

(2006) 11 KAR CK 0067

In the Karnataka High Court

Case No : Regular First Appeal No. 325 of 2001

P. Krishnappa (since deceased by his LRs. Smt. Huchamma and Others)

APPELLANT

Vs

M.S. Channappa and Others

RESPONDENT

Date of Decision : 24-11-2006

Acts Referred:

Limitation Act, 1963 — Section 14, 27

Citation : (2007) 5 KarLJ 474

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Poonacha, for C.M. Monappa, for the Appellant; Somasundara Dikshit, for R-1 and R-4 to 6, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Appeal by the disappointed plaintiffs in OS No. 3957 of 1984, on the file of City Civil Judge Bangalore, a suit that had been filed for declaration of title and recovery of possession in respect of the suit schedule property, which came to be dismissed in terms of the judgment and decree 20-2-2001 rendered in the said suit.

2. The facts leading to filing of the suit and this appeal as pleaded by the plaintiff, though not necessarily consistent or cogent, are that: The original plaintiff is the owner of the suit schedule properties in respect of which a declaration is sought for viz., property bearing No. U-78, which is formed part of site No. 92 of Jabbar Block, Palace Guttahalli, Bangalore-3, which is a site allotted to the plaintiff in the year 1967 by the then City Improvement Trust Board [CITB] on lease-cum-sale basis; that this site measures east to west 20 feet and north to south 25 feet; that initially a lease-cum-sale agreement was executed in favour of the plaintiff and the plaintiff had been given possession of the site as per possession certificate dated 25-2-1969/6-3-1969 [Exp7] followed by execution of an absolute sale deed on 16-12-1983 [Exp1] by the Bangalore

Development Authority [BDA], which had by then come in place of CITB; that the plaintiff after taking possession had put up a shed in the suit site in addition to the hut already in existence on the western half portion of the site and that had been leased out to the original defendant M.S. Chennappa on a monthly rent of Rs. 30/- and the eastern portion was rented out in favour another person by name Boralingaiah on a monthly rent of Rs. 30/-; that the defendant having stopped paying rent from 1-10-1975 onwards, it had become necessary for the plaintiff to initiate legal action; that the plaintiff had initially filed HRC No. 2001 of 1980 [originally numbered as HRC No. 1435 of 1978], but the same having been dismissed by the learned judge of the court of small causes, Bangalore, in terms of order dated 11-7-1984, holding that the plaintiff was not able to establish the jural relationship of landlord and tenant; thereafter the present suit had been instituted on 13-11-1984. It is also pleaded that before filing the suit, the plaintiff had got issued a legal notice dated 12-9-1984 [though it is not amplified in the plaint as to what were the contents of this legal notice nor the notice itself is exhibited as a document in the suit], but the defendant having chosen to evade service of notice and also having not vacated the premises, it had become necessary for the plaintiff to file the suit for declaration of the ownership of the suit schedule property in favour of the plaintiff and for recovery of physical possession of the same.

3. Defendant on service of notice entered appearance and filed written statement, inter alia, contending that the very description of the address of the defendant and the property are all incorrect; that the defendant has nothing to do with site No. 92, which the plaintiff claims to have got allotted from CITB" that the defendant had been in possession of the premises bearing No. U-78, Jabbar Block, Palace Guttahalli, Bangalore, since a long time, even before the CITB had acquired the land; that no part of the premises of the property which is in possession of the defendant ever belonged to the plaintiff; that the plaintiff had not rented out any portion of the property to the defendant; that the defendant had never paid rent at the rate of Rs. 30/- as claimed by the plaintiff, as there was no relationship of landlord and tenant between them and for such reason HRC No. 2001 of 1980 had been rightly dismissed; that if the sons of the plaintiff had initiated another eviction petition in HRC No. 2002 of 1980, against another person to which the defendant was not a party; that the order therein was of no consequence on the answering defendant; that the defendant having constructed a structure on the site in question and having continued to live there for more than 30 years without any interruption or obstruction and has become absolute owner of the same; that he had been agitating before the BDA for recognition of his ownership and for regularization etc.,; that it was incorrect to say in the plaint that the plaintiff had put up some structure and let it out to the defendant; that whatever structure was available on site No. U-78 where the defendant is residing, had been put up by himself and not by any other person; that the defendant was not liable to pay any arrears of rent or any rent as claimed; that there was no cause of action for filing the suit; that the defendant

had not received any legal notice as claimed in the plaint; that the defendant had perfected his title by being in continuous and uninterrupted possession and enjoyment of the property for more than 30 years and the suit is frivolous and vexatious and prayed for dismissal of the suit with costs.

