Krishnakumari Vs. K. Suresh Kumar

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Court : Karnataka

Decided On : Mar-20-2015

Judge : Anand Byrareddy

Appeal No. : Regular First Appeal No. 10 of 2009

Appellant : Krishnakumari

Respondent : K. Suresh Kumar

Judgement :

(Prayer: This Regular First Appeal filed under Section 96 read with Order 41, Rule 1 of the Code of Civil Procedure, 1908, against the judgment and decree dated 27.08.2008 passed in O.S.No.4744/2004 on the file of the XVII Additional City Civil Judge, Bangalore, decreeing the suit for permanent injunction.)

1. Heard the learned counsel for the appellant and the learned counsel for the respondent.

2. The appellant was the defendant before the Trial Court. The suit was for permanent injunction restraining the defendant from interfering with the plaintiffs possession of the suit property, which was described as follows:

All that piece and parcel of the Southern side Western Portion of House / site property bearing No. 14, 15, 19 and 13, Re-Survey No. 1/4 and 1/B5, Present Corporation No. 19, situated at 1st Cross, Byrasandra village, Jayanagar

Corporation Ward No. 60,

And Measuring

East to West: On the Northern side 30 feet

On the Southern side 37.6 feet

North to South: 20 feet

And bounded on

East by: Private Property

West by: Sanatorium Compound

North by: Portion of the property retained by the vendors.

South by: 10 feet Road.

Together with two square A.C. Sheet House thereon.

3. It was the respondent - plaintiffs primary contention that the plaintiff was put in possession under an agreement of sale and had continued in such possession till there was an absolute sale deed executed in his favour. Notwithstanding the same, since there was interference by the defendant, the suit was filed. The defendant on entering appearance, had filed written statement and had contended that the plaintiff had created the documents, on the basis of which he was laying claim to the suit property.

The defendant had entered into an agreement of sale to purchase the entire property, including the suit schedule property which was a portion of the property agreed to be so purchased from the previous owners, namely Hamsaveni, W/o. M.B. Thyagaraj and her children and the defendant had even issued a public notice of her intention to purchase the entire property and had not received any objections. Thereafter, she had entered into a registered agreement of sale with Hamsaveni and her children on 12.11.2003. The defendant had denied that the plaintiff had entered into an agreement of sale on 20.12.2003 with the vendors.

Whereas, the defendant had purchased the entire property from the previous owners and let it out on rent. When the plaintiff tried to secure the katha in respect of the suit schedule property and had failed, there is no substance in the contention of the plaintiff that he had purchased the property. That the sale deed under which the plaintiff was claiming was a later sale deed dated 29.05.2004, whereas the defendant was claiming under a sale deed dated 15.12.2003. Further, the sale deed in favour of the plaintiff had been executed by the registered Power of Attorney holder executed by the original owners, to which the vendors were the consenting witnesses. Whereas, the sale deed in favour of the defendant was executed by the owners themselves.

The Trial Court had framed the following issues:

1. Whether the plaintiff proves that he is in lawful possession of the suit schedule property on the date of suit?

2. Whether the plaintiff further proves that the defendant is interfering with his possession of the suit schedule property?

3. Whether the plaintiff is entitled to the injunction prayed for?

4. What order or decree?

The Trial Court had answered the issues to the effect that the plaintiff had proved that he was in lawful possession of the suit property and he had further proved that the defendant was interfering with his possession and granted the relief of injunction. It is that which is under question in the present appeal.

The Trial Court having also found that the plaintiff has a better title than that of the defendant, the present appeal is filed.

4. The learned counsel for the appellant would straightaway point out that the agreement of sale under which the plaintiff claims to have come into possession, initially, was an unregistered agreement of sale. By virtue of amendment to Section 17 of the Registration Act, 1908, whereby sub-section (1A) has been incorporated, which would require any such agreement whereby possession has

been delivered of the immovable property, would have to be compulsorily registered. The said sub-section reads as follows:

(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said Section 53A.

Further, he would also point out that pursuant to such insertion of sub-section 1(A) to Section 17, Section 49 of the Registration Act, 1908 has also been amended to delete a portion of the said section which provided:

49. Effect of non-registration of documents required to be registered.No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power,

Unless it has been registered:

Provided that an unregistered document affecting, immovable property and required by this Act, or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, (or as evidence of part performance of a contract for the purposes of section 53-A of the Transfer of Property Act, 1882,) or as evidence of any collateral transaction not required to be effected by registered instrument.

