

(2013) 09 KAR CK 0063
In the Karnataka High Court
Case No : Writ Petition No. 22147 of 2012 (LR)

Sri Anjanappa

APPELLANT

Vs

The Assistant Commissioner and Sri C. Shivardudraiah

RESPONDENT

Date of Decision : 06-09-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2013) 09 KAR CK 0063

Hon'ble Judges : H. Billappa, J

Bench : Single Bench

Advocate : N. Hariprasad, for Mathru Associates, for the Appellant; Srinivas T.P., AGA for R1 and Sri Ashok B. Patil, for R2, for the Respondent

Final Decision : Dismissed

Judgement

H. Billappa, J.—In this writ petition under Articles 226 and 227 of Constitution of India, the petitioner has called in question, the order dated 26.09.2008, passed by the Karnataka Appellate Tribunal, in Appeal No. 1054/2004 vide Annexure-E. By the impugned order at Annexure-E, the Karnataka Appellate Tribunal has set aside the order passed by the first respondent.

2. Aggrieved by that, petitioner has filed this petition.

3. Briefly stated the facts are; The petitioner claims that his grand-father Lagumappa was the tenant in respect of Sy. No. 296, measuring 3 acres 19 guntas, Sy. No. 297, measuring 2 acres 27 guntas, Sy. No. 300, measuring 3 acres 7 guntas and Sy. No. 302, measuring 1 acre 23 guntas situated at Ganjikunte Village. After the death of Lagumappa, his son Muniyappa and the petitioner were cultivating the land. The petitioner filed Form No. 7A for grant of lands. The first respondent by order dated 25.02.2004 granted 3 acres 19 guntas of land in Sy. No. 296, 2 acres 27 guntas in Sy. No. 297, 3 acres 7 guntas in Sy. No. 300 and 1 acre 23 guntas in Sy. No. 302 of Ganjikunte Village in favour of the petitioner. Aggrieved by that, the second respondent preferred an appeal in

Appeal No. 1054/2004. The Karnataka Appellate Tribunal by its order dated 26.09.2008 has allowed the appeal and set aside the order passed by the first respondent. Therefore, this writ petition.

4. The second respondent has filed statement of objections contending that the writ petition is not maintainable. The second respondent owns lands bearing Sy. Nos. 296, 297, 300 and 302 of Ganjikunte Village and they are in possession of the land. The petitioner is the grand son of Lagumappa.

5. The father of the second respondent C.V. Channaveeranna had filed suit in O.S. No. 10/1984 for declaration of title and permanent injunction. The petitioner's grand-father Lagumappa, father Muniyappa and petitioner's uncle Narasimha were parties in O.S. No. 10/1984. The suit was dismissed. In R.A. No. 4/1992, the appeal was allowed and the suit in O.S. No 10/1984 was decreed declaring the title and possession of the second respondent's father. Thereafter, Lagumappa, Muniyappa and Narasimha filed R.S.A. No. 766/1993. It was dismissed on 23.01.1998 rejecting the claim of the petitioner's grand-father, father and uncle that they have perfected their title by adverse possession. Therefore, the second respondent has prayed for dismissal of the writ petition.

6. The learned counsel for the petitioner contended that the impugned order passed by the Appellate Tribunal cannot be sustained in law. He also submitted that the petitioner's grand-father, father and his uncle were cultivating the lands in question and they were tenants. The petitioner filed Form No. 7A claiming grant of land. The first respondent after holding enquiry has granted the lands in question. The Appellate Tribunal without any valid reason has reversed the order passed by the first respondent. Therefore, the impugned order cannot be sustained in law. He also submitted that the revenue records and entries stand in name of the petitioner, his grand-father, and father. Therefore, the impugned order cannot be sustained in law.

7. As against this, the learned counsel for the second respondent submitted that the impugned order does not call for interference. He also submitted that second respondent's father C.V. Channaveeranna had filed suit in O.S. No. 10/1984 for declaration of title and permanent injunction. The suit was dismissed by the Trial Court. In the appeal, the appellate court reversed the judgment and decree passed by the Trial Court and the suit was decreed declaring the title of the second respondent's father and also possession. The second appeal filed by the petitioner's grand-father, father and uncle in RSA No. 766/1993, has been dismissed on 23.01.1998 rejecting the contention of the petitioner's grand-father, father and uncle-that-they have perfected their title by adverse possession. He also submitted that though the petitioner was aware that C.V. Channaveeranna was no more, in Form No. 7A, C.V. Channaveeranna has been shown as owner C.V. Channaveeranna died during the pendency of second appeal and his LR's were brought on record. The petitioner has made false claim. Therefore, Appellate Tribunal was justified in reversing the order passed by the first respondent and it does not call for interference.

8. The learned AGA supported the impugned order and submitted that in view of the judgment in RSA No. 766/1993, the impugned order does not call for interference.

9. I have carefully considered the submissions made by the learned counsel for the parties.

10. The point that arises for my consideration is;

Whether the impugned order calls for interference?

The petitioner has filed Form No. 7A claiming grant of land in Sy. No. 296, measuring 3 acres 19 guntas, Sy. No. 297, measuring 2 acres 27 guntas, Sy. No. 300, measuring 3 acres 7 guntas and Sy. No. 302, measuring 1 acre 23 guntas situated at Ganjikunte Village. Form No. 7A has been filed on 28.01.1999. In Form No. 7A, the father of the second respondent Sri. C.V. Channaveeranna is shown as the owner. When Form No. 7A was filed, the second respondent's father was no more. The father of the second respondent had filed suit in O.S. No. 10/1984 for declaration of his title and permanent injunction against Lagumappa, Muniyappa and Narasimha, the grand-father, father and uncle of the petitioner. The said suit was dismissed by the Trial Court. In R.A. No. 4/1992, the judgment and decree passed by the Trial Court was reversed and the suit was decreed declaring the title of the second respondent's father. In R.S.A. No. 766/1993, the petitioner's grand-father Lagumappa, father Muniyappa and uncle Narasimha have contended that they have perfected their title by adverse possession and it has been rejected. The second appeal has been dismissed on 23.01.1998. Thereafter, the petitioner has filed Form No. 7A on 28.01.1999 for grant of land claiming that his grand-father and father were the tenants. When petitioner's grand-father, father and uncle have claimed adverse possession, it is difficult to believe how the petitioner can contend that they were tenants. Apart from this, the contention of the petitioner's grand-father, father and uncle that they have perfected their title by adverse possession has been rejected. Therefore, it is clear, the application filed by the petitioner was baseless and not bonafide. The first respondent without considering the decree passed in the civil suit and that Form No. 7A was filed against the dead person has granted lands in favour of the petitioner which is totally incorrect. The Appellate Tribunal has rightly reversed the order passed by the first respondent and it does not call for interference. There is no merit in this writ petition and it is liable to be dismissed.

Accordingly, the writ petition is dismissed with cost of Rs. 2,000/-. The cost shall be paid to the second respondent.