

(2009) 03 KAR CK 0083

In the Karnataka High Court

Case No : Regular Second Appeal No. 298 of 2002

Yajaman Gowraiah since dead by his Lrs Shanthamma

APPELLANT

Vs

N.V.S. Shivaram since dead by his Lrs (Jayamma and Others)
and Others

RESPONDENT

Date of Decision : 24-03-2009

Acts Referred:

Limitation Act, 1963 — Section 65

Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 — Section 5

Citation : (2009) ILR (Kar) 2105 : (2009) 4 KarLJ 514 : (2009) 3 KCCR 1624

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

Bench : Single Bench

Advocate : M.K. Bhaskaraiah, dv, for the Appellant; B.B. Gowdar, HCGP for R.7 and R.8 and S. Chandrakala and S. Raju for R.1(a-e) and R.2 to 5, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Keshavanarayana, J.—This is an unfortunate litigation in which the parties are litigating for the last four decades.

2. This second appeal by the LR of the original defendant No. 4 in OS No. 186/1989 on the file of the then Munsiff at Gowribidanur, is directed against the judgment and decree dated 7.8.2000 passed by Civil Judge (Senior Division), and JMFC, Chikkaballapur, in RA No. 13/1994 whereby the Lower Appellate Court has set aside the judgment and decree passed by the Trial Court in OS No. 186/1989 dismissing the said suit and in reversal of the said judgment, decreed the suit of the plaintiffs for the relief of declaration and for possession of the property described in schedule to the plaint. The subject matter of the suit is the land bearing Sy. Nos. 14 and 15 of Mittenahalii village, Gowribidanur, (sic) measuring 17 acres 20 guntas.

3. The respondents 1 to 6 were ate the plaintiffs in the Trial Court. The original plaintiff No. 1 Sri. N.V. Shivaram appears to have died after the judgment by the

Trial Court and before the filing of the appeal before the Lower Appellate Court. The respondents 7 to 10 were defendants No. 1 to 3 and 5 respectively in the Trial Court.

4. For the sake of convenience, the parties herein will be referred to with reference to their ranking in the Trial Court.

5. The plaintiffs initially filed the suit before the then Civil Judge Chikkaballapur in OS No. 63/1979 which came to be transferred to the Court of Munsiff, Gowribidanur and renumbered as OS No. 186/1989.

The plaintiffs filed the said suit for the relief of declaration of their title to the suit schedule property and for the consequential relief of permanent injunction restraining defendant No. 4 from interfering with their peaceful possession and enjoyment of the suit schedule property. Alternatively, they claimed that if for any reason the Court were to conclude that by virtue of decision in OS No. 305/1967, the plaintiffs have lost juridical possession, a decree for possession in their favour against defendant No. 4 be passed directing defendant No. 4 to deliver possession of the suit schedule property to them.

6. The case of the plaintiffs in brief is as under:

Mittenahalli village was an Inam village which was unsurveyed and unsettled until 1.2.1959 when it vested in the State as per the provisions of Mysore (Personal & Miscellaneous) Inams Abolition Act, 1954 (for short "the Act"). The plaintiff No. 1 and one late Lakshmikantappa the father of plaintiff Nos. 2 to 5 and husband of plaintiff No. 6 got into possession of the suit schedule property as tenants under 16 Jodidars in or about 1941 and they continued to be the tenants of the schedule property till the village vested in the State on 1.2.1959. As the village had not been surveyed and was unsettled, there was only goal survey map and the suit land formed part of Sy. No. 1 of the said goal survey. After coming into force of the Act, the plaintiff No. 1 and the said Lakshmikantappa applied to respondent No. 2 namely the Special Deputy Commissioner for Abolition of Inams, Bangalore Division, Bangalore, seeking conferment of occupancy rights in their favour in respect of the schedule property in case No. 71/67-68. Defendant No. 2 after holding enquiry conferred occupancy rights on plaintiff No. 1 and Lakshmikantappa by order dated 4.3.1968. Thus, plaintiff No. 1 and the said Lakshmikanthappa became the absolute owners of the suit schedule property. The defendant No. 4 having no manner of right title or interest over the property started interfering with the plaintiffs' peaceful possession and enjoyment of the property and that since the plaintiffs resisted the attempt of defendant No. 4, he filed suit in OS No. 305/1967 on the file of Munsiff at Chikkaballapur for the relief of permanent injunction and got a decree which was confirmed in Appeal in RA No. 33/1978 and second appeal No. 110/1979. In the said suit, the defendant No. 4 claimed relief in respect of 10 acres of land stating that he is in possession of the said land on the basis of an endorsement issued to him by defendant No. 2 in Case

