
(2014) 03 KAR CK 0064

In the Karnataka High Court

Case No : Writ Petition Nos. 27773 and 30636/2011 (GM-CPC)

Narasimhappa

APPELLANT

Vs

Poojari Muniyappa

RESPONDENT

Date of Decision : 05-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, Order 39 Rule 1, Order 39 Rule 2, 151, 23

Citation : (2014) 3 KCCR 2360

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : S. Visweswaraiah, Advocate for the Appellant; P. Srinivasaiah, Advocate for the Respondent

Judgement

N. Kumar, J.—This is a classic case where alternative dispute mechanism has been abused by the parties as well as the counsel. If this tendency is not checked, a day will come when public will lose confidence not only in Lok Adalath but also in the judicial system.

2. The facts leading to these writ petitions are as under:

The subject matter of the suit is land bearing Sy. No. 20 measuring 01 acre 10 guntas situated at Ramasandra Village, Narasapura Hobli, Kolar Taluk. The petitioner herein is the son of late Muniyappa who had filed O.S. No. 475/2002 on the file of Prl. Civil Judge (Jr. Dn.) at Kolar for declaration of title and permanent injunction restraining the respondents herein and others from interfering with his peaceful possession and enjoyment of the said property. The petitioner's case is that he was personally cultivating the suit property unauthorisedly since 25 years and is the absolute owner in possession of the suit property and his cultivation was confirmed by the order of the Assistant Commissioner on 21.04.1982; khatha is mutated in his name and therefore he is the absolute owner of the said property. The defendants have no manner of right, title, interest and possession over the suit schedule property. The

respondent herein contested the suit by filing a detailed written statement contending that he is the owner of the land bearing Sy. No. 20 which measures in all 03 acres and 0.06 guntas and it was granted to him under Darkasth in LND 19/1958-59 dated 11.08.1960 by the Tahsildar, Kolar and therefore, the plaintiff has no title over the said property.

3. On the basis of the pleadings, the Trial Court framed the following issues:

i. Whether the plaintiff proves that the suit schedule property has been granted to him in LND/RUO/SC/STKLR147/81-82?

ii. Whether the plaintiff proves that he has been in possession and enjoyment of the suit schedule property?

iii. Whether the plaintiff proves the alleged interference and denial of title by defendants?

iv. Whether the defendants prove their contention as pleaded in para 3 & 5 of their written statement?

v. Whether the plaintiff proves that he is entitled for the relief as sought for?

vi. What order or decree?

4. The plaintiff Narasimhappa and his witness Kodappa were examined as P.W.-1 and P.W.-2 respectively and Exs. P1 to P30 were marked for the plaintiff. The defendant, Muniyappa and two witnesses Eshwarappa and Syed Basha Sab were examined as D.W.-1 to D.W.-3 and Exs. D1 to D9 were marked for the defendant.

5. The Trial Court on consideration of the oral and documentary evidence held that the land has been granted to the plaintiff in LND/RUO/SC/ST/KLR 147/1981-82 and that he is in possession and enjoyment of the suit schedule property. Further, it granted permanent injunction in favour of the plaintiff as the defendants were trying to interfere with his possession and also held that the defendants had failed to establish the title of the property.

6. Aggrieved by the said judgment and decree, the defendants preferred R.A. No. 300/2005 before the Fast Track Court - III, Kolar. The lower Appellate Court after hearing the parties, dismissed the appeal by considered judgment dated 13.08.2007.

7. Aggrieved by the said judgment and decree, the appellants preferred a regular second appeal before this Court in RSA No. 2782/2007 and this was also dismissed on 16.11.2007 upholding the findings of the trial court with regard to the title and possession of the plaintiff over the suit property. Thus these findings have attained finality and the respondent herein who is the first defendant is bound by the same.

8. Thereafter, the defendant filed O.S. 335/2009 for a declaration that he is the owner of the suit schedule property claiming that it was granted under Darkasth by the Tahsildar, Kolar in the year 1960 in No. LND.101/1958-59. Strangely, he

did not even whisper about the earlier proceedings or the findings recorded therein although he was also a party to the said proceedings.

9. In the said suit, plaintiff Poojari Muniyappa also filed an application U/o XXXIX Rules 1 & 2 CPC r/w Sec. 151 CPC for temporary injunction restraining the defendant Narasimhappa from interfering with possession of the suit schedule property. The Court ordered emergent notice on this I.A. No. 1 returnable by 26.06.2009 on which day Sri. M.R., Advocate filed vakalath for the defendant.

