

Kantharaju and Others Vs. Basavaraju and Others

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Court : Karnataka

Decided On : Oct-13-2014

Judge : A.V. Chandrashekara

Appeal No. : Regular Second Appeal No.2869 of 2007

Appellant : Kantharaju and Others

Respondent : Basavaraju and Others

Judgement :

(Prayer: This RSA Is Filed U/Sec. 100 Of CPC, Against The Judgment And Decree Dated 12.7.2007 Passed In R.A.No.55/2006 On The File Of Prl. Civil Judge (Sr.Dn.) and JMFC, Srirangapatna, Dismissing The Appeal And Confirming The Judgment And Decree Dated 3.8.2006 Passed In O.S.No.6/2001 On The File Of Prl. Civil Judge (Jr.Dn.), Srirangapatna.)

1. The defendants to an original suit bearing O.S.No.6/2001 which was pending on the file of Civil Judge (Jr.Dn.), Srirangapatna are before this Court challenging the concurrent findings of the courts below by filing an appeal under Section 100 of Code of Civil Procedure. The first respondent is the sole plaintiff. The parties will be referred to as plaintiff and defendants as per their rankings before the trial Court.

2. The facts leading to the filing of the suit in O.S.No.6/2001 in respect of 12 guntas of agricultural land in Survey No.181 of Hongahally village, Belagola Hobli,

Srirangapatna Taluk, Mandya District are as follows:

The plaintiff is said to have purchased schedule property measuring 12 guntas of land from the younger brother of the first defendant through a registered sale deed dated 10.3.1993 for valuable consideration. The plaintiff is said to have been put into possession of property by the vendor on the very day of execution of the sale deed and since then the plaintiff is in lawful possession and enjoyment of the schedule property. Since the defendants tried to interfere with the peaceful possession and enjoyment of the schedule property, the plaintiff was left with no avenue except to file a suit for permanent injunction against the defendants. The first defendant has contested the suit and defendant Nos.2 and 3 have not contested the same by filing written statement.

3. The gist of the stand taken by the first defendant is as under:

That the schedule property was never handed over to the plaintiff by virtue of the registered sale deed and that the documents relied upon by the plaintiff are bogus revenue records which are created in the name of the plaintiff in collusion with revenue authorities; the first defendant is the owner of 10 guntas of land in Survey No.181 of Hongahally Village, Belagola Hobli, Srirangapatna Taluk, Mandya District; his father had filed suit in respect of said 10 guntas in O.S.No.380/74 against the father of the plaintiff which came to be decreed; the father of defendant No.3 therein filed an appeal under Section 96 of Code of Civil Procedure in R.A.No.110/1978 against the said decree and the said appeal was also dismissed confirming the decree passed in O.S.No.380/74; in view of the illegal interference, defendant No.1 had filed Execution case in Execution Petition No.108/82; the father of defendant No.1 had filed another suit in O.S.No.530/62 against father and brothers of plaintiff in respect of 10 guntas of land and the same has also been decreed.

With these pleadings, he requested the trial Court to dismiss the suit.

4. On the basis of the aforesaid pleadings, the following issues came to be framed:

1. Whether plaintiff proves the lawful possession over plaintiff schedule property?

2. Whether plaintiff proves the interference of the defendants?

3. To what order (or) decree?

5. The Plaintiff himself has been examined as PW.1 and 3 witnesses have been examined on his behalf apart from 7 exhibits being marked. Defendant Nos.1 and 2 are examined as DWs.1 and 2 and no documents are marked on behalf of the defendants.

6. After analyzing the material placed on record and after hearing the arguments, learned Civil Judge has answered issue Nos. 1 and 2 in the affirmative and suit came to be decreed vide considered judgment dated 30.8.2006. Against the said judgment appeal came to be filed under Section 96 of Code of Civil Procedure in R.A.No.55/06 before the Principal Civil Judge (Sr.Dn.) and JMFC at Srirangapatna. The learned First Appellate Judge framed the following six points for consideration:

1. Whether the trial Court erred in not observing that, the suit for bare injunction is not tenable without seeking declaratory relief?