No. 1175/1960-61 dated 1.6.1961. The enquiry by the plaintiffs disclosed that one of the 16 Jodidars namely the father of defendant No. 5 had helped defendant No. 4 colluding with him and false claim having been allowed by defendant No. 2. They also came to know that documents were fabricated with the help of the father of defendant No. 5 without the knowledge of the other Jodidars. Immediately after coming to know of this clandestine proceedings in 1175/60-61, the 15 Jodidars filed appeal before the Revenue Appellate Tribunal and in the said appeal, the plaintiff No. 1 as well as Lakshmikantappa filed application to implead themselves as appellants, but ultimately both the appeal and the application were dismissed as barred by time. During the pendency of the suit in OS No. 305/1967, Lakshmikantappa died and his heirs contested the said suit. The plaintiffs also came to know that defendant No. 4 in his claim application before defendant No. 2 had asked for regrant of 10 acres of land without mentioning the Survey number, but by furnishing boundaries and the boundaries described by him in his application was not referable to any portion of the suit property which was originally part of Sy. No. 1, therefore the land purported to have been granted to defendant No. 4 was not the schedule property. Therefore, the defendant No. 4 has no right over the suit property and since the Civil Court in OS No. 305/1967 has granted the relief of permanent injunction in favour of defendant No. 4, it has become necessary for the plaintiffs to seek declaration of their title in respect of the suit schedule property and also for the relief of injunction and in the alternative for the relief of possession.

Upon service of suit summons, defendant No. 4 appeared before the Trial Court and contested the suit. In his written statement, he denied the case of the plaintiffs and contended that the suit filed by the plaintiffs is barred by principles of res-judicata as all the contentions raised in the present suit have already been decided against them in the suit in OS No. 305/1967 and therefore it is not open for them to contend contrary to it. He contended that the suit property was re-granted to him by defendant No. 2 by order dated 1.6.1961 and the said order came to be challenged by the erstwhile Jodidars before the Karnataka Appellate Tribunal by filing an appeal and the said appeal came to be dismissed as barred by time and thus the order of regrant made by defendant No. 2 u/s 5 of the Act has become final and that the land so re-granted to him was subsequently assigned re-survey numbers 14 and 15 as such, he is the absolute owner in possession and enjoyment of the suit schedule property. He further contended that in OS No. 305/1967 the Court has recorded a definite finding that the plaintiffs therein have been in lawful possession and enjoyment of the suit property and therefore the plaintiffs in the present suit are not entitled for the relief of injunction. It was his further contention that since in the earlier suit the Court has recorded a finding that the land re-granted in his favour forming part of Sy. No. 10 has been subsequently assigned Sy. Nos. 14 and 15, plaintiffs are estopped from contending that the land re-granted to them in erstwhile Sy.No.2 has been assigned Sy. Nos. 14 and 15 as such the plaintiffs are not entitled for any of the reliefs sought in the suit. Therefore, defendant No. 4 sought for

dismissal of the suit. He also alternatively contended that he has been in continuous, open and peaceful possession and enjoyment of the suit property in assertion of hostile title adversely to all concerned including the plaintiffs for over 12 years and thus he has perfected his title by adverse possession.

7. In the light of the pleadings of the parties, the Trial Court framed the following issues;

1. Whether the plaintiffs are the owners of the suit property as contended in the plaint?

Or

Whether the 4th defendant is the owner in possession and enjoyment of the suit property as contended in para-20 of the written statement?

2. whether the land registered in the name of the 4th defendant in case No. 1175/60-61 is not suit land as contended in the plaint?

3. Whether the proceedings in claim petition No. 1175/60-61 are void and not binding on plaintiffs as contended in para 11 of the plaint?

