
(2015) 04 KAR CK 0303

In the Karnataka High Court

Case No : Regular First Appeal No. 531 of 2009

V. Kupparaju and Others

APPELLANT

Vs

K.N. Shamanna Reddy and Others

RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 3
Evidence Act, 1872 — Section 83

Citation : (2015) 04 KAR CK 0303

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : S. Rajendra and M.V. Keshava Reddy, for the Appellant; D.S. Jayaraj, Advocate for Jayaraj and Associates, Advocates for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.

1. Heard the learned counsel for the appellants and the respondent.

2. It was the plaintiffs case that he was the absolute owner of property bearing House List No. 31/2, V.P. Khata No. 43, of Koramangala Gramathana, Begur Hobli, Bangalore South Taluk, measuring east to west on the northern side 48 feet, on the southern side 40 feet and north to south on the eastern side 62 feet and on western side 32 feet, more fully described in the schedule to the suit.

It was the plaintiffs further case that the suit property originally belonged to one Patel Muni Reddy, who was the father of the second defendant and Muni Reddy is said to have sold the suit property in favour of one Kurubarahalli Muniyamma and her grand son Dandumum under a registered sale deed dated 27.8.1941. The said Kurubarahalli Muniyamma and her grand son were said to be in possession and enjoyment of the suit schedule property and it stood in the name of Muniyamma and her grand son. They in turn are said to have sold the property in favour of Muni Rudrappa under a registered sale deed dated

14.4.1955. Muni Rudrappa was said to have been in possession of the property and the documents in respect of the suit property stood in his name and he had in turn said to have sold the suit property in favour of the plaintiff under a registered sale deed dated 9.8.1971. Subsequent to the purchase, the plaintiff had got the revenue entries made out in his favour, to indicate that he was in possession of the property and he was the absolute owner thereof. The plaintiff claimed to be residing in a house premises situated adjacent to the suit property. It was said to be a vacant site at the time of purchase and thereafter the plaintiff had put up a small house measuring 2 1/2 feet on the suit schedule property and the remaining portion was left vacant. The first defendant was said to be a resident of Koramangala village and had requested the plaintiff to let out the constructed portion of the suit schedule property and accordingly, the plaintiff is said to have permitted the defendant to occupy the same. Though he had initially paid rents in respect of the premises, the first defendant is said to have turned a defaulter and on collusion with the second defendant, had filed a civil suit in OS 3344/1992 before the City Civil Court, Bangalore, for permanent injunction restraining the plaintiff from interfering with his possession of the suit schedule property and there was an interim order of temporary injunction restraining the plaintiff from interfering with the suit schedule property.

The plaintiff claimed that on receipt on summons in the suit, he had entered appearance through counsel and when the matter was posted for filing written statement, a contention was taken by the first defendant, who was the plaintiff therein, that the second defendant was the owner of the suit property and that he had taken the property on lease from the second defendant. He had also stated that it originally belonged to the ancestors of the second defendant in the present suit and he had further stated that he had purchased the suit schedule property from the second defendant under a sale deed dated 26.12.1991 and that he was the absolute owner of the suit schedule property and therefore, there was a dispute about the title to the suit property in both the plaintiff as well as the first defendant seeking to claim the suit property as their absolute property. It is the plaintiffs assertion in the present suit that the first defendant's claim was false and at no point of time, that the second defendant or his ancestors owned the suit schedule property and they were never in possession of the suit schedule property. On the other hand, the plaintiff had asserted that he had derived title in the manner stated above and it was a fact that the first defendant was permitted to occupy the suit property on lease and that there was active collusion between the defendants in setting up a sale deed of the year 1991. The plaintiff was never a party to the said sale deed and it was obviously created by collusion and they have played fraud on the plaintiff and that the sale deed set up by the first defendant was not binding on the plaintiff

