
(2015) 08 KAR CK 0317

In the Karnataka High Court

Case No : Regular Second Appeal No. 5768 of 2011

Pinjara Kasim Sab

APPELLANT

Vs

Pinjara Sanna Mabu Sab and Others

RESPONDENT

Date of Decision : 05-08-2015

Acts Referred:

Evidence Act, 1872 — Section 73

Registration Act, 1908 — Section 17, 17(1), 49

Citation : (2015) 08 KAR CK 0317

Hon'ble Judges : B. Veerappa, J

Bench : Single Bench

Advocate : T. Basavanagoud, for the Appellant

Final Decision : Dismissed

Judgement

B. Veerappa, J—This is a plaintiffs second appeal against the judgment and decree dated 28.06.2011 made in R.A. No. 4/2011 on the file of the Principal Senior Civil Judge & JMFC, Hospet, confirming the judgment and decree dated 08.12.2010 made in O.S. No. 37/2005 on the file of the Civil Judge & JMFC, Huvmahadagalli dismissing the suit of the plaintiff for permanent injunction.

2. Appellant - plaintiff filed suit in O.S. No. 37/2005 for permanent injunction contending that the suit schedule property is an ancestral property of the plaintiff and the deceased defendant. Originally it belonged to one Pavadasab, who is grandfather of plaintiff. During his lifetime, he was in peaceful possession and enjoyment of the same and after his death, the property was divided among the sons of Pavadasab. The suit property was fallen to the share of Sanna Mabusab as well as the deceased defendant and they are the absolute owner of some extent of the suit property i.e., 15 cents in Sy. No. 123 totally measures 5 acres 94 cents. It is further pleaded that the deceased defendant has executed a relinquishment deed in favour of the plaintiff on 19.07.2004 and also handed over the possession of the same on the same day and on the basis of the said relinquishment deed, plaintiff filed application before the Revenue Authorities for

change of Khata and same has been effected on 20.10.2004 and RTC also stand in the name of plaintiff and he has paid taxes regularly. The defendant has no manner of right, title or interest over the suit property, he has preferred an appeal before the Assistant Commissioner, who cancelled the Mutation entry made in favour of the plaintiff and appeal filed before the Assistant Commissioner came to be dismissed with observations to approach Civil Court. Therefore, he filed the suit.

3. Originally, defendant filed written statement, denied entire plaint averments except the relationship and specifically contended in para 9 of the written statement that suit property was purchased by his father by name Pavadasab in the year 1920. The suit property is not ancestral property of the plaintiff, since the date of purchase the father of the defendant and after his death, the defendant and his brother were in possession of the same. The defendant has got mutated suit schedule land in his name on 27.10.1993. The father of plaintiff Malgi Rajsab son of Sanna Alisab of Ittigi has filed Appeal No. 681/93-94 before the Assistant Commissioner and it was contended that his father never executed relinquishment deed in favour of plaintiff and plaintiff never is in possession and enjoyment of suit property etc. Therefore, sought for dismissal of the suit.

4. Based on the pleadings of the parties, the Trial Court framed the following issues:

"1. Whether plaintiff proves that he was in actual and physical possession of suit land Sy. No. 123 measuring 0-15 cents of village Ittagi on the date of suit?

2. Whether the plaintiff proves that the defendant has executed relinquishment deed in favour of him on 19.07.2004 and handed over the physical possession of suit schedule property?

3. Whether the plaintiff proves that, defendant has caused illegal obstruction and interference in his possession of suit schedule property?

4. Whether plaintiff is entitled the relief of permanent injunction?

5. What order or decree?"

5. In order to prove his case, the plaintiff examined as P.W.1 and witnesses P.Ws.2 to 7 and marked the documents Ex. P-1 to Ex. P-8. Defendant examined as D.W.1 and witnesses D.Ws.2 to 5 and marked the documents Ex. D-1 to Ex. D-9.

6. The Trial Court after considering the entire material on record has recorded a finding that the plaintiff failed to prove that he is in actual and physical possession of the suit land as on the date of the suit and also failed to prove that the defendant has executed a relinquishment deed in favour of the plaintiff on 19.07.2004 and handed over physical possession of the suit schedule property and plaintiff failed to prove that the defendant has caused illegal obstruction and interference of his possession of the suit property is not entitled for the relief of

permanent injunction. Accordingly, the suit came to be dismissed.

7. Aggrieved by the said judgment and decree, appellant filed an appeal before the lower Appellate Court in R.A. No. 4/2011, who after hearing both the parties, by the impugned judgment and decree dismissed the appeal. Against the concurrent findings of fact, the present appeal is filed.

8. I have heard the learned counsel for the appellant.

9. Shri T. Basanagoud, learned counsel for the appellant has strenuously contended that both the Courts below concurrently erred in holding that plaintiff is not entitled to permanent injunction, without considering the pleadings, documents and evidence on record. He further contended that the plaintiff has produced mutation extract, tax paid receipts, record of rights, land revenue paid receipt, patta book and other oral evidence to prove that he is in possession of the suit schedule property, as on the date of the suit. The said material documents have not been considered by the Courts below. On that ground alone, the judgment and decree of the Courts below are liable to be set aside for non-consideration of material evidence on record. Therefore, he sought to set aside the impugned judgment and decree of the Courts below.

