

(1991) 03 KAR CK 0034
In the Karnataka High Court
Case No : RSA Nos. 1082 and 1060/1990

Tuljaram

APPELLANT

Vs

Chunnusing and Others

RESPONDENT

Date of Decision : 22-03-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (1991) 2 KarLJ 410

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

1. These two regular second appeals are preferred by the plaintiff and the defendants in O.S. No. 183/1985 on the file of the III Additional Munsiff, Gulbarga. The plaintiff who is the appellant in RSA. No. 1082/1990 presented the suit for a permanent injunction based on his possession of the suit schedule vacant space. The suit was resisted by the 2nd defendant who claimed to be the purchaser of the property in question under a registered sale deed and claimed possession as well as made a plea for an injunction restraining the plaintiff from interfering with his peaceful possession in his written statement as a counter-claim.

2. On such pleadings, issues were joined. The trial Court framed as many as 7 issues. The issues which are necessary to be stated for disposal of this appeal as well as the connected appeal RSA. No. 1060/1990 filed by the defendants are as follows:

(1) Whether plaintiff proves that he was in lawful possession of the suit property on the date of the suit or just prior thereto?

(2) Whether the defendants prove that they are owners and possessors of the suit open space?

xxx xxx xxx xxx (6) Whether the defendant-2 is entitled to the injunction against the plaintiff as sought for (counter-claim)?

xxx xxx xxx xxx

3. Number of witnesses were examined for parties and numerous documents were also marked in support of the rival contentions. The plaintiff besides claiming permanent injunction based on possession had pleaded title by adverse possession but did not in furtherance of such pleading either get an issue raised or lead evidence. On Issue No. 2 the 2nd defendant has established his ownership and possession as held by the trial Court. It was, in that circumstance, that the trial Court dismissed the suit. On appeal, the lower Appellate Court while not disturbing a finding on Issue No. 2 in regard to ownership, nevertheless, came to the conclusion that defendant was not in possession and therefore the trial Court was in error in granting an injunction when he had not proved possession. It is in that behalf RSA No. 1060/1990 is filed by the defendants against that finding.

4. On reappreciating the evidence on record, particularly, with reference to the municipal maps and plans produced in the case, the lower appellate Court came to the conclusion that though the suit vacant space did not form part of the premises claimed by the plaintiff but really was part of the premises purchased by the 2nd defendant, it nevertheless came to the conclusion on the evidence that the plaintiff was in possession, but not lawful possession. Because the possession was not lawful, it declined to grant the injunction. Aggrieved by that finding, the plaintiff has approached this Court in RSA No. 1082/1990 for relief inter alia contending that once his possession was established, the Court could not refuse him the relief of an injunction.

5. In that behalf Mr. G.S. Visweswara, learned counsel, has placed reliance on the ruling of the Supreme Court in the case of Krishna Ram Mahale (dead) by his L.Rs. v Mrs. Shobha Venkat Rao, AIR 1989 SC 2097. Though the facts of that case were different, inasmuch as the dispute was between a licensor and a licensee, the Court in the context of unlawful possession held that it was settled law in this Country that where a person was in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. As stated by their Lordships of the Supreme Court themselves, the law itself is not declared anew. But it is only a reiteration of an earlier Privy Council decision in the case of Midnapur Zamindari Co. Ltd. v Naresh Narayan Roy, 51 Indian Appeals 293: AIR 1924 P.C. 144.

6. Per Contra the counsel for appellants-defendants in RSA No. 1060/1990 contended that no injunction could be granted by the Court against the true owner and as the lower appellate Court had affirmed the finding though ownership was in indirect issue that the 2nd defendant was the owner of the property, the suit vacant space, the lower Appellate Court correctly refused to grant injunction to the plaintiff even though on a different ground.

7. The correct position in law appears to be somewhere else, a Court may not grant an injunction in terms of Section 41 of the Specific Relief Act when there are efficacious alternative remedies available to parties to establish their rights

other than by way of injunctions, under clause (h) of Section 41 of the Specific Relief Act. Therefore, though the lower Appellate Court came to correct conclusion and denied injunctions to both the plaintiff and the 2nd defendant for the reasons given by it, this Court cannot interfere with those findings because those findings recorded are findings recorded on evidence with which this Court cannot interfere under Section 100 of the C.P.C.

8. In that circumstance, really no substantial question of law arises having regard to the failure of the parties in both the appeals to plead properly for the correct reliefs. In that circumstance all that this Court may do is to reject both the appeals with the observation that the 2nd defendant in RSA No. 1060/1990 cannot take law into his own hands to dispossess the plaintiff who is found to be in possession of the suit vacant space. Nor can the appellant in RSA No. 1082/1990 in any manner lay to waste the suit vacant space as a trespasser unless he establishes his legal right by procedure known to law to use that vacant space in a lawful manner.

9. Subject to these observations the appeals are dismissed by this common Judgment, at the stage of admission but after notice and after hearing the counsel for parties.