
(2014) 12 KAR CK 0119
In the Karnataka High Court
Case No : Regular First Appeal No. 1385/2005

Sopan	Vs	APPELLANT
Tippanna		RESPONDENT

Date of Decision : 10-12-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Contract Act, 1872 — Section 56
Evidence Act, 1872 — Section 115

Citation : (2014) 12 KAR CK 0119

Hon'ble Judges : A.V. Chandrashekara, J

Bench : Single Bench

Advocate : Shivanand Patil, Advocate for the Appellant; Pradeep Babashetty, Advocate for the Respondent

Judgement

A.V. Chandrashekara, J.—Plaintiffs of an original suit in O.S. 50/00 pending on the file of Civil Judge (Senior Divn.), Bhalki, have approached this court by filing the appeal under Section 96, C.P.C. since they are aggrieved by dismissal of their suit filed for the reliefs of title and permanent injunction.

2. Respondent herein is the sole defendant in the said suit. Parties will be referred to as plaintiffs and defendants as per their ranking in the trial court.

3. The facts leading to the filing of O.S. 50/00 are as follows:

"a) One Beerappa was the propositus. He had four sons, Chandrappa, Bhimsha, Shivanna and Maruti. All of them are no more. According to the plaintiffs, Shivanna was of unsound mind and died issueless.

b) It is the case of the plaintiffs that defendant-Thippanna had entered into an agreement of sale with Shivanna to purchase 2.02 acres of land in Survey No. 103/3A and the said property is the joint family property of the sons of Beerappa. According to them, Shivanna could not have executed any agreement of sale as he was of unsound mind. Therefore the contract so entered into with

Shivanna was not enforceable and even otherwise he was not competent to sell the undivided share by mentioning the extent of land with specific boundaries.

c) Apart from this, plaintiffs have specifically averred that the said alienation was contrary to the provisions of Karnataka Consolidation of Holdings and Prevention of Fragmentation Act.

d) The defendant-Thippanna chose to file a suit against the plaintiffs for the relief of specific performance in O.S. 5/79. The said suit was decreed against which Shivanna filed an appeal contending that it was an ex parte decree. The said appeal was allowed and the matter was remitted to the trial court for consideration afresh.

e) During the pendency of the suit, Shivanna died and only the legal heirs of Chandrappa and Bhimsha were brought on record and the legal heirs of Maruti, i.e. plaintiffs 6 to 9 were not brought on record. The suit filed in O.S. 5/79 was again decreed against which an appeal was filed by the legal heirs of Chandrappa and Bhimsha which was dismissed after contest.

f) The legal heirs of Chandrappa, Bhimsha and Maruti chose to file the present suit for the reliefs of declaration to the effect that the judgment and award passed in O.S. 5/79 does not bind them and that they are still the owners of the property and for consequential relief of permanent injunction.

g) Later on defendant chose to file written statement denying all the plaintiff averments. According to him, the land in question belonged to Shivanna and Shivanna was competent to execute the agreement of sale and that he was mentally and physically alright. According to him, the present suit is not maintainable either in law or on facts and is hit by the principles of constructive res judicata and that the judgment passed in O.S. 5/79 binds the present plaintiffs, i.e. wife and children of Maruti who have joined other persons against whom a decree for specific performance is already granted and the same having become final in the light of dismissal of the regular appeal filed by the legal representatives of Chandrappa and Bhimsha. On these pleadings, he had requested the trial court to dismiss the suit.

h) Based on the above pleadings, the trial court framed the following issues for consideration:

1) Whether the plaintiffs prove that they are the joint owners and in possession of the suit land?

2) Whether the plaintiffs prove the alleged interference and obstruction caused by defendant in their possession and enjoyment over the suit land?

3) Whether the plaintiffs prove that the judgment and decree in O.S. 5/79 on the file of Munsiff, Bhalki, which has been confirmed by the appellate court obtained by defendant, is liable to be cancelled?

4) Whether plaintiffs 6 to 9 prove that though they were necessary parties to the

suit, but yet they were not impleaded so by the plaintiff in O.S. 5/79 and hence, the judgment and decree in O.S. 5/79 is bad in law and unenforceable against them?

5) Whether the plaintiffs prove that the agreement of sale dated 5.4.1976 deserves to be annulled and cancelled as void and voidable as against plaintiffs 1 to 9?

6) Whether plaintiffs prove that entries in the revenue records of the suit land are incorrect and hence the same are liable to be corrected?

7) Whether defendant proves the factum of partition between Shivanna his brothers and that suit land had fallen to the share of Shivanna?

8) To what reliefs plaintiffs are entitled for?

9) What order and decree?

ADDITIONAL ISSUES:

1) Whether the present suit is hit by the doctrine of res judicata or constructive res judicata in view of finding in O.S. 5/79?

