
(2006) 08 KAR CK 0016

In the Karnataka High Court

Case No : Regular First Appeal No's. 64 and 205 of 2004 and Crob 13 of 2004

Nagaraja and Others

APPELLANT

Vs

Rathnamma and Others
 Dodda Narappa (since dead by his LRs. Chinnamma and Nanjappa Narappa), Nanjappa (since dead by his LRs. Yellamma and Others) and Nagappa (since dead by his LRs. Thimmakka and Others) Vs Narayanappa (since dead by his LRs. Rathnamma, Pushpa and Manjula), Byanna and Jayamma
 Byanna Vs Nagaraja and Others

RESPONDENT

Date of Decision : 18-08-2006

Acts Referred:

Citation : (2006) 08 KAR CK 0016

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : Raghu Prasad B.S., in RFA No. 205 of 2004, C.M. Nagabhushana, in RFA No. 64 of 2004, Umashankar M.N., in RFA, Crob No. 13 of 2004, for the Appellant; Umashankar M.N., for C/R4 and R5, H.R. Anantha Krishnamurthy, for R1 to R3, Vaishali Hegde, for R4 and R5, C.M. Nagabhushana, for R6-10 and 12-18 in RFA No. 205 of 2004, Umashankar M.N., for R2 in RFA No. 64 of 2004 and C.M. Nagabhushana in RFA, Crob No. 13 of 2004, for the Respondent

Judgement

K. Sreedhar Rao, J.—The appellants in RFA No. 64 of 2004 have filed a suit in O.S. No. 1982/84 seeking declaration of title and possession of a portion of a schedule property said to be in encroachment by the defendants.

2. The plaintiffs in R.F.A. No. 205/2004 are the co-plaintiffs in O.S. No. 1982/84. The defendants have filed cross objection No. 13/04.

3. The disputed suit schedule property alleged to be in encroachment of the defendants measures to an extent of 19 guntas described as kharab attached to Sy. No. 124/1 described in Schedule a to the plaint. The plaintiffs submit that Sy. No. 124/1 totally measures 2 acres 20 guntas. Out of which, the extent of 19 guntas is said to be in encroachment of the defendants. The Plaintiffs seek

declaration of title in respect of a schedule property and seek possession of the encroached portion of 19 guntas described in B schedule from the defendants. It is admitted fact that the encroached portion in B schedule is part of kharab. The plaintiffs have not produced any records to show that said kharab has been granted in favour of the plaintiffs by the Government. Under the Karnataka Land Revenue Act, the plaintiffs may have a preferential right of allotment but without specific allotment, the plaintiffs cannot lay any claim over kharab land.

4. In the instant case, the plaintiffs have not produced any material to show that the revenue authorities have allotted kharab land in their favour. The contention of the plaintiffs that kharab portion is part of Sy. No described in a schedule is untenable. The plaintiffs are entitled to declaration only to the extent of a schedule lands as sought for in the plaint. But by implication, cannot seek title over B schedule land on the pretext that it is a kharab land. Without establishing title or any legal interest, the plaintiffs are not entitled to seek possession of B schedule property. In that view, dismissal of the suit of the plaintiffs in respect of B schedule property is sound and proper and does not call for interference. The judgment and decree of the trial court is sound and proper. Accordingly, RFA No. 64/2004 and 205/2004 are dismissed. Cross objection filed by the defendants lacks merit. Hence it is dismissed. It is clarified that dismissal of the appeals shall have no bearing upon the rights of the appellants in RFA No. 205/04 and 64/2004

KSRJ: RFA No. 205/2004 c/w. RFA No. 64 /2004 & 8.9.2006 RFA. CR-OB.13/2004 Orders on for Being Spoken to

5. The Learned Counsel for the appellants relied on the Division Bench decision of this Court in P. Bhimachar v. State of Mysore and Ors. reported in 1966(2) MysLJ 184, Wherein the following observations are made:

It is obvious that the Tahsildar did not correctly understand the expression "phut kharab". a land is described as kharab land when it is unfit for cultivation. In Volume I of the Mysore Revenue Manual the word kharab is explained in that way. The expression "phut kharab" is similar to the expression "pot kharab". That is so, is clear from the Mysore Revenue Survey Manual where at page 68 the words "pot kharab" land is defined thus:

(13). Potkharab means a piece or pieces of land classed as unarable and included in a survey number." The description has no relevance to ownership and if Survey No. 23 belonged to the petitioner as stated by the Tahsildar, that part of it which is described as phut kharab is also included in such ownership.

