

(2014) 03 KAR CK 0206

In the Karnataka High Court

Case No : Regular First Appeal No. 2503 of 2006

Smt. Bhanumathi

APPELLANT

Vs

Bayanna, Smt. Nagarathanamma, B.K. Ramanna and C.
Balappa

RESPONDENT

Date of Decision : 19-03-2014

Acts Referred:

Citation : (2014) 03 KAR CK 0206

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : B. Roopesha and Sri K.S. Narayana Swamy, for the Appellant; R.P. Somashekaraiah, for Sri C.M. Desai, for R2 and Sri R.B. Prakash, for R3, for the Respondent

Final Decision : Allowed

Judgement

B.S. Patil, J.—This appeal is filed by the 3rd defendant challenging the judgment and decree dated 09.10.2006 passed in O.S. No. 8127/2002 thereby decreeing the suit granting permanent injunction restraining the appellant herein and respondents 3 & 4 from interfering with the possession and enjoyment of the suit schedule properties by the plaintiffs/respondents 1 & 2 herein. The suit schedule properties as described in the plaint schedule are site Nos. 1 & 2 formed in Sy. No. 97/2, Panchayat Khaneshumari No. 342/1 & 342/2 situated at Jakkur Village, Yelahanka Hobli, Bangalore North Taluk, Bangalore, measuring East to West 60" and North to South 40". Plaintiffs claimed that they were the absolute owners in possession of the suit properties which belonged to their forefathers. After the death of the father of the plaintiffs, plaintiffs inherited the land Sy. No. 97/2 and got it converted from agricultural to non-agricultural forming 37 sites. Defendants without having any manner of right, title or interest started interfering with the possession and enjoyment of the suit schedule sites by plaintiffs which was resisted.

2. Defendants 1&2 though served remained unrepresented. Hence, they were

placed *ex parte*. The 3rd defendant - appellant herein appeared through a counsel, but did not file any written statement. The Trial Court framed the following issues:

- i) Whether the plaintiffs prove that they are in lawful possession and enjoyment of the suit schedule properties?
- ii) Whether the plaintiff further proves the defendant are trying to interfere and dispossess the plaintiff?
- iii) Whether the plaintiffs are entitled for the injunction sought for?
- iv) What order or decree?

3. The 1st plaintiff examined himself as P.W. 1 and got marked Exs. P1 to P9. There was no cross-examination of P.W. 1. Based on the evidence on record, the Trial Court, having accepted the version of the plaintiffs, has decreed the suit for permanent injunction vide its judgment and decree dated 09.10.2006. Aggrieved by this, present appeal is filed by the 3rd defendant.

4. It is contended by the 3rd defendant - appellant herein that she was not keeping well. Her brother-in-law received the information regarding filing of the suit from third party. Thereafter, he secured signature of appellant on vakalath and engaged an advocate. But the matter was not defended before the Court and appellant was kept in dark about the progress of the case. Her brother-in-law informed appellant that the advocate engaged had assured to inform the progress of the case and send necessary information to the appellant whenever required. On 29.11.2006 with the assistance of her brother-in-law, appellant claims to have met the advocate and on enquiry, she learnt about passing of the decree. Thereafter, without further loss of time, she has taken steps to file the present appeal.

5. It is contended by the appellant that plaintiffs along with their mother Smt. Kempamma jointly executed a General Power of Attorney on 15.06.1989 in favour of the 1st defendant Sri V.K. Ramanna in respect of some sites formed in the land Sy. No. 97/2 including the sites in question which are mentioned in Schedule-A to the said GPA. Based on the GPA, 1st defendant sold the sites in favour of the 2nd defendant vide registered Sale Deed dated 07.02.1992. The 2nd defendant in turn sold the sites in favour of 3rd defendant - appellant herein vide registered Sale Deed dated 22.03.2000 and put her in actual possession of the suit schedule sites. It is further urged in the appeal memo that khatha has been changed in the name of the appellant and appellant has paid taxes in respect of the property in question.

6. Counsel for the appellant contends that due to communication gap between the appellant and her counsel and also on account of omission on the part of the brother-in-law of the appellant in not taking proper steps through the advocate engaged before the Trial Court, the judgment under challenge has been passed without appellant having any opportunity to adduce evidence or cross-examine

the witness examined by the plaintiffs.

7. Learned counsel appearing for respondent No. 2 justifies the judgment and decree passed by the Court below. Respondent No. 4 though served has remained unrepresented.

8. Having heard the learned counsel for both parties, the only point that arises for consideration is-

Whether the judgment and decree under appeal suffer from any illegality warranting interference in this appeal?

9. The facts, as adverted to above, clearly disclose that appellant does not have a fair and reasonable opportunity to participate in the proceedings before the Trial Court. There is a registered Sale Deed executed in her favour in respect of the sites in question. According to her version, her brother-in-law had received notice from the Court and took the responsibility to contest the case by engaging an advocate for her. An advocate was indeed engaged, but he did not file written statement, nor cross-examine P.W. 1, let alone leading any evidence of defendant No. 3.

10. Defendants 1 & 2 who were the GPA holder and; the subsequent purchaser from the original owner were placed *ex parte*. Therefore, the proceedings have virtually gone uncontested. The appellant being a lady, having lost her husband, had indeed faced difficulty in defending herself before the Trial Court. In such circumstances, I am of the view that in the ends of justice, an opportunity has to be given to the appellant herein to contest the suit. The judgment under challenge proceeds only on the basis that the testimony of the plaintiffs remained unchallenged and therefore, their version deserves to be accepted.

11. In the light of the above, I am of the view that the judgment and decree deserve to be set aside and the matter has to be remanded for fresh consideration in accordance with law by providing an opportunity to the appellant - 3rd defendant to file her written statement and lead evidence. Hence, the point raised for consideration is answered accordingly. This appeal is allowed. Impugned judgment and decree are set aside. The matter is remanded to the Trial Court for fresh consideration. Appellant is given 30 days time from today to file written statement. Both parties are directed to appear before the Trial Court on 04.04.2014. The Trial Court is directed to dispose of the case as expeditiously as possible, at any rate, within a period of eight months from 04.04.2014. Both parties are directed to maintain status-quo as on today till the disposal of the suit. Appellant shall pay costs of Rs. 6,000/- to respondent No. 2 by the next date of hearing before the Trial Court.