

(2013) 07 KAR CK 0227

In the Karnataka High Court

Case No : Regular First Appeal No. 257 of 2010

Sabjan Saheb

APPELLANT

Vs

Sri. Gayub Saheb, Sri. Sadar Saheb and Baba Saheb

RESPONDENT

Date of Decision : 26-07-2013

Acts Referred:

Citation : (2013) 07 KAR CK 0227

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : S. Mubarak Begum, for Shri. R. Kothwal, for the Appellant; Vishnu Hegde, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—Heard the learned counsel for the appellant and the learned counsel for the respondents. The appellant was the defendant before the Trial Court and the present impugned judgment is after a second round before the Trial Court. In that, the earlier judgment rendered in the suit between the parties was subject matter of an appeal in R.F.A. 56/1999 and the same was disposed of by a judgment dated 21.01.2003. The said judgment was against a dismissal of the suit and the plaintiffs had approached this court. The claim of the plaintiffs was that the suit schedule property was the self-acquired property of their father and Defendant who was their uncle, had no right over the same. That the defendant had only been permitted to use the suit property on account of an exigency, as the defendant had undertaken construction of his house on his own property. However, the defendant had refused to vacate the premises even after completion of construction of his house and sought to lay a claim over the suit property, which had prompted the plaintiffs to file the suit.

2. The case of the defendant on the other hand was that the suit property was allotted to his share under a Partition Deed between the plaintiffs and the defendant in the year 1985. The Trial Court had framed issues on the above pleadings, which are as follows:

- 1) Does the plaintiffs prove that they are the absolute owners of the suit property?
- 2) Does the plaintiffs prove that they are entitled to vacant possession of the suit property in the occupation of the defendant?
- 3) Does the plaintiffs prove that they are entitled to damages of Rs. 50/- per month from the defendant?
- 4) Whether the suit schedule property is under valued?
- 5) Does the defendant prove that he is the owner of the suit property?
- 6) To what reliefs?

Issues 1, 2, 3 and 4 had been answered in the negative and Issue No. 5 was answered in the affirmative. This court held that the real dispute between the parties was whether the suit property was the self-acquired property of the father of the plaintiffs or whether it had been allotted to the defendant at a partition said to have been entered in the year 1985 and opined that the Trial Court had not framed an issue on that primary dispute between the parties and that the finding on other issues actually depended on a finding on the issue as to whether it was the self-acquired property or allotted at a partition and hence, this court thought it fit to remit the matter, to record a finding on the above issue and to dispose of the matter on merits.

On such remand, the appellant had filed an amended plaint and additional documents had also been filed. The Trial Court, after recounting the respective contentions, had framed the following issues and additional issues:

1. Do the plaintiffs prove that they are the absolute owners of the suit property?
2. Do the plaintiffs prove that they are entitled to vacant possession of the suit property in the occupation of the defendant?
3. Do the plaintiffs prove that they are entitled to damages of Rs. 50/- p.m., from the defendant?
4. Whether the suit schedule property is undervalued?
5. Do the defendant prove that he is the owner of the suit property?
6. To what relief?

Addl. Issue:

1. Whether the suit schedule property is the self acquired property of the father of the plaintiffs or whether the said property has been allotted to the defendant's share in the partition said to have been entered in the year 1985?

The Trial Court answered Issues 1 to 3 in the affirmative, Issues 4 and 5 in the negative and additional issue partly in the affirmative, in favour of the plaintiffs.

The Trial Court has recounted the facts, that the plaintiffs were the sons of Abdul Razak Sab and defendant is a distant relative. Abdul Razak Sab had purchased the suit property under a sale deed dated 5.1.1963 and he was in possession of the same. Later, since the defendant was in need of residential accommodation as he had started construction of his house in the same village, plaintiff had provided accommodation till such time he completed construction. The suit property measures 36" x 20". The defendant continued to reside there even after completing the construction of his property and repeated demands by the plaintiffs to move out, had been negated. Hence the suit came to be filed for declaration and possession.

The defendant on the other hand, while contesting the suit, had claimed that the property was actually ancestral property and there was a partition in the year 1985 and the defendant had been allotted the suit property as his share, at that partition.

The Trial Court, after discussing the evidence in support of the respective contentions, has held that admittedly, the property had been purchased by the father of the plaintiffs under Exhibit P-24. Therefore, there could not be any merit in the contention taken by the defendant, as to the property being ancestral property, and that he had a share in the property. The plaintiffs were certainly in possession of the property and their names had been entered in the Panchayat and Municipal records and they were paying kadayam and that therefore, the defendant had failed to establish his case. It was also found that the plaintiffs or their father were not persons belonging to the branch of the defendant's family and they were distant relatives. It was admitted by the defendant that there was no document to show that he had inherited the suit schedule property. Further, the property claimed to have been allotted to the defendant at the partition was No. 6, whereas the suit property was identified as No. 5, which is exclusively the property of the plaintiffs, as they had inherited the same from their father Abdul Razak Sab. The defendant had examined one Honnappa ? DW-2, who was said to be the Deed Writer who had prepared the said Partition Deed. However, the Partition Deed itself was an unregistered document and was not produced before the Trial Court. It is in this background that the court below has negated the case of the defendant and decreed the suit in favour of the plaintiffs. The same is challenged in appeal.

3. The learned counsel Ms. Mubarak Begum appearing for the appellant would submit that there was indeed a partition deed and the same has not been produced before the Trial Court and seeks to produce the same before this court and would seek time to file an application to explain the circumstances under which the same could not be filed and seeks to rely on the same. However, it is not denied that it is an unregistered Partition Deed. Hence, in the absence of any explanation forthcoming as to why the document could not be produced before the Trial Court and when the deed is said to be an unregistered document, it would be an exercise in futility even to produce the same at this stage of the

proceedings, since an unregistered Partition Deed cannot be looked into by this Court. There is no reason assigned to consider the additional documents sought to be produced, belatedly. Therefore, if the sole reliance is sought to be placed on the Partition Deed to lay claim to the suit property as being a share allotted to the defendant, when the Trial Court has given a categorical finding that the property had apparently been purchased by the father of the plaintiffs under a registered Sale Deed and when the property bore a different number from the property that is said to have been allotted to the defendant at the partition, it is an exercise in futility on the part of the defendant to assail the findings of the Trial Court which are categorical and with reference to material documents that have been produced by the plaintiffs. On the other hand, the defendant had produced one municipal extract and one tax paid receipt which did not pertain to Property No. 5 at all.

Therefore, the appeal lacks merit and is accordingly, dismissed.