
(2013) 03 KAR CK 0146

In the Karnataka High Court

Case No : Regular First Appeal No. 1502 of 2007

Sri. Ashwathaiah @ Sanjeevaiah

APPELLANT

Vs

Sri. B.K. Durgada Narasaiah and Others

RESPONDENT

Date of Decision : 26-03-2013

Acts Referred:

Limitation Act, 1963 — Article 58, 65

Citation : (2013) 03 KAR CK 0146

Hon'ble Judges : Anand Yareddy, J

Bench : Single Bench

Advocate : M.S. Purushothama Rao, for the Appellant; H. Madan Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Anand Yareddy, J.—The parties are referred to by their ranking before the trial court for the sake of convenience. This appeal is by the defendants. The facts of the case are as follows:

The plaintiff who died during the pendency of the suit was a government servant. He had purchased the suit property, which was a site allotted by the erstwhile City Improvement Trust Board (hereinafter referred to as the "CITB" for brevity) to his vendor and who was put in possession under a possession certificate dated 25.7.1972. The plaintiff had purchased the same under a sale deed dated 21.8.1972, even before a sale deed could be executed in favour of his vendor. A sale deed was ultimately executed in favour of his vendor, by the Bangalore Development Authority, which was the successor-in-interest of CITB, by a sale deed dated 04.09.1991. The property thereafter fell within the jurisdiction of the Corporation of the City of Bangalore and katha was transferred in favour of the plaintiff as on 04.03.1992. The plaintiff thereafter was paying taxes in favour of the Bruhat Bengaluru Mahanagara Palike. It is stated that the plaintiff's daughter Smt. D.H. Latha, wife of Srinivas had constructed a house in a portion of the suit property and she was living with her family of her husband and two children for

about 11 years prior to the suit. It is stated that when the daughter of the plaintiff Smt. Latha and the plaintiff had gone out of town, the defendants who are said to be husband and wife, had put up a hut in a portion of the vacant area of the suit schedule "B" property measuring about 4 feet by 6 feet, overnight. The plaintiffs daughter on her return questioned the defendants of their act, who pleaded that they were very poor and did not have any shelter but when the plaintiffs daughter protested that they could not occupy the suit property, they had pleaded for two days" time to vacate the suit property. However, they failed to do so. It is in this background that the plaintiff reported the matter to the Vyalikaval Police Station on 28.6.2001. However, the police did not take any action. Thereafter, representations were made to the Bruhat Bengaluru Mahanagara Palike as well as the Bangalore Development Authority who in turn expressed that since the property had been handed over to the allottee, it was for the owner of the property to protect the same against trespassers. Therefore, the plaintiff was constrained to file the above suit seeking a declaration of ownership of suit "B" schedule property which was occupied by the defendants and for injunctory reliefs, as well as damages. The suit was resisted by the defendants denying the plaint averments and disputing the ownership of the plaintiff and claimed that the defendants had put up the residential house in the suit property in the year 1960, in an area measuring 10 feet by 15 feet and that they have been in possession ever since, along with their children. Therefore, as they were claiming adversely to the plaintiffs, they had become owners of the property and had produced documents in support of their claim to continuous undisturbed possession. On the basis of the above pleadings, the Court below had framed the following issues:

1. Does Plaintiff prove that plaint Schedule Property was allotted to him by City improvement Trust Board and that a registered sale deed dated 21.8.1972 executed by C.I.T.B. in plaintiffs favour?
2. Did defendants illegally occupy a portion of suit site by putting up thatched hut as alleged by plaintiff?
3. Do defendants prove that they put the hut in 1960 and they have become owners of suit property?
4. To what reliefs is the plaintiff entitled?

The trial court held issues 1 and 2 in the affirmative and issue no. 3 in the negative. It is that which is sought to be challenged in the present appeal.

2. The learned Counsel for the appellants would contend that the Court below has accepted that there were documents to indicate as to the defendants having been in possession of the suit property from the year 1983. The suit was filed in the year 2003. Therefore, the suit was clearly barred by limitation in terms of Articles 58 and 65 of the Limitation Act, 1963 and hence, the trial court was not justified in decreeing the suit in the face of such a finding. That the trial court has also committed an error in not addressing the claim to adverse possession

set up by the defendants which was established by the defendants on the admitted circumstances. More significantly, it is pointed out that the plaintiff claims to have purchased the property in the year 1972 when his vendor did not have any title to the property and therefore, the sale transaction was not only opposed to public policy as the terms of the allotment of the site prohibited any such alienation and therefore, the plaintiff never having acquired title to the property could not claim a better right over the defendants, who had been in possession for over 20 years, even as found by the trial court. It is in this vein that the learned Counsel for the appellant would seek to protect the possession of the defendants.

3. Insofar as the contention that the plaintiff having purchased the property in the year 1972 when there was no right in his vendor to sell the property may not be a tenable contention. Though this may have been in violation of the terms of allotment by the CITB or the Bangalore Development Authority, which ultimately executed the sale deed in favour of the vendor of the plaintiff. It did not preclude the said authorities from revoking the allotment for violation of such terms of allotment. This circumstance had not come about. Hence, the plaintiffs vendor having been conferred with title, it would certainly enure to the benefit of the plaintiff. In any case, it is not open for the defendants to question the validity of the title of the plaintiff.

4. Insofar as the contention that the defendants have perfected their title by adverse possession is also not available, as the primary requirement of claiming adverse possession is to admit the ownership of the person against whom such adverse possession is claimed. In that view of the matter, such a claim would not be available to the defendants. Insofar as the contention that the suit was barred by limitation, it was the defendants case that the defendants were in possession of the property since 1960. However, the same not having been established notwithstanding that there were certain incidental documents produced of the year 1983 to claim that there was a semblance of an exercise of possession over the suit property by the defendants. The Court below has rejected and negated the said documents, as it does not establish the case of the defendants that they were in possession of the suit property from the year 1960. Therefore, none of the grounds urged by the appellants -- defendants are tenable and hence, the appeal is dismissed.