It is further contended that in the year 1976, one Susheelamma had filed an application before the Inquiry Officer, City Survey, Bangalore that her name be entered in the records in respect of the suit property and she was related to the second defendant and was claiming a right in the suit schedule property through

her ancestors. On the representation of the said Susheelamma, a notice had been issued to the second defendant and the plaintiff and they were asked to produce necessary documents to establish their claim over the suit property. The plaintiff had filed his objections disputing the claim of Susheelamma and the second defendant had also filed a statement that neither Susheelamma nor the plaintiff had a right over the suit schedule property. On a consideration of the respective statements and the records produced, the Inquiry officer had passed an order directing change of khata in favour of the plaintiff. The order passed by the inquiry officer was never challenged by Susheelamma nor the second defendant and hence the order passed by the inquiry officer was binding on the second defendant. This was an added circumstance to indicate that the second defendant could not set up any claim over the suit schedule property as contended by the plaintiff and consequently, the first defendant also could not claim title over the suit schedule property through the second defendant.

It was also pointed out that the first defendant had filed an application before the competent authority seeking transfer of khata in his favour on the basis of the alleged sale deed. The revenue authorities had changed khata in favour of the first defendant and the plaintiff upon learning of the said change, had taken action to rectify the same by approaching the Assistant Commissioner, Bengaluru Sub-Division, Bengaluru, by an appeal in VPC 20/1992. The plaintiff had also produced the relevant documents in support of his contention. The first defendant as well as the second defendant were also parties to the proceedings and it is after hearing the arguments and considering the documents, the Assistant Commissioner was pleased to strike down the khata and entry in respect of the suit property in favour of the first defendant and an appeal filed by the first defendant before the Deputy Commissioner was said to be pending as on the date of the suit and therefore, in suppression of these circumstances, the claim of the first defendant was not sustainable in the eye of law. The claim set up by the first defendant became known to the plaintiff only on receipt of the summons in the civil suit in OS 3344/1992, which has been contested by the plaintiff. It is in this vein that the plaintiff had brought the present suit for a declaration against the defendants to declare the sale deed executed by the second defendant in favour of the first defendant on 26.12.1991 as null and void and for recovery of possession of the suit schedule property in favour of the plaintiff and for permanent injunction restraining the first defendant from alienating the suit property.

There was an application for temporary injunction preferred along with the suit restraining the defendants from changing the nature of the properties. However, no order came to be passed on the said application.

Defendant No. 1 had entered appearance and had filed written statement to deny the plaint averments and it was asserted that the second defendant was the absolute owner of the suit schedule property and had executed the sale deed in favour of the first defendant and khata was also transferred in his favour and it is

when the plaintiff sought to interfere with the property that a civil suit in OS 3344/1992 was filed and that the same was pending consideration. It is further asserted that the plaintiff was a neighbour living in the vicinity of the suit schedule property and he was fully aware of the sale transaction and notwithstanding the same, it is only in the year 1995 that the suit was filed though the sale deed was of the year 1991. The second defendant had also filed a written statement to deny the plaint averments and supported the case of the defendant No. 1. It was also asserted that as seen from the description of the suit property, it is evident that the property that was sold in favour of Kurubarahalli Muniyamma was a different property and was not the property described in the plaint schedule and hence the plaint was mischievous and misleading and the suit was not maintainable. It is on these pleadings, that the court below framed the following issues:

- "1. Whether the plaintiff proves he is the absolute owner of the suit schedule property as contended?
2. Whether the plaintiff proves his vendors title to the suit schedule property in particular?
3. Whether the defendant No. 2 proves the property sold by the plaintiffs vendor's vendor is different from that of the suit property?
4. Whether the defendant No. 2 proves he has validly executed the sale in favour of defendant No. 1 and transferred valid title to defendant No. 1 ?
5. Whether the plaintiff proves defendant No. 1 was the tenant under him in the schedule property earlier?
6. Whether the plaintiff proves that defendant No. 2 was not having title to transfer to defendant No. 1?
7. Whether the plaintiff is entitled for declaration and possession as prayed for?"