2. Whether the trial Court erred in not holding that, the actual interference by defendants over suit land is not proved?

3. Whether the trial Court lost sight of the well known principle that, the plaintiff is not entitled to rely on the weakness of the defendants?

4. Whether the judgment and decree are opposed to the settled principles of law, facts and probabilities of the case?

5. Are there any grounds for this Court to interfere in the judgment and decree under appeal?

6. What order?

The learned first appellate Judge answered points 1 to 5 in the negative and dismissed the appeal. It is these findings which are called in question in this appeal amongst various other grounds.

7. Learned counsel for the appellant vehemently argued as under:

that the questions of law proposed in the appeal memo are not substantial questions of law within the purview of Section 100 Code of Civil Procedure and therefore, the matter needs to be admitted; that 10 guntas of land about which decree has already been obtained in O.S.No.380/74 is nothing but the same schedule property and the trial Court could not have decreed the suit in favour of the plaintiff; that the courts below have adopted wrong approach and not tested the evidence on the touchstone of intrinsic probability; that the plaintiff - respondent No.1 herein has not proved that his vendor that is younger brother of defendant No.1 had title to the schedule property. Finally it is argued that viewed from any angle both the courts have committed perversity and illegality in appreciating the material evidence placed on record.

8. After going through the judgment of both the courts below, it is evident that the plaintiff has relied upon a registered sale deed dated 10.3.1993 executed by one Nagegowda who is none other than the brother of defendant No.1. Defendant Nos. 2 and 3 have not opposed the claim of the plaintiff and they have not filed written statement. Original sale deed has been executed on 10.3.1993 and on the basis of the said sale deed, name of the plaintiff has been incorporated in column Nos.9 , 10 and 12(2) of RTC by incorporating the name of the person who is in possession. Statutory presumption available under Section 133 of Karnataka Land Revenue Act, 1964 is about the genuineness of an entry found in the revenue record till it is lawfully substituted by another entry.

9. Though the first defendant has taken a specific stand in the written statement that the property over which decree has already been obtained by his father in O.S.No.530/1962 is the same property in the present suit, nothing has been placed on record to substantiate the same. The trial Court has assessed the oral and documentary evidence on the touch stone of intrinsic probabilities. If really the boundaries mentioned in the earlier suit were the same as found in the present suit, nothing came in the way of the plaintiff to produce documents to that effect. The averments made by defendant No.1 in the written statement has remained only as an averment without being substantiated in any manner.

10. What is argued before this Court by the learned counsel for the appellant is that if initial burden cast upon the plaintiff is not effectively discharged, then the onus does not shift on the adversary. He has placed reliance on 2004(1) KCCR 662 between K. Gopala Reddy and Suryanarayana, to contend that the initial burden of proof was on the plaintiff and that if the initial burden is not effectively discharged, the weakness of the defendants cannot be a trump card for the plaintiff. In a suit for injunction, the court is expected to go deep into all aspects of the case. Suffice to state that possession is important more particularly in a suit for injunction. Even if a person is in unlawful possession, he can maintain a suit against the true owner provided, he has been in possession for a good length of time. Even if he is in possession of the property belonging to another for a reasonable length of time, it would be considered as a settled possession and such a person could be evicted only in accordance with law. In this view of the matter, the questions of law proposed in the appeal memo are not substantial questions of law within the purview of Section 100 of C.P.C. Suffice to state that both the courts have adopted a right approach assessing the evidence on the touchstone of intrinsic probabilities. There is no illegality or perversity in the approach adopted by both the courts. Therefore, the appeal is liable to be dismissed unfit for admission. Hence the following:

ORDER

The appeal is dismissed as unfit for admission. There is no order as to costs.

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