

(2012) 09 KAR CK 0125

In the Karnataka High Court

Case No : Regular First Appeal No. 2033 of 2010

Smt. M. Sumithra

APPELLANT

Vs

Sri K. Chandrababu Naidu and Smt. K. Pushpa

RESPONDENT

Date of Decision : 28-09-2012

Acts Referred:

Citation : (2012) 09 KAR CK 0125

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

**Advocate : M.A. Kiran Kumar, for Sri M.A. Sebastian, for the Appellant;
Vighneswar U., for M/s Dharmashree Associates for R-1 and 2, for the Respondent**

Final Decision : Dismissed

Judgement

A.S. Bopanna

1. The appellant herein is the defendant in O.S.No. 2024/2006. The suit in question was filed by the plaintiffs seeking for a judgment and decree of permanent injunction against the defendant and persons claiming under her. The Court below after considering the rival contentions has decreed the suit. The defendant is therefore before this Court in this appeal. The parties would be referred to in the same rank as assigned to them before the Court below for the purpose of convenience and clarity.

2. The case of the plaintiffs in brief is that they have purchased the property bearing Site No. 25, Khatha No. 158/6, measuring 40 ft x 30 ft at Kothanur village, Uttarahalli Hobli, Bangalore South Taluk. The sale transaction under which they purchased the property is dated 10.03.2003. Subsequent thereto, they have secured the change of khatha in their names in the Panchayath records and thereafter in the Office of the City Municipal Council, Bommanahalli. Pursuant thereto, the plaintiffs have also obtained plan for construction and have put up construction in the suit schedule property. Though at an earlier point there was certain interference by the Vendors, the same did not materially alter

their possession. However, subsequently, the defendant sought to interfere with the possession of the plaintiffs and since according to the plaintiffs, the defendant had also attempted to trespass into the property, they were forced to file the instant suit by contending that the cause of action had arisen on 04.03.2006. It is in that context, they have sought for the relief as prayed for in the plaint.

3. The defendant on being served with the suit summons appeared and filed her detailed written statement. The case of the defendant is that the very Vendor who has sold the property to the plaintiffs had sold the very same property to the defendant under a sale deed dated 18.09.1989. The defendant also contends that she was in possession of the property and had left it remain so to put up construction subsequently. Considering that the purchase of the site by the defendant is earlier to the point in time which is claimed by the plaintiffs, she has right over the property and as such, the defendant disputed all other averments which were made in the plaint. It was also denied by her that the plaintiffs had obtained the khatha in respect of the property in the Panchayath or the City Municipal. Council and also with regard to the loan they had obtained for putting up construction. The allegation of interference as made in the plaint was also denied by contending that she has right over the property and as such, the question of alleging interference against her does not arise. It was therefore contended that the suit is liable to be dismissed.

4. The Court below on taking note of the rival contentions had framed five issues for its consideration. The plaintiff No. 1 examined himself as P.W. 1 and two witnesses were examined as P.W. 2 and P.W. 3. The documents at Exhs.P1 to P30 were relied upon. The defendant examined herself as D.W.1 and relied upon the documents at Exhs.D1 and D2. The Court below on analysing the evidence has decreed the suit.

5. While assailing the judgment passed by the Court below, learned counsel for the defendant would contend that the Court below was not justified in its conclusion. It is his case that when the defendant was the earlier purchaser in respect of the property under a sale deed dated 18.09.1989 and the said transaction was also reflected in the Encumbrance Certificate, the plaintiffs in any event could not have purchased the said property. In such circumstance, when the defendant contends to be the bona fide purchaser of the property, no right can be claimed by the plaintiffs in respect of the same. It is also the case of the learned counsel that even if the plaintiffs were to succeed in the suit, they were required to prove that they were in lawful and settled possession of the property. In the instant case, when the defendant had purchased the property as far back as in the year 1989 and she had come in possession of the property, the plaintiffs could not have contend that they have come in possession of the property under the sale deed dated 10.03.2003. Therefore, it is his case that the Court below ought not to have protected the right of the plaintiffs as sought for in the plaint. As such, the learned counsel contends that the appeal is liable to be allowed and

the judgment be set aside.

