

(2011) 12 KAR CK 0096

In the Karnataka High Court

Case No : Regular Second Appeal No. 1914 of 2011 (DEC and INJ)

Venkateshappa

APPELLANT

Vs

Venkateshappa and Another

RESPONDENT

Date of Decision : 01-12-2011

Acts Referred:

Evidence Act, 1872 — Section 114

Citation : (2012) 1 KarLJ 280

Hon'ble Judges : K.N. Keshavanarayana, J

Bench : Single Bench

Advocate : S. Visweswaraiah, for the Appellant;

Final Decision : Dismissed

Judgement

K.N. Keshavanarayana, J.—This appeal by the unsuccessful plaintiff is directed against the concurrent judgment and order passed by the Courts below dismissing the suit filed by him for the relief of declaration of title and permanent injunction.

2. The subject-matter of the suit is land bearing Survey No. 181 measuring 2 acres situated in Sugatur Village of Kolar Taluk.

3. The case of the appellant/plaintiff in brief was that, the suit schedule property was granted to one Muniga, son of Thimma of Sigtur Village, under Dharkasth by the revenue authorities on 3-6-1942 and since then, the said Muniga was in possession and cultivation of the suit schedule property as its absolute owner; that subsequently, the said Muniga sold the suit schedule property in favour of the plaintiffs father under a registered sale deed dated 4-1-1971 and placed the plaintiffs father in possession of the same; that since then the plaintiffs father was in possession and enjoyment of the suit schedule property as its absolute owner till his death; that subsequent to his father's death, the plaintiff has been in peaceful possession and enjoyment of the suit schedule property as its absolute owner; that the defendants who have no manner of right, title or

interest over the suit schedule property are trying to interfere with the plaintiffs peaceful possession and enjoyment and they have also denying the title of the plaintiff. The 2nd defendant is stated to be the son-in-law of the 1st defendant.

4. The defendants contested the suit denying the case of the plaintiffs. They inter alia contended that the grant in favour of Muniga was subsequently cancelled by the revenue authorities and thereafter, the suit schedule property was granted in favour of the 1st defendant during the year in 1957-58 and since then, he has been in peaceful possession and enjoyment of the suit schedule property as its absolute owner. They further contended that since grant in favour of the Muniga was cancelled, by virtue of the subsequent sale effected on 4-1-1971, the plaintiffs father had not derived any title to the suit schedule property and therefore, the plaintiff is not entitled for the reliefs sought.

5. The Trial Court on the basis of the pleadings of the parties framed issues. The parties led oral and documentary evidence in support of their respective contentions. The plaintiff produced RTC extracts, mutation register extracts and the original sale deed as per Exs. P. 1 to P. 5. On the other hand, the defendants produced the certified copies of the extract from the dharkasth register issued by the Tahsildar, Kolar Taluk, apart from the saguvali chit, revenue records like RTC mutation, survey sketch, etc. as per Exs. D. 1 to D. 10.

6. The Trial Court on assessment of oral and documentary evidence answered the material issues against the plaintiff holding that the plaintiff has failed to prove his title to the suit schedule property on the ground that the defendants have proved that the grant made in favour of Muniga in the year 1942 has been subsequently cancelled and the suit schedule property has been granted in favour of the 1st defendant and therefore, the sale effected by Muniga in favour of the father of the plaintiff has not conveyed any title in his favour, as such, the plaintiff cannot be declared as the owner of the suit schedule property. The Trial Court also held that the plaintiff has failed to prove his possession over the suit schedule property. In that view of the matter, the Trial Court dismissed the suit. Aggrieved by the said judgment and decree, the appellant/plaintiff filed appeal in R.A. No. 273 of 2008 before the lower Appellate Court.

7. The lower Appellate Court, on reappreciation of oral and documentary evidence, concurred with the findings recorded by the Trial Court and consequently dismissed the appeal. It is against these concurrent judgment of the Courts below, the appellant/plaintiff is before this Court.

8. I have heard the learned Counsel for the appellant. Perused the judgments under appeal.

9. It is the submission of the learned Counsel for the appellant that the judgments under appeal are perverse and illegal being contrary to the evidence on record, inasmuch as the Courts below have not taken into consideration the oral and documentary evidence placed by the plaintiff, which would clearly establish that the land was granted in the year 1942 in favour of Muniga, who

