

(2016) 02 KAR CK 0098

In the Karnataka High Court

Case No : Writ Petition Nos. 112453/2014 and 113445-446/2015 (GM-Police)

Rauat and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 10-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 227

Evidence Act, 1872 — Section 114

Karnataka Land Revenue Act, 1964 — Section 133

Penal Code, 1860 (IPC) — Section 143, Section 147, Section 148, Section 149, Section 323, Se

Citation : (2016) 02 KAR CK 0098

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : G.R. Gurumath, Advocate for Mallikarjunswamy B. Hiremath, Advocate, for the Appellant; K. Vidyavati, AGA, for the Respondent

Final Decision : Disposed Off

Judgement

B. Veerappa, J.—1. Shri G.R. Gurumath, learned counsel for the petitioners has filed a memo for not pressing the prayer (B) in Writ Petition No. 112453/2014.

2. Memo is placed on record.

3. Accordingly, the prayer (B) in Writ Petition No. 112453/2014 is dismissed as not pressed.

4. The petitioners in Writ Petition No. 112453/2014 sought for a writ of mandamus, directing the respondent Nos. 2 and 3 to provide public protection by considering Annexure - C, issued by the Deputy Commissioner and the petitioners in Writ Petition Nos. 113445-446/2015 sought to quash Annexure - A, issued by the Deputy Commissioner dated 15.10.2014.

5. It is the case of the petitioners in Writ Petition No. 112453/2014 that agricultural land bearing Sy. No. 102/2, measuring 6 acres 25 guntas, situated at

Kavatagi Village, Jamkhandi Taluk, Bagalkot District, originally belong to one Sagareppa, who had a wife namely Irawwa and they have no issues. After the death of said Sagareppa, his wife Irawwa succeeded his property. The said Irawwa executed a "will" on 06.01.2003 bequeathing the property in favour of the 2nd petitioner. After the death of the said Irawwa, the 2nd petitioner name came to be entered in the mutation i.e., record of rights as per Annexure - A for the year 2013-14 and 2014-15.

6. It is further case of the petitioners that respondent Nos. 6 and 7 filed the suit in O.S. No. 3/2008 against the 2nd petitioner for declaration of title and injunction in respect of Sy. No. 102/2, measuring 6 acres 25 guntas situated at Kavatagi Village, Jamkhandi Taluk. After contest, the said suit came to be dismissed on 30.10.2013, wherein the Civil Court categorically recorded a finding that the respondent Nos. 6 and 7 who are the plaintiffs in the said suit are not in possession of the disputed land. It is further stated that in the month of October 2014, when the petitioners have been to the land for harvesting sugarcane, the respondent Nos. 6 to 11 illegally trespassed and threatened the petitioners with dire consequences. Therefore, the petitioners were constrained to approach the Deputy Commissioner seeking Police protection for harvesting sugarcane crop. On the basis of the request made by the 2nd petitioner, the Deputy Commissioner intimated the same to the Superintendent of Police to take action in accordance with law. Thereafter, on 28.10.2014 respondent Nos. 6 to 11 went to the land of the petitioner and assaulted petitioner No. 2 and immediately a Police complaint was lodged with Superintendent of Police which was registered in Crime No. 151/2014 and the respondent Nos. 6 to 11 were not even arrested by the respondent Nos. 4 and 5. As such, petitioner approached the Superintendent of Police. Thereafter, respondent No. 5 arrested respondent Nos. 6 to 10 only and respondent Nos. 11 to 13 are not arrested as on the date of petition filed.

7. It is further case of the petitioners that they approached the Superintendent of Police on 04.11.2014 seeking Police protection for harvesting sugarcane crop. In respect to the said request, the Superintendent of Police in turn called upon respondent Nos. 4 and 5 to give necessary protection. They did not heed to any request of the petitioner rather went on protracting the matter. Finally on 28.11.2014 the CPI informed the petitioner that the concerned PSI i.e., the 5th respondent will do the needful and washed his hands. In the meanwhile, respondent Nos. 6 to 11 brought the Tractor and Trailer bearing No. KA-48/T-4538 and entered the land of petitioner and transported sugarcane worth 60 tones. Therefore, the petitioner made one more complaint on 02.12.2014 to the Superintendent of Police to bring their notice the illegal acts of his Officers in collusion with respondent Nos. 5 to 11. In spite of the said complaint, a criminal case was registered and the Police have not given any protection to the petitioners. Hence, the petitioners are before this Court.