6. Learned counsel for the plaintiffs however seeks to sustain the judgment passed by the Court below. The learned counsel would contend that except for contending that the defendant had purchased the property earlier to the point in time which is claimed by the plaintiffs, there is absolutely no material available on record to indicate that she was also put in possession of the property. In the instant case, the plaintiffs have only sought to protect the possession and in that regard, having established that they had lawfully come in possession of the property under a registered sale deed and thereafter exercised their right of ownership by seeking change of revenue documents and putting up construction on the said site, the requirement for passing a decree in a suit for injunction had been complied. It is the case of the learned counsel that apart from the document produced by the plaintiffs, the defendant in her cross-examination in fact has admitted the fact that there is a building constructed in the property and as such when it is not a building of the defendant, in any event, the defendant cannot claim to be in possession of the property. It is therefore contended that the Court below was justified in its conclusion.

7. In the light of the rival contentions, a perusal of the documents available on record would indicate that the first plaintiff who had examined himself as P.W. 1 after narrating with regard to the transaction under which he purchased the property has produced and relied upon the sale deed dated 10.03.2003 which is marked as Ex.P1. The extract of the assessment list of Bommanahalli City Municipal Council is produced and marked as Ex.P2 wherein the names of the plaintiffs are indicated and the details of the taxes paid in respect of the property is also indicated. The tax paid receipts and the application at Exhs.P3, P4, P5 and P6 would disclose that the plaintiffs had subjected the property to self-assessment within the jurisdictional Municipal Council and the tax in respect of the said property was also paid. The document at Ex.P7 is the plan approved for putting up construction on the site in question. The said documents at the outset would indicate the manner; in which the plaintiffs had come in possession and had immediately exercised ownership rights over the property. In fact, the subsequent tax paid receipts have also been produced and marked at Ex.P23 onwards. The photographs are produced and marked to indicate the existence of the building and the telephone bill and electricity bill for having obtained connection is also produced and marked. The said documents at the outset would indicate that the plaintiffs had purchased the property and had come in possession of the same.

8. In that context, the case put forth by the defendant requires to be noticed. With regard to purchase of the site, the certified copy of the sale deed is produced and marked as Ex.D1 which is dated 18.09.1989 and the Encumbrance Certificate is produced and marked as Ex.D2. No doubt, the sale transaction as at Ex.D1 is reflected in the said Encumbrance Certificate which is in Form No. 15. As against the same, it is also to be noticed that the plaintiffs have obtained the

Encumbrance Certificate in Form No. 16 for the period from 01.06.1989 - 17.02.2003 which does not refer to any transaction in respect of the property prior to the purchase by the plaintiffs. Therefore, to that extent, the plaintiffs have sought to indicate that the transaction under which the defendant claims to have purchased the property has not been properly reflected in the documents and therefore, that in itself cannot prejudice the case of the plaintiffs. Be that as it may, the fact that the defendant has relied on only certified copy of the sale deed and the Encumbrance Certificate would indicate that though the purchase is claimed to be on 18.09.1989, there is no other document to indicate that immediately thereafter she has exercised ownership rights over the property and had continued to remain in possession of the property till the date on which the plaintiffs claim to have purchased the property. Though these aspects of the matter relating to ownership would not arise, in the present suit, which is a suit for bare injunction, it would still be open for the defendant herein to establish her rights in a properly constituted suit or even to initiate criminal proceedings against her Vendor, if she chooses to do so after having come to know of the claim made by the plaintiffs in the instant suit since evidently it was established that the Vendor has played mischief by selling the very same property to the plaintiffs once over again. Notwithstanding such right available to the defendant to proceed against her Vendor or seek for a larger relief, insofar as the instant suit which has been filed by the plaintiffs seeking for injunction to protect their possession, the document relied upon by the plaintiffs and the admissions made by defendant-D.W.1 in her cross-examination would establish the fact that from the date of purchase by the plaintiffs, they have been in possession of the property and are even "enjoying the same. Therefore, insofar as the grant of injunction in favour of the plaintiffs, the Court below has not committed any error so as to call for interference in this appeal.

In that view, reserving liberty to the appellant/defendant to initiate appropriate action in accordance with law in the manner indicated above, the appeal stands dismissed. Parties to bear their own costs.