

Mahadevappa and Others Vs. Uday Kumar and Another

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Court : Karnataka Kalaburagi

Decided On : Nov-24-2015

Judge : A.N. Venugopala Gowda

Appeal No. : Regular Second Appeal No. 7512 of 2010 c/w Regular Second Appeal No. 7511 of 2010

Appellant : Mahadevappa and Others

Respondent : Uday Kumar and Another

Judgement :

(Prayer: This RSA is filed under Section 100 of CPC against the judgment and decree dated 01.10.2010 passed in R.A. No. 66/2009 on the file of the Senior Civil Judge at Yadgir, dismissing the Appeal and confirming the judgment and decree dated 12.10.2009 passed in O.S. No. 53/2000 on the file of the Civil Judge (Jr.Dn.) at Yadgir.)

1. These two second appeals were brought under Section 100 CPC from a common judgment and separate decree (s) passed by the Senior Civil Judge at Yadgir, whereby the dismissal of suit for declaration and mandatory injunction and for restoration of the property to the plaintiff was maintained and the decree for permanent injunction passed in favour of defendant No. 1 was confirmed.

2. Defendant No. 2 “ Mr. Mathew, was the owner of plot No. 2, in land bearing Sy.No. 150/1 of Yadgir (B). He entered into an agreement of sale dated

23.07.1998 in favour of the plaintiff “ Mahadevappa. Sale deed of the property was executed and registered on 25.04.2000. Contending that the possession of the suit property is with the plaintiff and alleging that defendant No. 1 has filed a false suit and obtained an ad-interim ex- parte order of temporary injunction and constructed a room in the said plot by taking possession by force, O.S. No. 49/2000 was instituted in the Court of Civil Judge (Jr.Dn.) at Yadgir, to pass decree of declaration that the plaintiff is the absolute owner of the suit property and restrain defendant No. 1, permanently from causing obstruction to the possession of the plaintiff over the suit property and for mandatory injunction directing defendant No. 1, to remove the illegal construction of room made in the suit property and for restoration of the property to the plaintiff.

3. Uday Kumar “ the defendant No.1, purchased the said plot on 15.12.1998 from defendant No. 2, under a registered sale deed and his name was mutated in the municipal records. He obtained permission on 17.03.1999 to construct the house on the suit property. He commenced the construction during March 2000 and in view of obstruction caused for peaceful construction by Mahadevappa “ the plaintiff, a suit was instituted in the Vacation Court at Gulbarga and an ad-interim order of temporary injunction was passed. On the reopening of the Courts, the suit was transferred to the Court of Civil Judge (Jr.Dn.) at Yadgir and registered as O.S. No. 53/2000. In the said suit, decree of permanent injunction was sought against Mahadevappa i.e., the plaintiff in O.S. No. 49/2000.

4. The defendant(s) in the respective suits, filed written statement(s) and contested the cases. With reference to the pleadings of the parties, following issues were raised in O.S. No. 49/2000:

1. Whether plaintiff proves that, he has purchased the suit property bearing Plot No. 2 measuring 9x12 meter (30x 40') equal in land Sy.No. 150/1 of Yadgir (B) under registered sale-deed document bearing No. 177/2000-01 dated 25-4-2000 since then the plaintiff is owner and possessor of the said property?

2. Whether plaintiff proves that, the defendant has no right title and interest over the suit property and denied the title of the plaintiff with the help of the police try to dispossess the plaintiff from the suit property and also trying to construct a house

over the property of the plaintiff and cause interference by the defendants?

3. Whether defendant proves that he has purchased the suit property from the defendant No. 2 under registered sale-deed document No. 1398/98-99 dated 12-12-1998 since then the defendant is in possession and enjoyment over the suit property with permission from the Municipality defendant try to construct a house over the suit property?

4. Whether defendants prove that court fee paid by the plaintiff is insufficient?

5. Whether plaintiff is entitled for declaration and injunction as sought for?

6. What decree or order?

5. In O.S. No. 53/2000, the following issues were raised:

1. Whether plaintiff prove that he is the owner and Possessor of open plot bearing plot No. 2 measuring 9M x 12M = 108 Sq. Mtrs. in land sy.No. 150/1, of Yadgir (B), tq; Yadgir, as on the date of the suit?

2. Whether plaintiff proves that interference by the defendant?

3. What decree or order?

6. Since both suits pertained to one and the same property and the parties being common, by considering an application filed, were clubbed and common evidence was recorded in O.S. No. 49/2000. The plaintiff " Mahadevappa having died, his L.Rs. came on record and prosecuted O.S. No. 49/2000 and contested O.S. No. 53/2000. PWs.1 to 3 deposed and Exs.P1 to P9 were marked in proof of the claim made to the suit property by Mahadevappa. In proof of the claim made in O.S.No. 53/2000, Mr. Uday Kumar got himself examined as DW. 1 and examined DWs. 2 to 5. Exs. D1 to D10 were marked.

