

(2014) 12 KAR CK 0115

In the Karnataka High Court

Case No : Regular Second Appeal No. 648/2007(DEC-INJ)

P. Rukmandha Reddy

APPELLANT

Vs

The Deputy Inspector General

RESPONDENT

Date of Decision : 12-12-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 41 Rule 27

Karnataka Land Reforms Act, 1961 — Section 66

Citation : (2014) 12 KAR CK 0115

Hon'ble Judges : Budihal R.B., J

Bench : Single Bench

Advocate : S. Shaker Shetty, Advocate for the Appellant; Devdas, Sr. Counsel for Ashok N. Patil and Vasanth V. Fernandes, Advocate for the Respondent

Judgement

Budihal R.B, J.—This appeal is preferred by legal representatives of the original plaintiff against the judgment and decree dated 5.12.2006 passed by II Additional Civil Judge (Sr. Dn.), Bangalore Rural District, Bangalore in R.A. No. 214/2003 reversing the judgment and decree passed by the Principal II Civil Judge (Jr. Dn.), Bangalore Rural District, Bangalore, in O.S. No. 145/1997 dated 2.6.2003.

2. The case of the appellants-plaintiffs in the suit before the trial court was to the reliefs that they be declared as full and absolute owners of schedule land and that, defendants have no right, title or interest over the same and consequential relief of permanent injunction to restrain the defendants from interfering with their peaceful possession and enjoyment of the schedule land or from trespassing from any portion thereof. The father of the plaintiffs and his brothers purchased certain lands from Smt. Ratnammal and Sri. Ramkumar, who were the legal heirs of Jodidhars through the registered sale deed dated 9.3.1953. From the date of registration, father of the plaintiffs and his brothers were personally cultivating the lands. Subsequently, there was partition among plaintiff's father and his brothers. As per the terms and conditions of the said partition, it was

decided that in view of abolition of inam and introduction of Inam Abolition Act (for short "the Act"), the persons who were allotted respective lands had to approach the concerned authorities for registering katha for grant of occupancy rights. The father of the plaintiffs, who was allotted 52 acres of land in Sy. No. 55 of Tharalu village along with other survey numbers, made an application before the Special Deputy Commissioner for Inams, Bangalore, who in turn, as per his endorsement dated 5.12.1962, granted the occupancy rights in favour of father of the plaintiffs in respect of aforesaid extent of land. The father of the plaintiffs also submitted declaration under Section 66 of the Karnataka Land Reforms Act, showing all his holdings. After a detailed enquiry, the land tribunal held that the father of the plaintiffs was not having excess of land and accordingly, passed an order on 27.2.1982. Subsequently, father of the plaintiffs effected partition among his children. In the oral partition, 13 acres of land in Sy. No. 55 of Tharalu village had fallen to the share of plaintiffs, which was more fully described in the schedule to the plaint. Sy. No. 55 in all measured 555 acres of land and out of this, about 300 acres were in the occupation of different persons. The Special Deputy Commissioner, Bengaluru, by his order dated 23.9.1995, granted 253 acres of land in Sy. No. 55 in favour of CRPF in order to establish a firing range. Though the land was granted to CRPF, neither possession of the land was delivered nor grant certificate was issued to them. However, the revenue authorities had directed the survey department to survey the land and to earmark the extent of land granted in favour of CRPF to put them in possession of the same. Unfortunately, while surveying the land, without knowing the fact that original plaintiff was the owner of 13 acres of land in Sy. No. 55, the survey department, in the absence of the plaintiff, had fixed the boundaries and surveyed the land including the portion of land of the plaintiff. No notice had been issued to the plaintiff or any other land owners. Based on the survey of the survey department, the CRPF people started to harass the original plaintiff and he was not allowed to enter upon his own land. The CRPF also tried to cut and remove the trees on the suit schedule land of the plaintiff. The original plaintiff made an application requesting the revenue authorities to fix addubast in respect of land of his children by letter dated 14.3.1996. Subsequently, the survey department realized the mistake and addressed a letter to the revenue department stating that some of the lands were in possession of different persons and hence, the entire extent of land had to be resurveyed. When the matter stood thus, it was for the revenue authorities and survey department to take measurement and to fix boundaries to the land which had been granted in favour of CRPF. It is the contention of the plaintiffs that before resurvey of the property in question, the respondent-defendants had interfered with lawful possession and enjoyment of the land in question. Since the original plaintiff could not lodge any complaint against the police, he filed the aforesaid suit.