The expression pot kharab is explained in Gupte's book on the Bombay Land Revenue Code in the following words at page 278:

By the term "pot kharab" is meant barren or uncultivable land included in an assessed survey number" and includes "any land comprised in a survey number which from any reason is held not to be likely to be brought under cultivation....

The words phut kharab, therefore, mean and have reference to a land which is

included in an assessed survey number but which is unfit for cultivation.

It is clear from paragraph 160(5) of the Mysore Revenue Manual Volume I that the assumption made by the Tahsildar that every phut kharab land belongs to the Government is unfounded. That paragraph provides for the disposal of phut kharab land included in lands applied for coffee cultivation and for the exclusion of the phut kharab if it can be separated. What it also provides is that if the applicant chooses to have it included in the land, it should be granted to him for an upset price.

We have before us the certified record issued by the office of the land Records, Survey and Settlement in Mysore, from which it becomes clear that for purposes of assessment the uncultivable portion of the land with which we are concerned was excluded from consideration on the ground that it was uncultivable.

6. The appellants-plaintiffs made out a specific case in the pleading that the "B" schedule land as Phut Kharab is part and parcel of "A" schedule Survey land.

7. The commentaries in Karnataka Land Revenue Manual, New 1998 Edition at page 2167 explains the different types of Phut Kharab lands for convenient reference the relevant commentaries are extracted her under:

2. Kinds of Phut Kharab - There are two kinds of Phut Kharabs. They are (1) Uncultivable and (2) Cultivable but withdrawn and reserved for some other purpose. The rule about the first kind is that unarable land included in a survey number assessed for purposes of agriculture when it is classed as unfit for cultivation such as (1) Deep pits, (2) Water as uncultivable and the holder may bring such land under cultivation without any liability to a change because it is assumed that such cultivation can only be effected by the expenditure of owner. The rule regarding the second kind is that unarable land included in a survey number assessed for purpose of agriculture when reserved or assigned for public purpose, or occupied by a road or recognised foot path or by tank or stream used by the public for irrigation or for drinking or for domestic purpose, or used for a burial or funeral ground by the public etc., or assigned for village potteries cannot be cultivated.

8. When the plaintiffs have specifically stated that it is a phut kharab land and owned by them, necessary evidence in that regard should have been produced. The ROR extracts produced only disclose that it is a Kharab land. There is no material to show that it is a Phut Kharab land. In that view, the rejection of claim of title in respect of "B" schedule property in my earlier order warrants no interference.

9. That apart, it is to be noted that plaintiffs herein have filed in O.S. No. 2325/1980 for possession and permanent injunction in respect of the very same 19 guntas of land said to be in occupation of the defendants-respondents. The said suit has been rejected. Therefore, the said Judgment and Decree shall also be operate as Res Judicata against the plaintiffs only to the extent of "B"

schedule property in question.

10. The Learned Counsel for the respondents strenuously argued that the respondents are in possession of more than 19 guntas in Sy. No. 124/3. The Learned Counsel for the appellants pointed out the Judgment in O.S. No. 10836/1991, wherein, the respondents filed a suit seeking injunction in respect of Sy. No. 124/3 to an extent of 2 acre 20 guntas. The Trial Court dismissed the suit holding that the respondents herein have not proved the possession. The said Judgment operates as Res Judicata against the respondents to claim possession to an extent of 2 acres 20 guntas. It is admitted by the appellants that 19 guntas is in encroachment and appellants have failed to prove the title to the said property. Therefore, the relief of possession cannot be granted.

11. I find no ground to interfere with the order dictated. Hence, appellants not entitled to any relief in respect of "B" schedule property. However, in respect of "A" schedule property, an injunction sought for is to be granted excluding "B" schedule property.

12. Accordingly, appeals are partly allowed. The dismissal of Cross Objection is confirmed.