(Underlined portion omitted vide Act 48 of 2001)

5. Therefore, in the absence of registration of the agreement of sale under which the plaintiff claims to have come into possession of the suit property as of the year 2003, when the amendment to the Registration Act was in place, it was not possible for the court below to have admitted the document in evidence and to have looked into it. Given the tenor of Section 49 of the Registration Act, the document could not be given effect to insofar as the right over immovable property is concerned. Hence, it was a nullity and could not be acted upon, which the Trial Court has completely overlooked and therefore, he would submit that the suit would have to fail on that ground alone.

It is next pointed out that since there was a cloud cast on the title of the plaintiff in the defendant having taken a stand that there was a rival title deed which encompassed the property claimed by the plaintiff as well, it was appropriate for the court below to have relegated the parties to a comprehensive suit and the parties ought not to have been directed to go to trial, which was a cardinal error committed by the court below in having proceeded to address the title of the parties involving strongly disputed positions in addressing the title to the parties and would hence contend that on these primary grounds, the suit for permanent injunction having been decreed while arriving at findings even as regards title, had upset the title of the defendant, resulting in a miscarriage of justice and hence seeks that the appeal be allowed and the judgment and decree of the Trial Court be set-aside.

6. On the other hand, the learned counsel for the respondent plaintiff would vehemently resist the appeal and would point out that notwithstanding that the agreement of sale was not a registered document, Section 49 of the Registration Act would yet permit the said document being relied upon for a collateral purpose and hence, it cannot be completely ignored and the court below having referred to the same for purposes of and addressing his lawful possession of the suit property, is in order and the order of injunction granted is on a finding that the plaintiff was in lawful possession of the suit property. Hence, it could not be said that the finding of the court below was based on an invalid document which could not be admitted in evidence. He would further contend that insofar as the contention that the suit was one for permanent injunction and the title could not

have been addressed by the court below, is also not the correct proposition, as it is possible that even in a suit for bare injunction, if there are adequate pleadings and material documents on record, it is open for the court to examine the question of title and to consider the relief of injunction. There is no such legal bar on a Civil Court to consider the title of the parties even in a suit for permanent injunction and hence would submit that the court below having found that the plaintiff was in lawful possession, has rightly granted the relief of injunction and it cannot be set at naught on the pleas now put forth by the appellant.

7. On the question whether the agreement of sale could have been marked by the court below in evidence is concerned, there is a complete and express bar under sub-section (1-A) of Section 17, which requires that, in such agreement whereby physical possession of the property is delivered, it would require to be compulsorily registerable. This cannot be diluted and it would follow that if it required compulsorily registering a document, it cannot be marked in evidence and even if marked in evidence by mistake, could not be acted upon. This is the settled legal position of law.

Hence, the plaintiff claiming possession of the suit property under such a document which was compulsorily registerable, could not be admitted in evidence nor could be looked into for purposes of deciding the case and having regard to the added embargo that any document required by Section 17 to be registered if and non-registration of the same would not affect the immovable property comprised therein. In other words, any such documents cannot be set up to claim a right in immovable property. Consequently, the contention that the document could be looked into for a collateral purpose also does not hold water, for the proviso to Section 49 would speak of a collateral transaction and not a collateral purpose. Therefore, if such a document was capable for being produced as evidence of any collateral transaction, which transaction in turn did not require to be compulsorily registered, then it could be referred.

In this regard, the Andhra Pradesh High Court in the case of K. Ramamoorthi vs. C. Surendranatha Reddy in Civil Revision Petition No. 1623 of 2012 dated 27.07.2012, has examined the legal position with reference to a catena of judgments and thereafter has arrived at the following conclusions.

i) A document, which is compulsorily registrable, but not registered, cannot be received as evidence of any transaction affecting such property or conferring such power. The phrase affecting the immovable property needs to be understood in the light of the provisions of Section 17(b) of the Registration Act, which would mean that any instrument which creates, declares, assigns, limits or extinguishes a right to immovable property, affects the immovable property.

ii) The restriction imposed under Section 49 of the Registration Act is confined to the use of the document to affect the immovable property and to use the document as evidence of a transaction affecting the immovable property.

iii) If the object in putting the document in evidence does not fall within the two purposes mentioned in (ii) supra, the document cannot be excluded from evidence altogether.

iv) A collateral transaction must be independent of or divisible from a transaction to affect the property i.e., a transaction creating any right, title or interest in the immovable property of the value of rupees hundred and upwards.

v) The phrase collateral purpose is with reference to the transaction and not to the relief claimed in the suit.

vi) The proviso to Section 49 of the Registration Act does not speak of collateral purpose but of collateral transaction i.e., one collateral to the transaction affecting immovable property by reason of which registration is necessary, rather than one collateral to the document.

vii) Whether a transaction is collateral or not needs to be decided on the nature, purpose and recitals of the document.

