

(2015) 08 KAR CK 0397

In the Karnataka High Court

Case No : Regular Second Appeal No. 5838 of 2011

Yankappa

APPELLANT

Vs

The City Municipal Council, Gangavathi

RESPONDENT

Date of Decision : 05-08-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974 — Section 16

Citation : (2015) 08 KAR CK 0397

Hon'ble Judges : B. Veerappa, J

Bench : Single Bench

Advocate : Vijayendra Bhimakkanavar, Advocate for F.V. Patil, for the Appellant;
B. Sharanabasawa, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B. Veerappa, J—This is a plaintiffs second appeal against the judgment and decree dated 07.09.2011 made in R.A. No. 3/2011 on the file of the Senior Civil Judge, Gangavathi dismissing the appeal confirming the judgment and decree dated 18.12.2010 made in O.S. No. 98/2009 on the file of the Additional Civil Judge, Gangavathi, wherein the suit of the plaintiff for permanent injunction was came to be dismissed.

2. The plaintiff filed suit for injunction contending that he is the absolute owner and in possession and enjoyment of the suit schedule property, morefully described in the plaint schedule for more than 40 years and plaintiff has erected zinc sheet shed in the suit schedule property and has been doing his Dhobhi business and considering the long possession of the plaintiff, the defendant finally in the year 2000 assigned the suit property in favour of the plaintiff and effected the mutation in his favour on 18.10.2000. The plaintiff being in possession and enjoyment for more than 40 years, he has perfected his title to the suit property by assigning the same and effecting the mutation in his name.

That being so, that on 27.05.2009, the defendant along with its men have illegally trespassed into the suit schedule property and interfered with the plaintiff's peaceful possession and enjoyment of the suit property. However, the same was resisted. Therefore, he filed the suit.

3. The defendant filed written statement, denied the entire plaint averments including the possession of the suit property. It is the specific case of the defendant that the plaintiff was never in possession of the suit schedule property at any point of time. Question of interference by the defendant does not arise and he has not erected any zinc sheet shed in the suit schedule property, as it is open plot and there is no cause of action and it is an open space which is in possession of the defendant having its title. Defendant is a local body. As such, the property vests with the defendant. The plaintiff has created an unregistered sale deed in respect of the said property and remitted taxes to the suit open plot for a period of 4 to 5 years and the mischief came to know by the defendant and a notice was issued to the plaintiff on 12.10.2000 directing to produce the sale deed in respect of the suit plot. The said notice was served to the plaintiff. Then on 14.08.2001 the defendant passed an order canceling the Katha Nondani Adesha on 17.10.2000. The plaintiff has not preferred any appeal against the said order before the competent forum. The suit plot is a public premises and the same is governed by Karnataka Public Premises (Eviction of Un-authorized Occupants) Act, 1974 and plaintiff cannot take any shelter by filing the instant suit against the defendant. As the jurisdiction of the said Court was barred under Section 16 of Karnataka Public Premises (Eviction of Un-authorised Occupants) Act, 1974 and no relief will be granted in favour of the plaintiff. Hence, defendant sought for dismissal of the suit.

4. In order to establish the case, plaintiff examined himself as P.W. 1 and witnesses P.Ws. 2 and 3 and marked documents as Ex. P-1 to Ex. P-22. The defendant was examined as D.W. 1 and marked documents as Ex. D-1 and Ex. D-2. The Trial Court on considering the entire material on record, a finding that the plaintiff failed to prove his possession as on the date of the suit. Question of interference of the defendant does not arise and plaintiff is not entitled to the relief of permanent injunction. Accordingly, the suit came to be dismissed. The said judgment and decree, the plaintiff filed appeal in R.A. No. 3/2011 before the Senior Civil Judge, Gangavathi, who after hearing both the parties by the impugned judgment and decree has dismissed the appeal confirmed the judgment and decree passed by the Trial Court. Against the concurrent findings of fact, this regular second appeal is filed.

