

Siddalingappa and Others Vs. E. Anjinappa and Others

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Court : Karnataka Dharwad

Decided On : Jun-06-2014

Judge : A.V. Chandrashekara

Appeal No. : R.S.A. No.5037 of 2011 (DEC & INJ)

Appellant : Siddalingappa and Others

Respondent : E. Anjinappa and Others

Judgement :

(Prayer: This Appeal Is Filed U/S 100 Of Cpc Against The Judgment and Decree Dated 30.07.2010 Passed In R.A. No.16/2009 On The File Of The Civil Judge (Sr. Dn.) At Kudligi Allowing The Appeal Filed Against The Judgment Dated 13.03.2009 And The Decree Passed In O.S. No. 191/2002 On The File Of The Civil Judge (Jr. Dn.) and Jmfc At Kudligi, Decreeing The Suit Filed For Declaration And Injunction and Etc.)

1. Defendants 1 to 4 of an original suit bearing O.S.No.191/2002 which was pending on the file of the Court of Civil Judge (Jr.Dn.) and JMFC, Kudligi, Bellary District, are before this Court challenging the judgment and decree passed against them in R.A.No.16/2009 which was pending on the file of the Court of Civil Judge (Sr.Dn.), Kudligi. First respondent herein is the only plaintiff in the said suit. The remaining respondents are defendants 5 to 9 in the said suit. Parties will be referred to as plaintiff and defendants 1 to 9 as per their ranking given in the trial

Court.

2. Suit filed for the relief of declaration of title and permanent injunction was contested by the defendants and was decreed in part granting limited injunction against unlawful dispossession only vide considered judgment dated 13.03.2009. Against the said limited injunction granted in favour of the plaintiff, a regular appeal was filed by the very plaintiff under Section 96 before the First Appellate Court i.e., the Court of Civil Judge (Sr.Dn.), Kudligi, in R.A.No.16/2009. The said appeal had been filed on the ground that the trial Court was not justified in rejecting the main relief of declaration of title. The said appeal has been ultimately allowed and the main relief of declaration of title has been granted and consequently, the permanent injunction has also been granted by setting aside the limited injunction granted by the trial Court. Several grounds have been urged in the appeal memo filed under Section 100 CPC.

3. Learned Counsel for the appellants has submitted his arguments in regard to admission.

4. Following are the facts leading to the file of the suit in the trial Court :

The case of the plaintiff is that he is in absolute possession and enjoyment of the suit schedule property as the owner and that the suit schedule property originally belonged to one Parameshwarappa, who was the elder brother. The said Parameshwarappa is stated to have purchased the suit schedule property from one Narasinga Naik, S/o Somla Naik, r/o Gollenahalli Village in the year 1978, through a registered sale deed. The plaintiff and his brothers have were living in a joint family. The said Parameshwarappa died issueless in the year 1986. Plaintiff, being the legal heir of the deceased Parameshwarappa, has continued to be in possession and enjoyment of the suit property. He is stated to be paying land revenue regularly to the Government. According to the plaintiff, defendants have no manner of right, title or interest over the suit schedule property and they are stated to be busy bodies in creating unnecessary interference to the title as well as the possession of the suit schedule property held by him. As the defendants started interfering with their supporters on 06.06.2002, he was constrained to file a suit for declaration of title and permanent injunction.

Defendant No.1 appeared before the trial Court and filed detailed written statement and defendants 2 to 4 have adopted the said written statement by filing a memo to that effect. Defendants 5 to 9 got impleaded themselves in the said suit and they have not filed written statement. Defendants 1 to 4 have specifically denied all the material averments and have called upon the plaintiff to prove not only the acquisition of title, but also the possession asserted by him. According to the defendants, the entire extent of 13 acres 10 guntas of land in Sy.No.476 of Banavikal Village, Kudligi Taluk, originally belonged to the Government and the same was granted to one person by name Madigara Mariyappa and a patta was issued in his favour on 01.01.1926. The said Madigara Mariyappa had four sons viz., 1) Ningappa, 2) Durugappa, 3) Jogappa and 4) Siddappa. They are the members of the joint family and after the death of Madigara Mariyappa they have succeeded to the estate and they are stated to be in joint possession of the schedule property. According to them, alleged alienation by way of sale made by Jogappa, S/o Madigara Mariyappa or anybody else is void abinitio and that the said sale deed does not take away the right or interest of the other members of the joint family. The other three sons of Madigara Mariyappa also have equal right in the said property belonging to their father and therefore, sale deeds executed in favour of Parameshwarappa and Narasinga Naik are null and void and do not bind the sons and grandsons of Madigara Mariyappa. The suit is stated to be bad for non-joinder of necessary parties.

