

(2011) 11 KAR CK 0200

In the Karnataka High Court

Case No : Regular Second Appeal No. 2265 of 2010

Sri. Rajanna

APPELLANT

Vs

Sri. Rangaiah and Sri Thimmaiah

RESPONDENT

Date of Decision : 28-11-2011

Acts Referred:

Citation : (2011) 11 KAR CK 0200

Hon'ble Judges : K.N. Keshavanarayana, J

Bench : Single Bench

Advocate : M.B. Chandra Chcode, for the Appellant; Mahantesh S. Hosmath, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Keshavanarayana

1. This appeal is directed against the concurrent judgments of the court below in dismissing the suit of the appellant-plaintiff.

2. The appellant-plaintiff filed the suit in O.S.No.163/05 on the file of the Civil Judge (Jr.Dn) & JMFC, Tumkur, seeking relief of declaration of his title and for permanent injunction in respect of the land bearing Sy, No.19/8C measuring 1 acre 24 guntas situated - to Kodithimmasahalli village, Kora, hobli, Tumkur taluk.

3. The case of the plaintiff in brief was that the suit schedule property originally belonged to his grand lather Kare Manjasah s/o late Thippekarayanna, he having acquired the entire land under the registered sale deed dated 20.05.1962 as per Ex.P2; that since the date of purchase, the said Karenanjaiah was in possession and enjoyment of the suit schedule property till his death and thereafter, the property was succeeded by his sons and subsequently, the sons of Karenanjaiah jointly handed over the possession of the suit schedule property to the plaintiff; that the name, of Karenanjaiah had been mutated in the revenue records and that he was in possession and enjoyment of the suit schedule property as absolute owner; that the defendants who have no manner of title, right or

interest, are trying to interfere with, the peaceful possession and enjoyment of the suit schedule property and therefore, the plaintiff sought for declaration of his title and for permanent injunction.

4. The respondents-defendants contested the suit and denied the case of the plaintiff. They contended that the suit schedule property originally belonged to one Gundappa and subsequently, the same was purchased by Mudlaiah, father of the defendants under a registered sale deed dated 20.02.1996 as per Ex.D1. Since the date of purchase, the defendants' father was in possession and enjoyment, of the property. Subsequent to his death, his sons are in possession and enjoyment of the same. Therefore, they sought, for dismissal of the suit.

5. The parties led evidence both oral and documentary in support of their respective contentions. The trial Court on appreciation of oral and documentary evidence held that the plaintiff has utterly failed to prove his title to the suit schedule property and also the possession of the same. In that view of the matter, the trial Court held that the plaintiff is not entitled for the reliefs as sought and accordingly, it dismissed the suit on the appeal filed by the appellant before the lower "appellate". Court, the lower appellate court on reappreciation of oral and documentary evidence, confirmed the judgment and decree passed by the trial Court and consequently, dismissed the appeal. It is against these concurrent judgment of the courts below, the appellant is before this Court,

6. I have heard learned Counsel for the appellant and perused the judgments under appeal.

7. From the perusal of the judgments under appeal, it is clear that both the courts below on appreciation of oral and documentary evidence have recorded finding of facts that the plaintiff has failed to prove his title to the suit schedule property and also his possession over the same, This finding has been recorded by drawing inferences from the entries in the revenue records which have presumptive value since those entries in the revenue records clearly indicate that the plaintiff was not in possession of the suit schedule property, but on the other hand, the name of Gundurao finds place as the person in possession of the property. No doubt, the plaintiff has produced Exs.P1 and P2 the two sale deeds, under which his grand father and his vendor claimed to have purchased the property. However, both the courts below have noticed that the plaintiff has not produced any documentary evidence to show that the vendor under Ex.P1 had title to the property. The name of the vendor of the grand father of the plaintiff under Ex.P1 was not found in any revenue records to show that the suit schedule property was owned by him."

8. Having regard to the fact that the plaintiff has not produced even any iota of evidence to show the title of the vendor of his grand, father, and since the revenue records does not establish the possession of the property by the plaintiff and, the documents produced by the defendants would indicate that the suit schedule property was owned by Gundurao and he was found in possession of.

the suit schedule property, the findings recorded by the Court below cannot be termed as perverse or. illegal The findings recorded by the courts below are purely questions of fact and having been recorded on proper appreciation of oral and documentary evidence this Court sitting in second appeal cannot reappreciate the evidence on record and record a different, finding. It is not pointed by learned Counsel for the appellant that the courts below have ignored any material evidence or that the findings recorded by the courts below are contrary to the evidence on record.

9. In this view of the matter I find no grounds to entertain this appeal. No substantial question of law arises for consideration. Therefore, the appeal lacks merit and is dismissed accordingly.