8. The respondent Nos. 6 to 13 filed statement of objections and denied the

petition averments and contended that the very writ petition filed by the petitioners for the relief sought for is not maintainable and same is liable to be dismissed. It is further contended that the petitioners suppress the true facts of the case and they have not come to the Court with clean hands and denied the contents of the Vill" as false. It is also contended that the petitioners are nowhere related to the uncle and aunt i.e., Sagarappa and Irawwa of the 6th respondent. The alleged Vill" is not proved and established before the Civil Court and the petitioners are nowhere related to the suit property and further contended that against the decree passed by the Trial Court, they have filed R.A. No. 15/2014 on the file of the Civil Judge, Fast Track Court, Jamkhandi and same is pending for adjudication. It is further contended that the respondent Nos. 6 to 13 are in possession and enjoyment of the property by producing Annexure - R1, the photographs. Therefore, sought for dismissal of the writ petition.

9. The Writ Petition Nos. 113445-446/2015 filed for quashing of the impugned order dated 15.10.2014 issued by the Deputy Commissioner, intimating the Superintendent of Police to take further action. Reiterating the averments in the statement of objections in Writ Petition No. 112453/2014 and contended that the Deputy Commissioner has no power to direct the Superintendent of Police to give Police protection.

10. I have heard the learned counsel for the parties to the lis.

11. Shri G.R. Gurumath, learned counsel appearing on behalf of Shri Mallikarjunswamy B. Hiremath for the petitioners in Writ Petition No. 112453/2014 contended that inspite of specific finding recorded by the Trial Court in O.S. No. 3/2008 that the 2nd petitioner herein was the defendant in the Trial Court has proved that the deceased Irawwa executed the Vill" and bequeathed the suit property in her favour and the Trial Court categorically recorded a finding that the plaintiff failed to prove that the deceased Irawwa relinquished the suit schedule property in favour of the plaintiffs and executed relinquish consent letter dated 06.11.1995 and failed to prove that they are the owners of the suit schedule property and the plaintiff failed to prove the alleged interference of the defendants in the suit property and ultimately dismissed the suit. Admittedly, the decree is not stayed in R.A. No. 15/2014 on the file of the Principal Civil Judge, Fast Track Court, Jamkhandi, pending adjudication between the parties. He further contended that as per Annexure - A, the RTC entries in respect of suit schedule property for the year 2013-14 and 2014-15 which reflects the name of the 2nd respondent both in column Nos. 12(2) and 9 clearly indicates that she is in possession of the suit property as on the date of filing of the writ petitions. Respondent Nos. 6 and 7, who are the plaintiffs have not produced any material before this Court to prove their possession as on today and their claim is negated by the Trial Court.

12. Learned counsel for the petitioners also contended that by a combined reading of Section 2(h) and Section 95 of the Indian Succession Act, 1925 prima fade that the 2nd plaintiff proved that she is the owner of the suit property on

the basis of Vill" and in view of the finding recorded by the Trial Court that the Vill" is proved. In support of his contention, he also relied upon the dictum of the Hon"ble Supreme Court in the case of P.R. Murlidharan and others v. Swami Dharmananda Teertha Padar and others reported in , (2006) 4 SCC 501.

13. Per contra, Shri Shivaraj P. Mudhol, learned counsel for the respondents and petitioners in Writ Petition Nos. 113445-446/2015 contended that the very prayer sought for writ of mandamus for Police protection is not maintainable and the Trial Court has not recorded any finding with regard to possession of the 2nd petitioner/defendant. The Civil Court has not granted any enforceable decree in favour of the 2nd defendant. He further contended that the judgment and decree of the Trial Court denying his title and injunction is subject matter of R.A. No. 15/2014 on the file of the Principal Civil Judge, Fast Track Court, Jamkhandi is pending adjudication between the parties. Of course, the Appellate Court has not granted any interim order, in view of the delay in filing the appeal and the matter is posted for final arguments.