4. In the light of such rival pleadings, the learned trial judge has framed the following issues:

1. Does the plaintiff prove that he is the absolute owner of the suit schedule property?
2. Does the plaintiff prove that defendant is in illegal possession of the suit schedule property?
3. Does the plaintiff prove that the defendant is liable to pay damages for 3 years from. 1-11-1981 to 30-10-1984 amounting to Rs. 1,080/-?
4. Whether the plaintiff is entitled for possession of the suit schedule property?
5. Whether the suit of the plaintiff is barred by limitation?
6. Whether the valuation of the suit made is improper and court fee paid is insufficient?
7. To what relief, the parties are entitled?

5. Parties led evidence in support of their cases on the issues as framed. On behalf of the plaintiff, the wife of the original plaintiff was examined as PW1, as by then the plaintiff had died, and ExP1 to 9 were got marked, salient amongst them are ExP1 sale deed executed by the BDA in favour of the plaintiff, ExP2 tax paid receipt, ExP3 khata certificate, ExP4 special notice issued by the Bangalore City Corporation for recovery of arrears of property tax, ExP8 certificate issued by the CITB to the effect that site bearing No. 92 is in the name of the plaintiff. On behalf of the defendant, while the daughter-in-law of the original defendant was examined as DW 1 and got marked Ex. D 1 to 23, which include the entire documentary evidence comprising of covering letters and such other correspondence which the original defendant had received through mail and postal department to show that the address of the defendant is at No. 78, Jabbar Block, right from 1965 onwards.

6. The learned trial judge, on appreciation and examination of such evidence, oral as well as documentary, and in the light of the rival pleadings and contentions urged, answered all the issues against the plaintiffs, including the issue on limitation and dismissed the suit.

7. I have heard Sri Poonacha, learned Counsel for the appellants-plaintiffs and Sri Somasundaraa Dikshit, learned Counsel for the defendant-respondents.

On behalf of the appellant, Sri. Poonacha has vehemently urged that the leaned judge of the trial court has misguided himself in appreciating the pleadings and the evidence in support of such pleadings; that not much importance should

have been attached to the mere technicalities of the pleadings; that the suit being one for declaration and consequential recovery of possession, should have been examined only in the context of the plaintiffs' ability to make good his title to the suit schedule property and if so, should have directed recovery of possession; that the appreciation of evidence particularly of the clinching documentary evidence in the form of allotment letter, lease-cum-sale agreement, sale deed conferring the ownership on the plaintiff and thereafter the plaintiff having exercised the ownership rights particularly in respect of the eastern side of the allotted to him and having made efforts to vacate the western half portion of the site which was in unauthorized occupation of the defendant, should have all been appreciated in the proper perspective; that when once the defendant had not disputed the execution of sale deed by the CITB/BDA in favour of the plaintiff in terms of Exp1 and the CITB/BDA having acquired the land in question through acquisition proceedings which had not been challenged, there was a presumption in law that the vendor of the plaintiff have title over the property and if so, the plaintiff's ownership of the property should have been declared as a matter of course; that there was no occasion to dismiss the suit in view of the fact that the defendant might have been in possession for some duration of time which could not have come in the way of the suit being decreed in favour of the plaintiff and therefore the judgment decree under appeal is unsustainable and liable to be set aside.

8. It is also vehemently urged by Sri Poonacha that the learned judge of the trial court should not have attached much importance to the identification of property either by number or by any other method, particularly when the parties had understood that the subject matter of the suit property in respect of which the plaintiff was claiming ownership and declaration was the very property which was in the possession of the defendant and which was admitted by the defendant to be lying on the western side of the half portion of site bearing No. 93, which had been allotted by the CITB in favour of the plaintiff. Learned Counsel submits that there was no confusion with regard to the identification of the property in respect of which a declaration is sought for, that mere fact that the defendant described the eastern half of site No. 92 allotted to the plaintiff to be having a separate number as No. 78 or U-78 in Jabbar Block, that by itself cannot necessarily be presumed that CITB had allotted site No. 78 also in favour of the plaintiff and the plaintiff is not entitled to any interest to enjoy the property and such contention on the part of the defendant is untenable and the trial court has clearly erred in simply accepting this stand of the defendant and dismissing the suit for such reason holding that the plaintiff has not been able to prove his title to the suit schedule property.

9. Learned Counsel for the appellants also submits that the subsequent manner of enjoyment of site No. 92 clearly establishes the plaintiffs ownership in respect of site No. 92; that it was only in respect of the half portion of site No. 92, the defendant had disputed the authority and the ownership of the CITB/BDA in respect of the very site in his occupation and having sought for regularization of

this occupation of site No. 78 from BDA itself, it amounts that he is one claiming under the very BDA or earlier CFTB and if the CITB on the other hand had conveyed even this portion which was in the occupation of the defendant and in respect of which he was seeking regularization, in favour of the plaintiff, it is only the plaintiff who acquires good and valid title from CITB/BDA; that the defendant had not thereafter has no right or title or claim on the property and cannot squat on the property against the claim of the plaintiff, who has become the owner of the property and consequently when the plaintiff had sued for recovery of possession, the defendant could not have resisted the possession as against the true owner - the plaintiff - and therefore the learned trial judge should have not only declared the title of the plaintiff in respect of the suit schedule property but also directed recovery of possession.

