shown that he purchased the suit schedule property from its previous vendors and that he has been in possession and enjoyment of the same.

16. The appellant has himself produced Ex. P. 35 which is the RTC extract pertaining to Sy. No. 201/2 standing in the name of the plaintiff-N. Sidda Reddy which pertains to the year 1984-85. No document is produced for the subsequent years to show that Sy. No. 201/2 ceased to be in existence and that the land purchased by the appellant as per Ex. P. 1 was no longer found to be in existence in Sy. No. 201/2. If the plaintiff were to show that Sy. No. 201/2 is no longer in existence and that he has lost his claim for the extent of land that is reflected in Ex. P. 1-sale deed which he has purchased at an undisputed point of time during 1965, then there would have been some need for a further probe in the matter. Plaintiff has not made any endeavour to place before the Courts below the revenue records of Sy. No. 201/2 subsequent to the year 1984-85 to disclose that the said survey number was no longer available or was not existence. In fact, Counsel for the respondent vehemently contends that even as on today Sy. No. 201/2 exists and the name of the appellant is recorded as owner to the

extent purchased by him. It is unnecessary to deal with this argument any further. Suffice to observe that plaintiff has failed to establish that there is non-consideration of any material document produced by him. Unless the plaintiff establishes that Sy. No. 201/2 ceased to exist because it was re-numbered as Sy. No. 47/1 and that Sy. No. 47/1 was further bifurcated into Sy. Nos. 47/1A and 47/1B, question of undertaking any exercise based on the index of lands, revenue entries or the survey sketch which are not preceded by any order passed as per the provisions contained under the Karnataka Land Revenue Act, particularly Sections 128 and 129 would not arise. Therefore, the substantial question raised for consideration at Sl. No. 1 is answered accordingly, holding that the index of land and the revenue records including the survey sketch do not in any manner come to the aid of the plaintiff and the Courts below have rightly held that the plaintiff has not established his case.

17. Similarly as regards the second substantial question of law framed by this Court, it is clear from the concurrent findings recorded by both the Courts that findings are recorded based on the documents produced by both the parties after appreciating them in the wake of the oral evidence adduced. As already held by me, the survey sketch and the other revenue records cannot be given precedence over the documents of title of both the plaintiff and the defendant. The document of title-Ex.P.1 on which the plaintiff has placed reliance does not lend support to hold that he has become the owner of Sy. No. 47/1B. Similarly, the documents of title produced by the defendant establishes that he is the owner of Sy. Nos. 47/1A and 47/1B. The defendant''s title is traceable to Sy. No. 47/1 which was held by the family of his vendors, whereas the document of title of the plaintiff and his predecessor in interest only point out his title on Sy. No. 201/2 and there is no link for the claim made by the plaintiff that the land was converted into Sy. No. 47/1 at any point of time in the past. Therefore, even the second substantial question of law raised is also answered in favour of the defendant and against the plaintiff-appellant. In the result and the foregoing, this appeal fails and the same is dismissed with costs.