subsequently sold the same in favour of the father of the plaintiff and that the Courts below have failed to consider the fact that the defendants have not established by acceptable evidence that the grant in favour of Muniga was cancelled and it was subsequently granted to the 1st defendant. It is also his submission that the lower Appellate Court has not considered the material grounds urged in the appeal memorandum to the effect that the Trial Court has not taken into consideration the fact that Exs. D. 1 to D. 3 have not been proved in accordance with law inasmuch as those documents are all concocted and fabricated documents and no speaking order is produced to evidence the cancellation of the grant in favour of Muniga and that the Trial Court has failed to consider the entries in the revenue records in the name of the father of the appellant and also subsequently in the name of the appellant and if the grant in favour of Muniga had been cancelled, the revenue authorities would not have mutated the name of the father of the plaintiff in the revenue records, and these facts would certainly falsifies the defence put forth by the defendants regarding cancellation of the grant made in favour of Muniga. It is also his submission that Ex. D. 1, the so-called certified copy of the dharkasth register, is not proved to be genuine and even the entry therein to the effect that the grant is cancelled is not certified by the concerned authority, as such, no reliance could have been placed on Ex. D. 1 to hold that grant in favour of Muniga had been cancelled way back in the year 1952.

10. After hearing the learned Counsel for the appellant and on going through the judgments under appeal, I am unable to persuade myself to accept any of the contentions urged by the learned Counsel. Having heard the learned counsel, I am of the opinion that the appeal does not involve any question of law muchless substantial question of law. Both the Courts below, on appreciation of oral and documentary evidence have recorded finding of facts. The finding recorded by the Courts below cannot be termed as perverse or as illegal. No doubt, the defendants have not disputed the grant in favour of Muniga. However, it was their specific stand that the said grant in favour of Muniga was cancelled subsequently. To substantiate the same, the defendants produced Ex. D. 1, which is the certified extract from the dharkasth register issued by the Tahsildar, Kolar Taluk. The dharkasth register is maintained during the course of the official business in the office of the Tahsildar. The entries are made during the course of the official duty. The certified copy is issued by the Tahsildar, who was competent to issue such certified copies. Thus, Ex. D. 1 has been issued by a public officer, who was competent to issue the same, as such, the contents thereof is presumed to be true and correct, unless the contrary is proved. Section 114 of the Indian Evidence Act, 1872 draws a presumption that the official acts have been done in accordance with the rules and regulations. Of course, it is a rebuttable presumption. Therefore, it was the duty of the plaintiff to have proved that Ex. D. 1 is not a genuine document. However, the plaintiff has not made any effort to prove this fact. He did not take steps to summon the original dharkasth register to show that Ex. D. 1 is a concocted and fabricated document. As noticed

by the Courts below, the plaintiff did not produce the saguvali chit issued in favour of Muniga. No doubt, the grant in favour of Muniga has not been disputed. However, in the light of the specific defence taken by the defendants that the grant in favour of Muniga has been cancelled subsequently, it was incumbent upon the plaintiff to have produced the grant certificate or saguvali chit issued to Muniga. The non-production of the very important document entails drawing of an adverse inference against the plaintiff, which has been rightly drawn by the Courts below. If the grant had not been cancelled, the original grant certificate would have been in the custody of Muniga and subsequently, it would have been given to the custody of the purchaser namely, the father of the plaintiff. The very fact that the original grant certificate is not produced would probablise the theory of the defendants that it has been subsequently cancelled. This view is corroborated from the contents of Ex. D. 1, which has been issued by the Public Officer in discharge of his official duty, which has a presumptive value. As the plaintiff has not rebutted the said presumption, the Courts below are justified in placing reliance on Ex. D. 1 to hold that the grant in favour of Muniga has been cancelled. There is absolutely no evidence to indicate that Ex. D. 1 is a fabricated document.

11. Having regard to the above discussion, I find no substance in the submission of the learned Counsel that Ex. D. 1 could not have been relied upon by the Courts below. The other documents produced by the defendants would clearly establish that the suit schedule property has been subsequently granted to the 1st defendant and he has been in possession of the property. No doubt, the 1st defendant did not enter the witness-box but the 2nd defendant who is the son-in-law of the 1st defendant has given evidence as D.W. 1. It is to be borne in mind that it is the duty of the plaintiff who approached the Court to prove his case by producing cogent and acceptable evidence.

12. It is fairly well-settled that the plaintiff will have to stand or fall on the strength of his case and he cannot depend upon the deficiency in the case of defendant. In the case on hand, the evidence placed by the defendants have clearly established that the father of the plaintiff has not derived any title to the suit schedule property under the sale deed-Ex. P. 5, dated 4-1-1971, since grant in favour of Muniga was cancelled before the sale deed. As the plaintiff has utterly failed to prove his case, the Courts below have not committed any error in dismissing the suit. The findings recorded being questions of fact and having been recorded on proper appreciation of the evidence on record, does not call for interference by this Court. Therefore, the appeal is dismissed.