Having culled out the legal propositions, the discussion on this issue will be incomplete if a few illustrations as to what constitutes collateral transaction are not enumerated as given out in Radhomal Alumal vs. K.B. Allah Baksh Khan Haji Muhammad Umar and another AIR (29) 1942 Sind 27 and other Judgments. They are as under:

a) If a lessor sues his lessee for rent on an unregistered lease which has expired at the date of the suit, he cannot succeed for two reasons, namely, that the lease which is registrable is unregistered and that the period of lease has expired on the date of filing of the suit. However, such a lease deed can be relied upon by the plaintiff in a suit for possession filed after expiry of the lease to prove the nature of the defendants possession.

b) An unregistered mortgage deed requiring registration may be received as evidence to prove the money debt, provided, the mortgage deed contains a personal covenant by the mortgagor to pay (See: Queen-Empress v Rama Tevan (1992) 15 Mad, 253, P.V.M. Kunhu Moidu v T. Madhava Menon (2009) 32 Mad. 410 and Vani v Bani (1996) 20 Bom. 553).

c) In an unregistered agreement dealing with the right to share in certain lands and also to a share in a cash allowance, the party is entitled to sue on the document in respect of movable property (Hanmantapparao v Ramabai Hanmant (1919) 6 AIR 1919 Bom. 38).

d) An unregistered deed of gift requiring registration under Section 17 of the Registration Act is admissible in evidence not to prove the gift, but to explain by reference to it the character of the possession of the person who held the land and who claimed it, not by virtue of deed of gift but by setting up the plea of adverse possession (Varada Pillai vs. Jeevaratnammal 43 Madras 244 (PC).

(e) A sale deed of immovable property requiring registration but not registered can be used to show nature of possession (Radhomal Alumal (2supra), (Bondar Singh and others vs. Nihal Singh and others AIR 2003 SC 1905) and (A.Kishore @ Kantha Rao vs. G. Srinivasulu 2004 (3) ALD 817 (DB)).

This ironically, is furnished by the learned counsel for the respondent himself. The legal position as expounded in the above said judgment would certainly not advance the case of the respondent. On the other hand, would completely defeat his case. However, in the facts and circumstances of the case, it is to be kept in view that the court below owed a duty to the parties to address the case at the primary stage and ought to have relegated the parties to a comprehensive suit. It is by virtue of the court below not having taken such a measure that the matter has run its course and has resulted in the judgment, which also cannot be sustained on account of the invalidity of the primary document on the basis of which the plaintiff was claiming possession of the suit property. However, this ought not to shut the door on the respondent plaintiff who has litigated bonafide and has proceeded, albeit in ignorance of Section 17 (1-A) of the Registration Act.

8. Therefore, in order to do complete justice, the plaintiff respondent is granted leave to institute a fresh suit if he is so inclined, however on the same cause of action, after seeking appropriate comprehensive reliefs as that would be necessary in the circumstances where the defendant has raised a serious dispute as to title. However, insofar as the impugned judgment and decree is concerned, the same would have to be set aside. Accordingly, the appeal is allowed. The judgment and decree of the Trial Court is set aside with the observation that the plaintiff however is granted leave to institute a fresh suit with expedition.

Insofar as the apprehensions of the learned counsel for the plaintiff that by virtue of the dismissal of the suit, the plaintiff being dispossessed forthwith by the defendant, looms large and hence, seeks that there be a direction to the defendant to maintain status quo pending institution of a fresh suit. Once the appeal is disposed of, issuing any direction to the defendant appellant may not be proper. However, it is to be observed that having regard to the disposal of this appeal and if in the meanwhile in the interregnum of the plaintiff preparing and filing a suit, if any precipitative action is to be taken by the defendant, it would certainly be a circumstance for the court below to consider granting appropriate relief to the plaintiff, if he should make out such a case. With that observation, the appeal stands disposed of in terms as above.

Though it is not conceivable that a suit for injunction can be postponed by a week, if the threat of dispossession is imminent, having regard to the fact that the plaintiff claims to be of humble means and requires to muster the means to pay Court fee, he is granted one weeks time to prepare and file a proposed suit, to avail the benefit of the leave granted by this Court.