

(2012) 09 KAR CK 0181

In the Karnataka High Court

Case No : Regular First Appeal No. 612 of 2005

V Shivaraj

APPELLANT

Vs

K S Sreenivasa Reddy and Raveendran Rajan

RESPONDENT

Date of Decision : 04-09-2012

Acts Referred:

Citation : (2012) 09 KAR CK 0181

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : M S Siddaraju, for the Appellant; Sunitha H Singh, for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—Defendant in O.S. 579/90 aggrieved by the judgment and decree dt. 17/1/2001 of the XIV Addl. City Civil Judge, Bangalore City, allowing the suit and directing the defendant to vacate and handover vacant possession of the suit schedule property being southern portion of site measuring 40 ft. East to West and 20 ft. North to South carved out of Sy. No. 63/1 of Kacharakanahalli, Kasaba Hobli, Bangalore North Taluk, has presented this first appeal. Respondents instituted O.S. 579/90 at the first instance for permanent injunction and thereafter amended the plaint for the relief of recovery of possession. Appellant arraigned as defendant, entered appearance, engaged a legal counsel by name I.Chander and filed a written statement denying the plaint allegations and asserting that he was put in possession of the suit schedule property under an agreement of sale. The trial court in the premise of pleadings of parties, framed as many as 8 issues, whereafterwards 1st plaintiff was examined as PW-1 and 8 documents marked as Exs. P1 to P8 and was not cross-examined nor did the defendant adduce evidence, both oral and documentary. The trial court having regard to the material on record and the evidence, both oral and documentary, which remained unchallenged, allowed the suit by the judgment and decree impugned.

2. Learned Counsel for the appellant submits that the counsel by name I.Chander suffered from physical impairment and did not appear before the court in the said proceeding, was not within the knowledge of the appellant. According to the learned Counsel, the said Sri. I.Chander, advocate, died in the year 2005, whereafterwards the appellant an enquiry, became aware of the judgment and decree impugned, preferred this appeal along with an application to condone the delay which was ordered on payment of cost of Rs. 5,000/- in deposit in this appeal.

3. Learned Counsel hastens to add that due to the illness of Sri. I. Chander, learned Counsel for the defendant, the defendant did not have an opportunity to putforth his case by cross-examining PW-1 as also by adducing evidence, both oral and documentary. Learned Counsel submits that in the circumstances, the judgment and decree impugned be set aside and remit the proceeding for a fresh trial by extending reasonable opportunity of hearing to the defendant/appellant.

4. Per contra Smt. Sunitha H. Singh, learned counsel for the respondents/plaintiffs submits that defendant was not diligent in pursuing his defense in the suit and cannot blame the learned Counsel Sri. I.Chander. According to the learned Counsel, the suit pending since the year 1990 was decreed in the year 2001 and during the 11 long years, it is highly improbably for the defendant to plead that he never visited his lawyer to ascertain his lawyer's physical wellbeing. Learned Counsel further submits that it is highly improbably that a litigant would not have met his lawyer atleast once a year, that too when the proceeding is pending before a Civil Court in which trial had begun in the year 2000. It is also submitted that Sri. I. Chander, learned Counsel, had large number of juniors practicing under him and that, one of his juniors could have attended the court, hence no justifiable reason to remit the proceeding for a fresh trial.

5. Having heard the learned Counsel for the parties, perused the pleadings and examined the judgment and decree impugned, undoubtedly the order sheet maintained by the trial court discloses that issues were framed afresh on 8/2/1999 in view of amendment of the plaint, whereafterwards 1st plaintiff was examined for the first time on 21/6/2000 as PW-1 and further examined on 21/8/2000 and closed his side on 24/10/2000 and as there was no representation for the defendant, the defense evidence was closed, arguments heard and the judgment and decree impugned, passed.

6. Regard being had to the fact that the learned Counsel who represented the defendant passed away in the year 2005 after having suffered physical impairment since 1998, ends of justice would be met by directing a re-trial so as to extend an opportunity to the appellant/ defendant to putforth his defense and tender evidence, both oral and documentary. Although learned counsel for the respondents/plaintiffs stoutly opposes the claim for a re-trial of the suit, nevertheless in the fact situation, the plaintiffs could be compensated in terms of money on account of the defendant not being diligent.

7. In the result, this appeal is allowed. The judgment and decree of the court below is set aside and the proceeding remitted for consideration afresh from the stage of cross-examination of PW-1 and thereafter to pass a judgment and decree in accordance with law by extending reasonable opportunity of hearing to the parties. Parties since represented by their Counsel, are directed to be present before the trial court on 22/9/2012 without further notice. PW-1 to be present on 22/9/2012 and tender for cross-examination, on which day, it is made clear that the defendant to conclude the cross-examination. Plaintiffs are permitted to adduce further evidence, if any, and are directed to conclude their side by 19/10/2012, whereafterwards defendant to examine his witnesses and conclude his side by 22/11/2012 and the trial court to pass judgment and decree by 14/12/2012.

Registry to forthwith forward the Lower court records.

Cost quantified at Rs. 10,000/- payable to the plaintiffs on 22/9/2012 before the trial court. Registry is directed to issue a cheque for Rs. 5,000/- in deposit, favoring the 1st respondent.