10. The Court passed an order to place the matter before the Lok Adalath on 26.06.2009 itself. Application U/o XXIII Rule 3 of CPC was filed by the plaintiff Poojary Muniyappa wherein the claim that the schedule land was granted to him under Grant Order No. LND.101/1958-59 and he is in possession thereof was reiterated. Basing on the compromise petition, the following order came to be passed:

Case called before Lok Adalath. Parties arrive at settlement before the Conciliators. Compromise Petition u/s 23 Rule 3 CPC along with schedule. Terms of compromise read and explained to the parties. Parties admit of due execution. Compromise accepted. Return Court fee as per law. Draw decree as per compromise.

11. The defendant, after coming to know of the compromise decree, made an application u/s 151 of CPC before the Trial Court to set aside the compromise decree. Since the defendant's application came to be dismissed after contest, he has preferred these writ petitions.

12. The grounds urged in these writ petitions are that the terms of the compromise do not disclose the earlier proceedings between the parties. The petitioner is aged about 80 years and is totally depending upon the suit property. When the decree in his favour had attained finality, there is no question of accepting the respondent as the owner of the property. The compromise petition does not reflect the true state of facts. His old age has been taken advantage of and his signature was taken by mis-representation and therefore, the compromise decree has to be set aside.

13. The respondent in his objection contends that after the decree in the earlier proceedings, the parties have entered into an agreement of sale dated 25.06.2009 and sale consideration was paid. Sale deed dated 07.07.2009 was prepared; Narasimhappa executed the sale deed but did not come forward to register the same.

14. The suit was filed on 19.06.2009 and compromise decree is dated 26.06.2009. As is clear from the order-sheet, application is filed for an order of injunction restraining the defendants from interfering with his possession and emergent notice was ordered and also the date was fixed for defendant's appearance. The defendant appeared on 26.06.2009. If the case of Poojary Muniyappa the plaintiff/respondent is to be accepted, by that time he had

obtained an agreement dated 25.06.2009. But, there is no whisper about the same in the suit.

15. Immediately on filing of Vakalathnama by the defendant's Advocate, the court, without application of mind, directed that the matter should be placed before the Lok Adalath on the same day. Conciliators in the Lok Adalath accepted the compromise petition and passed decree in terms of the compromise petition. If at all, there was an agreement of sale as contended by the respondent herein, his remedy was to file a suit for specific performance and not a suit for declaration of title.

16. On the date of passing the compromise decree admittedly entire sale consideration was not paid and the sale deed came to be prepared, even according to the respondent herein, only on 07.07.2009. It is only after the khatha of the property came to be transferred in the name of the respondent, the petitioner became aware of the developments and immediately he has approached the Civil Court, filed I.A. u/s 151 of CPC for recalling the compromise decree.

17. Unfortunately, the Lok Adalath is now used/abused to perpetuate fraud and what one cannot achieve in the Court is sought to be achieved in the Lok Adalath. A person, whose claim of title to the property was negated by the court long ago, has been declared as the absolute owner by a compromise petition. Fraud is writ large in the way compromise is recorded, the way the Judge has placed the matter before the Lok Adalath and the way the decree is passed by conciliators. If the High Court does not come to the rescue of innocent, illiterate and vulnerable public who have become victims of the fraud, the public will lose confidence in the Institution of the Lok Adalath and also the Judiciary. Now this is a new challenge faced by the institution of the Judiciary. The threat is from within. If this tendency is not nipped in the bud and the process of lok-adalat is not saved from such abuses, the Alternative Dispute Resolution mechanism will lose its efficacy and would become the subject of ridicule. Therefore, I deem it proper to set aside the compromise decree dated 26.06.2009 passed by the Lok Adalath and restore O.S. 335/2009 back to file, so that the petitioner herein is given an opportunity to contest the same on merits and in accordance with law.

18. In the result, I pass the following

ORDER

(i) The writ petitions are allowed.

(ii) The compromise decree in O.S. 335/2009 dated 26.06.2009 passed by the Lok Adalath is set aside.

(iii) The suit O.S. No. 335/2009 filed by the respondent herein is restored to its original file.

(iv) It is open to the petitioner to file the written statement and contest the suit.