

(2015) 03 KAR CK 0119

In the Karnataka High Court

Case No : Regular First Appeal Nos. 337 and 336 of 2009

P. Rajendra Kumar

APPELLANT

Vs

Jayanthibai

RESPONDENT

Date of Decision : 24-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 6A

Citation : (2015) 4 KarLJ 539

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : L. Leena, for the Appellant; Akkamahadevi Hiremath, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—Heard the learned counsel for the appellant and the learned counsel for the respondent.

2. The appellant was the plaintiff before the Trial Court and had filed a suit for permanent injunction contending that he is the absolute owner of the property bearing Site No. 52/A formed in portion of property bearing Sy. No. 10/2 of B. Narayanapura Village, K.R. Puram Hobli, Bangalore South Taluk. The property was more fully described in the schedule to the suit. The plaintiff claimed that he had purchased the property from one C. Keshavamurthy, Raghunath, Diwakar, Bamma @ Bhanumathi and Smt Amaravathi through their Power of Attorney Holder one S.A. Jayalakshamma under a registered sale deed dated 13.07.2001. The plaintiff had also produced an encumbrance certificate in that regard. The plaintiff claimed that he was in peaceful possession of the property from the date of purchase and had put up a small shed on the suit property. He had also paid taxes to the local authority and had produced the tax paid receipts in that regard. It was the complaint of the plaintiff that the defendant who had no claim over the suit property was trying to interfere with the same and that on 14.06.2004; the defendant along with her henchmen came to the suit property

and tried to interfere with the property. It is with difficulty that the plaintiff resisted such interference and therefore had approached the jurisdictional police who had in turn had characterized the dispute as a civil dispute and directed that the plaintiff should approach the civil Court and that it cannot be treated as a criminal case. It is that which prompted the plaintiff to file a suit for permanent injunction restraining the defendant from interfering with his possession in the suit property.

3. The defendant had entered appearance on service of summons and had filed written statement as well a counter claim to contend that the plaintiff was falsely claiming the property as bearing No. 52/A formed out of portion of the land bearing Sy. No. 10/2 of Narayanapura Village, as claimed in the plaint, and that the alleged sale deed dated 13.07.2001 was in respect of a non-existent property. The plaint averments were generally denied. The defendant, on the other hand, claimed that the true facts were the property bearing No. 52, house list No. 135/3 was measuring 30 ft. east to west; 50 ft. north to south; was bounded on the East by house No. 51, West by house No. 53, North by road and South by Muniraju's property and that she had purchased the same and was the lawful owner. She had constructed a 300 sq.ft. house on the said property. One Ratnamma, wife of Chennappa was the original owner of the property and she had formed a private layout and sold the sites according to a rough sketch prepared of the private layout, which was produced as Annexure-D to the written statement and the site in question was denoted in the sketch as site No. 52 and the same was purchased under a registered sale deed dated 16.06.1983 by one A. Kumarswamy. Thereafter, A. Kumarswamy, son of Annaswamy, is said to have sold the very same site to the defendant under a registered sale deed dated 21.05.1992. The defendant had produced attendant documents such as an encumbrance certificate and tax paid receipts in respect of the property bearing Sy. No. 52. It was claimed that she has been in continuous possession of the same. Apart from that she has also produced the development tax receipts as per Annexures-D5 and D6. The defendant also claimed that she had demolished an old structure existing on the property and had put up a fence around the entire property. It was also further contended that the defendant had also raised a loan by mortgaging the property to the State Bank of India, Ulsoor Branch, by deposit of title deeds and the endorsement issued by the Bank in that regard was also produced. The khatha issued by the municipality assigning a different number, which was 700, as per the khatha extract issued by the Mahadevapura Municipality was also produced. It was asserted that the sale deed produced and relied upon by the plaintiff was a bogus document and questioned the bona fides of the vendor of the plaintiff it is in this fashion that the defendant sought to set up title to the property and sought to question the title claimed by the plaintiff.

4. On the basis of the said pleadings, the Court below had framed the following issues:

"(i) Whether the plaintiff proves his lawful possession and enjoyment over the

suit schedule property as on the date of the suit?

(ii) Whether the plaintiff proves the alleged obstructions from the defendant?

(iii) Whether the plaintiff is entitled to the relief claimed?

(iv) What decree or Order?

Addl. Issues:

(v) Whether the defendant proves her title in respect of entire property bearing Site No. 52?

(vi) Whether the defendant proves the trespass by the plaintiff in her property bearing Site No. 52?

(vii) Whether the defendant is entitled for possession of the suit schedule property?

(viii) Whether the defendant is entitled to damages at the rate of Rs. 50/- per day to be payable by the plaintiff?

(ix) Whether valuation of counter-claim made by the defendant is proper and the court fee paid on the counter-claim is sufficient?"

Issue Nos. 1, 2 and 3 were answered in negative and the other issues were answered in the affirmative in favour of the defendant and the trial court has dismissed the suit filed by the plaintiff and decreed the counter claim filed by the defendant. The dispute as already noticed was primarily with regard to the identity of the suit property. It is that, which is under challenge in the present proceeding.

