

(2012) 08 KAR CK 0340

In the Karnataka High Court

Case No : Regular First Appeal No. 2176 of 2010

Sri. T.S. Shivabhadrapa and Sri. R. Siddaraju

APPELLANT

Vs

The Commissioner, Bangalore Mahanagara Palike, J.C. Road,
Bangalore - 560 002 and Others

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Citation : (2012) 08 KAR CK 0340

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : Sunitha M, for the Appellant; S. Chandra Mohan, Party - In - Person
For R5 and Sri Vijayakumar.A. Patil, For R1-R4, for the Respondent

Judgement

A.S. Bopanna

1. The appellants herein are the plaintiffs in O.S. No. 823/2008. The suit in question was filed by the plaintiffs seeking for a declaration that the approved plan bearing L.P. No. 2859/2007-2008 dated 26.10.2007 issued by the defendants no. 1 to 4 is unlawful, illegal, improper and liable to be set aside. In that regard, the consequential relief of injunction was also prayed. The Court below has ultimately dismissed the suit by its judgment dated 03.09.2010. The plaintiffs therefore claiming to be aggrieved by the same are before this Court in this appeal. The parties would be referred to in the same rank as assigned to them before the Court below for the purpose of convenience and clarity.

2. Heard the learned counsel for the appellants and the contesting respondent, who appeared party-in-person.

3. The brief facts to be noticed is that, as already indicated, the plaintiffs had approached the Court below contending that, the construction being put up by the 5th defendant, who is the owner of site bearing No.257, 17th cross, 24th main, 5th phase, J.P.Nagar, Bangalore based on the approved plan bearing L.P.No.2859/2007-2008 dated 26.10.2007 is contrary to law inasmuch as the

plan itself has been approved contrary to the Revised Master Plan 2015 and Zonal Regulations 2007.

4. The plaintiffs are the owners of the respective adjacent properties bearing No.256 and 258, 17th cross, 24th main, 5th phase, J.P.Nagar, Bangalore. It is in that context, the prayer was made in the plaint to declare the plan itself as illegal. The defendant had appeared and disputed the claim put forth by the plaintiffs. It was the contention of the Official defendants that, the plan had been sanctioned and construction is being put up by the 5th defendant is in accordance with law. Similarly, the 5th defendant also contended that, as per the sanctioned plan the construction is being put up and the suit is without basis.

5. The 1st plaintiff had examined himself as PW-1 and the documents at Exs.P1 to P17 were marked. The defendant did not choose to tender oral evidence nor has he relied on any document. The Court below ultimately while dismissing the suit had arrived at the conclusion that, the prayer made in the plaint has become infructuous inasmuch as the 5th defendant has put up construction on the property based on a different plan bearing L.P.No.42559/2007-2008.

6. It is the case of the learned counsel for the appellants that, such plan bearing L.P.No.42559/2007-2008 was not brought on record by any of the parties and therefore, the Court below could not have come to such a conclusion that the construction is as per the said plan. This being the basic contention, the party-in-person namely, the 5th defendant also contends that, the Court below has committed an error in arriving at the conclusion that the construction is as per L.P.No.42559/2007-2008 as there is no such plan.

7. It is his case that, the plan sanctioned in his favour bears L.P. No.2859/2007-2008 and the said plan is sanctioned in accordance with the requirements under the Revised Master Plan 2015 and the Zonal Regulations 2007. He would further contend that, at an earlier point when the Court below had granted injunction against the 5th defendant, he was before this Court in MFA. No. 7008/2008 which was disposed of on 30.10.2009. By the said order, the injunction order was set aside and he was permitted to put up construction as per the said plan bearing L.P.No.2859/2007-2008. Hence, he contends that, the construction put up by the 5th defendant is in accordance with law.

8. Having noticed the contention, it is to be taken into consideration that, at the outset both the parties agree that the Court below was not justified in referring a non-existent plan bearing L.P.No.42559/2007-2008 inasmuch as the same was not a document on record. More particularly the 5th defendant, in whose favour such observation was made does not rely on the said plan to contend that, the construction is as per the said plan. That being the situation, the trial Court could not have come to the conclusion that, the prayer has become infructuous by holding that the plan bearing L.P.No.2859/2007-2008 has been substituted by a subsequent plan when the 5th defendant himself is contending that his construction is as per the plan bearing L.P.No.2859/2007-2008, Hence, it was

incumbent on the part of the trial Court to consider the case on merits and arrive at the conclusion as to whether the said plan L.P.No.2859/2007-2008 is in accordance with the provisions contained in the Revised Master Plan 2015 and Zonal Regulations 2007. Though, the 5th defendant/party-in-person contends that, the construction is held to be as per law in MFA.No.7008/2008, having perused the order passed therein, it is seen that, this Court had permitted the 5th defendant to proceed with the construction but, has indicated that the question as to whether the sanctioned plan issued by the Corporation is in accordance with the Revised Master Plan or not is a matter which is required to be decided at the time of trial.

9. From the observations made above, it is seen that, the trial Court has not decided this aspect even after trial but, has proceeded on the basis of another sanctioned plan to which the 5th defendant himself does not concede. Therefore, the matter requires reconsideration by the Court below in its correct perspective after permitting the parties to tender evidence on that aspect of the matter if need be. Accordingly, the judgment and decree dated 03.09.2010 is set aside, the suit in O.S.No.823/2008 is directed to be restored to the file of the IX Additional City Civil and Sessions Judge, Bangalore to reconsider the same in accordance with law keeping in view the evidence produced by the parties and the prayer made therein.

10. Considering that the parties are represented by their counsel, they shall appear before the Court below on 21.08.2012 as the first date of appearance. Thereafter, the trial Court shall regulate the proceedings. The appeal is therefore allowed in part. Parties to bear their own costs.