The court below on the basis of the evidence and the contentions of the respective parties, held issue Nos. 1, 2, 5, 6 and 7 in the affirmative and issues 3 and 4 in the negative and decreed the suit. It is that which is under challenge in the present appeal.

3. The learned Counsel for the appellants would contend that it would be necessary to take stock of the property, as claimed by the plaintiff and the property which is claimed by the defendants. One K.N. Shamanna Reddy has purchased the landed property under a registered sale deed from Muni Rudrappa under the sale deed dated 9.8.1971. A copy of the same has been marked as Exhibit P.6. The property so purchased is described as hereunder:-

"Gramatana Khaneshuman Property No. 252 and 253 situated in Koramangala Village, Begur Hobli, Bangalore South Taluk, having common boundaries.

This boundaries being given to adjoining No. 252 and as far as property No. 253

is concerned.

measuring East to West 24 feet, North to South 42 feet and measurement of Property bearing No. 252 is East to West 24 feet and North and South 45 feet."

It is contended that Shamanna Reddy had filed a suit against the first appellant and one K.N. Narayana. During the pendency of the suit, the original plaintiff, K.N. Shamanna Reddy and the second defendant, K.N. Narayana Reddy had died and their respective legal heirs have come on record.

The property described in the schedule to OS 4691/1995 filed by Shamanna Reddy, is described as follows:-

"SCHEDULE

All that piece and parcel of House on V.P. Katha No. 43, House list No. 31/2, situated at Koramangala Gramatana, Begur Hobli, Bangalore South Taluk and bounded on:

The built area is 2 1/2 squares with A.C. sheet roof house, built in the year 1970 with electricity amenity."

It is the claim of the plaintiff that the sale deed executed by the second defendant in favour of the first defendant is not binding on the plaintiff. It is evident that the boundaries of the suit schedule property do not tally with the property that had been purchased by K.N. Shamanna Reddy, Exhibit P.6.

It is also to be noticed that Patel Nanjundappa was a resident of Koramangala village, Begur Hobli, Bengaluru South Taluk and he had inherited various ancestral properties of Koramangala village and he had two wives. The plaintiff, K.N. Shamanna Reddy was the son of the first wife and Patel Muni Reddy was the son of the second wife and there was partition between the children of Patel Nanjundappa. Therefore, the entire property owned by Patel Nanjundappa was divided into 2/3rd and 1/3rd share and 2/3rd share was allotted to the first wife's children and 1/3rd share was allotted to the second wife's children. Patel Muni Reddy had intended to sell two pieces of land fallen to his one-third share during the year 1941 and as such two pieces of land were sold by Patel Muni Reddy along with his father Patel Nanjundappa in favour of Muni, the daughter of Mumga and to her grand son, Gunda, under a registered sale deed dated 27.8.1941. The said land belonging to Patel Muni Reddy was clearly out of one-third share that was allotted to him. The two pieces of land sold by Patel Muni Reddy and his father in favour of Mum and Gunda, indicated by their boundaries, are as follows:

"(1) Gramatana property situated in Koramangala village, Begur Hobli, Bangalore South Taluk, bounded on the

measuring East to West - 8 Gajas, North to South - 12 Gajas; consisting of about 5 Ankanas attached house.

(2) Another piece of property bounded on the measuring East to West 8 Gajas, North to South 14 Gajas."

