

(2016) 01 KAR CK 0280

In the Karnataka High Court

Case No : R.S.A. No. 100747/2014 (DECN. and P.INJ)

Suresh Laxmanrao Patil

APPELLANT

Vs

Sandeep Annasab Gavade and Others

RESPONDENT

Date of Decision : 21-01-2016

Acts Referred:

Registration Act, 1908 — Section 17, Section 50

Citation : (2016) 01 KAR CK 0280

Hon'ble Judges : B.V. Nagarathna, J.

Bench : Single Bench

Advocate : M.G. Naganuri, S.V. Deshpande and M.R. Shinde, Advocates, for the Appellant; Abhinandan Appasaheb Aski and D.M. Bandi, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

B.V. Nagarathna, J.—1. Defendant No. 1 in O.S. No. 1469/2010 has filed this Second Appeal, assailing judgment and decree passed in R.A. No. 29/2014 dated 25.8.2014 passed by the III Addl. Senior Civil Judge at Belgaum, by which judgment and decree passed in O.S. No. 1469/10 dated 5.12.2013 by the III Additional Civil Judge (Sr.Dn) & JMFC, Belgaum, has been confirmed.

2. For the sake of convenience, the parties shall be referred to, in terms of their status before the Trial Court.

3. The 1st Respondent filed the suit seeking the relief of declaration that he is the absolute owner of the suit property bearing R.S. No. 247/2A measuring 5 acres 4 guntas, situated at Wagavade village, Belgaum Taluk and District, and consequential relief of permanent injunction, restraining defendant from interfering with his peaceful possession and enjoyment of the suit property.

4. It is the case of the plaintiff that he is the owner of the suit property having purchased the same from its erstwhile owners viz., (1) Monappa Kedari Dhamanekar (2) Dhakalu Kedari Dhamanekar (3) Kamalabai Parasharam

Dhamanekar (4) Krishnabai Nagesh Sherekar (5) Gangubai Yallappa Dhamanekar and (6) Parasharam Yallappa Dhamanekar under a registered sale deed dated 22.11.2006. Thereafter his name was mutated in the revenue records and it was reflected in the record of rights and from that date he is in possession of the suit property. R.S. No. 247 originally measuring 20 acres, which has been sub-divided into pot hissas. Mother of defendants 2 and 3 i.e. Saraswati Laxmanrao Patil is the owner of 10 Acres 09 guntas in Sy. No. 247/1; Laxman Lagamappa Konakeri - defendant-4 is the owner in possession of 2 acres 22 guntas 4 annas in Sy. No. 247/2B and the defendant-1 is owner in possession of 2 acres 22 guntas 4 annas and the same is numbered as Sy. No. 247/2C. That, defendants' lands are adjoining the suit lands and they are in no way concerned with the suit land. But defendants are trying to encroach on the suit land and disturb peaceful possession of the plaintiff. Plaintiff requested defendant not to do such illegal acts, but in vain. Therefore, he approached the jurisdictional police who directed him to approach the civil court. Hence, he filed the suit seeking the twin reliefs.

5. On receipt of suit summons and court notices issued by the Trial Court, defendants 1 and 4 appeared through their Counsel and filed written statement. But defendants 2 and 3 remained absent and they were placed ex parte.

6. The 1st defendant filed his written statement stating that he had entered into an agreement to sell with the erstwhile owners of the suit land on 25.11.2004 i.e. R.S. No. 247/2A measuring 5 acres 4 guntas. That, R.S. No. 247 is undivided and there is no pot hissa or sub-division. The said extent measures in all 20 acres 17 guntas, as per the map of the A.D.L.R. dated 3.1.2011. That, plaintiff No. 1 did not intimate defendant-1 about purchasing of the property. The exact portion of the property purchased by plaintiff is not identifiable, as the boundary is not mentioned and there is no boundary of the suit land as per the map. That, the plaintiff has not arraigned his vendor as a party to the suit. But the plaintiff's vendor had executed agreement to sell in favour of defendant-1 prior to the execution of the sale deed. That, the suit is not maintainable on account of the non-joinder of the vendor. That, the plaintiff has suppressed material facts. Therefore, the 1st defendant sought for dismissal of the suit.

7. On the basis of the aforesaid pleadings, the Trial Court framed the following issues for its consideration:

1. Whether the plaintiff proves that, he is the absolute owner of the suit property?
2. Whether the plaintiff proves that he is in lawful possession of the suit property as on the date of the suit?
3. Whether the plaintiff proves the alleged interference by the defendants?
4. Whether the plaintiff is entitled for the relief of declaration as prayed?
5. Whether the plaintiff is entitled for the relief sought for?
6. What order or decree?

8. In support of his case, plaintiff examined himself as PW.1. He relied upon 24 documents which were marked as Ex.P.1 to P.24, while 1st defendant examined himself as D.W.1 and two other witnesses were examined as D.W.2 and D.W.3. The defendant produced two documents which were marked as Ex.D.1 to Ex.D.2(a).

9. On the basis of said evidence, the trial Court answered all the issues in the affirmative and decreed the suit of the plaintiff holding that plaintiff was the absolute owner of the suit schedule property and further restrained defendants, their agents, servants or anybody acting on their behalf from interfering with the peaceful possession and enjoyment of the plaintiff over the suit property by granting the relief of permanent injunction.

