

(2013) 08 KAR CK 0043

In the Karnataka High Court

Case No : Regular First Appeal No. 2287 of 2006

Sri. D. Lingegowda

APPELLANT

Vs

P. Narayana, Smt. Gowramma and Nagesha

RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Citation : (2013) 08 KAR CK 0043

Hon'ble Judges : B.S. Indrakala, J

Bench : Single Bench

Advocate : H.C. Shivaramu, for the Appellant; R.S. Ravi, Advocate for R-1, R-2 and R-3, for the Respondent

Judgement

B.S. Indrakala, J.—The above appeal is filed against the judgment and decree passed in OS No. 11/2002 on the file of the Principal Civil Judge (Sr. Dvn.), Mysore dated 28.7.2006 by the 3rd defendant therein. For the sake of convenience, the parties herein are referred to by their respective rank i.e., appellant as 3rd defendant, respondent no. 1 as plaintiff, respondents 2 and 3 as defendant Nos. 1 & 2 respectively.

2. It is the case of the plaintiff that his father was an employee under the then Maharaja of Mysore, he was working in the Darbar Bakshi Department of the palace; he was retrenched from service on 20.4.1972 due to disabandonment of palace establishment and by then he had already put in 24 years of service. Further, it is contended by the plaintiff that His Highness Maharaja of Mysore, keeping in mind the services rendered by the employees of the palace, gifted an extent of 105 acres of land in the land bearing Sy. No. 4 of Kurubarahalli Village, Kasaba Hobli, Mysore for the benefit of the employees and formed the layout under the name and style of Kempa Cheluvarajammanni Layout (for short "KC Layout") and the Mysore Urban Development Authority (Hereinafter referred to as MUDA for short) took over the land and formed the sites in the said land. Further, it is contended that in pursuance of the order of the Government of Karnataka bearing No. WNE 36 MIC 01 dated 15.5.1995 and also the notification

issued by MUDA bearing No. MUDA.NM.GOA 696-97 dated 9.4.1996, the list of employees of the Mysore Palace were published and they were entitled to be allotted a site in the said layout to be formed ha the land so gifted by his Highness. Further, it is alleged by the plaintiff that in the list of employees the name of his father was also mentioned to be working under Darbar Bakshi Office. It is contended further that as on the date of notification i.e. as on 9.4.1996, his father was dead and as such, 1st defendant viz., his mother representing the family of the plaintiff and defendants nos. 1 and 2 filed an affidavit before the concerned authority and sought allotment of the site in favour of deceased Puttaswamy to be given to her. On considering such circumstances, the Mysore Palace Central Co-operative Society Limited, Mysore intimated the MUDA on 14.12.1992 in Letter No. 000353 that site no. 368 of K.C. Layout, Mysore be allotted in the name of the 1st defendant and accordingly, the said site was allotted and registered in the name of his mother; possession certificate was issued on 23.2.1999, Katha of the said property was also made out in the name of the 1st defendant. It is specifically contended by the plaintiff that though the said site which is the subject matter of the suit was allotted in the name of the 1st defendant, it was the joint property of the plaintiff and defendant nos. 1 and 2 and defendant nos. 1 and 2 had no independent right over the schedule property to alienate the same to others. Further, it is alleged that plaintiff has 1/3 share in the schedule property to the knowledge of all the defendants, despite which the 1st defendant with the consent of the 2nd defendant sold the said site in toto for sale consideration of Rs. 3,60,000/- to the 3rd defendant/appellant herein under the registered sale deed dated 8.11.2000 to which the 2nd defendant has attested his signature as a consenting witness, but, such the sale does not bind his share in the property and in the circumstances, he sought allotment of his 1/3 share in the schedule property.

3. As could be seen from the Judgment, defendant nos. 1 and 2 viz., the mother and brother of the plaintiff remained absent and as such they were placed ex parte, whereas the appellant though entered appearance through his counsel, has not chosen to file any written statement nor has he contested the case on merits. In the circumstances, the trial Court deemed it fit to decree the suit as sought by the plaintiff by the impugned judgment.

4. Aggrieved by the said judgment and decree, 3rd defendant i.e., the purchaser of the property who is the appellant herein has preferred the above appeal interalia contending amongst other grounds that his counsel had told him that he would intimate him about his presence before the Court whenever required and with that bonafide belief he did not personally go to Mysore to inquire about the progress of the suit from time to time. Further, it is contended that in the circumstances his non-filing of the written statement before the Court below was unintentional and was by bonafide mistake. Further, it is contended that inspite of non-filing of the written statement, the trial Court ought to have exercised its jurisdiction to adjudge the claim of the plaintiff contending that the Court below erred in not noticing that the plaintiff had not given the details of all the

properties held by the family and failed to notice that the said site was sold for the purpose of discharging the hand loans and for other family necessity and further, failed to note that the site itself was allotted in the individual name of his vendor - 1st defendant; she had right to convey the same etc. and has sought allowing of the appeal.

5. Learned counsel appearing for the appellant contended that on perusal of the sale deed, it is seen there is an averment to the effect that the property was sold for the purpose of family necessity and in the circumstance, even if it is assumed that the plaintiff had 1/3 right in the property, the contents of the sale deed will have to be established in the proceedings by him for which purpose the appellant may be provided an opportunity to prove the same; further, he contended that the said property itself was allotted in the name of the 1st defendant-vendor, the question of he going behind the proceeding which took place before such allotment was not required and he is the bonafide purchaser for value and in the circumstances whatever contentions the appellant may deem fit to urge will have to be urged before the Court below; further, he submitted that non-filing of the written statement by the appellant before the Court below was unintentional and as detailed in the memorandum of appeal; therefore, he submitted that he may be provided with an opportunity to substantiate his case before the trial Court.

6. Per contra, learned counsel for the respondent herein submitted that the plaintiff having his own right in the schedule property is prevented from enjoying the same right from 18.11.2000 and though the, appellant was aware of the suit and he had entered appearance through his counsel, intentionally remained absent and in the circumstances, no leniency can be shown to him by giving further opportunity. On perusal of the impugned judgment, at paragraph 4 it is specifically mentioned that the appellant herein who entered appearance through a counsel has not chosen to file his written statement. In the circumstances, it is seen that the appellant had not availed the opportunity provided to him to establish his case during the entire proceedings and admittedly the suit is filed in the year 2002 and the judgment is rendered in 2006. In the circumstances, the contention of the counsel for respondent no. 1 herein that the reasons assigned by the appellant cannot be easily brushed aside, however, to meet the ends of justice and equity by fixing the date, the matter requires to be remanded to the Court below with a direction to provide an opportunity to the appellant herein to substantiate his case by filing his written statement and adducing evidence. Further by doing so, no prejudice or hardship would be caused to either of the parties. Hence, the following:

ORDER

The impugned judgment and decree passed in O.S. 11/2002 on the file of the Prl. Civil Judge (Sr. Dn.), Mysore is hereby set-aside and the matter is remanded to the Court below with a specific direction to dispose of the said suit within six months from the date of receipt of copy of this order by providing an opportunity to both the plaintiff as well as the defendants to file further pleadings if need be

and to adduce evidence.

The appellant is liable to pay cost of Rs. 1000/- to the 1st respondent herein.

As the appellant as well as the contesting respondent no. 1 is duly represented by their respective counsel, they are directed to be present before the Court below on 06/09/2013 and no fresh notice of transfer need be given to the parties.

Registry is directed to transmit the records forthwith.