It is further averred that father of the plaintiff viz. Giddappa was running an arrack shop in Banavikallu Village and Jogappa one of the sons of Madigara Mariyappa was working as a coolie under Giddappa in the arrack shop. Jogappa was illiterate and taking advantage of his illiteracy, Giddappa, Narasinga Naik and present plaintiff managed to play fraud on a Jogappa and got executed a sale deed illegally excluding his two other brothers Gooleppa and Chowdappa.

According to the defendants, the property was worth more than Rs.30,000/- per acre and therefore, the trial Court had no pecuniary jurisdiction to try the matter. With these pleadings defendants had prayed for dismissal of the suit.

5. On the basis of the above pleadings, following issues came to be framed:

1. Whether plaintiff proves that he is the absolute owner of the plaint schedule property?
2. Whether the plaintiff further proves that he is in possession and enjoyment of the plaint schedule property?
3. Whether the plaintiff proves that the defendants are trying to interfere with the possession of the plaintiff over the plaint schedule property?
4. Whether the defendants prove that this Court has no pecuniary jurisdiction to try the suit and the Court Fee paid by the plaintiff is not sufficient?
5. Whether the plaintiff is entitled for the relief of declaration and permanent injunction?
6. What order or decree?

6. Plaintiff is examined as PW1 and one Narasinga Naik is examined as PW2. In all 19 exhibits have been got marked. Dodda Veeranna is examined as DW1 and Banavikallu Marappa is examined as DW2. Five exhibits have been got marked on their behalf. Ultimately suit came to be decreed in part, answering issue Nos.1 and 4 in the negative insofar as it relates to relief of declaration of title and issues 2 and 3 have been answered in the affirmative and issue No.5 has been answered partly in the affirmative. Ultimately suit came to be decreed on 13.03.2009 granting the relief of injunction against unlawful dispossession. Defendants have been directed not to interfere with the plaintiff's possession and till plaintiff is evicted in accordance with law.

7. Being aggrieved by the said limited injunction granted in his favour and in the light of the main relief of declaration of title being refused, plaintiff chose to file an appeal under Section 96 of CPC before the Court of Civil Judge (Sr.Dn.) at Kudligi, Bellary District in R.A.No.16/2009 raising several grounds.

8. After hearing the learned Counsel appearing for the parties and perusing the records the learned Judge of the First Appellate Court has allowed the appeal and

has granted the main relief of declaration of title and consequently permanent injunction is granted in the place of limited injunction granted by the trial Court. It is this divergent judgment which is called in question on various grounds as set out in the appeal memo.

9. Learned Counsel for the appellants has submitted his arguments on the aspect of admission. Perused the judgments of both the Courts and perused the appeal a memo.

10. It is to be seen that defendant Nos.1 to 4 did not choose to file any appeal against limited injunction granted against them by the trial Court. This would go to show that plaintiff was in possession of the suit as on the date of filing of the suit. If plaintiff was not in settled possession of the schedule property, the limited relief of injunction against dispossession contrary to the due process of law, would not have been granted. The plaintiff chose to file an appeal under Section 96 of CPC as he was aggrieved by the refusal of the trial Court to grant the main relief of declaration of title.

11. Ex.P15 and 16 are the certified copies of the registered sale deeds. Admittedly, deceased Parameshwarappa was the elder brother of the plaintiff. He died issueless in the year 1986. Parameshwarappa chose to purchase the entire suit schedule property vide Ex.P14 from Narasinga Naik in the year 1978 i.e., almost 24 years prior to the filing of the suit. Consequent upon the purchase of the suit schedule property through Ex.P14 name of Parameshwarappa the brother of the plaintiff was incorporated in the revenue records through proper mutation and his name continued to be in force till his death.