10. Learned Counsel for the appellants also submits that the suit though filed in the year 1984, is one well within time, if the period spent on prosecuting HRC No. 2001 of 1980 is excluded; that the HRC case was being prosecuted from the year 1978 and upto the year 1984 and excluding this period as provided u/s 14 of the Limitation Act [for short, the Act], the suit laid during November 1984 is well within the period of limitation i.e. 12 years for recovery of possession and therefore the suit should have been decreed in law and the defendant directed delivery of possession in favour of the plaintiff.

11. Countering such submissions, Sri Somasundara Dikshi, learned Counsel for the defendant-respondents submits that the suit should fall on the very pleadings in the plaint; that the plaintiff who had sought for a declaration in respect of the site No. 78, has miserably failed in establishing his right and ownership in respect of the property described as suit schedule property; that the plaintiff was also not able to establish the defendant being either tenant or a person inducted into the site in question by the plaintiff, but on the other hand, being a person who was in possession of the site in question even prior to the site being allotted in favour of the plaintiff and not being a person claiming under BDA and being in possession [of the property in question] in his own right, the allotment and sale deed executed by the CUTB/BDA assuming that it is a fact, would not confer any title on the plaintiff to the detriment of the defendant; that the defendant had been in continued and uninterrupted possession of the property even as per the documentary evidence for more than 20 years prior to the filing of the suit; that even prior to the filing of eviction proceedings, more than 12 years had elapsed, from the date when the defendant was in possession of the property; that the plaintiff if is one claiming under CITB/BDA cannot plead a fresh cause of action on the allotment of site or execution of the sale deed, as the defendant was already in possession of the property; that if the vendor of the plaintiff had not recovered possession of property from the defendant, the plaintiff cannot maintain a suit for recovery of possession beyond the prescribed period of 12 years from the date of possession of the suit schedule property by the defendant; that the plaintiff being purchaser cannot lay a suit for declaration or recovery of possession beyond a period of 12 years of the possession of the

property by the defendant in view of the provisions of Section 27 of the Act, as the right if any having extinguished after the period for recovery of possession was over and the suit for recovery of possession was got barred by way of law of limitation; that Section 27 being an exception to the general object of the Act of barring the remedy, extinguishes even substantive rights; that Section 27 of the Act is attracted and if the plaintiffs right and entitlement has got extinguished, the suit for declaration is not tenable and the learned trial judge has rightly dismissed the suit.

12. The learned Counsel for the respondents in this regard placed reliance on the decision of our high court in the case of Pennaiah and Others Vs. Thippamma, and submits that this case is identical to the present case and that the plaintiff in the present case also failed to establish the link between the site No. U-78 and the site No. 92, which he claim to have got allotted from the CITB/BDA; that in the absence of such correlation, the plaintiff on the strength of the allotment of site No. 92 and on the basis of execution of sale deed by CITB/BDA cannot seek either a declaration of title in respect of site No. U-78 which is in possession of the defendant or seek recovery of possession thereof.

13. It is also the submission of Sri Somasundara Dikshit that the plaintiff who had earlier initiated eviction proceedings failed to establish the relationship of landlord and tenant and could have not have relied on the said proceedings to seek relief in the present suit and therefore the suit has been rightly dismissed.

14. The plaintiff was not-suited for the reason that he was not able to establish his title and prayer for declaration in respect of site bearing No. U-78, admittedly in the possession of the defendant, on the strength of the sale deed ExP1 executed by the BDA in respect of site No. 92. The very plaint pleading indicates that even when the site was allotted in favour of the plaintiff, there existed a hut in a portion of the site. That means it is to the knowledge of the plaintiff that there was some one else also on the property, even at the time of such allotment. The allotment is claimed to be of the year 1967 and it is also pleaded that the plaintiff was put in possession in the year 1969. If it is to the knowledge of the plaintiff that the defendant was in possession of the portion of the site ever since the year 1967 and at any rate from 1969 when he claimed to have got possession, unless the suit for recovery of possession had been laid within the permitted period, neither the suit for declaration nor for the consequential relief of possession can be filed thereafter. A mere fact that the sale deed was executed in the year 1983 cannot be of much significance and cannot be treated as the starting point for cause of action nor even the dismissal of the eviction proceedings in the year 1984 to be was the starting point for claiming declaration and recovery of possession.