10. I have given my thoughtful consideration to the arguments advanced by the learned counsel for the appellant and perused the entire material on record.

11. The Trial Court after considering the oral and documentary evidence has recorded a finding that P.W.1 has admitted the relationship between the deceased defendant and himself and it is forthcoming that the deceased defendant has executed a relinquishment deed in the year 2004 and on the basis of the same his name is entered in the mutation in respect of property in question and also admitted the fact that defendant has preferred an appeal against the mutation order and the Appellate Court granted stay and also admitted the fact that the Appellate Court set aside the order passed by the Deputy Tahasildar mutating his name in respect of the property in question and according to P.W.1 that the suit property was fallen to his share as per the pal-patti, but he has not produced the said document and in the cross-examination, he has admitted that said Ex. P-8 relinquishment deed does not bear any endorsement or seal of the Taluk Office and has admitted that he has not tried to get the document from the Taluk Office or Tahasildar office and produced before the Court which reads under:

12. P.W.1 also examined P.Ws.2 to 6 and 7, who supports his case. P.W.2 to 6 have stated regarding possession and enjoyment of suit property. P.W.2 admitted in the cross-examination that he is the relative of the plaintiff and also the relative of deceased defendant and he has not seen the relinquishment deed and he does not know whether it was registered or not. P.W.2 also admitted that:

13. P.W.3 has admitted that he does not know the total extent of the suit property and has not seen the relinquishment deed and he does not know when

it was executed and he has admitted that the earlier suit property was in possession of Pavadasab and after his death it is in possession of the defendants.

14. P.W.5 has admitted that:

15. P.W.6 has stated that he does not know how the suit property forthcoming. He knew the deceased defendant, even he does not know regarding the transactions in between the plaintiff and deceased defendant. He does not know what was happened on 25.06.2005.

16. P.W.7 has identified Ex. P-8 and also identified signature of deceased defendant as well as the witness and scribe and he has admitted that he is not having any land or rick-yard by the side of the suit property, but it is forthcoming that he went to the spot on 26.06.2005 after quarrel between the parties. It is further discloses that Ex. P-8 was written in Anjaneya Temple and at that time no talks were held regarding the consideration for the suit property. Ex. P-8 was written by one Pampanagouda on his own hand writing. P.W.4 though filed his affidavit has not tendered himself for cross-examination.

17. D.W.1 filed his affidavit and produced documents Ex. D-1 genealogy, Ex. D-2 is encumbrance certificate, Ex. D-3 and Ex. D-4 are RTC extracts, Ex. D-5 is certified copy of the order passed by the Deputy Commissioner and has specifically denied in the cross-examination the execution of relinquishment deed by him and denied all plaint averments.

18. D.Ws.2 to 4 supported the case of the defendant. According to D.W.2, Sanna Mabu Sab the signature is found in Ex. P-8 is not the signature of his uncle i.e., deceased defendant, according to him, his uncle put his signature as After going through the cross-examination, D.Ws.3 and 4, it is clear that the defendant is in possession of suit property. D.W.5 has stated that in view of the signature of his father that deceased defendant Ex. P-8(a) is not the signature of his father by name According to D.W.5 also, his father put his signature as but the signature found at Ex. P-8(a) appears as

19. The Trial Court also recorded a finding that considering the evidence of P.W.3 and P.W.1, the said Ex. P-8 was written at Anjaneya temple at Huvinahadagalli, but the scribe was residing at Ittagi and recitals of Ex. P-8 pointed out signature of M. Ramesh, he ought to have put his signature after the recitals of Ex. P-8, but it is not so, it is also a doubtful circumstance. He further added by stating that no consideration was fixed and even no consideration was passed under the Ex. P-8 and even no talks were held regarding consideration for the relinquishment of the property.

20. Considering the various judgments relied upon by the defendants in the case of Tulajappa and Others Vs. Subhas and Others, AIR 2003 Kar 118 : (2002) ILR (Kar) 4231 : (2002) 4 KCCR 2485 , in the case of Sri. S.B. Ittigi and Smt. Leelavathi Mahale Vs. Smt. S.V. Sulochana, Mahantappa Karibasappa Kalligud, Whannamallappa Sharanappa Kalligud and Sharanappa Karibasappa Kalligud,

(2007) ILR (Kar) 247 : (2007) 3 KarLJ 129 : (2007) 2 KCCR 1055 and in the case of Malakappa Handiganur Vs. Annapurna and Others and considering the provisions of Section 73 of the Indian Evidence Act, the Court has compared the signatures i.e., disputed signature with the admitted signatures and held that merely because the plaintiff has paid the deficit stamp duty and penalty on it, it cannot be said that the document is to be accepted in his evidence and it cannot be accepted simply because Ex. P-8 not a registered document, it is to be registered compulsorily under the provisions of Section 17 of the Registration Act, 1908. Therefore, decisions relied upon are applicable to the case on hand.

