

(2020) 04 KAR CK 0036

In the Karnataka High Court

Case No : Regular Second Appeal No. 75 Of 2012 (INJ)

Venkatesh

APPELLANT

Vs

Shankarappa & Others

RESPONDENT

Date of Decision : 16-04-2020

Acts Referred:

Evidence Act, 1872 — Section 91, 92

Citation : (2020) 04 KAR CK 0036

Hon'ble Judges : Nataraj Rangaswamy, J

Bench : Single Bench

Advocate : G.R. Anantharam, Y.R.Sadashiva Reddy, Lokanatha T.V

Final Decision : Allowed

Judgement

Nataraj Rangaswamy, J

1. This Regular Second Appeal is filed by the plaintiff in O.S. No.346/2006 challenging the Judgment and Decree dated 17.09.2011 passed by the First

Appellate Court [First Additional Civil Judge (Sr.Dn.), Kolar] in R.A.No.270/2008 by which the First Appellate Court reversed the Judgment and

Decree dated 08.09.2008 passed by the First Additional Civil Judge (Jr.Dn.) at Kolar in O.S.No.346/2006.

2. For the sake of easy understanding, the parties shall henceforth be referred to as they were arrayed before the Trial Court. The appellant herein

was the plaintiff, while the respondents were the defendants before the Trial Court.

3. A suit in O.S.No.346/2006 was filed for perpetual injunction in respect of a residential site measuring East to West 60 feet and North to South 55

feet bearing assessment No.131 and V.P. Katha No.88 situated at Gajaladinne village, kasaba hobli, Kolar Taluk, bounded on the:

East by : Road;

West by : Road;

North by : plaintiff's own residential house

and

South by : Veera Chikkanna's, site sold to

Rajanna.

4. A perusal of the plaint would disclose that the plaintiff succeeded to the suit property from his late father Venkataramanappa. The plaintiff claimed

that during the lifetime of the plaintiff's father, he had obtained the license from Dodda Hasala Grama Panchayath for the construction of a

residential house in the aforesaid property. The plaintiff laid a foundation in the suit property and was yet to commence the construction of a building

over the foundation so laid. The plaintiff claimed that the defendants were utter strangers and not even the owners of the neighbouring property,

attempted to cause damage to the foundation stone and to the southern stone compound of the property of the plaintiff. It is alleged that the plaintiff

had warded off the attempts of the defendants and thereafter filed the present suit for perpetual injunction.

5. The defendants entered appearance and filed their written statement contending that the father of the plaintiff, Sri.Venkataramanappa, was alive

and that the plaintiff with a mala fide intention had stated that his father had expired and that he had succeeded to the suit property. The defendants

therefore contended that the plaintiff had not approached the Court with clean hands. Further, they contended that a road runs on the eastern and

western side of the suit property and both the eastern and western side road are connected by a road which runs east to west on the southern side of

the suit property. They contended that the plaintiff had suppressed the existence of a road on the southern side of the suit property and that the

plaintiff had wrongly mentioned the southern side as 'Veera Chikkanna's site now sold to Rajanna'. Therefore, the contention of the

defendants is that the plaintiff by including the road that existed on the southern side of the suit property, had filed the frivolous suit for bare injunction

with an intention to grab the public road which lay on the southern side of the suit property. The defendants contended that they had furnished

documents in respect of the suit property, which indicated that there was a road on the southern side of the suit property and thus sought for dismissal of the suit with costs.

6. Based on the aforesaid contentions of the parties, the Trial Court framed the following issues:

1. Whether the plaintiff proves that he has been in lawful possession and enjoyment of the suit schedule property as on the date of suit

as contended by him?

2. Whether the plaintiff proves the alleged interference by the defendants?

3. Whether the plaintiff is entitled for the relief sought for?

4. What order or decree?

7. Before the Trial Court, the plaintiff was examined as PW.1 and his relative was examined as PW.2 and they marked exhibits P1 to P5. The

Secretary of Dodda Hasala Grama Panchayat was examined as DW.6 and she placed on record the charge list and the demand and tax paid register,

which were marked as Exs.P6 and P7 respectively. For the defendants, the defendant No.1 was examined as DW.1 and witnesses were examined as

DWs.2 to 6 and Exs.D1 to D5 were marked.

8. The Trial Court noticed that except the contention of the defendants that there existed a road on the southern side of the suit property, they had

failed to produce any material documents in proof of the same. The Trial Court held that Ex.D5 "demand register extract had been tampered in

respect of the extent, northern and southern boundary. Ex.P6 is charge list and Ex.P7 is demand register extract produced by DW.6 " Secretary of

Dodda Hasala Grama Panchayat. In the absence of any claim regarding the title to the suit property by the defendants and in the absence of any

proof regarding the existence of a road on the southern side of the suit property, the Trial Court decreed the suit and granted perpetual injunction

restraining the defendants from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property.