5. I have heard the learned counsel for both the parties to the lis.

6. Shri Vijayendra Bhimakkanavar, learned counsel for the appellant has strenuously contended that both the Courts below failed to consider the principles of settled position of the plaintiff in respect of the property in question and the defendant has recognized the possession of the plaintiff as far as Ex. P-17 and in respect of his case, he has also relied upon the dictum of the

Hon"ble Supreme Court in the case of Rame Gowda (D) by Lrs. Vs. M. Varadappa Naidu (D) by Lrs. and Another, (2003) 10 SCALE 950 : (2004) 1 SCC 769 : (2003) 6 SCR 850 Supp : (2004) AIRSCW 4205 : (2003) 8 Supreme 928 .

7. Per contra, Shri B. Sharanabasawa, learned counsel for the respondent sought to justify the impugned judgment and decree and specifically contended that the plaintiff was never in possession of the suit property at any point of time nor defendant admit the possession of the plaintiff. Ex. P-17 relied upon by the plaintiff is already cancelled and that is final and conclusive nor challenged and the judgment relied upon by the learned counsel for the appellant is not applicable to the facts and circumstances of the case. Therefore, he sought to dismiss the second appeal.

8. I have given my thoughtful consideration to the arguments of the learned counsel for both the parties to the lis and perused the entire material on record.

9. The plaintiff filed suit for permanent injunction. In order to prove his case, plaintiff examined himself as P.W. 1 and witnesses as P.Ws. 2 and 3 and produced the documents Ex. P-1 to Ex. P-22. The defendant examined as D.W. 1 and marked Ex. D-1 and Ex. D-2. Considering the entire material on record, the Trial Court has recorded a finding that during the course of cross-examination of P.W. 1, he has stated that suit schedule property was given to him by the defendant and earlier to that the suit schedule property was belonging to the defendant. About 20 years back a document is given in his favour and the possession was given to him by the defendant and he is in possession of the suit schedule property for more than 40 years. He further stated that he paid Rs. 10,000/- to the defendant and on that basis the suit property was granted in his favour and produced the receipt for having paid Rs. 10,000/- to the defendant and he states that the possession of the suit schedule property is given to him by doing panchanama and states that he do not know what type of document was given in his name by the defendant. Exs. P-1 to P-3, tax paid receipts, the same are paid during the year 2003 to 2005. Exs. P-4 to P-6 are the documents pertaining to self assessments of the Tax in respect of the property, the same are for the period 2002 to 2005. The measurement given in the said Exs. P-4 and P-5 is to the extent of 8 X 10 feet, whereas, the measurement of the said property is mentioned as 20 X 10 feet. Exs. P-7 to P-11 are the photographs and Ex. P-14 is the counter foil of the postal order. Ex. P-13 is the copy of the application given to the defendant under right to information Act. Exs. P-15 to P-22 are the documents given by the Right to Information Officer of the defendant. Ex. P-17 is the Khata Nondani Adesha which reflects the plaintiff is liable to pay the tax in respect of the suit schedule property. On perusal of the evidence of P.Ws. 2 and 3, it reflects that P.Ws. 2 and 3 have seen some of the documents in the name of the plaintiff in respect of the suit schedule property. P.W. 2 states that he has seen the mutation extract, whereas P.W. 3 states that he has seen the registered sale deed in the name of the plaintiff in respect of the suit schedule property. The plaintiff has not produced any documents as the witnesses stated above. The

defendants produced Exs. D-1 and D-2. Ex. D-2 is the true copy of the order dated 14.08.2001 which is the same document produced by the plaintiff as per Ex. P-21. The defendant stated that the plaintiff by giving false information obtained Ex. P-17 which is the Khata Nondani Adesha in his name during the year 2000 and the same has been cancelled as per order dated 14.08.2001 which had marked as Ex. D-2 and the said order is passed by giving notice to the plaintiff as per Ex. D-1. The order passed canceling the mutation extract, appellant has reached finality. Admittedly, plaintiff has not challenged the said order before any competent authority. He is seeking relief of said injunction on the ground that he is the absolute owner of the suit schedule property and he is in possession of the same for more than 40 years. The plaintiff has not produced any material document to prove that he is in possession of more than 40 years. The Trial Court also relied upon the decision of the Hon'ble Supreme Court in the case of Yamuna Nagar Improvement Trust Vs. Khariati Lal, AIR 2005 SC 2245 : (2005) 4 JT 261 : (2005) 10 SCC 30 : (2005) 1 UJ 617 held that the plaintiff claiming himself to be the owner seeking injunction against the dispossession, the decree of permanent injunction, it was his duty to prove that he was the owner of the property and said property remained in his possession and defendant had no right, title or interest therein. In the present case, the plaintiff failed to prove his ownership over the suit property and not entitled for permanent injunction, in view of the law laid down by the Hon'ble Supreme Court as stated supra, accordingly, the Trial Court dismissed the suit.