It is pointed out that the lands that were sold in the year 1941 was not recognized by any number allotted by any authority and the same were only identified by their boundaries and measurements. The said two pieces of land were different in view of both the properties are not situated next to each other, as described in the schedule to the sale deed. They did not have any common boundary on any side. However, Muni and Gunda, who purchased the aforesaid land in the year 1941, appear to have sold the same in favour of Muni Rudrappa, son of Chikka Nanjappa under a registered sale deed dated 14.4.1955. Even in the said sale deed, the schedule as mentioned is carried on without any change. Therefore, it is clear that what was sold in the year 1941 being two pieces of independent properties were conveyed by the purchasers Muni and Gunda in favour of Muni Rudrappa, under a registered sale deed of the year 1955. Even then, the properties were not recognized by any municipal numbers in the sale deed. It is those properties which the original plaintiff Shamanna Reddy had purchased from Muni Rudrappa under a registered sale deed dated 9.8.1971, which is marked as Exhibit P. 6. Therefore, for the first time, the two properties were identified and assigned with different numbers given by the authorities, as Khaneshuman Nos. 252 and 253, which have different boundaries and they were never treated as one single property and it could not be said that they were next to each other and they could not be recognized as having common boundary by virtue of being a single unit. On partition amongst the family members of the first and second wives, extensive properties held by Patel Nanjundappa were allotted to the respective members and it is thereafter that the items of properties were identified by different municipal numbers and one such property which came to be allotted to Patel Muni Reddy was property bearing house list No. 31/2 Khata No. 43 of Koramangala village. On the death of Patel Muni Reddy, the said property along with other properties, allotted to the share of Patel Mum Reddy came to be inherited by his son, the second defendant K.N. Narayana Reddy, who was in possession and enjoyment of the suit schedule property and had put up construction on the same and the khata stood in his name. During the year 1978, the second defendant, one K.N. Surendra Reddy had obtained electricity connection to the suit schedule property and the second defendant had let out the suit property to various tenants and it was ultimately let out to one V. Kuppa Raju, the first defendant. However, in view of paucity of funds, the second defendant. is said to have sold the property to the first defendant under a sale deed dated 26.12.1991, which is marked as Exhibit D.2 and that Kuppa Raju has been in possession and enjoyment of the suit schedule property and he was shown as the khatedar in respect of the suit schedule property and he had paid necessary taxes to the concerned. These documents were produced and marked as Exhibits D.2, D.3, D.4, D.5, and D.7 in the course of the trial. It is in this background that the plaintiff had petitioned the City Survey Office to have his name entered in the revenue records in respect of property bearing Nos. VP

35/2, 45/2 and 245/2 and newly measured as Chatta No. 254 of Sheet No. 1227, claiming that some of the suit schedule properties were inherited by him and a portion of it was acquired by a sale deed executed by Muni Rudrappa namely, the sale deed marked as Exhibit P.6. One Sharadamma, who was the sister-in-law of the second defendant had set up a counter claim in respect of the very properties. As such, an inquiry was conducted and in the inquiry, the second defendant had filed his statement with respect to the claim made by his sister-in-law in respect of the vacant property in Koramangala village and that it was sold by his ancestor to Muni and another and which was purchased by Muni Rudrappa and ultimately purchased by the plaintiff. The inquiry officer by his order dated 19.1.1976 held that the property was purchased by the plaintiff K.S. Shamanna Reddy. However, it is pointed out that in Exhibits P.1 and P.4, there is no reference to property bearing No. 31/2 and khata No. 43 of Koramangala village, as belonging to the plaintiff. It is on this nebulous claim that the court below had decreed the suit in favour of the plaintiff notwithstanding the inconsistency insofar as the boundaries to the suit are concerned with reference to the respective title deeds of the plaintiff vis-à-vis the title deeds of the first defendant.

The learned Counsel would point out that the trial court has proceeded to decree the suit only on the basis of Exhibit P.1 and P.4. Exhibit P.1 is the statement made by the second defendant K.T. Narayana Reddy before the City Surveyor pertaining to the claim made by his sister in law Sharadamma in respect of the vacant land in Koramangala village. Exhibit P.4 is the finding of the officer on the claim and counter claim made by the plaintiff and Sharadamma. The trial court had failed to notice that the petition filed by the plaintiff before the City Surveyor was in respect of the property bearing VP Nos. 35/2, 45/2 and 245/2 and newly measured as Chatta No. 254 of Sheet No. 1227 of Koramangala village, suit schedule VP 43 House List 31/2 of Koramangala village, which are totally different and distinct. The statement given by the second defendant was not with respect to the suit schedule property, but in respect of an apparently different property and therefore the court below has misled itself into addressing those documents as supporting the case of the plaintiff insofar as his claim to the suit schedule property is concerned. It is the case of the plaintiff that the suit schedule property bearing No. 31/2 and khata No. 43 was purchased by him in the year 1971. A perusal of the sale deed would make it clear that the plaintiff had purchased two pieces of property which were identified with Grama thana Khaneshuman No. 252 and 253, which had independent boundaries and different measurements. It was not the case of the plaintiff that the two pieces of property purchased by him in the year 1971 was in fact one single unit with common boundaries. It was not even the case of the plaintiff that the Gramathana Khaneshuman property Nos. 252 and 253 were later renumbered as VP 43 of Property No. 31/2 and there were no documents produced in respect of the same. And hence the reasoning of the court below in finding favour with the plaintiff's case was without basis. Significantly it is pointed out that the plaintiff

