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Court : Karnataka Gulbarga

Decided On : Feb-10-2012

Judge : N. Kumar

Appeal No. : R.F.A. No. 2230 of 2006

Appellant : Hullappa

Respondent : The State of Karnataka and Others

Judgement :

(**Prayer:** This RFA is filed under Section 96 of CPC against the judgment and Decree dated 24-07-2006 passed in OS. No. 242/1999 on the file of the Prl. Civil Judge (Sr.Dn.,) Bidar, Partly Decreeing the Suit for declaration.)

1. The plaintiff has preferred this appeal against that portion of the decree passed by the trial Court, declining to grant mandatory injunction.

2. For the purpose of convenience, the parties are referred to as they are referred to in the original suit.

3. The subject matter of the suit is land bearing Sy.No.29/2 totally measuring 5 acres 5 guntas out of which to the extent of 2 acres is acquired by the Government through defendants for construction of perculation tank at village Karanji, Taluka Aurad, District Bidar in the year 1997-98.

4. The case of the plaintiff is that defendants are Public Officers. It was their bounden duty to initiate acquisition proceedings under the Land Acquisition Act in respect of the private property, which is required for public purpose. The defendants being the responsible Public Officers are not sending requisition to the acquisition authorities for starting acquisition proceedings. The defendants have violated their legal obligation which they were bound to do, they have executed the work under the pretext of public duties. The promise given to the plaintiff that their land will be acquired under the process of law and will get compensation in respect of their acquired land is not complied with. So far more than two years have passed. The defendants deliberately violated the initiation of acquisition proceedings to pay the compensation under the Land Acquisition Act. Since the plaintiff is loosing income from the affected area of the land where perculation tank is constructed and because of acquisition the plaintiff is deprived of income from the suit land. The plaintiff got issued a legal notice on 21.09.1999 giving 60 days time for initiation of acquisition proceedings. The income of the plaintiff is decreased at Rs. 8,000-00 per acre and since the market value of the acquired land is Rs.80,000-00. The defendant neither replied to the notice nor initiated acquisition proceedings. Therefore he filed a suit for declaration that they are the owners of the suit land and for a direction to the defendants to initiate acquisition proceedings and for other consequential reliefs.

5. Defendants 2 and 3 have filed their written statement. They contend that plaintiffs suit is false, frivolous and illegal, as such the same is not maintainable. However, they say that contents at para 1 of the plaint are not disputed. However the plaintiff is put to strict proof thereof in respect of his alleged title and ownership and possession to the extent of 2 acres of village Karanji. The plaintiff is not required to remind the defendants of their duties and obligations. The plaintiff himself has admitted in para 1 of the plaint that the suit land to the extent of 2 acres is acquired by the Government and as such, the question of sending requisition etc., does not arise. The land acquisition proceedings are now started and further steps like conducting survey work and submission or proposals are being submitted. They denied that they deliberately violated the acquisition proceedings for payment of compensation. They denied that the market value of the acquired land is Rs. 80,000-00 per acre. On the contrary, the market value of

the suit land is not more than Rs. 15,000-00 per acre. The plaintiff has no cause of action. Therefore they want the suit to be dismissed.

6. On the aforesaid pleadings, the trial Court framed the following issues:

1. Whether plaintiff proves that he is the owner of the suit land and is entitle for a declaration as sought for?

2. Whether the plaintiff proves that the defendants have acted negligently in not initiating land acquisition proceedings in respect of suit land?

3. Whether this Court has jurisdiction to entertain and try this suit?

4. Whether the plaintiff is entitled for the mandatory injunction as sought for?

5. What order to decree?

7. The plaintiff in order to substantiate his claim, examined himself as P.W-1 and produced seven documents, which are marked as Ex.P-1 to P-7. No evidence was adduced on behalf of the defendants.

8. The trial Court on appreciation of the aforesaid oral and documentary evidence on record held that as the defendants are not disputing the title of the plaintiff to the suit property, there is no necessity for declaring the title again. However, she answered issue No.1 in the affirmative and declared that the plaintiff is the owner of the suit land. In view of the stand taken by the defendant that already acquisition proceedings are initiated, it held that no mandatory injunction directing the defendants to initiate acquisition proceedings is necessary as the said relief has become infructuous. Therefore issues-2- 4 were answered against the plaintiff in the negative. It also held that the Court has jurisdiction to try the suit and thus it decreed the suit of the plaintiff declaring him as owner of the land but declined to grant decree of mandatory injunction.

9. Aggrieved by the said judgment and decree of the trial Court, the plaintiff is in appeal.

10. The learned Counsel for the appellant assailing the impugned judgment and decree contends that when once the Court granted declaration of title, when the said land is acquired by the defendants for formation of tank without initiating acquisition proceedings, the trial Court ought to have issued a mandatory injunction directing the defendants to initiate acquisition proceedings. That has not been done. Therefore he submits that, that portion of the judgment and decree requires to be set aside and mandatory injunction is to be granted.

