

Holiyavva and Others Vs. Basavaneppa and Others

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Court : Karnataka Dharwad

Decided On : Jun-25-2014

Judge : A.V. Chandrashekara

Appeal No. : MSA No. 652 of 2013 (DEC-INJ)

Appellant : Holiyavva and Others

Respondent : Basavaneppa and Others

Judgement :

(Prayer: This Appeal Is Filed Under Order 43 Rule 1(U) Of Cpc, Against The Judgment And Decree Dated 21.03.2013 Passed In R.A.No.3/2013 On The File Of The Senior Civil Judge, Ramdurg, Allowing The Appeal Filed Against The Judgment And Decree Dated 04.12.2012 Passed In O.S.No.29/2006 On The File Of The Civil Judge, Ramdurg, Dismissing The Suit Filed For Declaration And Injunction.)

1. Order of remand passed by the learned Judge of the first appellate Court i.e., learned Senior Civil Judge, Ramdurg in R.A.No.3/2013 dated 21.03.2013 is called in question on various grounds as set out in the appeal memo. Respondent No.1 herein is the plaintiff and respondent Nos.2 and 3 herein are defendant Nos.1 and 2 in the suit bearing O.S.No.29/2006, which was pending on the file of the Civil Judge at Ramdurg. Parties will be referred to as plaintiff and defendants as per their ranking given in the trial Court.

2. Plaintiff has filed a suit against the Town Municipality, Ramdurg, represented by its President and Chief Officer and three others i.e., appellants herein for the relief of declaration of title on the ground that he has acquired title by way of adverse possession in respect of urban property bearing CTS No.2946/1 measuring 59-36 square mtrs. situated at Junipeth, Ramdurg. The same is described in the schedule appended to the plaint. The said suit has been contested by all the defendants by filing written statement. Appellants herein who are defendant Nos.1 to 3 have filed separate statement denying all the material averments and they have called upon the plaintiff to prove the contents of the plaint strictly. As many as 5 issues and one additional issue have been framed by the trial Court.

i) Whether the plaintiff proves that he is in possession of the suit schedule property bearing CTS No.2946/1 continuously, uninterruptedly with the knowledge with the knowledge of the MSA No.652/2013 defendants for more than 12 years and perfected his title by way of adverse possession?

ii) Whether the plaintiff further proves that the defendants are interfering with the peaceful use and enjoyment of the suit schedule property by the plaintiff as on the date of the suit?

iii) Whether the plaintiff is entitled for declaration as prayed?

iv) Whether the plaintiff is entitled for the consequential relief of permanent injunction as prayed for?

v) What order or decree?

Additional issue:

i) Whether defendants 3 to 5 prove that the suit is not maintainable for want of statutory period of 30 years as contended at para 8 of their written statement?

3. Additional issue No.1 deals about the maintainability of the suit for the relief of declaration of title by way of adverse possession. The said additional issue No.1 was treated as a preliminary issue and ultimately the trial Court has held that property in question, though belongs to the municipality, is a government property

for all practical purpose and therefore the plaintiff is expected to plead that he has been in possession of the property for over a period of 30 years as contemplated under Article 112 of the Limitation Act, 1963. Ultimately, said issue came to be answered in the affirmative holding that suit is not maintainable, since it has been brought within the statutory period of 30 years.

4. Being aggrieved by the said order on preliminary issue, plaintiff chose to file an appeal under Section 96 of CPC before the Court of Senior Civil Judge at Ramdurg in R.A.No.3/2013. After contest, the said appeal has been allowed and it is held that the property belonging to the municipality is not a government property and therefore, 12 years is the statutory period to seek the relief of declaration of title by way of adverse possession against the property of the Municipality. This judgment dated 21.03.2013 is called in question on various grounds as set out in the appeal memo. On hearing the learned counsel for the appellants, following substantial question of law is framed by this Court on 02.06.2014.

"Whether the 1st Appellate Court has committed a serious error in allowing the appeal and remanding the matter to the Trial Court contrary to the provisions of Section 112 of the Limitation Act and Section 118(2) of the Karnataka Municipalities Act, 1964 and thus, the judgment of the 1st Appellate Court is perverse and illegal?"

5. Counsel appearing for the parties have submitted their arguments.

6. It is true that of sub Section 23 of Section 3 of General Clauses Act, 1897 defines 'Government', which includes both the Central Government and any State Government. Sub Section 31 of Section 3 of the General Clauses Act, 1897 defines 'Local authority'. Sub Section 31 of Section 3 is as follows:

"Local authority"- shall mean a municipal committee, district board, body of port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund;"

7. City Municipal Council means, a city municipal council established under this Act, i.e., the Karnataka Municipalities Act, 1964. Municipal council is defined under

Sub Section (14) of Section 2 of Karnataka Municipalities Act, 1964, which means, the council of a town or city (municipal area) established under this Act.