calling to be the owner of the suit schedule property had not produced any revenue documents to indicate that the suit schedule property stood in his name. Per contra, the first defendant had produced Exhibits D-4 and D-5, the demand extract and the tax paid receipt, which clearly establish that the suit property earlier stood in the name of the second defendant and later was transferred in the name of the first defendant.

It is also pointed out that the prayer of the plaintiff was not for declaration of his title to the suit property, but for a declaration that the sale deed executed by the second defendant in favour of the first defendant was not binding on the plaintiff and sought for recovery of possession of the suit property. Hence, it is a fact that the title of the second defendant in respect of the property sold to the first defendant was never in question and there was no finding in this regard by the court and therefore, the court below having granted the relief, as prayed for by the plaintiff, suffers from cardinal error, which goes to the root of the matter as there was no prayer for declaration and the suit itself could not have been entertained and the prayer as granted leads the plaintiff nowhere and as such the judgment and decree is bad in law. It is further demonstrated with reference to the sketch produced indicating the location of the properties that the property purchased by the plaintiff in khameshuman Nos. 252 and 253, under Exhibit P.6, which is described as the plaint schedule property would tally with the property purchased by the first defendant under Exhibit D.2 and would seek to demonstrate that the boundaries of the property described in Exhibit P.6 cannot be reconciled with the boundaries indicated in respect of the suit schedule property and it was therefore sought to be urged that the plaint is mischievous and is an attempt to usurp the first defendant's property purchased under Exhibit D.2, where as the plaintiff continues in possession and enjoyment of the khameshuman Nos. 252 and 253, which are on the southern side of the road shown in the sketch, whereas the suit schedule property is on the northern side and is clearly a property purchased by the first defendant under Exhibit D.2. And there was much argument on the accuracy of the sketch sought to be produced and relied upon by the appellants and the first defendant. It is in this regard that a commissioner was appointed by this court to inspect the suit property as defined in the plaint with reference to the sale deed at Exhibit P.6 and to reconcile the physical existence of the properties as claimed by the parties.

The Court Commissioner has filed a report with a sketch which is in conformity with the case put forward by the appellants, namely that the suit schedule property as described cannot be reconciled with the boundaries mentioned of the properties said to have been purchased by the plaintiff under Exhibit P.6, but would tally with the boundaries indicated in Exhibit D.2, which is set up by the first defendant. It is in this background that the Counsel for the appellants seeks that the appeal be allowed and the suit be dismissed.

4. The learned Counsel for the respondent, on the other hand, would vehemently seek to justify the judgment of the trial court and more particularly, with

