

(2004) 04 KAR CK 0041

In the Karnataka High Court

Case No : Regular First Appeal No. 429 of 1999

Smt. Govindamma and Another

APPELLANT

Vs

Smt. Thimmakka and Others

RESPONDENT

Date of Decision : 06-04-2004

Acts Referred:

Citation : (2005) 1 KCCR 71

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : M. Sivappa, for the Appellant; S.K.V. Chalapathy, for Respondents 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

K. Sreedhar Rao, J.—The Appellants are the Defendants in the suit. The Respondents-Plaintiffs filed a suit for declaration of title to the suit site and seek relief of possession and mesne profits.

2. One Gangappa the husband of the first Plaintiff and father of Plaintiffs 2 and 3 jointly purchased the land bearing Sy. No. 66/1-A-2 of Saneguruvanahalli Village, measuring 3 acres 161/2 guntas along with one H. Rajanna Shetty and formed the housing layout. The second Defendant was constituted as General Power of Attorney of Gangappa and was authorised to sell certain sites named in the General Power of Attorney Ex.D.1. The second Defendant sold the suit site to his wife who is the first Defendant under registered sale deed Ex.D2 dated 21.5.1980. It is stated that the suit site bearing No. 54 is one of the sites named in the G.P.A. Ex.D1. The Principal Gangappa is one of the attesting witnesses to Ex.D.2. Gangappa died on 17.10.1982. When the Defendants tried to take up some construction activity, a suit was filed in OS No. 320 of 1983 for permanent injunction. Later on the suit was withdrawn and present suit came to be filed for comprehensive relief of declaration of title and possession.

3. It is the contention of the Plaintiff that the suit is not the subject of G.P.A.

Ex.D.1 held by second Defendant. Therefore the sale in favour of the first Defendant on the basis of Ex.D.1 is bad in law and does not convey title. The fact that Gangappa acted as attesting witness does not enhance the case of the first Defendant to derive valid title.

4. The Defendants per contra contend that the suit site is subject matter of the G.P.A. Ex.D.1. The sale deed Ex.D.2 is validly executed. Further it is contended that Gangappa is an attesting witness to the document, he was aware of the transaction, he consented and acquiesced the sale, therefore the Plaintiffs cannot claim any title to the property.

5. The trial Court found that the suit site is not the subject matter of G.P.A. Ex.D.1. Therefore second Defendant had no power of sell the suit site. The fact that Gangappa attested the sale does not amount to consent or acquiescence on his part. In view of the ratio laid down in Smt. Chandrakantaben Modi and Narendra Jayantilal Modi Vs. Vadilal Sapalal Modi and Others, the trial Court holds that there is no presumption that an attesting witness of a document must be presumed to be aware of the contents. Accordingly finds that the sale under Ex.D.2 does not convey title to the first Defendant. Thus decreed the suit of the Plaintiffs. Hence this appeal.

6. The documentary material categorically discloses that the suit site is not one of the sites mentioned in the power of attorney Ex.D.1. Yet the recitals of Ex.D.2 categorically mention Ex.D.1 as the source of power for executing Ex.D.2. The owner Gangappa is an attesting witness to Ex.D.2. The Counsel for the Appellant argued that Ex.D.2 does not disclose that Gangappa signed Ex.D.2 with the knowledge of its contents and as a consenting witness for the sale. Therefore the fact that Gangappa acted as an attesting witness cannot legally empower second Defendant to sell the property when not authorised under Ex.D.1. It is further argued that the half-hearted admission of P.W.1 in the cross-examination that Gangappa might have consented for a sale is not sufficient evidence to constitute admission. Therefore the Defendants cannot invoke the doctrine of estoppel.

7. On thoughtful consideration of the facts and evidence I find the decision of the Supreme Court in Smt. Chandrakantaben's case has no application to the facts of the present case. In the written statement alternative pleas are taken. In the first place it is stated that on the strength of power of attorney Ex.D.1 the sale deed is executed. Alternatively it is urged that Gangappa is an attesting witness and he consented for the sale under Ex.D.2. P.W.1 in the cross-examination makes the following statement.

It may be that my father has given consent for the sale of site No. 54 by first Defendant in favour of the second Defendant.

8. There is no categorical denial of the suggestion on the part of P.W. 1. On the other hand P.W.1 by implication admits that her father had consented for the sale of site No. 54.

9. In *Nayakammal Vs. S. Munusami Mudaliar*, and at column 2 of page 822 it is held thus:

...It has no doubt been held that attestation does not prima facie import knowledge. In *Lakshpati v. Rambodh Singh* 1, it has been held that the question whether attestation should be held to imply assent is a question of fact, and must be determined with reference to the circumstances of each case. As pointed out in *Gurudayaldas v. Nathu* 2 where a person, having a tangible interest in the property affected by a deed, attests that deed, his attestation should be taken as proof of his consent to and knowledge of the correctness of the recitals in the deed. Having regard to the circumstances that the reversioners in this case contested the right of *Gnanasundarammal* when she applied for letters of administration, and subsequently executed a release in her favour, there can be little doubt that they must have enquired into and known the contents and seen the deeds, which they attested. It is the commonest thing in this country for attestations to be obtained from persons having a possible interest, in the property, with the object of binding them later on. and I have rarely come across a case, where a person having an interest present or contingent in the property has attested the deed without enquiring into its contents.

10. The ratio laid down in the decision squarely applies to the case on hand. I am in respectful agreement with the views of the Madras High Court. In addition to the attestation by *Gangappa*, the *PW1* admits that her father may have consented for the sale. In the written statement although precisely the legal expression "estoppel" is not specifically used and stated but the over all narration of the facts and the alternative plea taken in the written statement suggests all the requisites of plea of estoppel. The fact that suit site was not the subject matter of *Ex.D1* is of no consequence, irrespective of *Ex.D1* the facts suggest that *Gangappa* conferred authority on the second Defendant orally to execute *Ex.D.2* in his presence which is evident from the attestation by *Gangappa*. In that view the findings of the trial Court is contrary to law and evidence on record. Appeal is allowed. The judgment and decree of the trial Court is set aside. The suit of the Plaintiff is dismissed. The parties to bear their own cost.