

(2017) 07 KAR CK 0045
In the Karnataka High Court
Case No : 588 of 2011

THE DEPUTY CONSERVATOR OF FORESTS & ORS.

APPELLANT

Vs

C.SRINIVAS & ORS.

RESPONDENT

Date of Decision : 11-07-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 100](#),
[Order 41 Rule 27](#), [Order 16 Rule 7](#) - Second appeal

Citation : (2017) 07 KAR CK 0045

Hon'ble Judges : Jayant Patel, S.Sujatha

Bench : DIVISION BENCH

Advocate : VASANTH V. FERNANDES, K.SREEDHAR, M.S.RAJENDRA PRASAD

Judgement

1. The appellants/defendants have preferred this Regular Second Appeal under Section 100 of Code of Civil Procedure, 1908 challenging the Judgment and decree passed by the II Additional District Judge, Mysuru in R.A.No.7/2004 whereby the Judgment and decree passed by the Principal Civil Judge (Sr.Dn), Mysuru in O.S.No.321/1995 is confirmed.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. Original Plaintiff filed O.S.No.321/1995 against the defendants for declaration, possession and permanent injunction, mesne profits and costs. It was contended that plaintiff was the owner and in possession of the landed property in Sy.No.82, New Nos. 192, 193 and 194, totally measuring 17 acres 20 guntas described in the schedule to the plaint; this land was granted to his father by the 3rd defendant vide grant certificate dated 10.4.1956, the father of the plaintiff was put in possession of the same. After the death of his father in the year 1981, the plaintiff has become absolute owner of the suit schedule property. It was further contended that defendants 1 and 2 interfered with his peaceful possession of the suit schedule property by making attempts to plant trees in the land. The plaintiff

complained to the defendants in writing, accordingly he was called upon to produce certain documents which were produced with, as demanded. Despite the same, as no action was taken by the defendants, the plaintiff filed Writ Petition before this Court, which came to be disposed of, directing the defendants to consider and dispose of the representations filed by the plaintiff within a period of two months. Thereafter, several requests were made by the plaintiff not to proceed with the planting of saplings in the suit property, but the same not having yielded any positive results, O.S. 321/1995 was filed before the trial Court, which came to be decreed as prayed for. Aggrieved by the same, defendants preferred R.A.No.7/2004 before the lower Appellate Court. In the said appeal proceedings, an application was filed by the defendants under Order 16 Rule 7 CPC seeking permission to examine the Tahasildar, Mysuru Taluk and for direction to the Tahasildar to produce certain documents. The Appellate Judge remanded the matter to the Trial Court to provide an opportunity to both the parties to adduce additional evidence. The said Judgment and order dated 16.03.2009 was challenged by the plaintiffs in M.F.A.No.34/2009 and this Court by Judgment and Order dated 26.11.2009, set aside the judgment dated 16.03.2009 observing that the Court has to consider the question whether grounds have been made by defendants as provided under Order 41 Rule 27 of CPC to adduce additional evidence. After remand by this Court, the learned Appellate Judge considered the case in the light of the observations made by this Court and dismissed the appeal. Hence, this second appeal. During the pendency of the appeal, original plaintiff died and his legal representatives are brought on record as respondents.

4. The arguments of the learned Government Advocate Sri.Vasanth V.Fernandes appearing for the appellants/defendants is two fold. Firstly, the challenge is made to the grant certificate - Ex.P2, not being genuine and valid. It was contended that the lower Appellate Court in para 29 of the impugned judgment though observed Ex.P2 - grant certificate was incomplete and legally not valid, for the reasons that the relevant columns of the grant certificate being filled by pencil; the certificate number being written in pencil; boundaries being not mentioned and thus expressing some doubts about the veracity of the same, proceeded to dismiss the appeal on the ground that the defendants have not challenged the grant certificate - Ex.P2. It was contended that the lower Appellate Court grossly erred in not examining the veracity of grant certificate dehors no such defense taken by the defendants in the written statement. In support of this contention, the learned counsel placed reliance on the judgment of the Hon''ble Apex Court in the case of Union of India -v- Vasavi Cooperative Housing Society Limited reported in 2014 (2) SCC 269. Placing reliance on this judgment of the Hon''ble Apex Court, it was contended that in a suit for declaration of title, the burden lies on the plaintiff to establish a clear case for granting such relief and a weakness, if any, of the case set up by the defendants would not be a ground to grant the relief to the plaintiff.

5. It was further contended that the I.As filed by the defendants to adduce the

additional evidence were not properly considered by the lower Appellate Court. Dismissal of the I.As for the production of additional evidence caused greater hardship to the defendants resulting in miscarriage of justice.