reference to Exhibits P.1 and P.4. The learned Counsel would submit that these documents if read in conjunction with one another, it is evident that a survey was carried out of the suit schedule property and the suit schedule property was shown as Exhibit P.2A in the survey sketch produced at Exhibit P.2, which undoubtedly tallies with the boundaries shown in the suit schedule and it is also found that the property shown at Exhibit P.2 A tallies with the property purchased by Shamanna Reddy, under a sale deed dated 5.10.1971 and the entries have been made by the competent authority in respect of the said property also carrying the house list No. 31/2 and khata No. 43. This has been affirmed by an order passed by the competent authority at Exhibit P.4 and hence disputes the correctness of the Commissioner's Report and assures that the suit schedule property, which bears the house list No. 43 and Khata No. 31/2, was most certainly that of the first respondent and the court below has rightly held in favour of the first respondent and it cannot be said that the suit schedule property had been purchased by the first defendant from the second defendant. He would further submit that insofar as the revenue entries having made in favour of the first defendant are of no consequence since the survey sketch would have to be given due credence as required under Section 83 of the Evidence Act, 1872, which raises a presumption in favour of the correctness and accuracy of such certificate and the sketches and would submit that even if any doubt has been raised as regards the claim of the plaintiff, it is an appropriate case which requires to be remanded to the trial court to enable the parties to tender evidence, as the court below had never occasion to inquire into the correctness or otherwise of the survey sketches, which would clearly be found in favour of the plaintiff. Hence, to decide the case only with reference to the sale deeds and the boundaries produced therein would again be misleading, as the boundaries provided under the several sale deeds are with reference to the situation as arising at a time when the sale deeds were executed and over time, the very geography of the area having changed by virtue of being built up and by virtue of formation of roads and other developments, the court would no longer be in a position to reconcile the boundaries in the several sale deeds with the actual situation and the ground reality and hence it is an appropriate case which requires to be remanded for further consideration giving liberty to the parties to tender evidence or to contest the veracity of documents relied upon by the plaintiff in this regard. The learned Counsel would submit that it would result in a miscarriage of justice and deprives the plaintiff of valuable property if the case is to be decided only with reference to the boundaries in the sale deeds and hence seeks that the judgment and decree of the trial court be confirmed.

5. By way of reply, the learned counsel for the appellants would point out that in terms of the Order VII Rule 3 of the Code of Civil Procedure, 1908, where the subject matter of the suit is immovable property, the plaint should contain the description of the property sufficient to identify. Therefore, in the instant case on hand, it is nobody's case that the properties purchased by the respective parties bore any numbers at the time when the same were purchased. Hence, the

properties being sought to be made out with reference to the numbers that have been assigned or revenue entries or on the basis of the survey sketches, which the plaintiff seeks to canvass, would not be relevant.

Insofar as the reliance placed on Exhibits P.1 and P.4 are concerned, though there is an order by the inquiry officer of the revenue authorities, directing that an entry be made in favour of the plaintiff, the same has been set aside by the appellate authority and the matter has been remanded for a further enquiry. It is contended that the entries made at the instance of the plaintiff have been effaced and there can be no reliance placed on any such entries or findings by the enquiry office. On the other hand, it is established by the Commissioner's Report that the properties purchased under Exhibit P.6 are in tact and available for the plaintiff where as the suit schedule property is away from the properties purchased under Exhibit P.6. And as indicated in the sketch now produced by the court commissioner, which is in conformity with the claim of the appellant and suit schedule property as described in the sale deed at Exhibit P.2 is accurately shown with the same boundaries by the court commissioner and therefore clearly establishes that the plaintiff was before the court with a false and fraudulent claim, in effect seeking to lay claim over the defendant's property under Exhibit D.2.

6. In the light of these contentions and the material on record, it is evident that the property purchased under Exhibit P.6 is apparently not the suit schedule property. The Commissioner's Report would indicate that the boundaries of two items of property bearing Khaneshuman Nos. 252 and 253, as follows:-

?Kaneshumari No. 252: measuring East to West 24 feet and North to South 45 feet and the same is bounded on:

Kaneshumari No. 253: measuring East to West 24 feet and North to South 42 feet and the same is bounded on:

Therefore, it is brought out by the commissioner that the plaintiff is asserting the true and correct facts and the court below had found in favour of the plaintiff only on the basis of Exhibits P.1 and P.4, which have been set at naught by Exhibit P.5 and the court has completely overlooked the said circumstance in decreeing the suit as prayed for.

Accordingly, the appeal is allowed. The suit stands dismissed with costs.