11. Per contra, the learned Counsel for the respondent admits that when the plaintiff has admitted initiation of acquisition proceedings, the trial Court was justified in declining to issue mandatory injunction and therefore no fault could be found with the judgment and decree of the trial Court.

12. In the light of the aforesaid facts and rival contentions, the point that arise for consideration in this appeal is as under:

Whether the trial Court was justified in declining to grant a decree of mandatory injunction?

13. From the aforesaid facts, it is clear that the suit is one for declaration of title. The documents which are produced in support of the said declaration are Ex.P-1, the certified copy of the notice issued under Section 80 of C.P.C. Ex.P-2 to 4 the record of rights, Ex.P-5 Form No.6, Ex.P-6 another Form No.6 and Ex.P-7 the letter of the Deputy Commissioner, Bidar, dated 07-06.2000. None of these documents are documents of title. The trial Court holds that plaintiffs title is not in dispute. Further, it says that when the plaintiffs title is not denied, second declaration of title is not necessary. Having recorded that finding, ultimately it granted a declaration that plaintiff is the owner of the schedule property. In fact, the trial Court has not properly read the written statement. In paragraph 2 of the written statement, this is what has been stated:

That the contents of para 1 of the plaint are not disputed. However, the plaintiff is put to strict proof thereof in respect of his alleged title and ownership and possession to the extent of 2 acres of village Karangi.

14. A reading of the entire paragraph makes it clear that the defendants have put the plaintiff to strict proof of his assertion that plaintiff is the owner. Now the plaintiff has produced seven documents. None of the said documents are document of title. It is settled law that in a suit for declaration of title, unless the plaintiff produces the document of title, the Civil Court cannot grant declaration on the basis of the record of rights, tax paid receipts or some communication or letters. This fundamental principles of law has not been kept in mind by the trial Court. In this context it is necessary to restate the law on this point.

15. The Apex Court in the case of STATE OF H.P. Vs. KESHAV RAM AND OTHERS reported in AIR 1997 SC 2181, has held as under:

In view of the rival contentions, the question that arises for consideration is whether the plaintiffs have been able to establish their title and the Courts below were justified in declaring plaintiffs title. As has been stated earlier the only piece of evidence on which the Courts below relied upon to decree the plaintiffs suit is the alleged order made by the Assistant Settlement Officer directing correction of the record of right. The order in question is not there on record but the plaintiffs relied upon the register where the correction appears to have been given effect to. The question, therefore, arises as to whether the entry in the settlement papers recording somebodys name could create or extinguish title in favour of the person concerned? It is to be seen that the disputed land originally stood recorded in the name of Raja Sahib of Keonthal and thereafter the State was recorded to be the owner of the land in the record of right prepared in the year 1949-50. In the absence of the very order of the Assistant Settlement Officer directing necessary correction to be made in favour of the plaintiffs, it is not possible to visualize on what basis the aforesaid direction had been made. But at any rate such an entry in the Revenue papers by no stretch of imagination can form the basis for declaration of title in favour of the plaintiffs. To our query as to whether there is any other document on the basis of which the plaintiffs can claim title over the disputed land, the learned counsel for the plaintiffs-respondents could not point out any other document apart from the alleged correction made in the register pursuant to the order of the Assistant Settlement Officer. In our considered opinion, the Courts below committed serious error of law in declaring plaintiffs title on the basis of the

aforesaid order of correction and the consequential entry in the Revenue Papers.

16. Again the apex Court in the case of NARAIN PRASAD AGGARWAL Vs. STATE OF MADHYA PRADESH reported in (2007) 11 SCC 736, at paragraph 19 has held as under:

19. Record-of-right is not a document of title. Entries made therein in terms of Section 35 of the Evidence Act although are admissible as a relevant piece of evidence and although the same may also carry a presumption of correctness, but it is beyond any doubt or dispute that such a presumption is rebuttable. Exhibit P-4 and Exhibit P-6 whereupon reliance has been placed by the learned trial Judge to hold that the State had title over the property in question, were documents of year 1920-21, but failed to notice that the documents must have been taken into consideration and/or would be presumed to have been taken into consideration by the Settlement Commissioner when the aforementioned order dated 30-10-1992 (Exhibit P-3) was passed wherein it had categorically been held that no deed of lease having been executed in respect of the land in question, the title of the said Putri Sethani should be deemed to be a permanent lessee.

