
(2008) 06 KAR CK 0019

In the Karnataka High Court

Case No : Regular Second Appeal No. 62 of 2005

Ranganath Ramchandra Suryavanshi

APPELLANT

Vs

Mohan and Others

RESPONDENT

Date of Decision : 12-06-2008

Acts Referred:

Evidence Act, 1872 — Section 83

Citation : (2008) ILR (Kar) 4774 : (2008) 5 KarLJ 504 : (2008) 4 KCCR 2287

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : S.B. Hebballi, for the Appellant; Veerendra Patil (absent), for the Respondent

Final Decision : Allowed

Judgement

V. Jagannathan, J.—This second appeal gives rise to an occasion to interpret Section 83 of the Indian Evidence Act, 1872 ("the Act" for short). The defendant before the Trial Court is the appellant herein and he is aggrieved by the lower Appellate Court reversing the judgment of the Trial Court inasmuch as though the Trial Court had dismissed the suit of the plaintiff for declaration and consequential injunction, the lower Appellate Court allowed the appeal preferred by the plaintiff and decreed the suit of the plaintiff and hence this second appeal by the defendant.

2. The facts which fall within a very narrow compass are to the effect that the plaintiff, being the owner of plot No. 11 of R.S. No. 224 of Bangalore, filed the suit in question by contending that the appellant herein, who was the defendant and being the owner of the adjacent plot No. 12, had encroached upon the plaintiffs property and the portion encroached is described as GBC in the sketch annexed to the plaint and, therefore, the relief was sought for declaring the plaintiff as the owner of the GBC portion and for consequential order of injunction restraining the defendant from interfering with the said GBC portion.

3. The defendant, on the other hand, contested the said suit by taking up the stand that, while the plaintiff is the owner of plot No. 11, the defendant had purchased plot No. 12 on 2-9-1993 and the defendant's plot measured 61" East-West and 82" North-South and, therefore, the question of the defendant encroaching upon the plaintiffs property will not arise. Another contention taken was that no survey was conducted and no notice was issued to the defendant and, therefore, the report of the surveyor was not binding upon him.

4. Based on the said pleadings of the parties, the Trial Court framed the issues which are to be found at page 8 of the paper book and, after taking into consideration the evidence let in by the parties, the learned Judge of the Trial Court opined that the report of the surveyor could not be acted upon because of several infirmities like the appellant being not given an opportunity of being present when the survey was conducted and secondly, the report of the surveyor was not very accurate and no evidence was placed to prove the accuracy of the said report. On the basis of the said reasoning and taking note of Section 83 of the Indian Evidence Act, 1872, the Trial Court did not accept the case of the plaintiff and the suit was dismissed.

5. On appeal by the plaintiff, the lower Appellate Court held to the contrary with regard to the surveyor's report by observing that the evidence placed indicated that the defendant was served with the notice and one witness D.W. 3 was also present during the survey and Ex. P. 4-P.T. Sheet, was not questioned by the appellant before any authority and, therefore, the question of viewing the surveyor's report with suspicion or as inaccurate will not arise. As far as the absence of the appellant on the day of survey is concerned, the lower Appellate Court observed that the appellant did not examine the author of the certificate-Ex. D. 4. On this reasoning, the suit of the plaintiff was decreed by allowing the appeal and thus, the defendant is before this Court.

6. I have heard the learned Counsel for the appellant. None appeared for the respondents and, therefore, in the absence of any representation, this Court could not have benefit of hearing the arguments on behalf of the respondents.

7. The learned Counsel for the appellant contended that the appreciation of evidence by the lower Appellate Court is erroneous both on facts and in law inasmuch as the document produced by the appellant particularly the sale deed itself will go to show that the property of the appellant measured 61" East-West and 82" North-South and this fact is admitted by the plaintiff himself. Secondly, it was submitted that the report of the surveyor, Ex. P. 4 suffers from several defects inasmuch as it is said to have been drawn on 28-10-1995 whereas, the plaintiffs own document Ex. P. 6 shows that the survey was conducted on 29-10-1995. It is also submitted by the learned Counsel that the surveyor was not examined in order to prove the accuracy of the survey report and this defect itself is sufficient to reject the report of the surveyor. For this submission, the learned Counsel for the appellant placed reliance on Section 83 of the Indian Evidence Act. Referring to the sale deed of the appellant, it is submitted that the

said document itself goes to show that the appellant's property measured 52+7" East-West and 82" North-South. Under the above circumstances, the view taken by the lower Appellate Court cannot be upheld in law whereas that of the Trial Court has to be accepted as correct.