9. Feeling aggrieved by the aforesaid Judgment and Decree passed by the Trial Court, the defendants filed R.A.No.270/2008 before the First

Appellate Court. The First Appellate Court summoned the records and found that the plaintiff had deliberately declared that his father had expired on

the date of filing of the suit but while in fact, the father of the plaintiff was alive. The First Appellate Court therefore held that the plaintiff had not come to the Court with clean hands. Further, the First Appellate Court noticed that Ex.P5, which was the sale deed dated 25.03.2006 executed by Sri V.M.Chikkachikkanna in respect of the property bearing No.359 lying on the southern side of the suit property, disclosed that the property was purchased by one Rajesh. The plaintiff had described the property on the southern side as property belonging to one Rajanna. The First Appellate Court noticed that there was a glaring mistake in mentioning the names of the person Rajesh and his vendor. Therefore, the First Appellate Court held that the reliance of the Trial Court on Ex.P5 was unwarranted and thus, allowed the appeal and dismissed the suit.

10. Feeling aggrieved by the aforesaid Judgment and Decree of the First Appellate Court, the plaintiff has filed this Regular Second Appeal.

11. This appeal was admitted on 28.10.2013 to consider the following questions of law:

1) Whether the Court below is justified in wrongly dismissing the suit acting contrary to the documentary evidence on record and in

violation of the provisions of Section 91 and 92 of the Evidence Act, in wrongly relying on the oral evidence to the exclusion of the

documentary evidence at Ex.P5, which is a registered title deed?

2) Has not the Court below erred in law in wrongly dismissing the suit of the plaintiff placing reliance on Ex.D5, demand register extract

wherein provenly the extent, Northern and the southern boundaries have been tampered as held by the trial Court, whereby the defendants

had placed tampered records in to court to purportedly prove their case thus warranting interference by this Honâble Court?

3) Whether lower appellate Court was justified in allowing the appeal in the absence of the respondents even challenging the finding of the

trial Court that Ex.D5 has been tampered upon which the defendants totally placed their reliance and that did it not vitiate the entire

Judgment and Decree of the Lower Appellate Court?

12. Heard the learned counsel for the appellant - plaintiff, learned counsel for respondents - defendants, perused the records of the Trial Court and the

First Appellate Court as well as their respective Judgments and Decrees and also

the grounds of appeal urged in the appeal memorandum.

13. A perusal of the plaint and written statement would indicate that the dispute essentially between the plaintiff and the defendants is that, while the

plaintiff claims that there is no road on the southern side of the suit property, the defendants claim that there exists a 12 feet passage on the

southern side of the suit property which the plaintiff is attempting to cover up and close it down.

14. In order to prove the claim of the plaintiff that he is the owner of the suit property, the plaintiff has marked Ex.P1, which is the assessment register

extract of the property bearing No.88 and katha No.131 for the year 1996-97. A perusal of this document would indicate the measurement of the

property as 60 feet x 55 feet and stood in the name of the father of the plaintiff. Ex.P2 is the tax demand register extract of property No.88, while

Ex.P3 is the assessment register extract for the year 2006-2007 in respect of the property bearing No.88/131. This document would show that the

aforesaid property was bound on the south by ??? ??.

Ex.P4 is the tax demand register extract in respect of the aforesaid property for the year 2006-2007. Ex.P5 is the sale deed dated 25.03.2006 in

respect of the property bearing village panchayath khata No.359 measuring 15 feet x 30 feet. This property is stated to be lying on the southern side of

the suit property. A perusal of the boundaries mentioned in the sale deed (Ex-P5) would indicate that the northern boundary of the property purchased

under this sale deed as the property belonging to the father of the plaintiff (Boodikote Venkataravanappa).

15. DW.1 in his cross examination has stated as follows:

??? ??

16. DW.3 in his cross examination has stated as follows:

??? .

.??

17. DW.4 in his cross examination has stated as follows:

??? 50 60 . . , ? : ,

.

? . 12 .

. . 60 55 ..â??

18. DW.5 stated in his cross examination as follows:

â?? 20-25 . 60 x 50 ..â??

19. DW.6, who was the Secretary of the Doddahasala Grama Panchayat, has stated as follows:

. .

â?? 131 g . ,

, , â??

20. The aforesaid evidence would clearly demonstrate the existence of the suit property. The only dispute is regarding the existence of a road

measuring 12 feet wide on the southern side of the suit property. While the plaintiff claims that there is no such road, the defendants claims that there

exists a 12 feet road which separates the suit property and the property of one Rajesh @ Rajanna on the southern side. In order to ascertain whether

there existed a road on the southern side of the suit property, let me consider the documents that the defendants have placed on record. Ex.D1 is the

tax demand register extract for the year 2004-2005 which indicate that the property bearing No.88/131 belongs to Venkataramanappa, son of

Boodhikote Ramanna. Ex.D2 is the assessment register extract for the year 2004-2005 in respect of the property bearing No.88/131 and the

measurement of the property is shown as 60 feet x 50 feet. The southern boundary of this property is shown as â??