14. In support of his contention, Shri Shivaraj P. Mudhol, learned counsel for the respondent also relied upon the judgment of the Hon"ble Supreme Court in the case of Moran M. Baselios Marthoma Mathews v. State of Kerala reported in AIR 2007 SCW 4367. Therefore, he sought for dismissal of the writ petition by the petitioners in Writ Petition No. 112453/2014.

15. Smt. K. Vidyavati, learned AGA representing respondent Nos. 1 to 3 in both the writ petitions contended that the Deputy Commissioner has not exercised any of his powers by issuing Annexure -A in Writ Petition Nos. 113445-446/2015 and Annexure - C in Writ Petition No. 112453/2014. He only treated the averments made in the complaint and same is forwarded to the Superintendent of Police for necessary action in accordance with law being the head of the District. The same cannot be found fault with.

16. I have given my anxious consideration to the arguments advanced by the learned counsel for the parties and perused the entire material on record.

17. It is an admitted fact that respondent Nos. 6 and 7/plaintiffs filed O.S. No. 3/2008 for declaration of title and injunction in respect of the property in question as Sy. No. 102/2, measuring 6 acres 25 guntas, situated at Kavatagi Village, Jamkhandi Taluk, mainly on the basis of unregistered relinquish consent letter dated 06.11.1995 said to have been executed by the said Irawwa and contended that they are in possession of the suit schedule property as owners as on the date of the suit. The 2nd petitioner Sharada herein who was the defendant in the Trial Court filed written statement, denied the entire plaint averments and contended that the property belongs to Sagareppa, the husband of Irawwa. After his death, she became the owner of the property. She has executed a Vill" on 06.01.2003 in favour of the defendant bequeathing the suit property and on the basis of the Vill", the Revenue Authorities acted upon and mutated her name in the RTC, as per Annexure - A for the year 2013-14 and

2014-15. After contest, the Trial Court dismissed the suit filed by the plaintiffs for declaration and injunction holding that the plaintiffs failed to prove their title and possession in respect of the suit schedule property, as on the date of the suit and also recorded a specific finding that the defendant proved that the deceased Irawwa executed a Will bequeathing the suit schedule property in her favour. The said judgment and decree is subject matter of R.A. No. 15/2014 on the file of the Principal Civil Judge, Fast Track Court, Jamkhandi. Admittedly, in the said appeal, the Appellate Court has not stayed the judgment and decree dated 30.10.2013 made in O.S. No. 3/2008 on the file of the Principal Civil Judge, Fast Track Court, Jamkhandi. It means, the finding recorded by the Trial Court that the plaintiff is not owner and in possession of the suit schedule property has reached finality. Of course, the appeal is filed and pending, but no interim order is granted.

18. Without adjudicating the merits and demerits of the case with respect of title and injunction which is the subject matter of appeal, pending adjudication between the parties the only point that arise for consideration in these cases:

"who is in possession of the suit property as on today?"

19. As already said above, the suit filed by the plaintiffs/respondent Nos. 6 and 7 for declaration of title and injunction stating that they are the owners and in possession has been negated by the Trial Court after full fledged trial and there is a specific finding that the plaintiffs failed to prove the ownership and possession, as on the date of the suit and there is a specific finding by the Trial Court that the "will" dated 06.01.2003 executed by Irawwa has been proved by the defendant. It is also not in dispute that on the basis of the "will" dated 06.01.2013 after the death of the said Irawwa in the year 2005 on the application made by the defendant - 2nd petitioner Smt. Sharada herein, the jurisdictional revenue authorities entered her name in the record of rights (RTC) for the year 2013-14 and 2014-15 both at column Nos. 12(2) and 9 in the RTC which reflects she is in possession of the suit schedule property and presumption has to be drawn under the provisions of Section 133 of the Karnataka Land Revenue Act that the same was made by the concerned Revenue Authorities exercising their powers during the course of their official correspondence under the provisions of Section 114 of the Indian Evidence Act. Admittedly, the said RTCs. vide Annexure - A for the year 2013-14 and 2014-15 is not at all set aside by any of the competent Revenue Appellate Authorities till today.