Or

Whether the occupancy rights conferred on plaintiffs by the 2nd defendant in case No. 71/67-68 is void as contended in para 18 of the written statement?

4. Whether the plaintiffs were in juridical possession of the suit property on the date of suit?

5. Whether this Court has no jurisdiction to question the decision of the 2nd defendant registering the 4th defendant as an occupant of the suit land as contended in para-19 of the written statement?

6. Whether the suit against defendant No. 1 and 2 is not maintainable in view of Section 35 of the Inam Abolition Act of 1955, as contended in para 19 of the written statement?

7. whether suit is not maintainable for non challenging the order of the revenue appellate Tribunal by the plaintiffs as contended in para-19 of the written statement?

8. Whether the 4th defendant has perfected his title to the suit property by adverse possession as contended in para-21 of the written statement?

9. whether the suit is barred by the doctrine of res judicata as contended in para-22 of the written statement?

10. Whether the suit is barred u/s 65 of the Limitation Act, as contended in para 23 of the written statement?

11. Whether the plaintiffs are entitled for declaration and injunction sought?

12(a) Whether the plaintiffs are entitled for the relief of possession in the alternative?

(b) If so, whether they are entitled for an enquiry for mesne profits as claimed?

8. The parties led evidence. During the trial, PWs.1 to 5 and DWs 1 to 3 were examined and Exs.P.1 to P.54 and Ex.D.1 to D.31 were marked.

9. The learned trial Judge after hearing both sides and on appreciation of oral and documentary evidence answered issue Nos. 1 to 6, and 8 to 12 in the negative and answered issue No. 7 in the affirmative. Consequently, dismissed the suit of the plaintiffs.

10. Aggrieved by the said judgment and decree, the LRs of plaintiff No. 1 and plaintiffs 2 to 6 filed appeal in RA No. 13/1994 on the file of the Civil Judge, Chikkaballapur. The Lower Appellate Court after hearing the learned Counsel appearing for the parties, during the course of the judgment framed the following points for consideration:

1. Whether the judgment and decree of the lower Court is capricious, vexatious, unreasonable etc., and it is without application of material facts placed before the lower Court and that it is liable to be set aside?

2. What order?

11. On re-appreciation of oral and documentary evidence, the Lower Appellate Court held that the judgment of the Trial Court is capricious, unreasonable and is without appreciation of the material facts placed on record, therefore, it is liable to be set aside. Consequently, the Lower Appellate Court allowed the appeal, set aside the judgment and decree of the Trial Court and decreed the suit of the plaintiff, for the relief of declaration and also for possession. Hence this second appeal by defendant No. 4. During the pendency of this appeal, the original defendant No. 4 died and his LR was brought on record on 29.3.2004.

12. This appeal was admitted for consideration of the following substantial questions of law:

1. Whether the appreciation of evidence by the Lower Appellate Court is perverse?

2. Whether the suit filed by the plaintiffs/respondents was barred by res judicata in view of the judgment in OS No. 305/1967?

13. Upon service of notice of appeal, the respondents-plaintiffs have appeared through their learned Counsel.

14. I have heard Sri. Bhaskaraiah, learned Counsel for the appellant - LR of the 4th defendant and Ms. Chandrakala, learned Counsel for the respondents-plaintiffs and perused the judgment and records of the Courts below.

15. Learned Counsel for the appellant contended that the Trial Court on

appreciation of the oral and documentary evidence recorded a finding that the suit schedule property is the one re-granted by defendant No. 2 in favour of defendant No. 4 and that defendant No. 4 has been in lawful possession of the property and in that view of the matter, the Trial Court dismissed the suit. However, the Lower Appellate Court without properly appreciating the reasoning assigned by the learned trial Judge, has proceeded to hold that the property re-granted to defendant No. 4 is entirely different from the suit schedule property and this finding of the Lower Appellate Court is erroneous and contrary to the evidence on record. He further contended that the issue as to whether the property re-granted to defendant No. 4 was subsequently assigned Sy.Nos.14 and 15 or whether the property re-granted in favour of the plaintiffs was assigned Sy.Nos.14 and 15 was the issue involved in the earlier suit filed in OS No. 305/1967 and the said issue was answered in favour of defendant No. 4 and the said finding of the Trial Court was affirmed by the Lower Appellate Court and also by this Court in second appeal and therefore, in the present proceedings, the plaintiffs are estopped from re-agitating the said controversy and that the Lower Appellate Court has completely overlooked this fact and has set aside the judgment of the Trial Court and has decreed the suit. In support of his contention that the finding on the above issue acts as an estoppel against the plaintiffs in the present suit, the learned Counsel sought to place reliance on the following decisions.