â?. Ex.D3 is the property tax assessment extract for the year 2006-07 in respect of the property

bearing No.308 and is shown to be standing in the name of Venkatarayappa, son of Ramanna, and measures 55 feet x 88 feet. The northern boundary

of this property is shown as â?? â??. Likewise Ex.D4 is the extract of the tax demand register for the year 2006-07 and shows the name of

Venkataramappa son of Ramanna. Ex. D5 is copy of Form No.10, which is placed on record. Ex. D5(a) is the relevant entry and the measurement is

tampered as 60 feet x 55 feet and the boundaries are shown as â??Â¥Ã? ; ; ; :
â?" -

â??.

21. Exhibit P6 is the list of articles that were received by DW.6 when she took

over the charge as the Secretary of the panchayat. Ex.P7 is the assessment register extract of Gajjaladinne Panchayat. Exhibit P7(a) is the entry relating to property No.308 and this measures 55 feet x 88 feet. This obviously does not relate to the suit property since it is covered on East by road, West by road, North by passage and South by Road.

22. In order to ascertain whether a road exists on the southern side of the suit property, let me now examine the oral evidence of the defendants.

23. The defendant No.1, who was examined as DW.1, has stated in his cross examination as follows:

.

â?? 12 . 100-150

.

..

â??

DW1 has further stated as follows:

â?? .

200 , 200 â??

24. Defendant No.3, who was examined as DW.2, has stated in his cross-examination as follows:

â?? 12 , 60 . 200 .

..

.. A A

â??

25. Defendant No.2, who was examined as DW.3, has stated as follows:

â?? , 12

...

...â??

26. DW.4 in his cross-examination has stated as follows:

..

â?? 12 C.r .

60 55

. .

.

. . A

â??

27. DW.5 has stated as follows:

â?? 15 .

. 2-3 .

.

.â??

28. DW.6 was the Secretary of the Panchayat and she has stated as follows:

â?? . .

. ?

Â . .â??

29. Therefore, though the defendants contended that there existed a road on the southern side of the suit property, they were unable to prove the existence of the road.

30. A circumstance that cannot miss my consideration is the fact that the suit property is bound on the east and west by a road. The defendantsâ??

claim is that they were using the passage lying on the southern side of the suit property to access the eastern and western side road. Thus between

the eastern and western roads, the property of the plaintiff is situated. There cannot be any property lying on the southern side belonging to more than

one or two persons. In the present case, the plaintiff has claimed that the southern side property belongs to one Rajesh (Rajanna). In order to prove

the same, he has placed on record Ex.P5, sale deed dated 25.03.2006, which indicates that Rajesh had purchased site No.359 measuring 15 feet x 30

feet. The eastern side of the property again seems to be the property purchased by Rajesh. Therefore, the property of Rajesh abuts on the southern

side of the suit property. In the absence of any document to show the existence of a road, the Trial Court was justified in decreeing the suit for

perpetual injunction.

31. It is no doubt true that the plaintiff had wrongly described that his father was dead while in fact the father of the plaintiff was very much alive.

This in itself could not be treated as the plaintiff coming to the Court with unclean hands. The plaintiff has filed the suit based on the contention that his father was the owner of the suit property. There is no mistake or suppression in so far as this fact is concerned. Thus, the finding of the First

Appellate Court that the plaintiff has come to the Court with unclean hands by averring in the plaint that his father is dead though his father was alive,

could not be too material to non-suit the plaintiff. Since the plaintiff has placed on record the material document and evidence and the defendants have

admitted the fact that the father of the plaintiff was the owner of the site, in the absence of any material to show that there existed a road on the

southern side and in the light of the finding of the Trial Court and First Appellate Court that Ex.D5 was tampered and could not be relied upon, the

Judgment and Decree of the First Appellate Court reversing the Judgment and Decree of the Trial Court is liable to be set aside. Hence, the

substantial questions of law framed by this Court are answered in favour of the plaintiff / appellant and it is held that the plaintiff is entitled for the

decree of perpetual injunction. The Judgment and Decree of the First Appellate Court placing reliance on Ex.D5 was totally unjustified in view of its

own finding that the Ex.D5 was tampered and therefore unreliable.

Hence, the Regular Second Appeal is allowed and the impugned Judgment and Decree dated 17.09.2011 passed by the First Additional Civil Judge

(Sr.Dn.), Kolar in R.A.No.270/2008 is set aside and the Judgment and Decree dated 08.09.2008 passed by the First Additional Civil Judge (Jr.Dn.) at

Kolar in O.S. No.346/2006 is restored.

The parties to bear their own costs.

In view of dismissal of this appeal, I.A. No.1/2012 for stay does not survive for consideration and the same stands rejected.