

(1949) 11 KAR CK 0002

In the Karnataka High Court

Case No : Second Appeal No. 284 of 1947-1948

Subbegowda and Others

APPELLANT

Vs

H.L. Keshava Murthy and Others

RESPONDENT

Date of Decision : 15-11-1949

Acts Referred:

Contract Act, 1872 — Section 69, 70

Citation : AIR 1950 Kar 6

Hon'ble Judges : Mallappa, J;Balakrishnaiya, J

Bench : Division Bench

Judgement

Balakrishnaiya, J.—This appeal arises out of O.S.No. 632 of 1944-45 filed by respondent 1 in the Court of the Munsiff of Hassan. Respondent-plaintiff 1 and defendants 7 and 8 are the sons of one Lakshminaranappa. The suit property is ancestral to the plaintiff and defendants 7 and 8 and the suit is for possession of the suit property both on his own behalf and on behalf of defendants 7 and 8, with mesne profits from the date of suit till the date of delivery of possession.

2. It is common case that the property was acquired by Krishnappa, the grandfather of the plaintiff, who claims half of the same under the will of the grandfather and one sixth as the heir to his father. He claims two-third share and the remaining on-third is said to belong to defendants 7 and 8 together. His mother, Venkamma, who claimed the property under a gift deed from her father-in-law, Krishnappa, was in possession and enjoyment even during the life-time of Lakshminaranappa, her husband, and owing to default in paying the arrears of revenue to the Government, the property in dispute was sold. In order to get the revenue sale set aside and regain the ownership of the property, Venkamma executed a usufructuary mortgage deed dated 22nd March 1943 in favour of one Manjegowda since deceased, the husband of defendant 2 and the undivided father of defendants 3 to 5, for a sum of Rs. 312-0-10 and the said Manjegowda deposited the arrears of kadayam of the land together with the compensation in the Revenue Department and got the sale cancelled. Since then the schedule

properties were said to be in possession of Manjegowda and after his death, defendants 1 to 6, his legal heirs, are in possession of the same. They, however, denied the plaintiff's right to possession, but alternatively pleaded that in the event the Court should decide that the plaintiff is entitled to possession, they should become entitled to repayment of the arrears of revenue advanced by them before the delivery of the property to the plaintiff. The plaintiff in his turn denied that Venkamma had even possession of the suit schedule property, or that she had any right to mortgage the same. He also stated that no arrears of revenue were due and pleaded that even if the payment was made towards revenue, it was made voluntarily and as such not binding on the plaintiff.

3. There is no dispute that the suit property belonged to Krishnappa, the grandfather of the plaintiff. Though Krishnappa and his son Lakshminarannappa were divided the suit property appears to have been kept in common enjoyment with the result that each of them had a right to the moiety of the property. The plaintiff claims the entire interest of Krishnappa under a will and a share through his father in the remaining half of the property. His mother Venkamma claimed the entire property under a gift deed from Krishnappa her father-in-law. She filed a suit in 1940 and obtained a decree on 35th February 1941 in her favour wherein it was held that the property belonged to her. The said decree was confirmed in the first appeal R.A. No. 111 of 1940-41, on 2nd December 1942. But in S.A.No. 356 of 1942-43 on the file of the High Court, both the decisions of the Munsiff and Subordinate Judge were set aside and the present plaintiff was declared to be the owner of the suit schedule property. The mortgage deed, Ex. IX in favour of Manjegowda is dated 22nd September 1943 when Venkamma, the mortgagor, was ostensibly the owner as held by the two Courts and at all events, on that date she had a right. That she was also in possession of the property is fully borne out by Ex. IX which is found to have been attested by H. Lakshminarayanan, who is no other than the father of the plaintiff through whom he claims a portion. There can, therefore, be little or no doubt that on that date, she was not only a declared owner but was also in actual possession of the property.

4. It is contended by the learned advocate for the respondents that Venkamma, the mortgagor, had no right to the property and could not pass interest under the mortgage, that the identity of the property in respect of which the arrears of revenue is said to have been paid by raising a debt is not established and that as the mortgagor Venkamma is ultimately declared to have had no interest, the defendants cannot resist possession till the money advanced is paid to them. It is further contended that if at all the defendants are entitled to any money they should look to Venkamma for the recovery of the money under the mortgage bond and that the debt is not binding on the plaintiff or his share in the property.

