
(2013) 06 KAR CK 0133
In the Karnataka High Court
Case No : Regular Second Appeal 702 of 2008

Sri. B.S. Krishnaiah

APPELLANT

Vs

Narasimhaiah @ Hosanarasimhaiah and Venkateshappa

RESPONDENT

Date of Decision : 14-06-2013

Acts Referred:

Citation : (2013) 06 KAR CK 0133

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : M.V. Seshachala, for the Appellant; C.M. Desai, for R1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Huluvadi G. Ramesh, J.—The second appeal is by the plaintiff challenging the judgment and decree passed by the Civil Judge (Sr. Dvn) in RA 42/1998 on 27.10.2005. The appellant/plaintiff filed a suit in OS 97/1993 before Civil Judge (Jr. Dvn.), Sidlaghatta for a declaration and permanent injunction restraining the defendants from interference with the lawful possession of the suit schedule property. Suit property is a land in Sy. No. 67 measuring about 3.00 acres situate at Bommanahalli Village, Sidlaghatta, having its boundaries. On the matter being contested, the 2nd defendant stated that he is a permanent resident of Bommanahalli Village, his uncle Pilla Muniyappa was cultivating 1.00 acre land in Sy. No. 67 since several years as such the said extent was granted by the Government and issued a saguvali chit and a grant certificate on 28.7.1986. On the death of Pilla Muniappa, defendant is in continuous possession of the same and also according to him plaintiff showing wrong boundaries, is trying to knock off the property which is in possession of the defendants. It is also stated, plaintiff claims right on 3.00 acres towards western side of Pindipapanahalli Gadi and also it is contended that wrongly plaintiff has given the boundary including that of 2nd defendant's land.

2. According to the 1st defendant, he also has been granted 1.37 acres in Sy. No.

67. He had also filed an application for grant of 3.00 acres in the said survey number and, after grant of 3 acres after spot inspection, it was found that only an extent of 1.37 acres was available as per their possession as such, 1st defendant is in possession of 1.37 acres. It is stated, plaintiff is a stranger and is a permanent resident of Sidlaghatta Town, having no right, on the other hand he contends that he is in continuous possession of property in Sy. No. 67 to an extent of 1.37 acres. Thus, according to the defendants, they are in possession to their respective extent. The alleged grant in favour of plaintiff is said to be canceled by the Tahsildar, Sidlaghatta way back in 1972-73 itself on the ground that the plaintiff is a Conductor by profession and he is an absentee and also he is residing at Sidlaghatta Town and not in Bommanhalli Village. Based on the pleadings, trial court having framed as many as five issues and two additional issues. While answering the relevant issues based on the documents and evidence on record, suit of the plaintiff came to be allowed and decreed.

3. As against the said judgment, in the appeal by the defendants before the Civil Judge (Sr. Dvn), Chintamani in RA 42/1998, judgment and decree passed in OS 97/1993 was set aside and suit of the plaintiff came to be dismissed, as against which this second appeal by the plaintiff.

4. At the time of admission, the following substantial question of law was raised for consideration:

Whether the courts below were justified in ignoring the grant made in ignoring the grant made in favour of the appellant which grant order has not been cancelled and pursuant to the said grant, the appellant continued to pay the taxes and his name was shown in the RTC for a long period of time?

Whether the lower appellate court was justified in re-appreciating the evidence on record and giving its own independent conclusions discarding the evidence and interpreting the documents of title, Ex. P9, P10 and P11 as inconsequential and ignoring the weight of the evidence on record.

5. Heard the arguments of the respective counsel.

6. According to the appellant's counsel, land was granted in favour of the appellant to an extent of 3 acres in the said survey number and that has been admitted by the defendants as such, compensation if any, paid for the acquisition of the property that was granted in favour of this appellant and the amount deposited has to be released in favour of the appellant. He also submitted, there was a grant earlier made in favour of the appellant which is in order and the stand of the respondents that the same has been cancelled can not be accepted and the procedure adopted in cancelling without notice to the appellant is void. Accordingly, he has sought for allowing the appeal and to confirm the order of the Civil Judge (Jr. Dvn.) and to set aside the order of the lower appellate court.

