

(2014) 02 KAR CK 0376
In the Karnataka High Court
Case No : R.S.A. No. 954/2011 (DEC and INJ)

Smt. H.C. Jayarathna

APPELLANT

Vs

Sri Ganganarasaiah and Others

RESPONDENT

Date of Decision : 11-02-2014

Acts Referred:

Citation : (2014) 02 KAR CK 0376

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : N.B. Manjunatha, Advocate for B. Veerappa, Advocate for the Appellant

Final Decision : Dismissed

Judgement

S.N. Satyanarayana, J.—Plaintiff in O.S. No. 278/1995 on the file of Civil Judge (Jr. Dn.), Gubbi, has come up in this second appeal in challenging the judgment and decree dated 25.08.2006, wherein her suit for declaration and permanent injunction is dismissed.

2. The suit schedule property is 08 guntas of converted land in Sy. No. 53 of Kallipalya village, kasaba hobli Gubbi Taluk, which according to the plaintiff, was sold in her favour by 6th defendant under the registered sale deed dated 29.07.1993. Based on the said registered sale deed, the present suit is filed. In the said suit, defendants 1 to 5 are the persons said to have purchased the suit schedule property under registered sale deed dated 29.07.1991 from 6th defendant.

3. The trial Court, after pleadings were complete, framed issues and recorded evidence. Thereafter, held that though the plaintiff is said to have purchased the suit schedule property under registered sale deed dated 29.07.1993. As on that date, 6th defendant was also not having title to the property in as much as the same was sold to defendants 1 to 5 under registered sale deed dated 29.07.1991. Hence, the suit for the relief of declaration and injunction was

refused and suit came to be dismissed, against which, appeal is filed by the plaintiff in R.A. No. 92/2006 on the file of Civil Judge (Sr. Dn.), Gubbi, and the same also came to be dismissed on 24.01.2011 by confirming the judgment and decree passed by the trial Court.

4. As against the concurrent finding of both the Courts below on facts, this second appeal is filed on the ground that as on the date when the sale deed was executed in favour of plaintiff by 6th defendant, he had already initiated a suit seeking cancellation of sale deed dated 29.07.1991. In that view of the matter, 6th defendant had right to sell the suit property in favour of plaintiff.

5. After hearing the counsel for appellant on the grounds urged in this appeal and on going through the judgments of both the Courts below, it is seen that mere filing of suit seeking cancellation of registered sale deed would not create any right in favour of 6th defendant with reference to suit property, which was already sold by him in favour of defendants 1 to 5. Therefore, both the Courts below have rightly refused to accept this plea and consequently, the trial Court has dismissed the suit, which has been confirmed by the lower appellate Court. As against the concurrent finding of both the Courts below on fact, no grounds are made out which give rise for substantial question of law to consider admission of this appeal.

Accordingly, this second appeal filed by the plaintiff in O.S. No. 278/1995 on the file of the Civil Judge (Jr. Dn.) & JMFC., Gubbi, is hereby dismissed.