5. For Ex. v, the petition of H. Lakshminarayanan son of Krishnappa, it is clear that the vritti of the land belonging to Hanandammann Krishnappa situated in Jodi Satyamangala village had been sold and Petal Siddalingegowda of Hassan had

purchased the same in the revenue auction, On a request of Lakshminaranappa in a petition to the Amildar that the kandayama in full and the compensation amount may be received from Manjiah, Manjiah deposited the amount, where upon the Amildar reported to the Sub-Division Officer to the effect that for arrears of kandayam, the vritti of Krishnappa had been auctioned on 27th February 1943 and that on behalf of the petitioner one Manjiah had paid the arrears of revenue with interest and process free amounting to rupees 312-0-10 and that the sale may be cancelled. The sale was consequently cancelled. it is, thus, amply clear that the land sold for arrears of revenue, was in the name of Krishnappa and that the mortgage amount was deposited by Manjiah in the Revenue Department to avoid the said sale.

6. The next point for consideration is about the title of Venkamma on the death of Krishnappa, Venkamma asserted her title to the property and was in possession thereof. She filed a suit which was decreed in her favour and the decree was also confirmed by the appellate Court. It cannot be said that she did not set up a bona fide claim to suit property; and further both the Courts below have come to the conclusion that the payment of arrears of revenue was not a voluntary one. The plaintiff does not assert that revenue was not due or that he had paid the same. If no deposit had been made by the said Venkamma through her mortgagee, the revenue sale would have extinguished the title of the plaintiff in the suit property. It must therefore be presumed that Venkamma and her mortgagee acting in good faith paid the kandayama in order to protect the interest in the property which Venkamma apparently possessed at the time. Venkamma had in fact possession of the property and the Courts below have upheld her title. it does not in the least make any difference that Venkamma lost her title subsequently in the second appeal and the plaintiff was declared the owner.

7. It is an established principle of law that where a person who puts forward a bona fide claim makes a payment in respect of the disputed property he is entitled to the protection afforded by Section 69, Contract Act, even though it ultimately transpires that he had not such an interest. It is consistent with general principle of equity that those who receive benefit from the payment lawfully made, by another cannot retain the benefit and plead non-liability and the terms of Section 70, Contract Act are wide enough to give effect to this principle. The scope of Sections 69 and 70, Contract Act is very well brought out by Venkataramana Rao C. J., in 22 Mys. L. L. 150 where in almost similar circumstances, he had observed that:

"To cases like this, the doctrine of unjust enrichment is applied. The basis of the doctrine is that if a person has received some property or benefit from another, it is just that he should make restitution, as otherwise he would be unjustly enriched at the expenses of the other."

Lord Macnaghten applied the same principle in *Dakhina Mohun Roy v. Saroday Mohan Roy* 21 Cal. 142 : 20 I.A. 160 P.C. to a case of payment of taxes pending

litigation and observes at page 148 thus:

"It seems to their Lordships to be common justice that when a proprietor in good faith pending litigation makes the necessary payments for the preservation of the estate in dispute, and the estate is dispute, and the estate is afterwards adjudged to his opponent, he should be recouped what he has so paid by the person who ultimately benefits by the payment."

It is just and equitable, therefore that the plaintiff and defendants 7 and 8 should pay the amount of revenue paid by defendants 1 to 6 before possession is delivered to the plaintiff and defendants 7 and 8.

8. The trial Court decreed the plaintiff's suit for possession of the properties for two-thirds share and in favour of defendants 7 and 8 for one-third share on their payment of Rs. 812-0-10 to defendants 1 to 6 in proportion to their respective shares to the properties. The claim for mesne profits was dismissed. On appeal the learned Subordinate Judge decreed the suit in favour of the plaintiff in entirety without payment of Rs, 312-0-10 and also awarded mesne profits of Rs. 100 with proportionate costs in both the Courts. The plaintiff has asked for possession of the entire property on his own behalf and on behalf of defendants 7 and 8. But the trial Court has directed delivery of plaintiff's two-third share and defendants 7 and 8 to one-third share on payment of proportionate liability. it does not appear to be convenient to split up the liability and introduce the complication of partition in respect of relief claimed by defendants 1 to 6. The property must be redeemed in full.

9. We, therefore hold that in modification of the decrees of the Courts below, there should be a decree in favour of plaintiff and defendants 7 and 8 for possession of the suit property on payment of Rs. 312-0-10. As defendants 1 to 6 are in enjoyment of the property in lieu of the interest under the mortgage with possession and their possession having been found to be lawful, the plaintiff or defendants 7 and 8 will not be entitled to mesne profits, till the date of deposit into the Court. The question of mesne profits may be enquired into on and from the date of the amount deposited into Court. The respondents will pay the costs of the appeal in this Court. Parties will bear their own costs in the Courts below.

10. Decree modified.