

(2017) 02 KAR CK 0001

In the Karnataka High Court

Case No : Regular Second Appeal No. 2144 of 2005

Town Municipal Council, Belgaum

APPELLANT

Vs

Subhas Neelakantappa

RESPONDENT

Date of Decision : 03-02-2017

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 284(2)

Citation : (2017) 2 AirKarR 635

Hon'ble Judges : Sreeniwas Harish Kumar, J.

Bench : Single Bench

Advocate : Shivaraj P. Mudhol, Advocate, for the Appellant; Ravi s. Balikai, Advocate, for the Respondent No. 1; L. Raju, Advocate, for the Respondent No. 2

Final Decision : Dismissed

Judgement

Sreeniwas Harish Kumar, J.—RSA No. 2144/2005 was admitted on 6/12/2007 on the following two substantial questions of law:

(i) Whether both the courts below are justified in decreeing suit even though suit is not maintainable without issuing prior notice as provided under Section 284 of the Karnataka Municipalities Act?

(ii) Whether the Courts below are justified in directing to demolish the building and to hand over the land to the 2nd respondent?

2. Another appeal RSA No. 2003/2005 was also admitted. These two appeals arise out of common judgment passed by the Civil Judge, Senior Division, Chikodi, in RA Nos. 71/96 and 58/96.

3. Actually, RSA No. 2003/2005 appears to have been dismissed by virtue of peremptory order dated 27/5/2013. Now, application under Section 151 of CPC is made by the appellant in RSA No. 2003/2005 for recalling the said order. This application is also accompanied by another application under Section 5 of the Limitation Act, for condoning the delay in making an application under Section

151 of CPC. But, the counsel for the appellant in this appeal is absent today. Anyway as disposal of RSA 2144/2005 results in disposal of RSA 2003/2005 also, delay in making application under Section 151, CPC, for recalling the order dated 27/5/2013 is formally condoned and preemptory order recalled.

4. By referring to the parties, with respect to position that each of them held in the Court of Civil Judge, Chikodi, the pleadings are summarized as below:-

The plaintiff claims to be the lessee of suit property i.e., plot No. 28, Gandhi Market, Chikodi, leased by the second defendant, i.e., Town Municipality, Chikodi. Measurement of the said plot is East-West 30ft. and North- South 30ft. Suit property was leased to the plaintiff by the Municipality, by passing a resolution on 30/1/1979, by subjecting him to certain terms and conditions. The plaintiff was put in actual possession of the suit property. He was also depositing the yearly rent of Rs.200/-. Period of lease was 5 years.

5. First defendant is in occupation of plot No. 29, which is adjacent to plot No. 28. As the first defendant tried to raise the construction in the suit property, the plaintiff filed a suit for permanent injunction to restrain him from putting up any construction.

6. The second defendant-Municipality was formally made a party in the suit. Subsequently, the plaintiff amended the plaint seeking reliefs of mandatory injunction to direct the first defendant to remove the illegal construction in the suit property and for possession of the suit property. Probably plaint came to be amended for the reason that after institution of the suit, the first defendant was successful in putting up construction in the suit property.

7. The first defendant took up pleas that he was in possession of plot No. 29, which was granted to him by the second defendant vide resolution No. 33 dated 30/8/1982. The construction that was put up by him was in his plot and not in plot No. 28. Therefore, he stated that the construction thus made by him was not unauthorised and he was in no way concerned with the plaintiff- s property. The second defendant Municipality in its written statement admitted that the suit property was leased to the plaintiff by resolution dated 30/1/1979, but, denied the plaintiff- s case that he was put in actual possession. According to the second defendant, the period of lease was only two years. Therefore, lease was not extended beyond 25/2/1981. It is another contention taken by the defendant No. 2 that since it was necessary to amalgamate two plots Nos. 28 and 29, they were amalgamated to enable the first defendant to run a kerosene depot of the Indian Oil Corporation. It is further contended that the suit is not maintainable in view of the provisions of Karnataka Municipalities Act.

8. The Trial Court in the first instance, after analysing the entire evidence, held that the suit property was allotted to the plaintiff by the Municipality and as the 1st defendant had raised construction in the plot belonging to the plaintiff. In other words, the Trial Court rejected the entire case of the defendant and came to the conclusion that the 1st defendant had raised construction over the suit

property and therefore, decreed the suit by directing the 1st defendant to demolish the construction made by him and to hand over the possession of the suit property to the plaintiff.

9. This judgment and decree was challenged by the defendant Nos. 1 and 2, by filing two appeals separately. Even the First Appellate Court, appreciated the evidence once again and came to a clear conclusion that the construction made by defendant No. 1 was on plot No. 28. It also held that the 1st defendant who claims possession of plot No. 29, has not given its boundaries in the written statement. But, while adducing the evidence, he gave the measurement of plot No. 29 as 60 x 60 ft. This evidence of 1st defendant was not believed by the 1st Appellate Court. It was also held by the 1st Appellate Court that the construction made by the 1st defendant was in the property belonging to the plaintiff and having held so, it dismissed both the appeals by confirming the judgment and decree of the Trial Court. Hence, the 1st defendant and second defendant are before this court in Second Appeal.

10. Now, that these appeals have been admitted on two substantial questions of law, they need to be answered. The 1st question is with regard to the issuance of notice to the second defendant before the institution of the suit. It is true that according to Section 284(1) of the Karnataka Municipalities Act, prior notice of 60 days has to be given to the Municipality. But, according to sub-section (2), if the only relief claimed in the suit is injunction, and if the object of the suit would be defeated by giving a notice, then there is no need to issue notice. Now in this case, as could be made out from the plaint, suit was brought for bare injunction in the initial stage. The second defendant is just a formal party. No relief is claimed against the second defendant. Even after amending the plaint, reliefs of mandatory injunction and possession were sought against the 1st defendant only. Therefore, in these circumstances, there was no need for the plaintiff to have issued a notice to the Municipality-second defendant according to section 284 of the Act. Therefore, the contention of the second defendant that the suit is bad without issuance of prior notice cannot be accepted. Accordingly, this question of law is answered in the negative.

11. Both the Courts below have held very clearly that plot No. 28 was leased out to the plaintiff. Even this is the case of the second defendant. If the plaintiff says that lease period was 5 years, but according to the second defendant, it was 2 years. Even if the lease period is taken as 2 years, the second defendant, if it is really aggrieved, should have placed cogent evidence before the Court to show that after expiry of 2 years, it evicted the plaintiff from the suit property according to due process of law. No such evidence is available.

12. Another contention that plot Nos. 28 and 29 were amalgamated, is also not supported by any evidence. Even in the written statement, nothing is stated about the date when this amalgamation took place. Therefore, this contention is to be rejected.

13. The plaintiff has been able to prove that he continues to be in possession by virtue of lease granted to it. There is ample evidence to show that defendant No. 1 has made construction on the said property in the guise of measurement of his plot being 60 x 60, which is not evidenced. In these circumstances, the trial court as well as the first appellate court are justified in holding that the construction made by the first defendant has to be demolished and possession handed over to the plaintiff. So, I do not find that these findings of both the courts should be interfered with and therefore, second substantial question of law is also answered in affirmative.

14. In view of the above reasons, it is to be concluded that these two appeals should fail. Accordingly, they are dismissed.