

Arun and Others Vs. The State of Karnataka and Others

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Court : Karnataka Dharwad

Decided On : Jun-02-2014

Judge : A.V. Chandrashekara

Appeal No. : RSA No. 6100 of 2011 (DEC)

Appellant : Arun and Others

Respondent : The State of Karnataka and Others

Judgement :

(Prayer: This Rsa Is Filed U/S.100 Cpc Against The Judgment And Decree Dated 30.08.2011 Passed In R.A.No.73/2008 On The File Of The Prl. District Judge, Belgaum, Dismissing The Appeal, Filed Against The Judgment Dated 03.12.2007 And The Decree Passed In O.S.No.221/2006 On The File Of The Addl. Civil Judge (Srdn.), Gokak, Dismissing The Suit Filed For Declaration Of Title By Adverse Possession And For Permanent And Mandatory Injunctions.)

1. Perused the judgments of the trial Court passed in O.S.No.221/2006 and affirmed by the First Appellate Court in R.A.No.73/2008.

2. Appellants were plaintiffs before the trial Court i.e., the Court of Addl. Civil Judge (Sr.Dn.), Gokak, in O.S.No.221/2006. They had filed a suit for the relief of declaration of title by way of adverse possession and for permanent and mandatory injunction. Suit filed against the respondents herein came to be dismissed by a considered judgment dated 03.12.2007. Against the said judgment

and decree passed in O.S.No.221/2006 a regular appeal had been filed in R.A.No.73/2008 before the Court of Prl. District Judge at Belgaum. That appeal has also been dismissed. Hence concurrent findings are called in question before this Court by filing an appeal under Section 100 of CPC.

3. Case of the plaintiffs is that land in Sy.No. 189/13 measuring 13.18 acres in Pamaldinni Village. Gokak taluk has been in their possession for more than 30 years and they have been cultivating the said land. It is their case that they have perfected their title by way of adverse possession and therefore they had sought for the relief of declaration of title having perfected their title by way of adverse possession.

4. Defendants 1 to 3 are the persons connected with the acquisition of the land in question. The land in question has been acquired by defendant Nos. 1 to 3 for the benefit of defendant Nos. 4 to 9 who are the beneficiaries. They have denied all the material averments and have called upon the plaintiffs to strictly prove the contents of the plaint. According to defendants 1 to 9, the land in question has been duly acquired as per the provisions of Land Acquisition Act, for the benefit of defendants 4 to 9 and that after acquisition of the land, possession has been taken over and handed over to the beneficiary by passing a regular general award.

5. Whoever wants the relief of declaration having perfected title by way of adverse possession against a Government should necessarily and specifically plead and prove that he or she has had been in possession of the property belonging to the Government for over a period of 30 years openly to the knowledge and adversely to the interest of the Government. Plea of adverse possession is an exception to the general rule. Whoever takes up the plea of adverse possession must prove the same by adducing acceptable evidence.

6. Section 103 of Evidence Act mandates that the person taking the plea of adverse possession must not only specifically plead but also specifically prove about all the ingredients of adverse possession. When exactly the plaintiffs came into possession of the land is not forthcoming, as the date of entry into the land of the defendants is decisive. There must be an unequivocal intention to possess the land of the Government adverse to its interest. That aspect has also not been

proved to the hilt. Mere say of the plaintiffs that they have been in possession for over a period of 25-30 years would be insufficient and therefore, the trial Court has disbelieved the claim of the plaintiffs.

7. Even otherwise, the land in question has been duly acquired by the Government for the benefit of defendants 4 to 9 by passing a regular award. Possession has been taken over in accordance with Section 16 of Land Acquisition Act and consequent upon the acquisition, the names of the beneficiary has been incorporated in the revenue records relating to the land in question. The property in question has already been transferred to the Department in the year 1999 itself and suit came to be filed in the year 2006. There is a statutory presumption regarding possession under Section 16(2) of the Land Acquisition Act, 1894 as amended in 1984. Plaintiffs have neither pleaded the necessary ingredients of adverse possession nor put forth cogent evidence to prove the special plea of adverse possession. The trial Court as well as the First Appellate Court have specifically held that the evidence adduced in regard to adverse possession is highly insufficient and there are many inherent lacunae. Even otherwise plaintiffs who have chosen to file one single suit have failed to establish the possession of their respective portions with necessary boundaries. Taking into consideration the inherent inconsistencies found in the very case of the plaintiffs and inability to prove the special plea of adverse possession, the trial Court as well as the First Appellate Court have rightly held that the plaintiffs have failed to prove the plea of adverse possession.

8. Viewed from any angle, the trial Court as well as the First Appellate Court have adopted right approach to the real state of affairs. There are no good grounds to interfere with the well considered judgment of the trial Court which speaks about the factual findings regarding the possession of the property by the acquiring body and the same being handed over to the beneficiary in accordance with law.

9. The questions of law proposed in the appeal memo are not substantial questions of law in its essence under Section 100 of CPC. Even otherwise no substantial question of law arises before this Court for consideration. Hence appeal is liable to be dismissed as unfit for admission.

ORDER

Appeal is dismissed as unfit for admission by upholding the judgments of the trial Court as well as the First Appellate Court. There is no order as to costs.

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