

(2012) 09 KAR CK 0043

In the Karnataka High Court

Case No : Regular Second Appeal No. 49 of 2010 a/w Miscellaneous Civ. No. 323 of 2010

Y. Srinivas

APPELLANT

Vs

S. Jayaram

RESPONDENT

Date of Decision : 28-09-2012

Acts Referred:

Citation : (2013) 1 AKR 550

Hon'ble Judges : Abdul Nazeer, J

Bench : Single Bench

Advocate : T.K. Rajagopala, for the Appellant; V. Anand, for the Respondent

Judgement

Abdul Nazeer, J.—This appeal is directed against the judgment and decree in R.A. No. 166/2007 dated 3.11.2009 on the file of the Principal District Judge, Bangalore Rural District, Bangalore, reversing the judgment and decree in O.S. No. 223/2006 dated 31.7.2007 on the file of the Civil Judge (Sr. Dn.) & JMFC, Devanahalli. The appellant is the plaintiff in the suit and the respondent is the defendant. For the sake of convenience, the parties are referred to by their respective ranking before the trial Court. The plaintiff filed the above suit for declaration that he has the absolute right over the schedule property and for certain other incidental reliefs. The case of the plaintiff is that in the year 1963, one Narasimhaiah was granted 4 acres of land in Sy. No. 87 of Arasinakunte village. He has sold the said property under a registered sale-deed dated 20.11.1964 in favour of Ahmed Khan for valuable consideration. Ahmed Khan had also purchased the lands in Sy. No. 87 at different blocks from certain other persons. It is further contended by the plaintiff that his paternal uncle Byrappa had purchased land measuring 26 acres in different blocks in Sy. No. 87 from Ahmed Khan under a registered sale-deed dated 27.11.1968 for valuable consideration. Since then Byrappa was in possession and enjoyment of the said 26 acres of land. The father of the plaintiff along with his brother partitioned the said properties. In the said partition, the father of the plaintiff, namely, Erappa

was allotted 4 acres of land in Sy. No. 87 block No. 69, new No. 124 of Arasinakunte village. After purchase of the property by Byrappa, his name was entered in the revenue records both at kathedhar and cultivator's column. Byrappa died intestate leaving behind plaintiff as his successor. Since then, plaintiff has been in possession and enjoyment of the suit schedule property. The katha of the said property was changed into his name. He is raising crops in the said property. Now, he has grown Neelagiri trees in the said property. On 14.7.1991 at about 11.00 a.m., the defendant along with his henchmen threatened him and began to cut the Neelagiri trees. In this connection, he has lodged a police complaint against the defendant. However, Police did not take any action against him. After verification of the records at that Tahsildar's office, he came to know that sale certificate has been issued by the Assistant Commissioner in favour of the defendant in respect of the suit schedule property.

2. The defendant has filed the written statement contending that Narasimhaiah had acquired 4 acres of land in Arasinakunte village in the year 1963. Narasimhaiah failed to pay the land revenue in respect of the suit property for a number of years. The tax collecting authority had initiated proceedings for recovery of arrears of land revenue. Even after that, he had not paid the arrears of land revenue. The Tahsildar had initiated proceedings for collection of arrears of land revenue by public auction of the suit schedule property. In the said public auction, the defendant purchased the said 4 acres of land. The Assistant Commissioner has issued a registered sale certificate in favour of the defendant on 26.6.1974. Thus, the defendant is the owner of the suit schedule property.

3. On the basis of the pleadings of the parties, the trial Court has framed the following issues:

- (i) Whether the plaintiff proves that he is the owner of suit schedule property?
- (ii) Whether the plaintiff proves that the sale certificate issued by the Assistant Commissioner with respect to the suit schedule survey number is not binding on him?
- (iii) Whether the defendant proves that the suit as brought is not maintainable?
- (iv) Whether the defendant proves that he has purchased the suit schedule property in public auction conducted by the revenue authorities and they have given sale certificate and possession to him on 26.6.1974?
- (v) Whether the defendant proves that the suit schedule property was acquired by the KIADB and he is entitled for the entire compensation amount?
- (vi) What order or decree?

4. The plaintiff got himself examined as P.W. 1 and documents Ex. P1 to Ex. P17 have been marked in his evidence. The defendant got himself examined as D.W. 1 and documents Ex. D1 to Ex. D22 have been marked in his evidence. On appreciation of the materials on record, the trial Court has decreed the suit.

