

(2011) 07 KAR CK 0052

In the Karnataka High Court

Case No : Regular Second Appeal No. 132 of 2009

Rangappa Since dead by Lrs (Chowdamma and Anjanappa) and Others APPELLANT

Vs

Lakshmaiah RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, Order 6 Rule 17, 11

Citation : (2011) 07 KAR CK 0052

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : R.V. Vijayakumar and Sri. K.S. Ramesh, for the Appellant; B.N. Muralidhar, for C/R, for the Respondent

Final Decision : Allowed

Judgement

Ajit J. Gunjal

1. The appeal was admitted on 17.09.2010, to consider the following substantial; questions of law: 1. Whether the Courts below were justified in accepting the plea of adverse possession set up by the defendant having regard to the material evidence on record?

2. Whether the plea of adverse possession could be set up on remand by the appellate Court having permitted the amendment to that effect for the first time?

3. Whether the respondent-defendant could claim adverse possession by taking possession that was claimed by him, with that of his father?

After perusing the papers, the substantial questions of law are refrained as follows: 1. Whether the Courts below were justified in non- suiting the plaintiff on the ground that the defendant has proved adverse possession?

2. Whether the Judgment and Decree passed by the Appellate Court is vitiated for non-considering the applications for additional evidence under Order 4J Rule

27 of the CPC and the amendment applications of both the plaintiffs and defendant under Order 6 Rule 17 of the Code of Civil Procedure, independently and not along with final hearing?

2. During the course of the Judgment, the parties would be referred to as per their ranking in the Trial Court.

3. Succinctly stated, the plaintiff sues for declaration of title and also for possession in respect of an extent of 3 acres in Sy. No. 93 of Arinaganahalli, Holur Kobli, Kolar Taluk. The specific case made out by the plaintiffs is that the defendant, who is not at all related to the plaintiffs, started cultivating the suit schedule property. When the plaintiff asked him to handover possession, he refused. Hence, in the circumstances, the present suit is filed for declaration and possession.

4. The defendant entered appearance and filed written statement inter alia contending that he has title to the property inasmuch as his name appears in the Revenue Records. He would also further take up a contention that he has perfected his title by adverse possession.

5. Suffice it to say that in the first instance, the suit was decreed. Aggrieved by the said Judgment and Decree the defendant filed an appeal. In the appeal, the defendant maintained an application for additional evidence i.e., production of an unregistered palupatti. The said application was granted and the matter was remanded to the Trial Court. During the pendency of the proceedings before the learned Trial Judge, the defendant maintained an application for amendment of the written statement so as to amplify his plea of adverse possession. The said application was rejected. The learned Trial Judge was of the view that the unregistered palupatti Ex. D9 cannot be looked into for any purpose inasmuch as it is not registered but however, chose to dismiss the suit on the ground that the defendant has perfected title by adverse possession.

6. The plaintiff filed an appeal before the Appellate Court. It is to be noticed that during the pendency of the appeal three applications were maintained. The plaintiff maintained two applications one under Order 41 Rule 27 of the CPC for production of additional evidence and also for amending the plaint. The defendant also maintained an application for amending the written statement so as to amplify the plea of adverse possession. It is noticed from the records of the Appellate Court that all the three applications were granted. Eventually, the three applications were disposed of on 15.07.2008. Incidentally, it is to be noticed that it was not brought to the notice of the learned Appellate Judge as to the rejection of the application for amendment of the written statement filed by the defendant.

7. I have heard Mr. R. Vijay kumar, learned counsel appearing for the plaintiff as well as Mr. B.N. Muralidhar, learned counsel appearing for the defendant. Without going into the larger question as to whether the plea set up by the defendant regarding adverse possession would satisfy the requirement, the matter requires reconsideration at the hands of the Appellate Court inasmuch as all interlocutory

applications, which are filed before the Appellate Court, be in the nature of additional evidence and production of documents, amendment of the pleadings are required to be considered along with the main appeal and not independently. If any decision is required, one can refer to the ruling of this Court in case of Sreenivasa Krishnappa Bilagi V/S. Shivappa Channabasappa reported in 1988 (2) Kar.L.J. 388.

8. Hence, I am of the view that the Judgment and Decree passed by the learned Appellate Judge is vitiated for not considering the applications along with the main appeal. It is also to be noticed that another question, which would warrant consideration by the Appellate Court is, when the defendant's application for amendment of the written statement having been rejected by the Trial Court, can an identical application be entertained by the Appellate Court? Incidentally, it is required to be observed that Section 11 of the CPC i.e., res judicata is also applicable to interlocutory applications. Hence, I am of the view that the plaintiffs-appellants are entitled to succeed to that extent. The second substantial question of law is answered accordingly.

9 Hence, the following order: (a) Appeal is allowed.

(b) The judgment and decree passed by the Appellate Court is set-aside. So also the orders dated 15.07.2008 passed by the Appellate Court: on interlocutory applications under Order 41 Rule 27 of CPC filed by the plaintiff the application for amendment of the plaint as well as the written statement are set-aside.

(c) The learned Appellate Judge shall consider the applications along with the main appeal.

(d) Both the appellants as well as respondent shall appear before the Lower Appellate Court on 19th September 2011.

(e) Registry, to transmit the records forthwith.

Appeal stands disposed of accordingly. Costs are waived.