

(2013) 08 KAR CK 0110

In the Karnataka High Court

Case No : Regular First Appeal No. 693 of 2011

Smt. Renuka

APPELLANT

Vs

Sri. N. Lakshmaiah Reddy and Others

RESPONDENT

Date of Decision : 05-08-2013

Acts Referred:

Citation : (2013) 08 KAR CK 0110

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : S. Anil Kumar, for M/s. M. Shivappa Associates, for the Appellant; Chandrasekharan, Advocate for Respondent No. 1 and Shri B.N. Shetty, Advocate, for the Respondent

Judgement

Anand Byrareddy, J.—Heard the learned counsel for the appellant and the learned counsel for the respondents. The appeal coming on for admission, is admitted to file and is considered for final disposal, having regard to the facts and circumstances of the case. The appellant herein was Defendant No. 1 before the Trial Court. The suit was one for declaration, injunction and possession. It was the case of the plaintiff that the plaintiff was the absolute owner of the property which was a house property measuring about 85" x 60". Out of this extent, what is mentioned as "B" schedule property measuring 15" x 60", is the disputed portion of the property. The plaintiff claims that he was the absolute owner of the entire property and that the sixth defendant had acquired the property bearing Sy. No. 48/2 of Cholanayakanahalli village Bangalore North Taluk, under a family partition and a residential layout had been formed and in the Partition Deed dated 4.2.1988, the house bearing Site No. 12 and vacant site No. 13 had fallen to the share of the wife of the plaintiff one Pavithra. There was a dispute with regard to the property between the plaintiff's wife and her sisters and a suit in O.S. No. 2779/1990 was filed against their father who was the sixth defendant, for declaration and injunction. A compromise was entered into in the suit wherein it was declared that the wife of the plaintiff was the absolute owner of the suit schedule "A" property in the present suit. It transpires that the

Bangalore Mahanagara Palike had collected betterment charges from the plaintiffs wife. On 4.7.2003, the plaintiffs wife had executed a Release Deed in favour of the plaintiff, in respect of the suit property. Therefore, he became the absolute owner of the suit property. Site No. 14 belonging to the sixth defendant is said to be on the Eastern side of the plaintiffs property and a road thereafter is formed in Sy. No. 48/2. It is alleged that the sixth defendant, in order to lay claim over the plaintiffs property, had fraudulently executed a Gift Deed in respect of the property bearing No. 14, while encroaching the extent of 15" x 60" as already stated, in favour of the: fifth defendant. There was no such land available to the sixth defendant to confer the same by way of gift, on the fifth defendant and the fifth defendant having sold the property in favour of the second defendant to an extent of 30" x 26" under a sale deed dated 2.5.2001, has mischievously included the portion of the suit schedule property. The third defendant had sold the very same property in favour of the fourth defendant by a further sale deed on 4.8.2006 and the fifth defendant, on the basis of the said Gift Deed, sold yet another portion of site bearing Nos. 14 and 15 under a sale deed dated 30.05.2002 in favour of the first defendant. The second defendant and the husband of the first defendant are said to have put up unauthorized construction in respect of which the plaintiff has filed a civil suit in O.S. No. 9017/2013, and that is pending adjudication. The defendants had purchased Site Nos. 14 and 15 which are situated on the Eastern side of the "A" schedule property and it is only belatedly that the plaintiff has learnt about the mischief and when unauthorized construction had come up, the plaintiff had realized the designs of the defendants, and hence the suit.

2. The suit having been contested by some of the defendants, the present appellant-defendant did not choose to file any written statement or tender any evidence. The reason assigned for not having contested the suit is that though the present appellant had made an attempt to implead herself in the said suit in O.S. No. 9017/2003 filed by the plaintiff, the said application had been rejected. However, since the suit was ultimately dismissed on merits, the present defendant thought it would be axiomatic that the subsequent suit-would also be dismissed and had neglected the same. This had resulted in the appellant being seriously jeopardized in being deprived of her title though according to the appellant, she has a good case on merits and if afforded an opportunity, she would yet be able to establish that there is no mischief or fraud, as sought to be alleged by the plaintiff and therefore, contends that the matter requires to be addressed on merits.

3. This contention cannot be countenanced in the absence of any evidence on the part of the appellant. Though the learned counsel for the appellant would vehemently contend that if an opportunity is granted, he will be in a position to produce additional documents in this appeal in support of his case and that it would yet be considered on merits as there is a miscarriage of justice in the appellant's case not being considered at all, though for reasons which cannot be entirely accepted. The learned counsel for the respondent on the other hand

would submit that there is no warrant for consideration of the appellant's case, as it is an admitted fact that the appellant was a party to the present suit. The appellant had also been represented by an Advocate and therefore, there is no warrant for any lenience being shown in favour of the appellant.

However, it is the duty of any court to ensure that there is complete adjudication of the rights of the parties. The appellant claiming to be in possession of documents of title, which not having been produced before the court below, should certainly be provided with an opportunity of doing so. This however, cannot be at the cost and hardship of the respondents. Therefore, in the opinion of this court, it may be necessary to re-consider the case of the appellant even though there has been much lapse of time. Since the suit was initially filed and decided after a full-fledged trial, it is justified in imposing costs on the appellant in remanding the matter for a reconsideration at the instance of the defendant. Therefore, the appellant may be permitted to file her written statement and produce documents. The court may frame such issues as may be warranted on those pleadings. The plaintiff in turn may be permitted to file any additional pleadings if warranted, and the matter shall proceed, accordance with law. This however, is subject to the appellant paying to the first respondent-plaintiff a sum of Rs. 50,000/- as costs, in the first instance. The matter stands remanded to the Trial Court for further consideration, in terms as above.

The court fees paid by the appellant shall be refunded to the appellant. The court shall proceed further, after issuing summons to the parties.