7. Per contra, counsel representing the respondents submitted, though the trial court has held that plaintiff is entitled for compensation on the land which was

acquired, the lower appellate court while re-appreciating the evidence has taken into consideration that plaintiff was from a different village and was also working as a Conductor and not cultivating the land, has given a finding to that effect. Further, the acquisition notification issued by the government in respect of different parties is concerned, the name of the predecessor in title of the defendants/respondents is found. Accordingly, he has sought for dismissing the appeal and to confirm the order of the lower appellate court.

8. The trial court based on the evidence has formed an opinion that Sy. No. 67 is a vast extent and the Government has granted land to the 1st defendant, 2nd defendant and also to the plaintiff but in the saguvali chit issued to the plaintiff, boundaries has not been disclosed. However, taking into consideration the evidence of the plaintiff that his land is bounded by Pindipapanahalli Gadi in the east and west by 1st defendants' land and north by Venkateshappa's land, relying upon Ex. P9-Mahazar and also Ex. P10-sketch prepared by the revenue inspector, it has opined that while marking those documents defendants have not placed any objection. It has noted that there was a grant based on the saguvali chit issued both in favour of the plaintiff and the defendants and that the defendants failed to prove the grant made in favour of the plaintiff had been canceled and accordingly, proceeded to decree the suit.

9. The lower appellate court noting that despite there is a grant order in favour of the plaintiff during March 1973 looking into the file maintained by the Tahsildar that there is a grant order for more than the extent which was available in the said survey number and in that view of the matter, having expressed that it requires re-survey and also to cancel the grant in so far as those who are not in possession, while considering Ex. P9 and P10-mahazar report and the sketch, what is opined is except those two documents there is no other document produced to prove the boundaries of the land of which the plaintiff is in possession and he is claiming ownership and that, to Ex. P9 the defendants are not the parties. Further, referring to the decision of this Court that satisfaction of the court is very much important as to the identification of the property is concerned, the lower appellate court has expressed that the identification of the property of the plaintiff itself is in dispute except Ex. P9 and P10. Also, having taken note of the evidence of DW 7-Tahsildar that the alleged property said to be granted to the plaintiff is in possession of Narasimhaiah and Pilla Muniyappa, observed that plaintiff is not in possession of the said property which the trial court has not considered and the plaintiff also has not produced any document to show that revenue authorities prepared the revenue sketch regarding availability of the land at the time of grant and without such a document it is difficult to believe that at the time of grant to the plaintiff land was available.

10. Further, Ex. P1 is the grant certificate in favour of the plaintiff wherein boundaries are not disclosed. On that premise, referring to Ex. P9 and P10 for which the defendants are not parties, without ascertaining the extent of land available the land has been granted over which the plaintiff is not entitled for any

relief as sought for. More over, as per the evidence as is analyzed by the appellate court, the land is said to be in possession of the defendants. That apart, the lower appellate court has also taken into consideration that plaintiff was from a different village and was also working as a Conductor and he was not cultivating the land, and that in the acquisition notification issued by the government in respect of different parties is concerned, the name of the predecessor in title of the defendants/respondents is found.

11. In that view of the matter, for want of mentioning the boundaries at the time of grant in favour of the plaintiff and also when Ex. P9 and P10-mahazar and sketch are drawn in the absence of the defendants as parties, based on the evidence with regard to possession which is with the defendants, Ex. P9 and P10 do not assume any importance. The finding of the lower appellate court in this regard cannot be lightly thrown out.

12. Apart from that, what is being demonstrated before the Court is, plaintiff has come before this Court to knock of the compensation awarded on acquisition of the property and it is also demonstrated that the properties, are in favour and in the name of the respondents" predecessor to the extent of 1.37 and 1.00 acre in Sy. No. 67. Further, plaintiff has approached the Court only during 1993. That being the case, appellant/plaintiff herein has no locus standi to challenge the acquisition of property which was in the name of respondents" predecessor, by the government and also depositing the compensation amount in their favour. The lower appellate court having noted that the acquisition notification is issued in the name of the respondents" predecessor in title, has rightly set aside the order of the trial court. Might be there was a grant earlier in favour of the appellant but the same has not been assailed by him and also he was not residing in that village and was working as a Conductor. In the fact situation of he residing elsewhere, claiming a right that he is entitled for compensation cannot be accepted. As such, the lower appellate court is justified in holding that plaintiff is not entitled for any right as claimed by him. While answering the substantial question of law raised accordingly, appeal filed by the plaintiff is dismissed. No costs.