6. Secondly, it was contended that the order passed by the Tahasildar dated 06.07.2002 discloses that the plaintiff had created the concocted documents in respect of the subject land in collusion with the village accountant and other officials of the Revenue Department. The said document indicates that the plaintiff had no valid title to the suit property. This vital aspect was not examined by the Appellate Court in a right perspective. It was contended that the Courts below failed to appreciate the fact that land in question was transferred from the Revenue Department to the Forest Department for planting of trees, for developing birds sanctuary, play ground and many other purposes for the welfare of the public, which was confirmed by the letter of Tahasildar, Mysuru Taluk, Mysuru dated 01.07.1994 addressed to the Divisional Commissioner, Mysuru. The Deputy Conservator of Forests was examined before the Trial Court as DW-1 to show that the suit property is in possession of the Forest Department since 1994 and developmental work is carried on in the suit property by spending huge money. The defendants have also examined the Range Forest Officer as DW-2 who supported the contention of the defendants. The Trial Court failed to appreciate the evidence placed by the defendants and wrongly proceeded to hold that the plaintiff is the absolute owner of the suit property and is entitled for possession of the property. Accordingly, he seeks for allowing the appeal, setting aside the orders of the Courts below.

7. Per contra, the Learned Senior Counsel Sri.Rajendra Prasad appearing for the plaintiffs justifying the impugned judgment and decree passed by the lower Appellate Court would contend that the Courts below after appreciating the evidence on record, rightly dismissed the appeal, confirming the judgment and decree of the Trial Court whereby the original plaintiff was declared as the owner of the suit property. However, it was clarified that the decree of possession granted by the Trial Court is confined in respect of that portion of the suit property wherein the defendants have planted trees. It was the contention of the learned counsel that the grant order at Ex.P2 was not challenged by the defendants. The factual aspects not being contested, cannot be considered in the second appeal more particularly, when this Court has to entertain the appeal only on the substantial questions of law. The entire gamut of challenge in the second appeal is based on the genuineness of the grant certificate issued to the father of the original plaintiff. The disputed facts cannot be construed as a substantial questions of law and on this ground alone, the appeal deserves to be dismissed.

8. We have given our anxious consideration to the arguments advanced at the bar and perused the material on record.

9. The plaintiff filed the suit for declaration, possession, permanent injunction etc. In support of his case, examined himself as PW-1. A Court Commissioner appointed by the Court to make a local inspection was examined as PW-2. Ex.P1

to Ex.P35 were marked. On behalf of the defendants, one Sri.R.Raju, working as Deputy Conservator of Forests was examined as DW-1 and one A.H.Chandrababha, working as Range Forest Officer was examined as DW-2. Ex.D1 to Ex.D6 were marked. Based on the pleadings, 6 issues were framed by the Trial Court. On appreciating the oral and documentary evidence, the learned Trial Judge decreed the suit, which was originally set aside by the learned Appellate Judge and the same came to be set aside by this Court in M.F.A.No.34/2009, remanding the matter to the Lower Appellate Court. An application under Order 16 Rule 7 of CPC filed by the defendants numbered as I.A.No.4 and an application filed under Order 41 Rule 27 of CPC (I.A.NO.6) were considered along with the main matter by the Lower Appellate Court. The learned Appellate Judge held that the documents which the defendants would propose to rely upon namely, the order dated 06.07.2002 said to have been passed by the Tahsildar canceling the RTC made in the name of the plaintiff is not relevant to decide the issue of title in the absence of challenge to the grant certificate. Pleadings constitute the base upon which issues are framed, on the basis of which evidence is adduced and the matter is decided. Hence, no exception can be found with the said finding given by the learned Appellate Judge on appreciation of evidence. The application IA No.4 filed by the defendants was to examine the Tahsildar based on the very same point relating to the issue of grant certificate not being challenged at the first instance by taking any defence in the written statement. Thus, these two applications are rejected. An attempt was made by the learned counsel appearing for the defendants to contend that weakness if any, in the case of the defendants would not be a ground to grant relief to the plaintiff referring to the Judgment of the Hon''ble Apex Court in Vasavi Cooperative Housing Society Limited's case [supra]. In the said case, the Hon''ble Apex Court was considering a case where a declaration was sought by the plaintiff and recovery of the vacant possession from the defendants after removal of the structure made therein by them, inter alia, seeking for an injunction restraining the defendants therein from interfering with the peaceful possession of the plaintiff and for other consequential reliefs. The trial Court decreed the suit. In appeal, the Hon''ble High Court of Andhra Pradesh affirmed the Judgments, but observed that the appellant had made large scale construction of quarters. Therefore, it would be in the interest of justice that an opportunity be given to the appellant to provide alternative suitable extent of land in lieu of the schedule suit land for which time was granted. In further appeal before the Hon''ble Apex Court, the Judgment of the trial Court decreeing the suit which has been affirmed by the High Court was set aside. In that context, it was held thus: "15. It is trite law that, in a suit for declaration of title, burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff.

21. This Court in several Judgments has held that the revenue records does not confer title. In Corporation of the City of Bangalore v. M. Papaiah this Court held

that (SCC p. 615, para 5)

"5.....It is firmly established that revenue records are not documents of title, and the question of interpretation of document not being a document of title is not a question of law."

In *Guru Amarjit Singh v. Rattan Chand* this Court has held that (SCC p.352, para 2)

"2.....that the entries in jamabandi are not proof of title".