5. The learned counsel for the plaintiff would contend that the suit was one for permanent injunction. Therefore, the scope for adjudication of the suit was limited in addressing whether the plaintiff was in lawful possession of the suit property. The plaintiff was claiming under a registered sale deed and attendant documents such as tax paid receipts, the khatha certificate and encumbrance certificate in respect of the property. This was adequate material for the Court below to hold that the plaintiff was in possession, as the suit property was a vacant site. However, the Court below having entertained the counter claim of the defendant and thereby enlarging the scope of the suit could not have allowed an amendment to the counter claim, which was filed much after the issues were framed for the reason that a counter claim can be lodged at the earliest and before the defence is made by way of filing a written statement. If that is a bar against filing a counter claim, the amendment to a counter claim, which would date back to the counter claim, cannot be allowed as it would get over the bar of limitation. He would point out that it is settled by the Apex Court as to the amendment, which would be permissible. Though it is possible in certain circumstances for amendment to be allowed at a later point of time in a proceeding, which would certainly date back to the date of filing of the original

proceeding, it cannot be said so in respect of amendment, which would change the nature of the relief or nature of the case put forth by virtue of such amendment and by that token of reasoning, the amendment to the counter claim permitting relief to the effect that the sale deed executed in favour of the plaintiff was null and void certainly enlarges the relief sought by the defendant in a counter claim and in addition to a declaration that she was the owner of the suit property. Therefore, there was a miscarriage of justice in such an amendment being allowed and the defendant being allowed to enlarge the scope of her claim and that the layout admittedly was formed as an unauthorized layout and the sketch, which is produced is a rough sketch with no legal sanctity and it could not have been held against the plaintiff when there is a registered sale deed, which cannot be wished away by the defendant and seeks that the judgment in favour of the defendant be set aside and the suit of the plaintiff be decreed.

6. The learned counsel for the respondent on the other hand would submit that insofar as the contention that the scope of the suit was limited and by virtue of the counter claim the scope of the suit has been enlarged is concerned, she would draw attention to the language of Order VIII Rule 6A of Code of Civil Procedure, which does permit a defendant to raise any right or claim in a suit and therefore, there is no legal bar for the defendant who has filed a counter claim seeking the reliefs that she has urged.

7. Insofar as the further contention that the counter claim could not have been permitted to be amended at a remote point of time, after the issues were framed in the suit is concerned, the additional relief by way of amendment was only by way of abundant caution as the relief originally claimed in the counter claim was adequate to protect the interest of the defendant and therefore, the amendment having been allowed since it was ancillary to the relief that was already claimed, there is no illegality in the same having been allowed and the Court below having passed such an order permitting the amendment not having being challenged by the plaintiff at the appropriate point of time, the same has attained finality and cannot now be challenged in appeal. There is no such enlargement of the scope of a suit or change in the nature of the relief sought, by virtue of such amendment. The contention of the learned counsel in this regard is not tenable. No doubt, the layout formed was a private layout. However, the local authorities have given recognition to the existence of sites formed in agricultural lands and have collecting the property tax in respect of the same and the same is reflected in revenue records. It is also significant that the revenue authorities have endorsed that there is no such site identified as site No. 52A in the locality and it is only site No. 52, which is conveyed to the defendant under the sale deed, which is recognized and therefore, the claim that the defendant was interfering with the site of the plaintiff bearing No. 52A has been held by the Court as not tenable as the existence of the very site was disputed and hence, submits that there is no fault to be found with the judgment of the Court below.

8. By way of reply, the learned counsel for the plaintiff would point out that the

very fact that defendant had sought for recovery of possession of the suit property would indicate that the plaintiff was in possession of the property and therefore, if it was lawful possession that was to be established by the plaintiff in alleging his case for permanent injunction coupled with the sale deed and attendant documents that were produced, the plaintiff cannot be expected to produce any other document to establish title and lawful possession. The court below was therefore not justified in negating the registered sale deed and attendant documents, which were adequate to show his lawful possession over the suit property.

9. Given these rival contentions, as already pointed out though the plaintiff may have relied upon the registered sale deed and other attendant documents, the property was essentially a vacant plot with a temporary shed being constructed. This by itself would not establish the physical possession of either of the parties. The relief sought by the defendant is immaterial. It is ultimately the identity of the property and the location there of, which was to be established by the parties. Since, the rough sketch, which no doubt was not sanctioned by any competent authority was a document, which was not in serious dispute and if the said sketch did not indicate the existence of site No. 52A, the plaintiffs remedy would be to proceed against the vendors in seeking damages for having conveyed properties, which were not reflected in the attendant sketch that was admittedly prepared by the common vendors of the respective properties. Therefore, in the above circumstances, the suit having been initially filed for permanent injunction by virtue of the counter claim the scope of the suit having been enlarged does not result in any illegality. Insofar as the amendment of the counter claim, which was again allowed in favour of the defendant not having been challenged at the appropriate time, it is not a ground, on which the appeal can be entertained. In any event, there is no illegality in the same as the amendment was only by way of abundant caution as an ancillary relief that defendant had sought for declaration that the plaintiffs sale deed was void. Hence, there is no infirmity to be found in the judgment of the Court below. The appeal filed by the plaintiff against the dismissal of the suit and the decree in respect of the counter claim in favour of the defendant in the respective appeals stand dismissed.