Hanumegowda Vs. Sudarshanachar,

Sajjadanashin Sayed Md. B.E.Edr. (D) By Lrs. Vs. Musa Dadabhai Ummer and Others,

Bhanu Kumar Jain Vs. Archana Kumar and Another,

Sulochana Amma Vs. Narayanan Nair,

16. On the other hand, learned Counsel for the respondents-plaintiffs sought to support the reasoning of the Lower Appellate Court and contended that the judgment in OS No. 305/1967 has been rightly held as not binding and the principles of res judicata is not attracted as the said suit was only for permanent injunction, whereas the present suit is for relief of declaration and possession, therefore, none of the findings recorded in the said suit would act as estoppel against the plaintiffs in the present suit. She further contended that the Lower Appellate Court having found that the Trial Court has committed serious error in coming to the conclusion that the suit schedule property is the property which was re-granted in favour of defendant No. 4 has corrected the said finding in its power of re-assessing the evidence and the judgment of the Lower Appellate Court is sound and based on evidence on record, as such it does not call for interference by this Court. It is her further contention that the substantial questions of law raised by this Court do not really arise for consideration.

17. The admitted facts are, Mittenahalli village was an Inam village and it was unsurveyed and unsettled. From 1.3.1959, by virtue of the provisions of the Act

all inams were abolished and the benefit attached to all such inams vested with the State subject to the right of regrant as provided u/s 5 of the Act. Original defendant No. 4 applied for regrant of the land to an extent of about 10 acres in Mittenahalli village, ofcourse, without mentioning the survey number obviously because the village remained unsurveyed and unsettled. In the said application he had furnished the boundaries for the land in respect of which he sought regrant. He claimed regrant on the basis that he is a permanent tenant under the Jodidars. The defendant No. 2 by his order dated 1.6.1961 ordered regrant of 10 acres of land in Sy.No.10 of Mittenahalli village in favour of defendant No. 4. Against the said order of regrant, two of the Jodidars one Yerappa and Narasimha filed appeal before the Mysore Appellate Tribunal, Bangalore, in Appeal No. 2113/1963. In the said appeal, the original plaintiff No. 1 and late Lakshmikantappa filed application to implead themselves as co-appellants. The said appeal came to be dismissed as barred by time by order dated 13.11.1964, a copy of which is marked as Ex.D.2 in the present proceedings. Thereafter, the defendant No. 4 alleging interference by the original plaintiff No. 1 and Lakshmikantappa with the land re-granted to him, filed the suit in OS No. 305/1967 on the file of the then Munsiff at Chikkaballapur seeking the relief of permanent injunction. In the said suit, he contended that the land re-granted to him was subsequently assigned Sy.Nos.14 and 15. The said suit was contested by the defendants therein. After contest, the suit was decreed by the judgment and decree dated 30.6.1976. Against the said judgment, the defendants therein filed appeal before the First Appellate Court which came to be dismissed and also further second appeal to this Court ended in dismissal. When the suit in OS No. 305/1967 was pending, the present plaintiffs applied to defendant No. 2 for regrant of the land to an extent of 17% acres in Sy. No. 1. The defendant No. 2 appears to have re-granted the land to an extent of 17 1/2 guntas to the plaintiffs in Sy. No. 2. After the said order of regrant the present plaintiffs amended the written statement in OS No. 305/1967 contending that the land re-granted to them in Sy. No. 2 has been assigned Sy. Nos. 14 and 15.

