

(1998) 06 KAR CK 0019

In the Karnataka High Court

Case No : Civil Revision Petition No. 976 of 1994

Saranabasayya Chandrashekharayya Hiremath

APPELLANT

Vs

Basanagouda Fakkiragouda Kempagoudar

RESPONDENT

Date of Decision : 12-06-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Karnataka Land Revenue Act, 1964 — Section 133

Citation : (1998) 6 KarLJ 425

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri Shivanandafor Sri M.V. Hiremath, for the Appellant; Sri Rasheed Khan for Sri Vigneshwara S. Shastry, for the Respondent

Judgement

1. Heard Sri Shivananda holding brief for Sri M.V. Hiremath, learned Counsel for the revisionist-applicant and Sri Rasheed Khan holding brief for Sri Vigneshwara S. Shastry, learned Counsel for the respondent.

2. This revision arises from the judgment and order dated 5-3-1994 passed by Sri V.G. Charati, learned Civil Judge, Haveri, in Miscellaneous Appeal No. 19 of 1993 allowing the appeal of the defendant and setting aside the order dated 29-9-1993 passed by the learned Munsiff, Haveri on I.A. I moved in Original Suit No. 94 of 1992 granting the injunction. The Appellate Court set aside that order and vacated the injunction. The plaintiff-revisionist had filed the Suit No. 94 of 1991 for declaration and injunction against the defendant-opposite party claiming to be in possession and alleging that the defendant was interfering with his possession along with the copy of the plaint, the plaintiff filed the application for temporary injunction. The Trial Court on a perusal of the evidence held that the plaintiff has been in possession and wahivat of the suit property and prima facie evidence establishes that the plaintiff was entitled to get the relief of temporary injunction as balance of convenience is also in his favour. It also held that damages, if any, to the defendant can be compensated and defendant will

not suffer any irreparable loss as compared to the hardship of the plaintiff. So it granted temporary injunction. The 1st Appellate Court on appeal being filed, set aside that order. It held that the registered lease deed coupled with the affidavit of the attesting witnesses of the lease deed namely the affidavit filed by the attesting witnesses to the effect that the defendant was put in possession as soon as defendant paid Rs. 10,000/- to the father of the plaintiff and thereafter defendant came into possession of the suit property. It also held that the evidence of the attesting witness has been ignored and as such, finding of the Trial Court was erroneous and held that the evidence produced by the defendant prima facie appears to rebut the presumption on which the plaintiff wanted to rely i.e., the R.T.C. It set aside the order of the Trial Court dated 29-9-1993 and held that the plaintiff not having prima facie shown to be in possession, he was not entitled to the relief of injunction. Feeling aggrieved from the Trial Court's order, the plaintiff has come up in revision u/s 115.

3. I have heard Sri Shivanand, as mentioned earlier, for the applicant and Sri Rasheed Khan, learned Counsel for the respondent. I have also perused the grounds for revision. Learned Counsel for the applicant submitted that the finding as regards the question of possession is contrary to the presumption u/s 133 of the Land Revenue Act and when in the R.T.C. applicant-revisionist's name has been mentioned as the owner and cultivator, the entry should have been given effect to and the Court should have raised the presumption that the plaintiff has been in possession of the suit property. He also contended that the Court should not have relied on an unregistered lease deed unless it has been established that lease was executed.

4. This contention of the learned Counsel for the applicant has hotly been contested by Sri Rasheed Khan. Sri Rasheed Khan, learned Counsel for the respondent, contended that the Trial Court when it recorded the finding, it refused to take into consideration the lease deed which was supported by an affidavit of the attesting witnesses who clearly stated that the father of the plaintiff handed over the possession to the defendant as soon as he got Rs. 10,000/- for the purpose of marrying of his daughter. Learned Counsel contended that for the purpose of considering the temporary injunction application, Appellate Court considering the evidence of statement on oath given by the attesting witnesses along with the lease deed was justified in holding that the presumption has been rebutted. Learned Counsel contended that whether the presumption is rebutted or not by the evidence and evidence is sufficient and reliable or not, these are not questions coming within the framework of Section 115. He submitted that the finding of the Appellate Court is not erroneous and it is correct. There is no jurisdictional error and this Court could not interfere with it and with the order impugned u/s 115 of the CPC as no case is made out u/s 115.

5. I have applied my mind to the contentions advanced by the learned Counsel for the parties. The jurisdiction of this Court as held in the case of Balakrishna v Vasudeva Ayyar, that jurisdiction of this Court u/s 115 is confined and applies to

question of jurisdiction i.e., illegal refusal to exercise jurisdiction, illegal usurpation of jurisdiction not vested or Court acting illegally or with material irregularity. The Privy Council observes that this section is not directed against conclusions of fact or law in which the question of jurisdiction is not involved. This has also been the view expressed in the case of AIR 1949 156 (Privy Council) . It has also been laid down in the case of Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav, . Their Lordships observed (at page 155),

"While exercising its jurisdiction u/s 115, it is not competent to the High Court to correct errors of fact however gross they may be, or even errors of law, unless the said errors have relation to the jurisdiction of the Court to try the dispute itself.

6. This being the position of law that this jurisdiction of the Court is confined to jurisdictional error and this Court is not entitled to interfere with the finding of fact or finding of question of law not touching the jurisdiction, the question before this Court is whether this Court can interfere with the order of the Appellate Court. In my opinion, Trial Court has recorded a finding about the possession in favour of the plaintiff no doubt, but the Appellate Court held that it ignored some evidence which prima facie establishes that possession has been transferred to the defendant and considering the overall evidence in order to examine the prima facie case and prima facie position, the Appellate Court after considering all the evidence, reversed the finding of the Trial Court. It is a pure and simple finding of fact. No illegality or irregular exercise of jurisdiction has been pointed out by the learned Counsel. The finding as to possession i.e., as to whether the plaintiff has been in possession of the property or not is a pure and simple finding of fact and this Court has no jurisdiction to interfere with that finding.

7. The revision, as such, is without any substance or merits. The revision application is hereby dismissed. No costs. No doubt, suit being of 1992, it is expected that the Trial Court will try its best to expedite the decision of the case with the co-operation of the learned Counsels for the parties and no unwarranted adjournments will be given.