15. Though it is contended that the eviction proceedings had been filed in the year 1978 and the benefit of provisions of Section 14 of the Act are to be extended to the plaintiff by excluding the time for prosecuting the eviction proceedings, it is not specifically pleaded as to how such things can be claimed

or on extending such benefit, how the suit is filed within the permitted time as specified in law. Unfortunately, for the plaintiff, what is pleaded is that the cause of action arose only in the year 1984, in which event, all earlier proceedings are necessarily to be ignored and the plaintiff has blown hot and cold in this regard for claiming the benefit of Section 14 of the Act to take note of the earlier proceedings for the purpose of pleading the cause of action only to be the date on which the eviction proceedings was dismissed.

16. If the suit for declaration is one based on the transaction of the year 1967, the cause of action arose from this day itself. When the burden was on the plaintiff to have made good this, more so if he is claiming benefit u/s 14 of the Act and therefore the time spent on prosecuting the eviction proceedings requires to be excluded and on such exclusion, as to what is the period of limitation within which the suit for declaration and recovery etc, could have been filed and the plaintiff should have so demonstrated that the suit is within time. This exercise has not been done at all.

17. On the other hand, the learned trial judge who had framed limitation as an issue, has given a finding that the defendant has proved his possession in the suit schedule property since from 1957 long prior to the date of plaintiff having been allotted the site. The finding is that the plaintiff was not in possession of the suit schedule property for more than 25 years immediately prior to the filing of the suit and if so, the suit is obviously barred by limitation.

18. If the eviction proceedings to be taken note of for the purpose of saving the limitation, then, the plaintiff cannot avoid the finding therein viz., that there did not exist the relationship of landlord and tenant between the parties. In the absence of any such relationship, obviously, the defendant is a trespasser in the premises to the knowledge of the plaintiff, not from the date of the dismissal of the eviction proceedings but from the date since when he is in such possession. If the defendant's possession dates back to a date anterior to the allotment [of site] itself, the defendant has been in possession all along and then there is no question of the plaintiff claiming the suit to have been filed within the period of 12 years and therefore the filing of the suit for recovery of possession is within time.

19. In any view of the matter, answer to issue No. 5 is definitely against the plaintiff. Though it is contended by the learned Counsel for the appellant that the learned judge has proceeded on the premise that the suit is only for recovery of possession and not as though it is one for declaration and consequential relief of possession. It makes little difference whether the suit is for mere possession or for declaration and possession. If the provisions of Section 27 of the Act are attracted and if the title of the plaintiff had got extinguished, a suit for possession is not maintainable.

20. I find there is yet another difficulty in favour of the plaintiff for grant of the relief of declaration i.e. the title of the vendor namely CITB/BDA in so far as it

related to the disputed property is not free from doubt. I say so because it is the admitted position that as on date when the plaintiff got allotted the site No. 92, the defendant was already in possession of a part of the site No. 92. If this is not to be so, then the plaintiff should have made good the plea that the defendant had been inducted into possession by the plaintiff. While the finding of the HRC court admittedly is against the plaintiff on this aspect, assuming for argument's sake that the plaintiff could have established otherwise, independently in the suit that he had filed, but actually he has not so established this factum that the defendant had been inducted into possession of the disputed property by the plaintiff. If such is the factual position, then it is not clear as to whether the acquiring authority i.e. CITB had taken possession of the property from the defendant or had acquired possession of this property also earlier. It is only if the property had been taken possession of by the CITB title would vest in CITB even in terms of the Land Acquisition Act. When the position is not made clear or established and on the other hand there being a finding against the plaintiff as recorded in the eviction proceedings, unless it had been positively established by the plaintiff before the trial court that the defendant is a person who had got into possession only after the acquisition of title by CITB. The title of the CITB itself is not free from doubt. If so, in the absence of any positive proof of such foundation facts, which would even in law can create a presumption in favour of the CITB and under whom the plaintiff can claim the right and title to the property conveyed by it, the plaintiff cannot succeed for the prayer of declaration.

21. Thus, in any view of the matter, I find that the plaintiff has miserably failed in establishing his title to the property claiming under CITB. Therefore, the suit has been rightly dismissed by the trial court, though there could have been more reasons for dismissal than what has been narrated by the learned trial judge.

22. In the result, no interference is necessary and the appeal is accordingly dismissed.

23. IAs I/2006 and II/2006, filed for appointment of a court commissioner and for receiving additional evidence respectively, obviously does not survive, in view of the dismissal of the appeal itself. Even otherwise, I notice that these applications are meritless as no case was made out for allowing these applications in this appeal and they are accordingly dismissed.