

(2006) 08 KAR CK 0043

In the Karnataka High Court

Case No : Regular Second Appeal No. 829 of 2001

Narayanappa

APPELLANT

Vs

Anandamma

RESPONDENT

Date of Decision : 19-08-2006

Acts Referred:

Citation : AIR 2007 Kar 1 : (2007) 3 KarLJ 397

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

Bench : Single Bench

Advocate : D.L. Suresh, for the Appellant; J.G. Chandramohan, for the Respondent

Judgement

N.K. Patil, J.—The appellant-plaintiff, being aggrieved by the judgment and decree dated 23.7.2001 passed in R.A. No. 152/1999 on the file of the Principal Civil Judge (Sr.Dvn.) Kolar, in allowing the appeal and setting aside the judgment and decree dated 31.5.1999 passed in O.S. No 608/1995 on the file of the Additional Civil Judge (Jr.Dvn.) Malur, has presented this regular second appeal.

2. The case of the plaintiff-appellant herein before the Trial Court in O.S.No. 608/1995 is that, he is the adjacent land owner and the defendant-respondent, her family members, etc. may be restrained from interfering in any manner with peaceful enjoyment of the suit schedule property, on the ground that, the suit schedule property is a Government road measuring 15 feet width bounded on East by Gangappa's land, West by plaintiff and defendant's house, North by Railway line and south by same road running towards south, which is situated at Mittiganahalli village, Malur Taluk. Further, it is the case of the plaintiff-appellant herein that, he is the permanent resident of Mittiganahalli village, Harijan colony and the said colony was formed about several decades ago by acquiring lands through land acquisition proceedings and after formation of sites the plaintiff-appellant's ancestors built a house and residing therein by using the road for their ingress and egress. Further, it is the case of the plaintiff-appellant that the defendant-respondent is a stranger to the road and she has no exclusive right,

title over the road except right to use the same with the villagers as the disputed property is a public road and she is wrongly causing inconvenience to the plaintiff-appellant intentionally by obstructing him and his family members from making use of public road. Therefore, he has filed the said suit for grant of permanent injunction restraining the defendant-respondent and her family members from interfering with the using of 15 ft. public road by the plaintiff-appellant and his family members. In response to the summons, defendant-respondent put in her appearance before the Trial Court through her counsel and filed her written statement, denying all the allegations made against her and the alleged road is used by plaintiff-appellant for ingress and egress to his house and there is no cause of action and the alleged cause of action is imaginary and prayed to dismiss the suit with costs. Before the Trial Court, to substantiate his case, plaintiff-appellant has examined himself as PW1 and examined other two witnesses as PWS- 2 and 3 and marked documents as per Exs.P1 to 6. On the other hand, defendant-respondent has examined herself as DW-1 and got marked document as per Ex.D1. On the basis of the pleadings of both the parties, the Trial Court has framed two issues for its consideration and after appreciation of the oral and documentary evidence and other materials available on file, has answered both the issues in the affirmative and decreed the suit, restraining permanently the defendant or her family members, supporters, agents from interfering in any manner with the peaceful possession of suit schedule road by the plaintiff and his family members, by a judgment dated 31st May 1999. Assailing the correctness of the said judgment and award passed by the Trial Court, the defendant-respondent herein has filed a regular appeal in No. 152/1999 before the Principal Civil Judge (Sr.Dvn.), Kolar. The Lower Appellate Court after hearing the counsel appearing for both the parties and after re-considering the materials available on record and after perusing the judgment and decree passed by the Trial Court, has raised necessary points for its consideration and answered Point No. 1 in the negative and Point No. 2 in the affirmative after appreciation of the oral and documentary evidence and allowed the appeal by its judgment dated 23.7.2001 and set aside the judgment and decree passed by the Trial Court. Being aggrieved by the judgment and decree passed by the Lower Appellate Court in setting aside the judgment and decree passed by the Trial Court, the plaintiff-appellant has presented this regular second appeal.

3. I have heard the learned Counsel appearing for plaintiff-appellant and learned Counsel appearing for defendant-respondent. After careful evaluation of the relevant materials available on file and after careful perusal of the judgment and decree passed by the Lower Appellate Court below. I do not find any error of law much less material irregularity committed by the Lower Appellate Court in setting aside the judgment and decree passed by the Trial Court. It is significant to note that, the Lower Appellate Court after re-appreciation of the oral and documentary evidence in paragraph-8 of its judgment has recorded a specific finding that, injunction order identified road in acquired land would certainly

cause trouble to the rights of neighbouring land holders to the disputed road. The Trial Court without appreciating the fact that defendant-appellant therein still hold remaining extent of land and without there being any evidence has on surmise concluded that she having lost her land due to acquisition and out of revenge and anguish might be interfered with the use of acquired land by lawful users and such a conclusion is totally unwarranted and is based on no evidence. Therefore, on re-appreciation and re-evaluation of whole evidence, the Lower Appellate Court has held that, plaintiff-appellant has failed to establish existence of public road as described under plaint schedule and the alleged acts of interference by defendant-Respondent and reversed the findings given by the Trial Court on issue Nos. 1 and 2.

4. Further, it is pertinent to note that the instant suit is filed by the plaintiff-appellant claiming that he is the adjacent land owner in individual capacity and the suit has not been filed in the representative capacity claiming that, after the acquisition the said 15 ft. road has been formed in the Harijan colony and it is fully used by all the residents of that colony, particularly, the houses situated in front of the 15 ft. road. The plaintiff/appellant cannot file a suit in individual capacity for restraining the land owner from interfering. This Court might have appreciated if the plaintiff/appellant has filed the suit in a representative capacity for redressing the grievance on behalf of the members of the harijan colony. Except pleading that land has been notified and acquired for formation of harijan colony and the plaintiff-appellant has not produced any authenticated documents like layout plan or that the competent authority has formed the said layout. The plaintiff-appellant instead of redressing his grievance before the competent authority requesting him to implement the layout plan as approved and sanctioned and to form 15 ft. road, has approached the Trial Court for permanent injunction. The Lower Appellate Court after re-appreciation of the oral and documentary evidence and other relevant materials available on record, has recorded the specific finding as referred above and allowed the appeal filed by the defendant-respondent. The said reasoning and finding given by the Lower Appellate Court for allowing the said appeal is in accordance with law. Hence, I do not find any justification or good grounds to interfere with the well considered order passed by the Lower Appellate Court.

5. Having regard to the facts and circumstances of the case as stated above, the instant appeal filed by the plaintiff-appellant is dismissed as devoid of merits. However, liberty is reserved to the plaintiff-appellant to redress his grievance before the competent authority, if so advised or if it requires.