

(2012) 04 KAR CK 0118

In the Karnataka High Court

Case No : Regular Second Appeal No. 815 of 2005

Shivanna Rangappa and Others

APPELLANT

Vs

S.R. Krishnappa Rangappa and Srinivasa and Others

RESPONDENT

Date of Decision : 18-04-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 31, 96

Citation : (2012) 04 KAR CK 0118

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : A.C. Chethan, for the Appellant; Subramanya R . for M/s. Ashok Haranahalli Associates, for the Respondent

Judgement

A.N. Venugopala Gowda

1. Appellants were the defendants and the 1st respondent was the plaintiff in O.S.No. 7/1998 in the Court of Addl. Civil Judge (Jr. Dn.), Hosadurga. Suit was instituted, to pass judgment and decree of declaration, possession, mandatory and perpetual injunctions. The defendants filed written statement and contested the suit. 6 issues were raised for trial and determination. For the plaintiff, PWs 1 to 3 deposed, through whom Exs.P1 to P13 were marked. For the defendants, DWs 1 to 5 deposed, through whom Exs.D1 to D3 were marked. Considering the rival contentions and the record of the case, suit was partly decreed and the claim of the plaintiff with regard to ownership in respect of the suit property was dismissed. However, plaintiff was declared as owner to a portion of the property bearing Khata No. 111 of Doddaghatta Village within the boundaries mentioned in a sale deed dated 11.01.1913 i.e., Ex.P2. Plaintiff was directed to ascertain the exact measurement and boundaries of his property by filing an application before the survey authorities. Defendants were restrained from interfering with the suit property of the plaintiff. Feeling aggrieved, some of the defendants filed R.A.No. 290/2001 in the Court of Civil Judge (Sr. Dn.) at Hoialkere. The lower appellate Court, having heard the arguments, raised 3 points for consideration and

dismissed the appeal. Feeling aggrieved, the defendants have filed this second appeal.

2. Learned advocate appearing for the appellants contended that the claim of the plaintiff i.e., the 1st respondent herein, is similar to that of the appellant in RSA No. 955/2003, which appeal was allowed vide Judgment dated 13.04.2011 and the matter was remanded to the First Appellate Court for consideration and decision and hence, this appeal may also be remanded to the lower appellate Court for decision in accordance with law. Learned counsel further submitted that, the case of the appellants has not been correctly appreciated by the learned Trial Judge and also the lower appellate Court Judge and that the Judgment passed by the First Appellate Court does not conform to the requirements of Order 41 Rule 31 CPC.

3. Learned advocate appearing for the 1st respondent, on the other hand would argue that, the Trial Court has correctly appreciated the material on record and passed the Judgment and Decree dated 30.11.2000 and the judgment passed by the First Appellate Court being one of affirmance, there is substantial compliance of the requirements in law i.e., the requirements of Order 41 Rule 31 CPC and sought dismissal of the appeal.

4. I have perused the record.

5. This Court, on 04.02.2010, raised the following substantial question of law for determination:

Whether the judgment and decree of the Trial Court is perverse in decreeing the suit for declaration without identification of the property?

6. This Court, again on 30.03.2012, raised the following substantial question of law for determination:

Whether the Judgment and Decree passed by the lower appellate Court is in conformity with the mandatory requirements of S. 96 read with Order 41 Rule 31 CPC and as explained in the case of Santosh Hazari vs. Purushottam Tiwari AIR 2001 SC 965?

7. The First Appellate Court having noticed the proceedings of the suit in paras 1 to 6 of its Judgment, raised in para 8, the points for consideration. Paras 10 & 11 of the Judgment is also with regard to the proceedings which have taken place before the Trial Court. In para 12 of the judgment, without appreciating the evidence of the parties, it has been observed that the defendants are not having any right in the property bearing Katha No. 111 of Doddaghatta Village and they are to be restrained from interfering with the suit property.

8. The impugned Judgment is not in conformity with the requirements under law as has been laid down in the case of Santosh Hazari Vs. Purushottam Tiwari (Dead) by Lrs., , wherein, it has been held as follows:

15. First appeal is a valuable right of the parties and unless restricted by law, the

whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. The task of an appellate court affirming the findings of the trial court is an easier one. The appellate court agreeing with the view of the trial court need not restate the effect of the evidence or reiterate the reasons given by the trial court; expression of general agreement with reasons given by the court, decision of which is under appeal, would ordinarily suffice (See *Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury*, . We would, however, like to sound a note of caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate court for shirking the duty cast on it. While writing a judgment of reversal the appellate court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the trial court must weigh with the appellate court, more so when the findings are based on oral evidence recorded by the same Presiding Judge who authors the judgment. This certainly does not mean that when an appeal lies on facts, the appellate court is not competent to reverse a finding of fact arrived at by the trial Judge. As a matter of law if the appraisal of the evidence by the trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the appellate court is entitled to interfere with the finding of fact. (See *Madhusudan Das Vs. Smt. Narayanibai (Deceased) by Lrs. and Others*, . The rule is - and it is nothing more than a rule of practice - that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lie, the appellate court should not interfere with the finding of the trial Judge on a question of fact. (See *Sarju Pershad Vs. Raja Jwaleshwari Pratap Narain Singh and Others*, . Secondly while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it.

(underlining is by me)

9. In RSA No. 192/2009, decided on 28.3.2012, it has been held as follows:

Keeping in view the settled principles of law, on perusal of the impugned Judgment, it is clear that the Court below has failed to follow the fundamental rules governing the exercise of its jurisdiction under S. 96 of the Code and decide the appeal as per the guidelines under O 41 R 31 of the Code. The impugned Judgment is cryptic. None of the relevant aspects of the matter has either been noticed or appreciated. The impugned Judgment, falls short of the considerations

which are expected from the Court of first appeal. Thus, there is a flaw, on account of which, the impugned Judgment is vitiated and cannot be sustained.

10. A perusal of the Judgment and Decree passed by the lower appellate Court, impugned in this appeal, would make it clear, that the learned Senior Civil Judge has not taken into consideration, several grounds raised in the appeal memorandum as against the Judgment and Decree passed by the learned Trial Judge. Learned Senior Civil Judge, has not considered the appeal in accordance with law. The impugned judgment and decree passed by the lower appellate Court is vitiated. Yet another factor is that, RSA No. 955/2003 was decided on 13.04.2011 and the Judgment and Decree passed in R.A.No. 291/2001 by the First Appellate Court which arose out of the Judgment and Decree passed in O.S.No. 5/1998 on 30.11.2000, was set aside and the matter was remanded to the First Appellate Court for consideration in accordance with law. The claim of the plaintiffs in both the suits being with reference to the property bearing Katha No. 111 of Doddaghatta Village, the matters may have to be decided together. Since the First Appellate Court has failed to decide the appeal in accordance with law, noticed supra, the Judgment and Decree passed in R.A.No. 289/2011 on 25.01.2005 cannot be sustained.

In the result, the appeal is allowed in part. Judgment and decree dated 25.01.2005 passed by the Civil Judge (Sr. Dn.), Holalkere, in R.A.No. 290/2001, is hereby set aside. The matter stands remanded to the Civil Judge (Sr. Dn.), Holalkere, for consideration keeping in view the observations made supra and in accordance with law.

The litigation having commenced in 1998, is required to be decided expeditiously. Hence, the parties are directed to appear before the Court below on 31.05.2012 and receive further orders. The Court below is directed to decide the appeal within a period of 6 months from the date of first appearance of the parties.

All the contentions of both the parties are kept open, for being agitated at the time of hearing of the appeal by the lower appellate Court. In the circumstances, parties are directed to bear their respective costs.