

(1963) 06 KAR CK 0005
In the Karnataka High Court
Case No : Second Appeal No. 24 of 1961

Sannagoundara Siddappa	Vs	APPELLANT
Mahadevappa and Another		RESPONDENT

Date of Decision : 14-06-1963

Acts Referred:

Citation : AIR 1964 Kar 214 : (1963) 2 MysLJ 471

Hon'ble Judges : N. Sreenivasa Rau, C.J

Bench : Single Bench

Advocate : G. Channappa, for the Appellant; C. Siddiah, for the Respondent

Judgement

1. This second appeal arises from a suit filed by the respondents for a declaration of their prescriptive right of easement to lead the water from the bathroom of their house into the open yard of the defendant situated to the north of the plaintiffs' house and for an injunction directing the defendant to remove, the obstruction made by him to the flow of the water.
2. The trial Court decreed the suit and this was confirmed by the appellate Court below. The decision depended upon whether the plaintiffs had established exercise of the easementary rights continuously for the requisite period. This was essentially a question of fact and the concurrent finding of the Courts below cannot be interfered with in second appeal.
3. But the learned advocate for the defendant, who is the appellant before this court, urges that the decision of the trial Court was vitiated by the fact that it was based mainly on the learned Munsiff's own observations during the local inspection and not on the evidence in the case and that further that the learned Munsiff made no notes of inspection at all, which circumstance rendered the judgment itself illegal. A number of decisions have been cited by the learned Advocate for the appellant in support of the first part of the contention. It is not necessary to refer to all of them, since all the important decisions have been referred to in Krishnaswamy Rao V. Dundappa 39 Mys LJ 402 : AIR 1962 Mys 17,

where the well established position is stated, namely that the views of the presiding officer at the time of inspection of the property in dispute can be used only for the purpose of better following and understanding the evidence adduced in the case or to its accuracy and the observations of the Judge cannot be substituted as evidence in the case or to contradict the evidence placed before the court and make it the foundation of the judgment. In this connection I should also refer to what has been stated on this point in the judgment in S. A. Ho. 292 of 1960 (Mys).

4. If the learned Munsiff's decision had been based solely or mainly on his observation during the local inspection, it might well be that the judgment could not be sustained, but the learned Munsiff in paragraph 20 of his judgment states :

"The truth or otherwise of the evidence of the witnesses on both the sides, can be determined by the observation made by me at the time of inspection of the disputed spots, in the presence of both the parties and their counsel."

It is thus clear that he has made use of what he observed during the local inspection to understand and follow the evidence and to test its accuracy. A perusal of the judgment shows that he has considered the evidence of every one of the witnesses examined by either side.

5. As regards the other part of the contention it appears to be beyond dispute that the learned Munsiff made no notes of his inspection. The learned Advocate for the appellant relies upon the decision reported in *Kaliyammal alias Thayammal Vs. Pongiammal and Others*, , which holds that the judgment of a court which makes a local inspection but fails to prepare notes of that inspection and keep them on record will be vitiated as the facts discovered at the local inspection must have consciously or unconsciously been taken into account by it in arriving at its conclusion in the judgment. There is, however, a series of decisions which take the view that, while it would be right and proper for the Judge making a local inspection to record his observations in a note made contemporaneously or immediately thereafter, the failure to do so does not amount to an illegality. All these decisions have been referred to in *Mungara Venkataramaniah alias Ragayya and Others Vs. Vudata Subbaramayya and Another*, in which the learned Judge, dissenting from the view expressed in the above mentioned Madras case, states :

"It seems to me such a view would convert a salutary principle of prudence into a mandatory rule of law. The failure to keep the notes as part of the record may at the worst amount to an Irregularity in a proceeding or suit, not, however, affecting the merits of the case or the jurisdiction of the court".

I respectfully agree with this view, at the same time it must be noted that the learned Judge says :

"It is most desirable that whenever Judges make local inspection, the notes of such inspection should be kept as part of the record."

It is unfortunate that in the present case the learned Munsiff did not make a record of the notes of his inspection. But, no prejudice has been caused by the omission, The evidence on record is quite adequate to sustain the conclusions arrived at by the two courts below.

6. There is thus no ground for interference in second appeal. The appeal is accordingly dismissed with costs.

7. Appeal dismissed.