8. What is argued by the learned counsel for the respondent/plaintiff is that, if municipality is government, then there would not have been two definitions in General Clauses Act, regarding Government and Local Authority and therefore, he has argued that 30 years is not the statutory period required for a person to prove adverse possession in respect of a property belonging to the municipality. Sub Section 8 of Section 3 of General Clauses Act, 1897 defines Central Government. Local authority is defined in sub Section 20 of Section 3 of Karnataka General Clauses Act, 1899. It shall mean that, municipal committee, district board or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund.

9. What is argued by the learned counsel for the respondent/plaintiff is that municipality is a creation under Article 243Q of the Constitution of India and therefore, it has a distinct entity. Chapter IV of Karnataka Municipalities Act, 1964 deals about the Municipal Property and Fund. Sub Section 2 of Section 81 specifically states that,

"All property of the nature herein specified, and not being specially reserved by the Government, shall be vested in and belong to the municipal council and shall, together with all other property of whatsoever nature or kind not being specially reserved by the Government, which may become vested in the municipal council, be under its direction, management and control and shall be held and applied by it as trustee."

10. Karnataka Municipalities Act, 1964 is a special local legislation and it prevails over the general law i.e., General Clauses Act, 1897. On a plain reading of Sub Section 2 of Section 81 of the Karnataka Municipalities Act, though a property belongs to the municipality, it is held by the municipality as a trustee. On a further plain reading of sub Section 2 of Section 81, it is clear that ultimately power vests with the government.

11. It is in this regard, it is useful to refer to a decision of the Hon'ble Apex Court in the case of Kshitish Chandra Bose Vs. Commissioner of Ranchi, reported in AIR 1981 SC 707, which is relied upon by the learned counsel for the appellant. There a claim had been made in regard to the acquisition of title by way of adverse possession in respect of a tank belonging to the Municipality. In paragraph-9 of the said decision, it is held that if a person asserts a hostile title even to a Tank belonging to the Municipality, such a title by prescription would be complete only after expiry of thirty years of continuous possession.

12. Learned Counsel for the first respondent-plaintiff has vehemently argued that there was no occasion for the Hon'ble Apex Court to deal with the definition of "Government", "Municipality" and the properties owned by Municipalities and therefore the said decision is distinguishable on facts.

13. This Court is unable to accept the said limb of argument advanced on behalf of the plaintiff. The mandatory provisions of Sub-section (2) of Section 81 coupled with the observation made by the Hon'ble Apex Court in Kshitish Chandra Bose Vs. Commissioner of Ranchi case more particularly, paragraph-9, a person seeking a relief of adverse possession must necessarily plead that he has been in possession of the property belonging to the Municipality for over a period of 30 years openly to the knowledge and adversely to the interest of the Municipality.

14. Apart from this, Section 72 (1) of Karnataka Municipalities Act, 1964, speaks about the competency of municipal council to lease, sell and contract its properties, but the said competency is subject to the conditions and restrictions contained in sub-sections (2) to (9) of Section 72 of the said Act. Sub-section (3) of Section 72, prohibits Municipality to lease its property for a period exceeding one year or of a sale or other transfer, or contract for the purchase of any immovable property. The sanction of the municipal council by a resolution passed at its general meeting is required. Sub-section (2) of Section 72 mandates that Municipality is not free to make any grant of its immovable properties, irrespective of its value or to grant for an upset price or to lease for a term exceeding five years without the previous sanction of the Government.

15. As already discussed even to obtain a previous sanction of the Government under sub-section (2) of Section 72, a resolution of the Council passed at a general body meeting is absolutely required.

16. Sub-sections 1 and 2 of Section 72 of the Act, impliedly depict that properties held by Municipality is not in absolutely capacity but as a trustee of the Government. In this view of the matter, sub-section (2) of Section 81 of the Act is relevant.

17. This Sub-section (2) of Section 81 assumes significance in the light of the fact that even if the Municipality were to sell the property belonging to the Municipality in favour of anybody, prior permission of the Government is required. On a combined reading of Sub-section 2 of Section 81 and judgment of the Apex Court rendered in Kshitish Chandra's case and the ultimate power of the Government in according permission to the Municipality in case it wants to grant or sell the property of the Municipality, this Court is of the considered opinion that the trial Court has committed a serious error in coming to the conclusion that the property in question is not a Government property for all practical purposes. Hence, the order of remand is not justifiable. The interpretation of the words 'State Government and Local authorities' as done by the First Appellate Court is not based on the other relevant provisions found in Karnataka Municipalities Act, 1964 and hence, the order of remand needs to be set aside and the judgment of the trial Court will have to be confirmed.

ORDER

Appeal filed under Order 43 Rule 1(u) of CPC is allowed and the judgment of the First Appellate Court is set aside and the judgment of the trial Court is confirmed. There is no order as to costs.

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