8. This Court, while admitting this appeal, had framed the following substantial question of law for consideration:

Whether the findings of the First Appellate Court in reversing the judgment and decree passed by the Trial Court and decreeing the suit of the plaintiff is contrary to the provisions of Section 83 of the Indian Evidence Act as report of the ADLR-Ex. P. 4 was prepared at the instance of the plaintiffs and no presumption could be raised u/s 83 unless accuracy of the report is proved?

9. Having regard to the above question of law that is raised, I have carefully examined the material on record. I have no hesitation to accept the contention put forward by the appellant's Counsel for the following reasons.

10. The plaintiff has admitted in the very first paragraph of the plaint that he is the owner of plot No. 11 which measured 61" East-West and 82" North-South and he also admits that the plot of the defendant is plot No. 12 which measures 82" North-South and 61" East-West. With the said admission made by the plaintiff himself, it is not difficult for us to find out from the survey report as to whether there has been any encroachment or not by the appellant. The survey report is produced at Ex. P. 4 and it mentions the area of the appellant's property as 60" East-West and 82" North-South and at the top of the survey sketch, it has been shown as 52" East-West. The encroached area is shown as 7" East-West at the top. The sale deed produced by the appellant, which has been marked as Ex. D. 1, puts the measurement of the appellant's plot as 52 + 7" East-West and 60" North-South. Therefore, the inference to be drawn from the above admitted documents is that the encroached area shown in the map actually falls within the area of the appellant. Even if it is taken that the area measures 52 + 7" at the top and not 61" East-West, even then, there can be no encroachment at all by the appellant.

11. Section 83 of the Indian Evidence Act reads as under:

83. Presumption as to maps or plans made by authority of Government.- The Court shall presume that maps or plans purporting to be made by the authority of the Central Government or any State Government were so made, and are accurate; but maps or plans made for the purpose of any cause must be proved to be accurate.

12. It is, therefore, clear from a careful reading of the said section, that if any map or plan is made for the purpose of any cause, the said map or plan will have to be proved to be accurate. The onus of proving such map as accurate lies on the party who wants to rely on the said map or plan. It has to be proved that the said map or plan or survey report, as in the instant case, is accurate by

examining the person who actually prepared it. It is not in dispute that in the instant case, the surveyor, who gave the report-Ex. P. 4, was not examined. Since the survey report-Ex. P. 4 is prepared for the purpose of the suit filed by the plaintiff and, in the absence of there being any evidence placed to show that the said survey report was prepared for a public purpose, it was incumbent on the part of the plaintiff to have proved the report by examining the surveyor in order to show that survey report is "accurate" report.

13. The reason for the report being insisted upon as accurate is not far to seek. It is not uncommon to come across instances where apart from playing fraud, there is a tendency to exaggerate, while preparing maps or survey reports and the said infirmity or defect can be overcome only by offering the maker of the survey report come before the Court and testify with regard to the accuracy of the report and, in the instant case, no such opportunity was available for the appellant to cross-examine the surveyor, as the plaintiff did not examine the surveyor to prove the accuracy of Ex. P. 4.

14. For the foregoing reasons, I hold that the lower Appellate Court has failed to properly appreciate the material evidence on record and it is rather unfortunate that the very document produced by the defendant i.e., sale deed, and the admission made by the plaintiff in his pleading were lost sight of by the lower Appellate Court and the provisions of Section 83 of the Indian Evidence Act also were not properly considered. Hence, I am of the view that the judgment of the lower Appellate Court cannot be sustained on facts and in law as there is not only misreading of the evidence on record but erroneous application of law is also clear from the reasons given by the lower Appellate Court. The Trial Court had rightly dismissed the suit of the plaintiff for want of accuracy in the survey report produced by the plaintiff and it also took note of Section 83 of the Indian Evidence Act in arriving at this conclusion. Hence, the substantial question of law is answered in favour of the appellant and following is the order that has to be passed in the above circumstances.

The appeal is allowed and the judgment and decree of the lower Appellate Court is set aside and that of the Trial Court is restored.