

(2015) 11 KAR CK 0172
In the Karnataka High Court
Case No : RSA No. 5078/2011 (PAR)

Ningappa Neelappa Mugali and Others

APPELLANT

Vs

Guru Padayya Gurubasayya Hiremath

RESPONDENT

Date of Decision : 18-11-2015

Acts Referred:

Citation : (2015) 11 KAR CK 0172

Hon'ble Judges : S.N. Satyanarayana, J.

Bench : Single Bench

Advocate : G.R. Andanimath, Advocate, for the Appellant; C.N. Harlapur, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Satyanarayana, J.—Defendant Nos. 1 to 4 in O.S. No. 52/2000 on the file of the Civil Judge (Jr.Dn.), Kundgol have come up in this second appeal impugning the divergent finding rendered by the lower appellate Court in R.A. No. 147/2008, wherein the lower appellate Court by judgment and decree dated 29.11.2010 set aside the judgment and decree dated 07.11.2008 passed in O.S. No. 52/2000.

2. The brief facts leading to this second appeal are as under:

"Plaintiff in the original suit is the owner of the property bearing VPC No. 114 of Yaliwal village, Kundgol Taluk, Dharwad District. The suit in O.S. No. 52/2000 was filed by him seeking the relief of mandatory injunction and as well as permanent injunction in directing the defendant Nos. 1 to 4 for removing the toilet, water tank and septic tank, which was constructed by them on a portion of panchayat road leading to the house of the plaintiff from the main road. The property of the plaintiff is situated on the eastern side of property bearing VPC Nos. 115 and 116 belonging to defendant Nos. 1 to 4. The panchayat road to which the plaintiff is seeking access runs from south to north in front of the property of the defendants and it takes a right turn near western corner of the

defendants property and proceeds towards east to reach the house of the plaintiff. The plaintiff has an entry to his property from the said road from the northern side of his property."

3. The grievance of the plaintiff is that, in the road which is situated on the northern side of his property which is running east to west passes next to the property of the defendants. According to him, from the edge of his property to a certain distance, the backyard of the defendants property is situated, thereafter, the house is located, which goes up to the corner where the road takes a right turn to reach his property. According to him, defendant Nos. 1 to 4 took up the work of constructing a toilet, water tank and septic tank in a portion of their property on the northern side boundary of their property in the middle portion, i.e., the portion where the constructed building ends and the backyard commences. While doing so, they encroached into the panchayat road, which according to him is 5 1/2 feet in width at the relevant place, where they have put up the aforesaid construction utilizing the road to an extent of 2 feet 8 inches in width, thereby reducing the width of the road to just 2 feet, which is insufficient for him to reach his property from the main road. Hence, the suit for perpetual injunction and permanent injunction was filed by him. In the said suit defendants accepted the location of the road and location of the plaintiff's property vis-?-vis their property and also the existence of road. However, they tried to substantiate that they did not encroach into the panchayat road while constructing the toilet, water tank and septic tank, instead it was contended that all the three were built within the boundary of their property in the backyard portion on its northern side which is abutting the road running east to west in front of the property of plaintiff and defendants.

4. In the proceedings before the trial Court several documents were produced and relied upon by the parties to demonstrate that there is encroachment by the defendants and on the part of the defendants to demonstrate that the construction which was taken up by them is within the boundary of their property. In the said proceedings an Advocate was appointed as Court Commissioner to conduct the spot mahazar of the place of construction and as well as the location of the plaintiff's property and defendants property with reference to the road which is in existence and to report whether there is encroachment. The said Commissioner who conducted the spot inspection produced a sketch, which is marked as Ex. C2 in this proceedings. Therefore, there are in all four sketches which are available on record. One which is filed by the plaintiff along with the plaint, another one filed by the defendants along with their written statement, one by the Court Commissioner, which is marked as Ex. C2 and another one is Ex. D4, which is a sanctioned plan for construction of toilet, water tank and septic tank in the portion of the property bearing VPC No. 115 belonging to defendants. The trial Court on appreciation of the pleadings, oral and documentary evidence available on record proceeded to hold that defendant Nos. 1 to 4 have put up the toilet, water tank and septic tank within the boundaries of their property and that they have not encroached into the

panchayat road while taking up the construction. However, when it comes to the other allegation of the plaintiff that they have not removed the debris which are lying on the road, while demolishing the northern wall of their property is concerned, a finding was given that the said debris which are shown as in Ex. C2 should be removed by the defendants.

