

(1986) 01 KAR CK 0029
In the Karnataka High Court
Case No : Second Appeal No. 1087 of 1976

T. Ranganna

APPELLANT

Vs

Bhagirathi Bai and Another

RESPONDENT

Date of Decision : 15-01-1986

Acts Referred:

Easements Act, 1882 — Section 41

Citation : AIR 1986 Kar 256 : (1986) ILR (Kar) 1169

Hon'ble Judges : M.S. Nesargi, J

Bench : Single Bench

Advocate : R. Gopal, for B.K. Ramachandra Rao, for the Appellant; B.V. Balaji, for the Respondent

Judgement

1. This is plaintiff s second appeal arising out of O.S.No. 748 of 1971 filed by him in the Court of the Principal Munsif, Mysore.

2. The undisputed facts giving rise to the suit of the plaintiff may be stated as follows. The plaintiff and one Ugrappa were brothers. The property abutting Sayaji Rao Road, Mysore, belongs jointly to them. Ramachandra Rao whose wife and son are the defendants, occupied the entire building as a tenant. The entire building consists of shop portion and residential portion. On 1-5-1935 partition of the property took place between the plaintiff and Ugrappa Southern half portion was allotted to the share of the Plaintiff. The whole building had only one lavatory and that lavatory is still in existence. That is in the portion that has fallen to the share of the plaintiff. On 15-9-1931 Ramachandra Rao purchased Ugrappa's share under a registered sale deed Exhibit D-3. The plaintiff filed O.S.No. 498 of 1940-41 praying for eviction of Ramachandra Rao from the property that had fallen to his share and for arrears of rent. The suit was decreed as per Exhibit P-7 for possession also. The plaintiff took possession on 16-10-1942 under Exhibit P-2. Thereafter, he applied for license to the Municipal Corporation, Mysore, to enable him to erect a wall partitioning his share of the property from the share purchased by Ramachandra Rao. License was granted

and he did erect the partition wall. The construction of the partition wall cut off the use of the conservancy lane and lavatory by Ramachandra Rao and his people. Ultimately Ramachandra Rao filed O.S.No. 599 of 1951-52 in the Court of the I Munsiff, Mysore for relief including mandatory injunction to pull down the partition wall to the extent that was necessary for his use of his conservancy lane and lavatory. The trial Court granted a decree in his favour. In R. A. No. 109 of 1953 the decree was modified to the following effect

"In modification of the decree of the Munsiff, it is ordered and decreed that the plaintiff is hereby granted a mandatory injunction to have that portion of the wall which buttresses in the front portion of his bathroom removed and the door and the two windows in the plaintiffs bathroom to be opened. The plaintiff do have access to the conservancy lane and also the lavatory: until the defendant gets it determined the plaintiff has a right of way to the conservancy lane and also that the plaintiff has no right to use the lavatory."

The said decree came to be confirmed by the High Court in S. A. No. 28 of 1955.

3. In view of the aforementioned facts, the plaintiff filed the suit on hand for declaration that he is the absolute owner of the lavatory and the passage leading to the conservancy and the defendants have no manner of right in them and for grant of permanent injunction restraining the defendants from executing the decree passed in O. S. No. 509 of 1951-52 referred to above.

4. The records disclose that along with the plaint in the suit he filed I. A. No. I for temporary injunction. Notice was issued to the defendants. Ultimately I. A. No. I was dismissed on 6-12-1976. The plaintiff preferred Misc. Appeal No. 6 of 1972 and that also came to be dismissed.

5. The facts mentioned in the preceding paragraph show that the plaintiff did not have the benefit of the injunction during the pendency of the trial.

6. As already stated the trial Court decreed the suit. In appeal the lower appellate Court allowed the appeal and dismissed the suit of the plaintiff.

7. The records further show that on the filing of this appeal by the plaintiff the same came to be admitted on 3-12-1976 and temporary injunction as prayed for by him was granted. In the result the defendants could not execute the decree in O.S.No. 599 of 1951-52 and make available to them selves the use of the conservancy lane and of the lavatory.