20. The Hon'ble Supreme Court while considering the Police protection to be given to the aggrieved parties in the case of P.R. Murlidharan and others v. Swami Dharmananda Theertha Padar and others reported in , (2006) 4 SCC 501 held that a writ of mandamus directing the Police authorities to give protection to the person of a writ petitioner can be issued, when the Court is satisfied that there is a threat to his person and the authorities have failed to perform their duties and it is different from granting relief for the first time to a person either to allegedly protect his right to property or his right to an office and ultimately

the Hon"ble Supreme Court held Police protection to be given on the basis of the decree or an order passed by the Civil Court which has not been determined by the Civil Court or at least at an interlocutory stage in an unambiguous manner and then too in furtherance of the decree or order.

21. In the present case, admittedly there is a specific decree, holding that the respondent Nos. 6 and 7 - plaintiffs before the original suit failed to establish their title and possession, as on the date of filing of the suit and ultimately, the Trial Court dismissed the suit for declaration and injunction. It means, the plaintiffs are not the owners in possession, as on the date of the suit. There is a specific issue No. 3 in the Trial Court that defendant has proved the deceased Irawwa executed the Vill" by bequeathing the suit property made in favour of the defendant. The declaration made by the Trial Court negating the title and possession of the plaintiff is not stayed by the Appellate Court, though the appeal is pending in R.A. No. 15/2014 on the file of the Principal Civil Judge, Fast Track Court, Jamkhandi and prima facie RTC, Annexure - A for the year 2013-14 and 14-15 clearly depicts that the 2nd petitioner is in possession and enjoyment of the suit schedule property. Therefore, it is the duty of the concerned Police Officers to protect the person who got an order/decreed from the Court, prima facie established that she is the owner of the property in question and possession also reflects from Annexure - A, the RTC for the year 2013-14 and 2014-15 and the Police has to enforce the decree passed till the decree is stayed by the Appellate Court.

22. That the judgment relied upon by Shri Shivaraj P. Mudhol in the case of Moran M. Baselios Marthoma Mathews v. State of Kerala reported in AIR 2007 SCW 4367 is not applicable to the facts of the present case. In the said case, before determination of the rights by the Civil Court, the parties approach for Police protection. In those circumstances, the Hon"ble Supreme Court held the person who claim to protect his possession, without first establishing his possession in Civil Court, he cannot approach High Court under Articles 226 and 227 of the Constitution of India for writ of mandamus for Police protection would not be maintainable. In the present case, after adjudication of the original proceedings between the parties and after the decree passed by the Trial Court holding that the plaintiffs failed to establish title and possession, as on the date of the suit and held that the defendant has proved Vill" and in view of the RTC entries for the year 2013-14 and 2014-15 clearly depicts that defendant Sharada is in possession of the property in question. Therefore, the judgment relied upon by Shri Shivaraj P. Mudhol has no application to the facts and circumstances of the present case.

23. It is also relevant to state at this stage that on the basis of the complaint made by the 2nd petitioner, the jurisdictional Police also registered criminal case in Crime No. 151/2014 offences punishable under Sections 143, 147, 148, 447, 341, 323, 324, 504, 506 and 149 of IPC and it is also brought to the notice of this Court by the learned counsel for the petitioners that charge sheet is already

filed in C.C. No. 77/2015 and respondent Nos. 6 to 13 are accused persons and the said criminal case is pending for adjudication and the said registration of the FIR and filing of the charge sheet is not at all challenged by the respondent Nos. 6 to 13 before in any higher Courts.

24. In view of the aforesaid reasons, Writ Petition No. 112453/2015 is allowed in part and Writ Petition Nos. 113445-446/2015 is dismissed. Respondent Nos. 2 and 3 are directed to give Police protection to the 2nd petitioner Smt. Sharada by considering the communication Annexure - C issued by the Deputy Commissioner is in accordance with law.

25. However, it is clear that any observations made by this Court while deciding the present writ petitions for grant of Police protection shall not come in the way of the private parties to adjudicate their rights pending in RA. No. 15/2014 on the file of the Principal Civil Judge, Fast Track Court, Jamkhandi.

Both the learned counsel for parties fairly submits that the Appellate Court may be directed to decide the appeal as expeditiously as possible.

The said statements made by the learned counsel for the parties across the Bar is placed on record.

This Court only hope and trust that the Appellate Court will deciding the appeal as expeditiously as possible in accordance with law.

All the contentions of both the private parties are left open in the appeal.