3. The 3rd defendant-CRPF had filed written statement in the suit denying the allegations at plaint para Nos. 2 to 7. It was contended that there was no cause of action for the plaintiffs to file the aforesaid suit. The 3rd defendant had

contended that the land to an extent of 253 acres at the rate of Rs. 30,000/- per acre was sanctioned to it by the Government of Karnataka for rifle training course vide letter dated 5.7.1994. The Deputy Tahsildar, Uttarahalli, Nadu Kacheri Office, Bangalore South Taluk, had issued possession certificate to the 3rd defendant on 7.12.1995 and put it in possession. It was contended that the Deputy Commissioner, Bangalore District, wrote a letter on 9.11.1995 to the Assistant Director of Land Records and Survey, Bangalore Division for fixing the boundaries of the said land and accordingly, surveyor fixed the boundaries. The mutation entry also stood in its name in respect of the said land. It was further contended that the plaintiff's father and four others approached this Court in W.P. Nos. 16553 to 16557/1996, which were disposed of on 13.2.1997, in which 50 acres of land in Sy. Nos. 55 and 75 of Tharalu village, Bangalore South Taluk had been claimed for all the five petitioners therein. The original plaintiff was not a party to the said writ petitions and not got impleaded as necessary party. However, he filed the above suit by making false and frivolous allegations with oblique motive to grab the defendant's land. It was further contended in the written statement that O.S. No. 211/1997 on the file of the I Additional Civil Judge, Bangalore, filed by brother of the plaintiff was pending whereas in the application filed under Order XXXIX Rules 1 and 2 of CPC was rejected on 19.7.1997. Hence, prayed to dismiss the suit.

4. On the basis of the said pleadings, the trial court framed the following issues:

"1. Whether the plaintiff proves that, he is the absolute owner of the suit schedule land?

2. Whether the plaintiff proves that he is in lawful possession and enjoyment of the suit schedule property as on the date of filing of the suit?

3. Whether the plaintiff proves that defendants prevented the plaintiff and his family members from entering into his own land as stated in para 7 of the plaint?

4. To what order or decree?"

5. After considering merits of the case, ultimately, the trial court had decreed the suit of the appellants plaintiffs. The 3rd defendant challenged the judgment and decree of the trial court in R.A. No. 214/2003 and the first appellate court after considering the case, allowed the appeal and set aside the judgment and decree of the trial court and dismissed the suit of the plaintiffs.

6. While admitting the appeal, this Court has framed following substantial question of law:

"1. Whether the lower appellate court committed any error in properly not construing Exs. P.3 to P.5, P.6, P.8 to P.10?

2. Whether the lower appellate court committed any error in not taking into account the decision of this Court directing the Government to cancel the Government order?"

7. Heard the arguments of the learned Counsel appearing for the appellants/ plaintiffs and also the learned Senior Counsel appearing for respondent No. 1/ defendant No. 3.

8. Learned Counsel for the appellants, during the course of arguments, submitted that the suit schedule land was the inam land and an extent of 52 acres in Sy. No. 55 was purchased by the father of the original plaintiff from Smt. Ratnammal and Ramkumar, who were the legal heirs of Jodidars. He further submitted that subsequently in view of the coming into the effect of the Act, the father of the original plaintiff was allotted 52 acres of land in Sy. No. 55 of Taralu village along with other survey numbers. He submitted that when the application was made before the Special Deputy Commissioner for Inams, the said authority as per his endorsement 5.12.1962 confirmed the occupancy right in favour of the father of the original plaintiff in respect of 52 acres in the said survey number. He further submitted that in the suit, the government had not filed any objections, on the contrary, it supported the case of the plaintiff. No survey was conducted for fixation of boundaries and possession of the suit schedule property was also never given to the respondents. There is no resurvey of the land and as the property is the inam land, by coming into force of the Act, the land vests with the government. He made further submission that re-grant certificate was issued in favour of father of the original plaintiff in respect of 52 acres of land in said survey number. Prior notice were issued to the appellants-plaintiffs for conducting survey and the appellants had objected for the same. It is also his contention that respondent No. 1 played fraud on the court and suppressed the material facts. The identification of property was not established by the respondents and conversion charges were also not paid by them. He submitted that no document was produced before the courts below to show that possession of the suit schedule property was delivered to respondent No. 1. The survey sketch was also not produced by respondent No. 1. He has also submitted that the revenue authorities, without cancelling the earlier grant, cannot allot the said property to the other persons. He further submitted that the trial court after taking into consideration of all these aspects of the case had rightly decreed the suit of the appellant plaintiff. But the first appellate court, without looking into the legal as well as the factual aspects, has wrongly allowed the appeal and set aside the judgment and decree of the trial court. He submitted that the first appellate court is the final court which is duty bound to take all the important factual aspects into consideration while deciding the appeal. Hence, he submitted that the judgment and decree passed by the first appellate court is illegal and not sustainable in law. Hence, sought to allow the appeal. In support of his arguments, the learned Counsel relied upon the following decisions filed along with list of citations dated 25.6.2013:

- "1. M. Venkataramana Hebbar (D) by L.Rs. Vs. M. Rajagopal Hebbar and Others,
2. Kedar Nath Agrawal (Dead) and Another Vs. Dhanraji Devi (Dead) by LRs. and Another,

3. Hakam Singh Vs. State of Haryana and Others,
4. Shyam Gopal Bindal and Others Vs. Land Acquisition Officer and Another,
5. Wadi Vs. Amilal and Others,
6. ADIL Jamshed Frenchman (D) by LRs. Vs. Sardar Dastur Schools Trust and Others,
7. State Inspector of Police Vs. Surya Sankaram Karri,
8. Santosh Hazari Vs. Purushottam Tiwai (Dead) by Lrs.,
9. Surain Singh (Dead) by Lrs. and Others Vs. Mehenga (Dead) by Lrs.,
10. Sayed Muhammed Mashur Kunhi Koya Thangal Vs. Badagara Jumayath Palli Dharas Committee and Others,
11. Govindaraju Vs. Mariamman,
12. Yadarao Dajiba Shrawane (dead) by Lrs. Vs. Nanilal Harakchand Shah (dead) and Others,
13. Maria Colaco and Another Vs. Alba Flora Herminda D'Souza and Others, "

9. Per contra, learned Senior Counsel appearing for respondent No. 1-defendant No. 3, during the course of his arguments, made submission that the arguments advanced by the learned counsel for the appellants is beyond the scope of substantial questions of law framed by this court. he submitted that the changed circumstances, taken place during the pendency of the proceedings, have also to be taken into consideration while deciding the matter. He referred to document Ex. R.2 and submitted that in view of subsequent developments taken place as per Ex. R.2, the first appellate court was justified in allowing the appeal and setting aside the judgment and decree passed by the trial court. He submitted that appellants-plaintiffs have not challenged Ex. R.2. Hence, in view of document Ex. R.2, the suit itself becomes infructuous and liable for rejection. Regrant order was not produced by appellants plaintiffs before the trial court and also before the first appellate court, and thereby the appellants plaintiffs committed fraud on the court and not respondent No. 1. Regarding contention of learned counsel appearing for the appellants that the first appellate court has not considered the oral and documentary evidence on record, he made submission that the judgment and decree of the first appellate court makes it clear that it has taken into all these aspects into consideration and decided the appeal. The learned Senior Counsel further submitted that the partition deed relied upon by the appellants is an incomplete document and no substantial question of law is involved in this appeal and the appeal ought not have been admitted at all. Lastly, he submitted that judgment and decree of the first appellate court is in accordance with law and no illegality has been committed and accordingly, prayed to dismiss the appeal. In support of his contention, the leaned Senior counsel relied up on the following decisions:

"1. Pasupuleti Venkateswarlu Vs. The Motor and General Traders,

2. Om Prakash Gupta Vs. Ranbir B. Goyal, "

10. I have perused pleadings of both parties submitted before the trial court, oral and documentary evidence and judgment and decrees of both the Courts below and the grounds urged in the appeal memorandum. I have further perused the decisions relied upon by the learned Counsel appearing on both sides as also considered the submissions made by them during the course of their arguments.