8. It is the case of the defendants that Ugrappa had acquired the right to make use of the lavatory and the passage to the conservancy and he had under Exhibit D-3 sold that right also to Ramachandra Rao the predecessor of the defendants and therefore they were entitled to that right and as such they were entitled to the benefits of the decree in O.S.No. 599 of 1951-52.

9. The facts narrated in the preceding Paras show that the lavatory was the only lavatory attached to the house which was jointly owned by the plaintiff and

Ugrappa and there was partition of the property including the house premises between the plaintiff and Ugrappa on 1-5-1935 under Exhibit P-1. Perusal of Ex. P-1 discloses that nothing is mentioned in it about the use of the lavatory and the conservancy lane.

10. It is undisputed that both the shares, i. e., of the plaintiff and Ugrappa have residential portions and they were being made use of. These facts attract the application of S. 13(c) of the Easements Act, 1882 (here in after referred to as the Act). It is further clear that the residents residing in each one of these two portions must necessarily have had the use of the lavatory, if not, they would not have been able to enjoy their share at least to the residential portion. When that is so, it will have to be held that Ugrappa had acquired easement of necessity over the conservancy lane leading to the lavatory in question. It follows, in law, that Ugrappa had every right to sell this right also when he sold his share to Ramachandra Rao. When that is so, what is contained in Exhibit D-3 the title deed of Ramachandra Rao in regard to sale of this right to him, is valid in law. All these aspects have not been adverted to by the two Courts below.

11. Though the position in law as discussed above shows that the defendants did acquire the right in question, it is now to be seen whether the plaintiff has, in law, any right to succeed in this suit.

12. It has been already pointed out that the plaintiff after taking possession of his premises from Ramachandra Rao on 16-10-1942 under Exhibit P-2, he obtained a licence from the Mysore Municipal Corporation to construct a partition wall and did construct it thereby forcing Ramachandra Rao to file O.S.No. 599 of 1951-52 that too for mandatory injunction as already described. Therefore, it is patent that even prior to 1951-52 Ramachandra Rao had been deprived of the enjoyment of his right over the conservancy lane and the lavatory. But, he still continued to reside in the property that he had purchased from Ugrappa under Exhibit D-3 and enjoyed that property. The defendants also continued to enjoy the same. This state of affairs as is clear from the facts narrated in some of the earlier paragraphs, has continued up till today particularly because of the operation of the temporary injunction order granted by this Court on 3-12-1976. The one and the only conclusion that is to be reached from these facts is that the defendants have been enjoying their property acquired under Exhibit D-3 by their predecessor Ramachandra Rao even though the easementary right they had got for enjoyment of the conservancy lane and the lavatory in question, has been denied to them for the last about 33 years and odd. It is to be made clear at this stage, because Sri Balaji, learned Advocate appearing on behalf of the respondents urges so, that the defendants have not by themselves given up this right, but they have been deprived of this right in view of the order of temporary injunction passed by this Court on 3-12-1976. Even then, it is very plain that the defendants have been able to enjoy their property, namely, the one acquired by the predecessor Ramachandra Rao under Exhibit D-3 without the benefit of this easementary right over the conservancy lane and the lavatory which property

had undisputedly fallen to the share of the plaintiff. In this connection it is to be remembered that the easement of necessity acquired by Ugrappa and conveyed by him to Ramachandra Rao pertains to use of the lavatory also. Right of easement over the conservancy lane was only to facilitate Ramachandra Rao and his people to reach the lavatory. When the defendants have been deprived of the use of the lavatory for such a long period of 33 years, it follows that they must have some other alternative arrangement to ease themselves. That leads to a further irrefutable conclusion that the necessity that was there for the defendants to use the suit lavatory is no longer there. It has to be held that, in law, it has come to an end. Therefore, S. 41 of the Act has to apply. It reads as follows:

"An easement of necessity is extinguished when the necessity comes to an end."

13. In view of the foregoing reasons, the plaintiff is entitled to succeed. Hence, I allow this appeal, set aside the judgment and decree passed by the lower appellate Court and restore the one passed by the trial Court. It is directed that each party will bear his costs throughout.

14. Appeal allowed.