

(2015) 01 KAR CK 0121

In the Karnataka High Court

Case No : Regular Second Appeal No. 552 of 2011 (DEC-INJ)

U.S. Ramananda Shet

APPELLANT

Vs

Anasuya Shet

RESPONDENT

Date of Decision : 16-01-2015

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 187

Citation : (2015) 01 KAR CK 0121

Hon'ble Judges : Ravi V. Malimath, J.

Bench : Single Bench

Advocate : A. Ananda Shetty and N. Rajashekar, for the Appellant; Harish A.S., Advocate for Sampath and Vatsala Law Assts., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ravi V. Malimath, J.—Aggrieved by the concurrent findings recorded by both the courts below in decreeing the plaintiffs' suit for declaration and mandatory injunction, the defendant No. 1 has filed this second appeal.

The parties would be referred to, as per their ranking before the trial Court.

2. The case of the plaintiffs is that the plaint "A" schedule property has been allotted to their share, as per registered deed of partition dated 3/2/1984 entered into between U. Hari Shet and others. The plaint "A" schedule property constitutes a portion of Sy.No. 111/3 measuring 6 cents of Shivalli Village, Udupi Taluk, which absolutely belonged on Mooli right to late U. Devanna Shet, paternal grandfather of plaintiffs 2 and 3; that Sy.No. 111/3 adjoins the suit schedule property and it belongs to the paternal grandfather of the defendant, namely late U. Shivaraya Shet. There is also a tiled residential building in the eastern 6 cents of Sy.No.111/3. The eastern wall of the said house is on the eastern most side of the plaint "A" schedule property which runs north to south. The said eastern wall continues further to the south and divides the southern portion of Sy.No. 111/3 (eastern portion) from the southern portion of Sy.No. 111/3 (western portion). It

has been in existence for the last 70 years and exclusively belongs to U. Devanna Shet. That the defendant appears to have purchased the eastern 6 cents in Sy.No. 111/3 with the building standing thereon, on 25/1/1991, in a court auction. During second week of May 1991, the defendant illegally started erecting a new room to the south of the building, without obtaining a license. The same was touching the eastern wall of the suit house. The plaintiff objected to the same, but the defendant continued the construction. The plaintiff issued a notice to the defendant requiring to remove the room, along with the foundation, being illegally constructed. It is the case of the defendant that it is only a temporary roof supported by pillars and that it is much above the eastern compound wall of the suit house. Since the concerned authorities did not take any action in the matter, the defendant continued to put up the construction. The plaintiff had complained to the Chief Officer of Udupi Town Municipality, seeking to take action against the defendant. Ex.D5 is the notice issued by the Municipality to the defendant, seeking for an explanation with regard to the illegal construction put up by him, to which he has replied, seeking for regularization, on the admitted fact that he has put up an illegal construction. The unauthorized construction put up by the defendant has been legalized by imposing compounding fee, by the Town Municipality. Hence he filed the instant suit seeking for a decree of declaration that the eastern wall of the residential building and its continuation on the south, up to the south-eastern most point of "A" schedule property, forms part and parcel of the schedule property and for a mandatory injunction directing the defendant to demolish the western most portion of the southern room.

3. Based on the pleadings, the Trial Court framed the following issues:

"1) Whether the plaintiffs prove their right, title and interest in respect of plaint "A" schedule property?

2) Whether the plaintiffs prove that the eastern wall of the house situated in plaint "A" schedule property is on the eastern most side of plaint "A" schedule property and the said wall has been in existence for the last more than 70 years and it exclusively belonged to U. Devanna Shet, thereafter belonging to them as part and parcel of the house?

3) Whether the plaintiffs prove that somewhere in the 2nd week of 1991 the defendant illegally started erecting a new room immediate to the south of building purchased by him without obtaining any permission from the Udupi Town Municipality?

4) Whether the plaintiffs prove that the alleged new room touches the eastern wall of the suit house?

5) Whether the plaintiffs prove that the alleged construction of the new room is in violation of the provisions of S. 187 of K.M. Act and Karnataka Town Municipalities (Building Model) Bye-Laws?

- 6) Whether the plaintiffs prove that in erecting the new construction the defendant acted contrary to the public policy and committed breach of the obligation existing in favour of them?
- 7) Whether the plaintiffs are entitled to the relief of declaration as prayed for?
- 8) Whether the plaintiffs are entitled to the relief of mandatory injunction prayed for?
- 9) Whether the plaintiffs are entitled to the relief of perpetual injunction as prayed for?
- 10) Whether the suit is bad for non-joinder of necessary parties?
- 11) Whether the description of plaint "A" schedule property is correct?
- 12) Whether the plaint reliefs are barred by delay and laches?
- 13) What order?

Additional Issue:

1) Whether the defendant proves that in between the house of the plaintiff and defendant there are two walls with a gap of about 8" (eight inches) in between northern portion of the buildings and western wall belongs to the plaintiff and eastern wall belongs to defendant as contended in the written statement?" Issue Nos. 1 to 9 and 11 were held in the affirmative and issue Nos. 10, 12 and additional issue No. 1, were held in the negative. The suit was decreed as prayed for. Aggrieved by the same, defendant filed an appeal which was dismissed. Hence the present second appeal.

4. Learned counsel for the appellant contends that the impugned orders passed by both the courts below are erroneous. That the Trial Court committed an error in misreading the report of the Commissioner. That the Commissioner himself has stated that he is not clear as to where the defendant's room or the plaintiffs' property ends and commences. Hence the courts below committed an error in decreeing the suit of the plaintiff. On the other hand, learned counsel for the respondents defends the impugned orders.

5. On hearing learned counsels, I'm of the considered view that there is no merit in this appeal. The contention of the plaintiffs is that the suit schedule property is owned by them. The same is undisputed. The defense set up by the defendant is that the construction having been made and even if it is to be found that the said construction is illegal, the same has been compounded by the Municipality. Therefore the question of the plaintiffs seeking a decree, is erroneous. The Trial Court has recorded a finding, based on the admissions made by the defendant himself that the construction put up by him is illegal. That in order to regularize the construction, the Municipality has levied a compounding fee on him. Hence the construction has been legalized. Therefore no decree could be granted.

6. I am of the considered view that such a contention cannot be accepted. The

title to the property is an issue which is different from compounding of an offence under the Karnataka Municipalities Act. What is compounded by the Municipality is an illegal construction. The very fact that the defendant sought for compounding of the illegal construction put up by him would indicate his defense against the plaintiffs. In view of the compounding sought for by the defendant, the plea of the plaintiffs, therefore, stands proved. Nothing else requires to be considered by the Trial Court. When the entire case of the plaintiffs is that an illegal construction or an adjoining room is being put up and when the defendant contends that it is an unauthorized construction, the question of whether it has been compounded or not, would be of no avail in determining the title of the plaintiffs' property or the alleged interference or the illegal construction by the defendant. The same having been admitted by the defendant, the courts below were justified in decreeing the suit. It is an illegal construction which has been forcibly put up by the defendant. Under these circumstances, the suit was rightly decreed and even the mandatory injunction was granted to the plaintiffs, directing the defendant to demolish that portion of the construction. I do not find any error committed by both the courts below that call for interference. Even otherwise no substantial question of law arises for consideration in this appeal. The appeal revolves on facts. Consequently the appeal, being devoid of merit, is dismissed.