
(2013) 07 KAR CK 0201
In the Karnataka High Court
Case No : Regular First Appeal No. 51 of 2010

Smt. Renuka and Sri. B.S. Madivalappa	APPELLANT
Vs	
Smt. Shashikala	RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Citation : (2013) 07 KAR CK 0201

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : S. Shekar Shetty, for Shri. B.N. Jayadeva, for the Appellant; S.R. Hegde Hudlamane, Advocate for Caveator, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—The parties are referred to by their rank before the trial court. This is appeal is filed by the defendants.

It was the case of the plaintiff that she was the absolute owner of the house site bearing No. 17, which was re-numbered as No. 288 and as on the date of suit was No. 65. She had purchased the same under a sale deed dated 26.3.1998 from Vittal N. Shet. The said vendor is said to have purchased the same from one Smt. Venkatamma, wife of Yellappa, in the year 1992.

When the plaintiff sought to put up construction on the said property, the defendants along with their henchmen had obstructed them and tried to interfere with the suit property. The plaintiff therefore filed the suit.

It transpires that even during the pendency of the suit, the defendants had forcible occupied a portion of the suit property. This entailed the plaintiff seeking to amend the plaint to plead that event and seek appropriate relief in respect of the encroached portion, described as plaint Schedule - B property.

The suit was contested. The defendants claimed in their written statement that the land in survey No. 17/7 was the ancestral property of one Yellappa. There

was a partition in his family and at that partition, the said land fell to the share of his wife, Venkatamma, she had in turn formed sites and sold several sites to third parties. It was contended that the husband of the plaintiff, V.N. Shet had purchased a site from her too. That was site No. 17. As registration of sales of such sites, which were termed as "revenue sites", was banned, it was claimed that Venkatamma had resorted to a common practice in such circumstances of executing an agreement of sale, in the form of an affidavit and a general power of attorney in putting the purchaser in possession of the suit property.

It was further averred that the said Shet was a good friend of the first defendant, and had approached him proposing the sale of a portion of the said site No. 17, for a sum of Rs. 2.30 lakh. The defendant had accepted the offer, but the purchase was made in the name of the second defendant. The defendants had furnished a Schedule to the Written Statement indicating the portion so sold as Schedule - B. This transfer dated 31.1.1995 was also not registered as the ban on registration continued to be in force on that date. The second defendant was however, put in possession of the suit property under certain documents acknowledging the transfer and declaring her possession.

The second defendant claimed to have constructed a car shed on the portion of property so purchased. The said construction was later extended to form a residential unit. The defendants had then moved into the said unit and were living there.

Taking advantage of the imperfect transfer of title, it was alleged, that Shet claimed further amounts towards the sale, to unjustly enrich himself. And further took advantage of the power of attorney given to him by Venkatamma to execute and register a sale deed in favour of his wife. It is contended that the sale deed does not describe the property accurately and that false documents had been utilized to obtain registration of the entire extent of the property, suppressing the transfer in favour of the defendant.

There is also an additional written statement filed in view of the amendment of the plaint and in view of certain further developments. It is stated that the even at the time there was a purported transfer by Venkatamma of the suit property, the land in question was subject matter of acquisition proceedings under the provisions of the Bangalore Development Authority Act, 1976 (Hereinafter referred to as the "BDA Act", for brevity). The land had vested in the State and hence the transaction which was nebulous in any case, could not confer any right or title, even if it were made in the manner known to law. The portion of the property claimed by the plaintiff is vacant land and hence the plaintiff is not entitled to any relief in respect of the same. Whereas the defendants have been in continuous settled possession of the property and can defend such possession even as against the State and the Bangalore Development Authority (BDA). Hence, the defendants seek dismissal of the suit.

The court below had framed the following issues:

1. Whether the plaintiff proves her lawful possession over the suit schedule property?
2. Whether the plaintiff proves the cause of action as alleged in the plaint?
3. What order or decree?

Additional Issues:

1. Whether the plaintiff proves her title over suit property?
2. Whether the plaintiff proves that she was dispossessed of "B" schedule property during pendency of suit?
3. Whether the plaintiff is entitled for possession of "B" schedule property?

The court below held in favour of the plaintiff and decreed the suit. It is that which is under challenge in the present appeal.

