

(1952) 02 KAR CK 0002

In the Karnataka High Court

Case No : Second Appeal No. 263 of 1948-1949

Revanna Devaru

APPELLANT

Vs

A.V. Ranga Rao and Others

RESPONDENT

Date of Decision : 26-02-1952

Acts Referred:

Evidence Act, 1872 — Section 114
Registration Act, 1908 — Section 60

Citation : AIR 1952 Kar 119

Hon'ble Judges : Mallappa, J

Bench : Single Bench

Advocate : Nittoor Sreenivasa Rao, for the Appellant; N. Keshava Iyengar and M.L. Venkatanarasimhaiya, for the Respondent

Judgement

1. The suit out of which this appeal arises was filed by the first respondent for redemption of the properties now in dispute. According to his case the property belonged to his father Venkataramanayya and his uncle Ranganna and they mortgaged the properties with possession to Siddabasappa father of Defendants 1 and 2. The 3rd defendant has been impleaded as a person in possession of the properties, while plaintiff's brothers defendants 4 and 5 are formal parties to the suit. The main contesting defendant is the third defendant. He claims to have been in adverse possession of the property for over 12 years and denies title of the plaintiff. He does not admit that the property had been mortgaged by his father and uncle as alleged in the plaint.

2. Some oral evidence has been let in by the plaintiff to show that the mortgage deed, copy of which is Ext. J, is genuine and that the properties are his family properties and that they were in possession of the mortgagee Siddabasappa. P. W. 2 an old man of 80 at the time of his examination in 1947, was a young man of 25 years on the date of the original of Exhibit J. He says that he was present at the time Ranganna, plaintiff's uncle presented the document for registration and admitted its execution both on his behalf and on behalf of his brother

Venkataramanayya. Exhibit B is the original of power of attorney under which Venkataramanayya had authorised Ranganna to admit execution before the Sub-Registrar not only of the original of Exhibit J but also of Exhibit E and two other documents. It must also be noted that the handwriting of Subbannachar in Ext. B has been spoken to by this witness. Exhibit E which purports to have been executed in favour of the grand-father of P. W. 2 was also registered on the day on which the original of Exhibit J was registered. All this probabilises the evidence of P. W. 2.

Apart from the evidence of this witness, it must be stated that the mortgage deed of which Ext. J is a copy, is a registered document which came into existence about CO years ago and neither the attesters nor the writer are alive and the parties to the documents are also dead. It is particularly in cases of this kind that the presumption that arises u/s 60 of the Registration Act should be raised. A presumption arises u/s 114 of the Evidence Act. As has been observed by this Court in "Hutche Gowda v. Chennige Gowda", S. A. No. 8 of 1948-49 (Mys.):

"In case of a registered document the document is registered only after the officer appointed for the purpose satisfies himself that the document has been duly executed. In many cases an endorsement of the Sub-Registrar proves that a person who purports to have executed the document has presented it for registration and has received consideration in the presence of the Sub-Registrar.

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The presumption is one of fact, and the Court is at liberty to infer from all these circumstances that the document was executed by the person by whom it purports to have been executed. After all the fact that the document is registered is only a piece of evidence. It is open to the Court to accept it or reject it.

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While it is clear that the presumption of the genuineness of a document is not unrepeatable it is one that the Court may raise considering the circumstances of each case including the hardship that might be caused by not raising such a presumption in a proper case."

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In cases where it is impossible for any person to prove the execution of a document on account of the death of all the persons concerned, the best and only possible evidence that may be available is that of a certified copy of the registered document."

3. The lower appellate Court was therefore right in holding that the mortgage deed, copy of which is Exhibit J is a genuine document.

4. The evidence of some of the P. Ws. that the father of Defendants 2 and 3 was in possession of the property is corroborated by the documentary evidence which

shows that he has paid kadayam for the suit lands for some years. The fact that four of the suit lands stand in the Khatha of Venkataramanayya and the fact that the defendants have not been able to show what their title is, probabalises the case of the plaintiff that the properties belonged to his father. Considering these aspects of the matter there is hardly any doubt that the father and uncle of plaintiff mortgaged with possession the plaint schedule properties to Siddabasappa and put him in possession of the same. " (5) That the third defendant and his father have been in possession of the property for over 12 years is a point about which there is no dispute. But the main point for consideration however is whether it is adverse to the title of the mortgagor. It is a well established fact that ordinarily adverse possession against a mortgagee is altogether ineffectual as against the mortgagor where the mortgagor was not entitled to immediate possession, the principles applicable¹ being "contra non valentem agro non current praescripte" (Prescription does not run against a person who is unable to act). It may however be stated that in cases where mortgagor's right is assailed to his knowledge adverse possession runs against him from the time it is assailed, the Article applicable being 144 of the Limitation Act. The burden of proof to show that the possession is adverse to the mortgagor is on the person asserting that he is in adverse possession. If for instance more than 12 years before suit the plaintiff had issued a notice to the defendant and he denied the plaintiff's title, it would be a clear case of the third defendant haying assailed the mortgagor's right and acquiring his right also by adverse possession. No such claim is made by the 3rd defendant. The plaintiff's suit for redemption is therefore in time and is not barred by adverse possession. The lower appellate Court's decision is therefore upheld and this appeal stands dismissed with costs.

5. Appeal dismissed.