18. After the second appeal filed by the present plaintiffs against the judgment and decree in OS No. 305/1967 was dismissed, they filed the present suit for the relief of declaration and for consequential injunction and in the alternative for the relief of possession. As noticed earlier, the Trial Court dismissed the said suit while the Lower Appellate Court reversed the judgment and decreed the suit. In the Trial Court the defendant No. 4 had contended that the suit is barred by principles of res judicata in the light of the judgment and decree in OS No. 305/1967. However, the Trial Court though framed an issue in that regard issue No. 9 held it against defendant No. 4 holding that the suit in OS No. 305/1967 was filed for a bare injunction, wherein the question of title of the parties have not been gone into in the said suit and whereas the present suit is filed for declaration of title, therefore the principles of res judicata are not attracted. Before this Court, the principal contention of learned Advocate for the appellant is that the finding on material issue in OS No. 305/1967 acts as an estoppel

against the plaintiffs in the present suit and in the present suit, the said issue cannot be re-agitated again and the plaintiffs are bound by the said finding recorded in OS No. 305/1967 with regard to identity of the property.

19. The Supreme Court in Bhanu Kumar Jain Vs. Archana Kumar and Another, , has considered the distinction between the principles of "res judicata" and the "issue estoppel". The Apex Court has observed that there is a distinction between the "issue estoppel" and "res judicata". In para-30, the Apex Court has observed that:

Res judicata debars a Court from exercising its jurisdiction to determine the lis if it has attained finality between the parties whereas the doctrine "issue estoppel" is invoked against the party. If such an issue is decided against him, he would be estopped from raising the same in the latter proceeding. The doctrine of res judicata creates a different kind of estoppel viz. Estoppel by Accord.

20. A single Judge of this Court in Hanumegowda v. Sudarshanachar referred to supra has considered this aspect at great length. The relevant observations are found in paragraphs 21 to 23. The Apex Court in Sulochana Amma Vs. Narayanan Nair, in paragraph-9 has considered the applicability of the principles of res judicata in connection with the suit for injunction vis-a vis the suit for declaration of title between the same parties. The observation reads thus:

Sri. Sukumaran further contended that the remedy of injunction is an equitable relief and in equity, the doctrine of res judicata cannot be extended to a decree of a Court of limited pecuniary jurisdiction. We find no force in the contention. It is settled law that in a suit for injunction when title is in issue for the purpose of granting injunction, the issue directly and substantially arises in that suit between the parties, when the same issue is put in issue in a later suit based on title between the same parties or their privies in a subsequent suit the decree in the injunction suit equally operates as res judicata. In this case, when the right and interest of the respondent were questioned in his suit against "K", the validity of the settlement deed and the terms thereof were gone into. The Civil Court found that "K" acquired life-estate under the settlement deed executed by his wife conferring vested remainder in the respondent and on its basis the respondent was declared entitled to an injunction against "K" who was prohibited not only from committing acts of waste, but also from alienating the properties in favour of third parties. The later suit of injunction to which the appellant was a party also binds the appellant Therefore even though decree founded on equitable relief in which the issue was directly and substantially in issue and decided, and attained finality would operate as res judicata in a subsequent suit based on title where the same issue and directly and substantially arises between the parties.

21. Thus from the aforesaid decision, it is clear that the finding on issue in a previous proceedings would act as res judicata and also as an estoppel in a subsequent proceedings. Merely because, the earlier suit was for the relief of

permanent injunction alone, the finding recorded in the said proceedings cannot be held to be not binding on the parties in the subsequent suit for declaration of title. The Apex Court in *Sajjadanashin Sayed Md. B.E.Edr. (D) By Lrs. Vs. Musa Dadabhai Ummer and Others*, has laid down the test for determination whether the issue was directly and substantially an issue in an earlier proceedings or collateral or incidental. According to this test, if the issue was necessary to be decided for adjudicating on the principal issue, and was decided, it would have to be treated as "directly and substantially" an issue, and if it is clear that the judgment was (sic) based upon that decision, then it would be *res judicata* in a later case. According to the Apex Court, the material test to be applied is whether the Court considers the adjudication of the issue material and essential for its decision.

22. In the case on hand, having regard to the rival contentions of the parties in the earlier suit in OS No. 305/1967, the Court had framed several issues. The two relevant issues raised in the said case are required to be noted, i.e., Issue No. 1 "Does plaintiff prove that he is in possession of the suit schedule land as registered under the Inam Abolition Act?" Issue No. 5, "Do defendants prove boundaries given to the schedule property are wrong and there is no such property as pleaded by them in their written statement?"