21. After going through the evidence of the witnesses, Ex. P-1, nowhere it is mentioned regarding relinquishment deed, but the date of Ex. P-8 is 19.07.2004 is mentioned in the mutation order. It is also mentioned on the basis of the succession, the mutation has been effected, but after going through the evidence, it is clearly established that the plaintiff and the deceased are though relatives, but plaintiff is not successor of deceased defendant. Ex. P-7 dated 20.10.2004 the name of Pavadasab is mentioned and it is also mentioned that on the basis of relinquishment deed dated 19.07.2004, the name of the plaintiff has been mutated. It is also mentioned that relationship between the executant and the plaintiff is "Son". As it could be seen from the proceedings since 2005 that the plaintiff has pointed out that the plaintiff has pleaded in his plaint regarding the execution of relinquishment deed by the deceased defendant, but he has not produced the same. According to P.W.1, as could be seen from his evidence that it was produced before the Tahasildar, Hadagalli for some other purpose. But the plaintiff has not taken any pain to get it called for and produce the same in the suit, as it trump card for the plaintiff and the suit itself is based on the said document. The Trial Court has also recorded a finding that Ex. P-8 is to be compulsorily regisiterable document under the provisions of Section 17 of the Indian Registration Act. The unregistered relinquishment deed cannot be relied upon to grant relief in favour of the appellant on the basis of Ex. P-8 is admittedly an unregistered document. No consideration was passed, no love and affection is mentioned, even during the talks as admitted by the P.Ws. that no consideration was fixed and there is an inconsistency in pleading and proof. Ex. P-8 is not a title deed. Moreover, the witnesses for the plaintiff i.e., P.W.3 has categorically admitted that during the time of Pavadasab, suit property was in his possession and after his death, deceased defendant is in the possession of the suit property. The Ex. P-2 i.e., RTC extract for the years 2004-05, it stands in the name of Sanna Mabusab i.e., deceased defendant. Accordingly, the Trial Court recorded a finding that plaintiff failed to prove his possession as on the date of the suit and dismissed the suit.

22. On re-appreciation of the entire material on record, lower Appellate Court recorded a finding that on careful examination of evidence and attesting witnesses as well as cross-examinations, it is clear that the witnesses are touted witnesses and created to suit the story of the plaintiff. P.W.2 at the first instance when his evidence was recorded before pronouncement of first judgment, he has

pleaded his ignorance about the existence of Ex. P-8 as well as his presence at the time of executing this document, but when he examined after remand of the matter by the Trial Court, he had supported the plaintiff's version by giving a clear go bye to his earlier version before the Court. This is one of the strongest circumstance by which we can say that the plaintiff tried to build up a witness so as to suit his case.

23. On perusal of Ex. P-8, one can easily state that this document was initially a signed blank document and an effort was made to type the subject matter within available space just before the signatures. The first part of the document was got typed by leaving double line space in between first and second typed lines, whereas only single line space has been left out in between the first and second typed lines at second part of the document. Nearly seven lines have been typed at the second part of the document in thickest and closest manner. Such an effort will be done only to get finish the document within available space. Otherwise, there were hardly reasons for typist to type second part of the document in this way. The interesting point to be noted that the document has not been produced during the course of first trial. But subsequently, got produced after the matter was remanded back. In view of the reasons as well as contradictory version of plaintiff and his witnesses, held that the plaintiff miserably failed to prove the execution of Ex. P-8 and its genuine and credibility.

24. The lower Appellate Court also recorded a finding that a plain reading of Section 17(1) of the Indian Registration Act, 1908, it is evident that the document which creates or extinguishes right, title or interest in an immovable property worth of Rs. 100/-and more bound to be registered. Therefore, it is crystal clear that the document Ex. P-8 is a compulsorily registerable document. As per Article 20(1) of Karnataka Stamp Act, 1957 ad valorem stamp duty ought to have been paid on the market value of the property. But the stamp duty paid is Rs. 20/- only. As such, as per the directions of this Court, the document was impounded and duty and penalty was received from the plaintiff.

25. The Appellate Court has also considered whether the said document can be looked into for collateral purpose. But as per the provision of Section 49 of the Registration Act, 1908 the document which is unregistered though compulsorily required to be registered, cannot be looked into for any purpose, much less for collateral purpose, simply because duty and penalty is paid and ultimately held that Ex. P-8 is a document in question is compulsorily registrable document, therefore, it cannot be looked into for collateral purpose. Accordingly, the lower Appellate Court recorded a finding that on minute examination of over all reasonings given by the Trial Court in its judgment and decree passed by the Court below is in accordance with law and no interference is called for. Accordingly, appeal came to be dismissed.

26. Both the courts concurrently held that the plaintiff failed to prove his actual and physical possession of the suit schedule property as on the date of the suit and failed to prove the execution of relinquishment deed by the deceased

defendant in his favour on 19.07.2004 and plaintiff is not entitled to the decree of permanent injunction and accordingly the suit came to be dismissed.

Such a finding of fact is based on both oral and documentary evidence on record and no substantial question of law involved in the present appeal. Therefore, appeal filed by the plaintiff is devoid of merit and accordingly, the appeal is dismissed at the stage of admission.