10. Being aggrieved by the judgment and decree of the trial court dated 5.12.2013, the 1st defendant preferred R.A. No. 29/2014 before the First Appellate Court, which, on hearing the respective parties framed following points for its consideration:

1. Whether the appellant proves that the trial court has erred in decreeing the suit by holding that the plaintiff has established his title and possession over the suit property?

2. Whether the judgment and decree of the trial court call for interference?

3. What order?

It answered points 1 and 2 in the negative and dismissed the appeal, by confirming the judgment of the Trial Court.

11. Being aggrieved by the judgment and decree of the I Appellate Court, 1st defendant has preferred this Second Appeal.

12. I have heard the learned Counsel for the appellant and learned Counsel for 1st respondent and perused the material on record as well as the original records.

13. Learned Counsel for the appellant contended that the courts below were not right in holding that the plaintiff was in possession of the suit land, whereas under the agreement to sell dated 25.11.2004, the 1st defendant was given possession of the suit land by the very vendors of the plaintiff. He contended that initially, the vendors of the plaintiff had agreed to sell the suit land to the 1st defendant, but they had apparently sold the suit land to the plaintiff. However, on 25.11.2004, when the agreement to sell was entered into, possession of the suit land was granted to the 1st defendant. It is also contended that the suit filed by the plaintiff had to be dismissed as the suit schedule property is not clearly identifiable. The Plaintiff submits that he has purchased 5 acres 4 guntas in R.S. No. 247/2A, but the boundaries to the suit land are not quoted. Therefore, he contended that in the absence of there being certainty and identity of the suit land no relief should have been granted to the plaintiff. He also contended that the judgment and decree of the court below is incorrect as the evidence on

record has not been appreciated by the courts below in its proper perspective and that the substantial questions of law would arise in this appeal, which may be admitted for a detailed hearing of the matter.

14. Per contra, learned Counsel for first respondent supporting the judgment and decree of the courts below contended that the suit was filed seeking relief of declaration and injunction based on Exhibit P.7 sale deed. Under the sale deed the vendors of the plaintiff sold the suit schedule property to plaintiff on 22.11.2006. By that sale deed plaintiff acquired right, title and interest as well as possession in respect of the suit schedule property. The defendants are owners of adjacent lands. Their survey numbers are totally distinct as there has been a division of property which took place long time back. Even according to the hand-sketch attached to the plaint, it is shown that the 1st defendant is in possession of R.S. No. 247/2C. Defendant No. 4 is in possession of R.S.247/2B and the remaining part of R.S. No. 247/1 is in possession of defendants 1 to 3 jointly. That, at no point of time, defendants had possession of R.S.247/2A, which is suit schedule land and the plaintiff's vendors executed a sale deed on 22.11.2006 in respect of this very piece of land and handed over possession of the same to the plaintiff. He therefore, contended that though Ex.D.2 was marked in the evidence as an agreement of sale said to have been entered into between the vendors of the plaintiff and defendant-1, that document was not proved in evidence, and therefore, the courts below were right in not giving any credence to that document and by upholding that defendants were not in possession under Ex.D.2. He contended that this appeal does not give rise to any substantial question of law and therefore, the appeal may be dismissed, in limine.

15. Having heard learned Counsel for the parties and on perusal of the records as well as material on record, it is noted that so far as R.S.247/2A is concerned, the original owners were (1) Monappa Kedari Dhamanekar (2) Dhakalu Kedari Dhamanekar (3) Kamalabai Parasharam Dhamanekar (4) Krishnabai Nagesh Sherekar (5) Gangubai Yallappa Dhamanekar and (6) Parasharam Yallappa Dhamanekar. They have sold various portion of said Sy. No. 247 to defendants 1 to 4 as noted above. As far as the suit land is concerned, it is R.S. No. 247/2A. This piece of land was sold by the vendors to the plaintiff on 22.11.2006 under a registered sale deed. The said document also records that the possession of the suit land has been handed over to the plaintiff on that day. As against that registered document, defendants particularly the 1st defendant has relied upon Ex.D.2 to contend that there was an agreement to sell the suit land in favour of defendant-1 on 25.11.2004 and on that date possession was handed over to the 1st defendant and it is on the strength of that document that 1st defendant is entitled to enjoy the suit land. This contention of defendant/appellant has been negated by both courts below by placing reliance on the registered document in favour of plaintiff dated 22.11.2006. Under Section 50 of the Registration Act, 1908, if any document mentioned in clauses (a), (b), (c) and (d) of section 17, if duly registered, it would take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not

being a decree or order, whether such unregistered document be of the same nature as the registered document or not. Therefore, the registered sale deed dated 22.11.2006 would take effect as against unregistered agreement to sell dated 25.11.2004 on the basis of which the 1st defendant/appellant herein claims to be in possession of the suit land. That apart, Ex.D.2 document dated 25.11.2004 has not been proved in accordance with law. Neither the existence of that document nor its attesting witnesses have been examined. In the circumstances, both the courts below were right in not giving any credence to the Ex.D.2 and by placing reliance on Ex.P.7, have granted the relief of declaration and consequential relief of permanent injunction against the defendant.

16. I do not find any infirmity in the judgment of the court below. In my view, no substantial question of law would arise in this appeal. The appeal is devoid of merits and it is dismissed.

Parties to bear their respective costs.

In view of the dismissal of the appeal, I.A. 1/2016 does not survive for consideration and it is ordered to be filed.