10. On re-appreciating the entire material on record, the lower Appellate Court recorded a finding of fact that P.W. 1 has stated in his cross-examination as under:

11. A careful analysis of the evidence P.W. 1, it is contrary to his own pleading. There is no averments in the plaint as regards execution of deed about 20 years back, receipt of Rs. 10,000/- and allotment of suit property in his favour by the defendant. It is well settled law that any amount of oral evidence without pleading are in admissible. Pleadings without evidence are also in admissible. Therefore, the Appellate Court relied upon the decision in the case of Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs. and Others, AIR 2008 SC 2033 : (2008) 3 CLT 23 : (2008) 4 SCALE 718 : (2008) 4 SCC 594 : (2008) AIRSCW 4959 has held pleadings absent -- no amount of evidence could be looked into. In the entire suit the plaintiff is based on the Khata Nondani Adesha which is marked at Ex. P-17 on which the document, learned counsel for the appellant mainly relied to show that he is in property in question. Ex. P-17 khata nondani adesha is dated 18.10.2000. It clearly indicates that based upon the application of the plaintiff, the defendant has passed an order endorsing the khata number in its register in the name of the plaintiff. On careful perusal of Ex. P-17, it does not disclose the title of the plaintiff or suit property was assigned in the name of the plaintiff or defendant was received Rs. 10,000/- from the plaintiff or possession of the suit property was delivered in favour of the plaintiff about 20 years back as contended and it is not the case of the plaintiff that defendant has

sold the suit property. In the absence of any document, it is for him to prove that he came in possession of suit property. Except those documents, nothing has been placed on record. Ex. P-17 admittedly has been cancelled by the defendant on 14.08.2001. That is final and conclusive and the suit filed on 06.02.2009 as on the date of the suit, the said document was not in existence and it was cancelled. Therefore, said document in no way helpful to the plaintiff. With regard to possession, argument advanced by the learned counsel for the appellant, it is not the case of the plaintiff that defendant has admitted his possession. Defendant specifically denied his possession and except Ex. P-17 the defendant has not placed any material before the court to prove that he is in settled position against the true owner of the property in question. The decision relied upon by the learned counsel for the appellant, in the case of Rame Gowda (D) by Lrs. Vs. M. Varadappa Naidu (D) by Lrs. and Another, (2003) 10 SCALE 950 : (2004) 1 SCC 769 : (2003) 6 SCR 850 Supp : (2004) AIRSCW 4205 : (2003) 8 Supreme 928 is not applicable to the facts of the present case. In the said case, the possession of the plaintiff was admitted by the defendant and therefore, the Hon'ble Supreme Court held that unless the defendant dispossess in due process of law, his possession cannot be restored. The facts of the said case and the facts of the present case different. Therefore, it is not applicable to the facts and circumstances of the present case.

12. The plaintiff has admitted, that the defendant is the owner of the suit property. When that is so, the plaintiff filed the suit against the defendant for relief of permanent injunction to restrain the defendant from interfering with the peaceful possession and enjoyment of the suit property. As such, a suit for permanent injunction is not maintainable against the true owner when the defendant disputed the case of the plaintiff including title. Therefore, the suit filed by the plaintiff for permanent injunction was rightly dismissed by the Trial Court and affirmed by the lower Appellate Court. The appellant has not made out any substantial questions of law to interfere by this Court under Section 100 of the Code of Civil Procedure, 1908. The impugned judgment and decree passed by the Court below is based on the cogent legal evidence on record, the same is in accordance with law. Accordingly, the appeal is dismissed at the stage of admission.