5. Plaintiff being aggrieved by the judgment and decree passed by the trial Court preferred an appeal in R.A. No. 147/2008 on the file of the III Additional Senior Civil Judge, Hubli, wherein the lower appellate Court on re-appreciation of the pleadings and documents available on record held that the plaintiff has established encroachment by defendant Nos. 1 to 4 into the panchayat road to an extent of 2 feet 8 inches in width into the said road and consequently, decreed the suit of the plaintiff as prayed for and directed defendant Nos. 1 to 4 to remove the toilet, water tank and septic tank, which are constructed by encroaching into the panchayat road to an extent of 2 feet 8 inches in width north to south and running to an extent of about 7 feet 6 inches east to west in a portion of place referred to as in Ex. C2-Commissioner's sketch relied upon by the trial Court. Being aggrieved by the divergent finding rendered by the lower appellate Court, this second appeal is filed by the defendants contending that the lower appellate Court has not properly appreciated the pleadings, oral and documentary evidence available on record resulting in miscarriage of justice and wrongfully holding that there is encroachment committed by defendant Nos. 1 to 4 into a portion of panchayat road as stated in the judgment impugned.

6. Heard the learned counsel for the appellants and as well as contesting respondent, who are respectively defendants and plaintiff in the trial Court, perused the judgments of both the Courts below with reference to the pleadings oral and documentary evidence on record. As stated supra, in all there are four hand sketches, which are in the lower court records. Two of them are filed along with the plaint and written statement by plaintiff and defendants. The said sketch would clearly indicate the existence of the property of plaintiff and defendants with reference to panchayat road. In addition to that, there is one more sketch, which is produced by the defendants is marked as Ex. D4 in the Court below, which is the sanctioned plan. The fourth sketch is Ex. C2, which is filed by the Court Commissioner after conducting the spot mahazar of the property of plaintiff and defendants. If all these four sketches are looked into along with the evidence available on record, it is clearly seen that, in the sanctioned plan which is at Ex. D4 and the sketch which is filed by defendants themselves along with their written statement would clearly indicate that the northern boundary of their property runs as a straight line from west to east where toilet, water tank and septic tank are constructed. However, when the Commissioner's sketch and the plaint sketch is looked into, it clearly indicate that the northern boundary of the plaintiff's property is not shown in the straight line. Up to a distance from west to east where the house is existed it is in straight line, thereafter, there is projection towards north from the place where the house ends and the backyard starts, which proceeds further up to the property of defendants, thereby showing

that there is encroachment into the public road in that particular place. With reference to that, if the measurement of the property of the defendants is taken into consideration at the relevant portion, there is a clear indication of encroachment of public road to an extent of 2 feet and 8 inches north to south and 7 feet and 6 inches east to west as rightly identified by the lower appellate Court.

7. In that view of the matter this Court fully accept the finding of the lower appellate Court in holding that defendant Nos. 1 to 4 have committed encroachment on to the panchayat road to an extent of 2 feet 8 inches in depth i.e., from north to south and 7 feet 6 inches in width from east to west on the said road, which is rightly ordered to be removed. Therefore, this Court feel that the finding of the lower appellate Court is just and proper, hence, question of admitting this second appeal to consider correctness or otherwise of the same does not merit consideration. Accordingly, this second appeal filed by defendant Nos. 1 to 4 in O.S. No. 52/2000 is dismissed. While doing so, it is seen that, defendants though they have sufficient open space available in their backyard which is approximately 40 to 70 feet, they have shown their greed in encroaching into the panchayat road to an extent of 2 feet 8 inches, thereby reducing the width of the road, which leads to the house of the plaintiff to mere 2 feet to make his life miserable for all these years, i.e., from 2000 to 2015. Therefore, this conduct of the defendants cannot be appreciated and they shall not be allowed to go scot-free by dismissing this second appeal on the ground that the same is not maintainable. While dismissing this appeal, a punitive cost is required to be imposed for unnecessarily obstructing the right of way of the plaintiff and also the use and enjoyment of the public road. Therefore, this Court would impose cost of Rs. 25,000/- as compensation to the plaintiff in the original suit, who is respondent in this appeal for the inconvenience caused to him due to non-availability of sufficient width of road to reach his property for all these 15 years, in addition to the cost of the suit and appeal before the lower appellate Court and in this Court. The appellants who are defendants in the original suit shall deposit the cost, as imposed in this judgment. The same shall be deposited in this Court within sixty days from the date of receipt of certified copy of the judgment, failing which, the respondent herein who is plaintiff in the original suit shall be entitled to recover the same as if the decree which is passed in this appeal is also money decree for recovery of the said cost.