17. Again the Apex Court in the case of GURUNATH MANOHAR PAVASKAR and ORS Vs. NAGESH SIDDAPPA NAVALGUND and ORS reported in AIR 2008 SC 901, at paragraph 12 has held as under:

12. A revenue record is not a document of title. It merely raises a presumption in regard to possession. Presumption of possession and/or continuity thereof both forward and backward can also be raised under Section 110 of the Evidence Act. The courts below were, therefore, required to appreciate the evidence keeping in view the correct legal principles in mind.

18. Therefore it is clear that mutation entries and the records evidencing the same are not documents of title. In other words, the revenue record is not a document of title. Mutation being only for fiscal purpose of collection of land revenue from the person in whose name the revenue record stands. The guiding factor in recording mutation is to show who is in possession. If the mutation entry is made in accordance with law, there is a presumption in favour of the person in whose

name the mutation entry stands to the effect that he is in possession of the said property. That by itself is not sufficient to hold that he is the owner of the property. It is not proof of title. Therefore, the Civil Courts cannot declare title in a person on the basis of the aforesaid entries in the revenue records or on the basis of the revenue records. This is the settled legal position.

19. This case is a classic example of how in this part of Karnataka, the judicial process is abused and everyone concerned are parties to this fraud. In the first place, the defendants are not justified in admitting the title, if they are not sure about it. It is here it reflects the way some of the Government officers in this part of Karnataka, in particular, Hyderabad-Karnataka are dealing with the public properties. There is a clear attempt to create title in the plaintiff through the process of Court by tacitly admitting the title and not contesting the suit. Unfortunately, the learned trial Judge has become the victim of these circumstances. When the plaintiff has not produced documents of title, the Civil Court had no jurisdiction to declare the title to the immovable property in the plaintiff. The Court states in the judgment that when the title is not disputed, there is no necessity to declare the same. Still it declares. This is how the judicial process is abused. It is time that persons who are holding authority at the highest level, in particular, in districts of Bidar, Gulbarga, Raichur, Yadgir and Koppal, which was part of erstwhile State of Hyderabad are made aware of these tendencies which are in vogue in this part of the State. After re-organization and formation of the State of Karnataka, series of frivolous litigation are filed claiming title and claiming possession and compensation in terms of money in respect of the properties which were lost during the regime of Nizam. Neither the declaration of independence in the year 1947 nor the re-organization of States in 1956 can be the cause of action for such suits. These people have lost their title, prior to independence or even prior to re-organization of the State, voluntarily surrendering lands. Even otherwise lands have been acquired for irrigational purpose and also widening of roads. Claims are putforth saying that their lands have been acquired without notification and without payment of compensation. They have approached the Courts for direction to the authorities to initiate acquisition proceedings, which in many of the cases has been done. Therefore, it is of utmost importance to direct the authorities concerned to consider such claims minutely, engage the best legal

talent available in the area and fight these litigation which have the effect of looting public money in broad daylight through the process of the Court.

20. Therefore, the High Court Registry shall send a copy of this judgment to the Deputy Commissioner, Bidar, Gulbarga, Raichur, Yadgir and Koppal for due compliance forthwith. It is also necessary for them to initiate appropriate action against those Government officials, who have been colluding with the plaintiffs either by not filling the written statement or by filing the statement and admitting the claim or not entering the witness box to protect the interest of the State. If because of their negligence, the Government has lost any money, it shall initiate appropriate proceedings to recover the money from such persons. When the cases are not properly conducted in Court and if the Counsel for the State are also party to the same and has not protected the interest of the State, appropriate action should be initiated even against them. This is the only way the public property, public money in this part of the State can be protected and abuse of the judicial process can be prevented.

21. Now that the Circuit Bench of High Court is functioning from Gulbarga, these transactions are slowly appearing to us better than what it was at the Principal Bench at Bangalore. The law of the land should prevail. The law passed by the Parliament and the State Legislature should prevail and this hangover from Nizam rule should end at the earliest.

22. In the light of what is stated above, when the plaintiff has not produced document of title and he himself says that acquisition proceedings are initiated or declining to act on the statement of the defendant that acquisition proceedings are already started, the question of Civil Court issuing mandatory injunction to the Government or Governmental authorities for initiation of acquisition proceeding is not permissible and rightly to that extent, the judgment of the trial Court is right and it is up held.

23. It is also made clear that if and when the claim is putforth claiming compensation by the plaintiff herein, the authority considering such claim shall ignore the judgment and decree of the trial Court insisting on proof of title and only being convinced that the plaintiff is the owner of the property, the compensation

shall be awarded to the plaintiff if the plaintiffs land is acquired for the aforesaid cause. That would meet the ends of justice. Hence, I pass the following order:

Appeal dismissed.

Sri Manavendra Reddy, learned Counsel is permitted to file memo of appearance for R-1 within four weeks.