Feeling aggrieved, the defendant has filed an appeal before the first Appellate Court. The first appellate Court has passed an order on 3.11.2009 setting aside the judgment and decree of the Court below and dismissed the suit.

5. At the time of admission of the appeal, this Court has framed the following substantial question of law:

Whether the suit property which was said to have been sold at a public auction having been negated by the trial Court, whether the lower appellate Court could reverse the judgment without addressing the said question?

6. Learned Counsel for the plaintiff/appellant would contend that the suit schedule property was granted to Narasimhaiah in the year 1963. Narasimhaiah had sold the said property in favour of Ahmed Khan by a deed of sale dated 20.6.1964. Byrappa, grand-father of the plaintiff purchased the said property from Narasimhaiah along with certain other lands of Ahmed Khan totally measuring 26 acres. After the death of Byrappa, the father of the plaintiff and his brothers have inherited the said property. A partition was entered into between the father of the plaintiff and his brothers. The suit schedule property was allotted to the share of the father of the plaintiff. After the death of the father of the plaintiff, he has succeeded to the said property. Thus, he is the owner and in possession of the said property.

7. The contention of the learned Counsel for the defendant/respondent is that though the property was granted in favour of Narasimhaiah, he did not pay the land revenue. Therefore, the suit schedule property was auctioned. In the said auction, the defendant had purchased the said property. The sale certificate was issued by the Assistant Commissioner in his favour on 26.6.1974.

8. It is thus clear that grant of the land by the State Government in favour of Narasimhaiah is not in dispute. The plaintiff has produced the sale-deeds and other documents in order to establish that he is the owner of the said property. The defendant has only produced the certificate of sale of immovable property at Ex. D1 issued by the Assistant Commissioner, Doddaballapur Division, Bangalore. The trial Court has found that except the said document, no other documents have been produced to support the contention of the defendant that he is the owner of the property especially the confirmation of the sale and payment of the bid amount.

9. In the appeal, the plaintiff filed an application-I.A. No. 2 under Order 41, Rule 27 of the CPC seeking production of a document, namely, an order passed by the Deputy Commissioner in No. LND.RA. 24/2001-2002 dated 20.5.2008 in order to show that no auction of the suit schedule property has been made in the year 1974 as contended by the defendant. The lower appellate Court though noted the filing of the said application in paragraph 14 of the judgment, it has failed to consider the said documents. It is well established that the appellate Court has to consider the said application at the time of final hearing of the appeal on merits.

10. Even otherwise, the lower appellate Court has not at all considered the merits of the appeal in its proper perspective. In *Madhukar and Others Vs. Sangram and Others*, the Apex Court has laid down the law relating to consideration of the appeals. It has been held that sitting as a Court of first appeal, duty is cast on the Court, to deal with all the issues and evidence led by the parties, before recording its findings. It is further held that the first appeal is a valuable right and the parties have a right to be heard both on the questions of fact and law and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. In *Parimal Vs. Veena @ Bharti*, the Apex Court has held that Order 41, Rule 31 of the CPC provides for a procedure for deciding the appeal and that the law requires substantial compliance with the said provision and the first appellate Court should not disturb and interfere with the valuable rights of the parties which stood crystalised by the trial Court's judgment, without opening the whole case for re-hearing, both on questions of fact and law. It has been made clear that the appellate Court should not modify the decree of the trial Court by a cryptic order without taking note of all relevant aspects.

11. Tested from this angle, I am of the view that the first appellate Court has not decided the appeal in accordance with the aforesaid principles. As noticed above, it has not considered the application filed by the plaintiff under Order 41, Rule 27 of the CPC seeking production of additional evidence. I am of the view that the first appellate Court has to reconsider the matter.

12. In the result, the appeal succeeds and it is accordingly allowed in part. The judgment and decree in R.A. No. 166/2007 dated 3.11.2009 on the file of the Principal District Judge, Bangalore Rural District, Bangalore, is hereby set aside. The matter is remanded to the first appellate Court for fresh consideration in accordance with law. It shall also consider the application-I.A. No. II filed by the plaintiff seeking production of additional evidence along with the main. The first appellate Court is directed to dispose of the appeal on its merits and in accordance with law within a period of three months from the date of receipt of a copy of this order. All contentions are kept open. No costs. Draw the decree accordingly. Registry is directed to send the records of the Courts below to the lower appellate Court forthwith. In view of the disposal of the appeal as above, Misc. Civil No. 323/2010 does not survive for consideration. It is accordingly dismissed.