In *State of Himachal Pradesh v. Keshav Ram* this Court held that (SCC p.259, para 5)

"5.....the entries in the revenue papers, by no stretch of imagination can form the basis for declaration of title in favour of the plaintiff."

22. The Plaintiff has also maintained the stand that their predecessor-in- interest was the pattadar of the suit land. In a given case, the conferment of patta as such does not confer title. Reference may be made to the judgment of this Court in *Syndicate Bank v. Estate Officer & Manager, APIIC Ltd. & Ors.* and *Vatticherukuru Village Panchayat v. Nori Venkatarama Deekshithulu & Ors.* .

24. We are of the view that even if the entries in the Record of Rights carry evidentiary value, that itself would not confer any title on the plaintiff on the suit land in question. Ext.X-1 is Classer Register of 1347 which according to the trial court, speaks of the ownership of the plaintiff's vendor's property. We are of the view that these entries, as such, would not confer any title. Plaintiffs have to show, independent of those entries, that the plaintiff's predecessors had title over the property in question and it is that property which they have purchased. The only document that has been produced before the court was the registered family settlement and partition deed dated 11.12.1939 of their predecessor in interest, wherein, admittedly, the suit land in question has not been mentioned."

The defendants therein relied on the entries in the GLR, the Court went on to examine the correctness and evidentiary value of the entries in the GLR. In the context, it was held that the question is not whether GLR could be accepted or not. The relevant question would be whether the plaintiff proves his title over the suit property in question.

10. In the light of the said Judgment, it is true that in a suit for declaration of title, the burden always lies on the plaintiff and the plaintiff would succeed only on the strength of his own title irrespective of the question whether the defendants have proved their case or not. In the case on hand, the Courts below have examined in depth, the question relating to title of the plaintiff. It is well settled law that the revenue records are not documents of title. The entries in the RTC are not proof of title. The case of the plaintiff based on Exhibit.P2, the grant certificate issued to the father of the plaintiff was further substantiated by Exhibit.P16, an order dated 20.02.1960 passed by the Special Tahsildar for

Inams Abolition, Mysore Sub-division, which would disclose that on 10.11.1959 the plaintiff's father had given an application to the Special Deputy Commissioner, Mysore, seeking permission to convert the land bearing Sy.No. No.82 into a non agricultural land and since no intimation had been given to him, even after 90 days from the date of his application, by legal fiction, it was deemed that permission had been given to him for conversion. This document is of the year 1960 which came into existence at an undisputed point of time prior to the filing of the suit. In this document, a sketch is written showing the portion of the land that has been granted to the plaintiff's father. The extent is mentioned as 17 acres 20 guntas and the reference is also made to Exhibit.P2. This Exhibit.P16 confirms the grant made to the father of the plaintiff. Exhibit.P16 is also at no point of time challenged by the defendants.

11. It is the contention of the defendants that the suit property was handed over to the forest department to develop the lands for developing Bird sanctuary, parks etc., as per Exhibits.D3 and D4, letters received from the office of the Deputy Commissioner, Mysore and the letter addressed by the Divisional Commissioner to the Defendant No.1, but the same was not proved. The other documentary and oral evidence of the parties placed on record establishes the title of Chinnabovi, the father of the plaintiff as per the concurrent findings of the courts below. It is not merely based on the weakness of setting up the case of the defendants i.e., not taking a defence of challenge to the grant certificate in the written statement or the absence of substantial evidence of the defendants, the suit of the plaintiff is decreed, it is based on the oral and documentary evidence placed on record by the plaintiff to establish the title to the property in question, the suit is decreed and confirmed by the Lower Appellate Court, after appreciation of the evidence.

12. Much emphasis was placed by the learned counsel appearing for the appellant on the order of the Tahsildar dated 6.7.2002 to contend that the Tahsildar has observed that the plaintiff has created the documents of title in collusion with the revenue officials and the RTCs standing in the name of the plaintiffs were cancelled. It is significant to note that the Judgment was pronounced on 13.11.2002 by the trial Court. It cannot be said that the defendants were oblivious of this order dated 6.7.2002 said to have been passed by the Tahsildar during the pendency of the suit proceedings. However, any observation/opinion of the Tahsildar made in the year 2002 would not frustrate the rights of the plaintiffs which has been established in accordance with law. On the other hand, this order dt. 6.7.2002 referred to by the learned Govt. Advocate would shroud suspicion in the mind of the Court as the same being not placed before the trial Court at the first instance, as such, the order of the Tahsildar dated 6.7.2002 certainly would not enure to the benefit of the defendants. Moreover, this Court cannot examine these factual aspects, which would otherwise be an appreciation of evidence, not warranted under Section 100 of CPC. Concurrent findings of the Courts below is based on the material evidence available on record. Appreciation/re-appreciation of evidence by the Courts below

cannot be said to be vitiated under any score. No substantial question of law arises for consideration in the appeal. Hence, appeal stands dismissed.