12. Narasinga Naik had purchased the suit property from Jogappa S/o Madigara Mariyappa and Gooleppa S/o Chowdappa in the year 1969 through a registered sale deed vide Ex.P15, which is the certified copy of the sale deed and through another sale deed from Durugappa S/o Mariyappa and Gooleppa S/o Chowdappa vide Ex.P16. Thus the entire suit schedule property measuring 13 acres 10 guntas had been purchased by Narasinga Naik wayback in 1969 i.e., 33 years prior to the filing of the suit. If Narasinga Naik had not been in possession of the suit schedule property consequent upon the purchase made by him through two sale deeds, he

could not have executed a sale deed in favour of Parameshwarappa in the year 1978 and he could not have handed over possession of the suit schedule property. The very fact that the trial Court has granted limited relief of injunction would go to show that Parameshwarappa was in possession of the property and consequent upon his death, plaintiff continued to be in possession of the property.

13. What is vehemently argued before this Court by the learned Counsel for the appellants is that Parameshwarappa is survived by his father and other brothers and they have not been made as parties. It is to be seen that in a suit like this, member of the joint family can file a suit for and on behalf of the joint family. The judgment so passed by the First Appellate Court in favour of the plaintiff granting the relief of declaration is binding only between parties to the suit i.e., in personam. If the other family members of the plaintiff have any right, they are at liberty to exercise their right and seek necessary relief and this will not give a right to the defendants to question the authority of the plaintiff in filing a suit for the main relief of declaration of title.

14. The trial Court itself has made a specific discussion in page No.13 of the impugned judgment stating that Asst. Commissioner has clearly held that sale transaction made in favour of Parameshwarappa is not hit by the provisions of the Karnataka Schedule Castes and Schedule Tribes (Prohibition of Certain Lands) Act, 1978. It is further held that if the sale deeds have been executed by playing fraud and by misrepresenting facts, then Jogappa or other executants could have challenged the same by filing necessary suit and none of them have filed any suit against Narasinga Naik or Parameshwarappa or plaintiff, as the case may be, challenging the validity of the said sale deeds.

15. If really the suit schedule property was in joint possession of the defendants, they would have really filed a suit for partition amongst themselves stating that the sale transaction so made in favour of Narasinga Naik would not bind them. Though the defendants have taken up a specific stand that suit properties is the joint family property, they have not made any counter claim regarding partition or separate possession or they have not challenged the validity of the sale deeds. It is further held that since the sale deeds marked as Exs.P15 and P16 are executed

by sons of Madigara Mariyappa and son of Chowdappa who are the sharers of the suit schedule property that too after the death of Madigara Mariyappa, the sale deeds cannot be said to be void ab initio.

16. This part of specific observation made by the trial Court is taken into consideration by the First Appellate Court in granting main relief of declaration of title. Having kept quiet without challenging the two sale deeds executed in favour of Narasinga Naik and the sale deed executed by Narasinga Naik in favour of Parameshwarappa and having kept mum all these years having allowed the plaintiff and his brother to continue in possession of the property, the defendants cannot turn around and say that the suit of the plaintiff is not maintainable for the main relief of declaration of title and permanent injunction.

17. The First Appellate Court has considered the entire evidence in right perspective and has taken into consideration the silence of the defendants in not challenging the sale deeds executed vide Exs.P14 to P16 and entry of the name of the purchasers in the revenue records through proper mutation. As rightly pointed out by the trial Court presumption arises under Section 133 of the Karnataka Land Revenue Act regarding genuineness of the mutation entry, more particularly, based on registered sale deeds executed in accordance with the provisions of Indian Registration Act. Suffice to state that First Appellate Court has adopted right approach to the real state of affairs. It has re-assessed the entire evidence in right perspective. By no stretch of imagination the judgment of the First Appellate Court could either be called as perverse or illegal. The entire evidence placed on record has been reassessed by the First Appellate Court on the touchstone of intrinsic probabilities.

18. The substantial questions of law as proposed in the appeal memo are not substantial questions of law in the present case within the purview of Section 100 of CPC and even on perusal of the records no substantial questions of law arise. Hence the appeal is liable to be dismissed as unfit for admission.

ORDER

Appeal is dismissed as unfit for admission. No order as to costs.