23. Thus, in the said suit for deciding whether the plaintiff therein has been in lawful possession and enjoyment of the property claimed by him and whether he is entitled for the relief of permanent injunction, the Court was required to find out as to whether the land re-granted to the plaintiff therein in Sy. No. 10 was assigned Sy. Nos. 14 and 15 subsequently or whether the land re-granted in favour of the present plaintiff in Sy. No. 2 was assigned new Sy. Nos. 14 and 15. Finding on that aspect of the matter was very much material for deciding as to whether the plaintiff in that case was entitled for in the relief as sought therein or not. Parties led elaborate evidence on that aspect of the matter. The Trial Court in that case on consideration of the entire evidence and by elaborately discussing all those materials placed by the parties on record, recorded a finding that the land which was re-granted to the plaintiff therein namely defendant No. 4 herein, in Sy. No. 10, was subsequently assigned new Sy. Nos. 14 and 15 and that the plaintiff therein has been in lawful possession of the said property and since interference by the defendants therein has been established, plaintiff therein, is entitled for the relief of permanent injunction. The said finding recorded by the Trial Court in that case was affirmed by the First Appellate Court and also by this Court in the Second Appeal. The said finding is binding on the parties to the suit. The present plaintiffs were very much parties to the said suit. Therefore they are bound by the said finding. While recording the said finding, the Trial Court has also found that the land re-granted to the present plaintiffs in Sy. No. 2 was not assigned new Sy. Nos. 14 and 15. In the present suit, of-course for declaration of title, the plaintiffs again contended that the land re-granted to them in Sy.No.2 by defendant No. 2 was subsequently assigned Sy.Nos.14 and 15 and that they are in lawful possession of the property despite the contrary finding recorded in

the earlier proceedings. Therefore in the present suit also, the question required to be considered by the Court was whether the land re-granted to the present plaintiffs in Sy. No. 2 was assigned Sy. Nos. 14 and 15 as claimed by them or whether the land re-granted to defendant No. 4 was assigned Sy. Nos. 14 and 15. in view of the fact that the said issue was substantially an issue in the earlier proceedings in OS No. 305/1967 and that Court had jurisdiction to decide the said aspect of the matter and since that issue was material one for deciding the controversy involved in that suit and since the Court in that case has recorded a definite finding in favour of defendant No. 4 herein, as held in the aforesaid decisions, the finding recorded in OS No. 305/1967 would act as *res judicata* in the present suit and the plaintiffs are estopped from re-agitating the very same issue in the present suit. Both the Courts below have completely ignored this aspect of the matter and have committed serious error of law in this regard. The Trial Court on assessment of the evidence has again reaffirmed the finding recorded in OS No. 305/1967 on the material issue, though the plaintiff was estopped from re-agitating the same issue in the present suit. In my opinion, the Trial Court was not required to go into the details of the claim made by the plaintiffs, in the light of the finding recorded in OS No. 305/1967 on material issues. Nevertheless, the Trial Court has gone into this question and recorded a finding of fact. However, the Lower Appellate Court without considering any of these aspects of the matter and ignoring the material evidence on record has reversed the well-reasoned findings recorded by the Trial Court. Therefore, in my opinion, the judgment of the Lower Appellate Court is perverse, illegal and contrary to the evidence on record and also is opposed to law laid down in the aforesaid decisions. In view of the fact that the plaintiffs in the present suit are estopped from re-agitating the issue, which had already been decided in OS No. 305/1967 to which they were parties, the present suit was clearly barred by principles of *res judicata*.

24. In this view of the matter, the judgment of the Lower Appellate Court reversing the judgment of the Trial Court is erroneous, perverse, contrary to well established principles of law, and therefore, is liable to be set aside. Accordingly, both the substantial questions of law framed in this appeal are answered in the affirmative. In this view of the matter, the above appeal deserves to be allowed with costs throughout. Accordingly, this appeal is allowed with cost. The judgment and decree dated 7.8.2000 passed by Civil Judge, Senior Division, Chikkaballapur in RA No. 13/1994 is hereby set aside and the judgment and decree of the Trial Court dismissing the suit is hereby upheld.