2. The learned Counsel Shri S. Shekar Shetty appearing for the counsel for the appellant contends that the trial court has committed several factual errors in accepting the case of the plaintiff. It is pointed out that the plaintiff claims title to the suit property under a sale deed dated 26.3.1998 executed by her husband V.N. Shet on the strength of a General Power of Attorney dated 13.11.1992 (Exhibit P. 3) executed by Venkatamma in respect of property bearing Khatha No. 17/7, property No. 17, within the limits of the Kathriguppe Group Panchayath, Bangalore South Taluk, which is described in the plaint schedule as No. 65 (Old No. 17) Survey No. 17/7, Kathriguppe village, Banshankari III Stage, Bangalore. The property was in the possession of the first appellant under an agreement of sale, dated 31.1.1995 (Exhibit D-1), which the very same V.N. Shet had executed, again on the strength of the General Power of Attorney executed by Venkatamma, the original owner of the property.

It is sought to be highlighted that out of the extent of 1740 square feet in the possession of the appellant, an extent of 1162 square feet to the eastern side of the property, as described in Schedule B, to the written statement, was agreed to be sold to the first appellant under Exhibit D. 1. The subject matter of Exhibit P-1 was different and did not form part of the property that is the subject matter of the General Power of Attorney (Exhibit P-3). The appellants were in possession of the property described in the General Power of Attorney.

It is after a lapse of nine years from the date of the appellants having asserted the above facts in their written statement that the plaintiff made an application for amendment of the plaint seeking recovery of possession of the extent of property in the possession of the appellants. The date of dispossession was significantly not stated.

It is contended that the finding of the trial court that there is a sale deed in favour of the plaintiff and none in favour of the appellants is without reference to the fact that the sale deed set up by the plaintiff describes the property as site

No. 17 and has no reference to the Sy. No. 17/7 and hence there is incomplete identity of the property in the sale deed which is ignored by the trial court. It is contended that Exhibit D. 1 having been marked in evidence, the trial court erred in negating the same on the footing that it was executed as a sale deed and was not registered therefore could not be relied upon. On the other hand it was in the nature of an agreement of sale and the registration of the document was merely postponed due to the ban at that point of time of sale of revenue sites. The receipt of the consideration and delivery of possession clearly stood established in favour of the appellants in the said document.

It is contended that the factum of possession of the appellants subsequent to Exhibit D. 1 has been unfairly negated. This is in the face of a clear admission by PW-1 that in spite of his objection to the Karnataka Electricity Board not to provide electricity connection to the building of the appellants on the suit property, it had been provided in the year 1998, clearly demonstrated that the appellants were very much in possession.

It is also pointed out that Shet had admitted in proceedings for change of khatha, before the Corporation Authorities that the appellant was in possession in his voluntary statement dated 18.12.2002 at Exhibit D-7, that under the agreement of sale dated 31.1.1995 he had put the appellants in possession and that they continued to be in possession.

That the finding as to the plaintiff having been dispossessed during the pendency of the suit is without any specific pleadings in that regard by the plaintiff.

It is contended that the suit property is the subject matter of acquisition under the BDA Act. The property having vested in the State, a declaration of title in favour of the plaintiff was per se illegal and void. Though the appellants could on the other hand claim settled possession and protect the said possession unless dispossessed by the BDA, in accordance with law.

3. The learned counsel for the respondent, on the other hand, seeks to justify the judgment of the trial court. On a consideration of the rival contentions and on a perusal of the record, it is noticed that the trial court primarily found that the plaintiff had established title to the land in question. The defendants having claimed to have into possession under the unregistered sale deed, which is sought to be termed as an agreement of sale, in the alternative by the appellants - has been trashed by the trial court as a document which was compulsorily registerable and in the absence of which that the same could not be looked into though admitted and marked in evidence. Further, the trial court has held that the appellant No. 1 who was claiming under Exhibit D-1 had failed to enter the witness box. It was only appellant No. 2 who had tendered evidence in support of the defence. He had on the other hand admitted that the defendants had no claim or interest in property mentioned in Exhibit P-1. The trial court has extracted the statements to that effect, verbatim, in its judgment thus:

I do not know whether property mentioned in Ex. P. 1 situates. According to me

schedule "B" property is not a part and parcel or property in Ex. P. 1. I have no interest in respect of property mentioned in Ex. P. 1

The trial court had thus concluded that the defendants had failed to establish their possession of the suit property.

In so far as the contention that the suit property admittedly being the subject matter of acquisition by the State under the BDA Act, the trial court has observed that a decree in favour of the plaintiff vis-a-vis the defendants, would not bind the authorities and the said authorities were not parties to the suit and has held that it is for the concerned to dispossess the plaintiff.

The above basic reasoning of the trial court cannot be faulted. The other contentions of the defendants in this appeal to point out other infirmities in the pleadings and the documents set up by the plaintiff cannot be made much of, as the defendants were claiming possession of the suit property only through the plaintiff.

The appeal is accordingly dismissed.