2) Whether there is frustration of contract under Section 56 of the Indian Contract Act as alleged in the suit?

The 1st plaintiff is examined as P.W. 1 and 3 more witnesses have been examined on his behalf, apart from getting 5 documents marked. Thippanna is examined as D.W. 1 and 2 witnesses on his behalf. In all 6 exhibits have been got marked on his behalf.

i) After analyzing the evidence placed on record and hearing the arguments, the learned senior judge has answered issue Nos. 1 to 6 and additional issue No. 2 in the negative, and issue No. 7 and additional issue No. 1 in the affirmative. Consequently the suit has been dismissed by virtue of a considered judgment dated 28.6.2005.

j) It is this judgment and decree which is called in question by the plaintiffs on various grounds as set out in the appeal memo.

4. Learned counsel for the appellants, Mr. Shivanand Patil has vehemently argued that the trial court has adopted a wrong approach to the real state of affairs and has not assessed the evidence on the touchstone of intrinsic probabilities. It is argued that the trial court has failed to take into account that Shivanna had no absolute right to alienate the property, much less through an agreement of sale. It is further argued that when the entire land in Survey No. 103 was joint family property of the sons of Beerappa, he could not have sold 2.02 acres with specific boundaries as he did not know which part of the property would fall to his share. It is argued that the judgment and decree are opposed to law, facts and probabilities. It is argued that the judgment passed in O.S. 5/79 does not bind the plaintiffs 6 to 9 who were not parties to the said judgment and decree. It is

further argued that this aspect of the matter has been ignored to the trial court.

5. After hearing the learned counsel for the parties and perusing the records, the following points arise for consideration in this appeal:

"1) Whether the trial court is justified in holding that the suit is hit by the principles of constructive res judicata?

2) Whether interference is called for, and if so, to what extent?"

REASONS

6. Point No. (1): Admittedly no evidence is placed on record to prove that Shivanna was suffering from unsoundness of mind and was incapable of entering into any contract. The fact that Shivanna was defendant in O.S. 5/79 is not in dispute. Initially the said suit was decreed against which Shivanna himself filed an appeal on the ground that it was an ex parte order. If really he was of unsound mind, he would not have ventured to file the appeal under Section 96, C.P.C. This probablises the case of the defendant that Shivanna was not of unsound mind.

7. After the matter was remitted to the trial court in the appeal filed by Shivanna, the legal heirs of Chandrappa and Bhimsha were brought on record. It is true that neither the wife nor children of Maruti (plaintiffs 6 to 9) had been brought on record as L.Rs. in place of deceased Shivanna. It is to be seen that if really Maruti's wife and children had been aggrieved, they would have independently challenged the decree passed in O.S. 5/79 and they would not have joined the legal heirs of Chandrappa or Bhimsha who, by then, had already suffered the decree in O.S. 5/79.

8. After the matter was remitted to consider the matter afresh, O.S. 5/79 was once again decreed against which Chandrappa and Bhimsha chose to file an appeal under Section 96, C.P.C. before the first appellate court. The said appeal came to be dismissed after contest. Thus the judgment and decree passed in O.S. 5/79 binds the plaintiffs for all practical purposes and they cannot challenge the said judgment by means of a fresh suit in O.S. 50/00.

9. If the wife and children of Maruti have ventured to challenge the said judgment along with those who had already suffered a decree in O.S. 5/79, they cannot turn round and say that the judgment and decree passed in O.S. 5/79 does not bind them. It is in this view of the matter the trial court has held that plaintiffs 6 to 9, being legal heirs of Maruti, are bound by the principles of constructive res judicata as per Section 115 of the Evidence Act.

10. Even otherwise, it could be held that the legal heirs of Chandrappa and Bhimsha had adequately represented the interests of the wife and children of Maruti under the doctrine of "adequate representation." It is not as though the wife and children of Maruti were unaware of the suit filed by Thippanna against Shivanna and the subsequent proceedings which were conducted by the legal

heirs of Chandrappa and Bhimsha. If the L.Rs. of Maruti were living as members of the joint family consisting of the legal heirs of Chandrappa and Bhimsha, the doctrine of "adequate representation" is aptly applicable to the facts and circumstances of this case. In this view of the matter, the approach adopted by the trial court is quite correct.

11. The trial court has adopted proper approach to the state of affairs and has proceeded on the basis of preponderance of probabilities. The judgment and decree are neither opposed to law nor facts nor probabilities. Hence, point No. (1) is answered in the affirmative.

12. Point No. (2): In view of my finding on point No. (1), no interference is called for and the appeal is liable to be dismissed.

ORDER

The appeal is dismissed. In the circumstances of the case, there is no order as to costs.