11. The contention of the appellants-plaintiffs is that the suit schedule land is the inam land and father of the original plaintiff had purchased certain lands from the above mentioned vendor. It is their further contention that when the Inam Abolition Act came into force, father of the original plaintiff presented an application and the authorities concerned granted occupancy rights in his favour to an extent of 52 acres in Sy. No. 55 of Taralu village. Perusal of the judgment and decree of the first appellate court, it has observed that the regrant order in favour of father of the original plaintiff was not produced by the plaintiffs before the trial court and in the absence of the regrant order, the case of the plaintiffs cannot be said to be proved that it was inam land and after coming into force of Inam Abolition Act, occupancy rights were granted to father of the original plaintiff. Mainly on the basis of non production of regrant order, the first appellate court has disbelieved the case of the plaintiffs and has allowed the appeal by setting aside the judgment and decree of the trial court.

12. The appellants have filed an application under Order XLI Rule 27 of CPC producing the documents at Sl. Nos. 1 to 3 in the application. The application is supported by affidavit of appellant No. 1 herein. Perusing these documents, document No. 1 dated 5.12.1964 was issued by the Special Deputy Commissioner for Inams Abolition stating that 52 acres in Sy. No. 55 was regranted in the name of A. Pilla Reddy. Document No. 2 is endorsement issued as per Section 9 of the Mysore (Personal and Miscellaneous) Inams Abolition Act 1954, treating the grantee i.e., A. Pilla Reddy as occupancy holder and for recommending to enter the said land into katha of Pilla Reddy. Document No. 3 is the one showing partition of the properties between Pilla Reddy and his family members in which Sy. No. 55 is also mentioned. The documents produced by the appellants are material and helpful to the court to resolve dispute between the parties, satisfactorily. Respondent No. 1-defendant No. 3 has also produced the document i.e., judgment dated 29.6.2007 passed by this Court in RFA No. 1382/2005 filed by P. Srinivas Reddy, son of Pilla Reddy A. against the State of Karnataka and to others, a copy of the judgment is produced along with statement of objections filed by him. This Court had allowed the appeal and granted permanent injunction in respect of A-schedule property. respondent No. 1 has also produced gazette notification dated 1.6.2009, which was not produced before the first appellate court and produced before this Court is to the following effect:

"Government Order No. RD 198 LGB 2000 Bangalore dated 17.12.2008.

In view of the facts explained, the Government is pleased to accord approval for grant of 220 acres which is vacant and free from anybody's possession instead of 253 acres in Sy. No. 55 of Taralu village to CRPF by partial modification of Government Order No. RD 121 LGB 94, dated 5.7.1994 subject to condition that the CRPF shall not utilize this land for firing range and natural habitat of animals in the Bannerghatta National Park should not be disturbed by the activities of CRPF and it is hereby cancelled the Government Order No. RD 455 LGB 2001 dated 16.12.2002, wherein 100 acres of land grant to Science City. "

13. The above gazette notification goes to show that the earlier notification granting 253 acres of land in favour of CRPF was also modified subsequently. So all these aspects will have to be considered to ascertain whether the plaintiffs have established their case or not. In respect of all the documents produced before this Court, parties will have to be examined before the Court below, their oral evidence is to be recorded giving an opportunity to the other side for cross examination. Recording of evidence in respect of the documents produced cannot be done before this Court in this second appeal. Therefore, the matter will have to be remanded back to the first appellate court to do the said exercise. All the documents produced by the appellants under the application filed under Order XLI Rule 27 of CPC as also two documents produced by respondent No. 1 along with objection statement are all public documents. The dispute between the parties is in respect of immovable properties. Therefore, to do substantial justice to both the sides, it is necessary to allow the documents. Accordingly the application under Order XLI Rule 27 of CPC is allowed. Further, the documents produced by respondent No. 1 along with objection statement are also allowed. Looking to the evidence on the side of respondents, it is admitted that no notice was issued to the father of original plaintiff or his legal representatives before conducting survey of the land.

14. In the result, I pass the following:

"i) The appeal is allowed. The judgment and decree dated 5.12.2006 passed by II Additional Civil Judge (Sr. Dn.), Bangalore Rural District, Bangalore in R.A. No. 214/2003 is hereby set aside and the matter is remanded back to the said court for fresh disposal.

ii) The first appellate court is directed to give opportunity to both sides to lead additional evidence, if any, in respect of the documents produced and then to dispose of the matter.

iii) As the suit is of the year 1997, the first appellate court is directed to dispose of the appeal as early as possible but not later than six months from the date of receipt of a copy of this judgment and also the records pertaining to this case.

iv) The High Court Registry shall take steps to send records to the first appellate court expeditiously."