7. On appreciation of the oral and documentary evidence led by the parties, the trial Court held that the L.Rs. of deceased Mahadevappa failed to prove the possession over the suit property and sale deed having been executed on 15.12.1998, by defendant No. 2 in favour of defendant No. 1, had no title to

convey and execute the sale deed dated 25.04.2000 in favour of Mahadevappa. It was found that, Uday Kumar has got his name mutated in the TMC Register and constructed house over the suit property by obtaining permission from the competent authority. Finding that, cancellation of the sale deed executed by defendant No. 2 in favour of defendant No. 1 on 15.12.1998 was not sought, the suit filed for declaration and injunction was held as not maintainable and was dismissed. Case of the plaintiff in O.S. No. 53/2000 “ Uday Kumar, who was treated as defendant No. 1 i.e., on account of common evidence recorded in the suits, having been found to be established, decree for permanent injunction was passed.

8. On the appeal(s) filed by the L.Rs. of deceased plaintiff “ Mahadevappa, the Senior Civil Judge at Yadgir, raised the following points for consideration:

1. Whether the trial court is justified in holding that the plaintiff in O.S. No. 49/00 has failed to prove that he is the owner and in actual possession of the suit property?

2. Whether the trial court is justified in holding that the plaintiff in O.S. No. 53/00 has proved that he is in actual possession of the suit property?

3. Whether the trial court is justified in holding that the plaintiff in OS. No. 49/00 is not entitled for the reliefs sought for in the suit and the plaintiff in O.S. No. 53/00 is entitled for the relief of permanent injunction as sought for in the suit?

4. Whether the judgment and decrees under appeal warrant interference?

5. What Order?

9. On a fresh assessment and appreciation of the oral and documentary evidence led by the parties, the appellate Judge concurred with the findings recorded by the trial Judge as a consequence, dismissed both appeals.

10. Assailing the said common judgment(s) and the separate decree(s) passed, these second appeals were filed.

11. Sri Ashok S. Kinagi, learned advocate for the appellants, contended that the Courts below have committed illegality in not considering the agreement of sale dated 23.07.1998 executed by defendant No. 2 in favour of Mahadevappa, much prior to the sale deed dated 15.12.1998 executed in favour of defendant No. 1. He contended that defendant No. 1 being not a bonafide purchaser for value, without notice, dismissal of suit filed by Mahadevappa and the decree for permanent injunction passed in favour of Uday Kumar, being illegal, substantial question of law has arisen for consideration and hence, the second appeal(s) are maintainable.

12. Sri Ameet Kumar Deshpande, learned advocate for respondent No. 1, on the other hand contended that both Courts below have considered the relevant evidence and have recorded findings, which are purely of fact. He submitted that the lower appellate Court, which is the final Court of fact, having confirmed the finding of the trial Court with regard to the title and possession of the suit property being with defendant No. 1 and the finding recorded being neither a surmise nor conjecture and also not suffering from any perversity, is not liable to be interfered with in exercise of the limited jurisdiction under Section 100 CPC. He submitted that the impugned judgments have not given rise to any substantial question of law and hence, the second appeal(s) being not maintainable are liable to be rejected.

13. Perused the record and considered the rival contentions.

14. The facts not in dispute are, that the suit property belonged to defendant No.2. He sold the same on 15.12.1998 in favour of the defendant No. 1 and delivered the possession. Original title deed of the property was also handed over. Pursuant to the sale, khata was transferred to the name of defendant No. 1 and he obtained permission for construction and commenced construction of the building. There being obstruction in the matter of completion of the building, suit was instituted by Uday Kumar and an order of temporary injunction was passed. M.A. Nos. 5 and 6 of 2000 filed by Mahadevappa, assailing the order passed making the temporary injunctions absolute were dismissed on 21.03.2002 and when questioned, was upheld in CRP Nos. 1618 and 1620 of 2002 vide order dated 01.07.2002.

15. Defendant No. 2 sold the suit property (which he had already sold and conveyed to Uday Kumar), in favour of the plaintiff, on 25.04.2000. Sale deed executed earlier in favour of the defendant No. 1, by defendant No.2, was not questioned. The Courts below, taking note of the said facts have decided the suit(s) and the appeal(s) respectively, against the L.Rs. of the deceased plaintiff/appellant.

16. S.48 of the Transfer of Property Act, 1882 determines the priority, when there are successive transfers. The provision contains important principle that no man can convey a title better than what he himself possesses. If a person effects a transfer of property, in law, he cannot, thereafter, deal with the same property, already transferred by him, ignoring the rights already created by the earlier transfer effected.

17. In the present case, the defendant No. 2 having effected transfer of suit property on 15.12.1998, in favour of the defendant No. 1 and delivered the original deed of title and also the possession of property, the plaintiff did not acquire the title or possession in pursuance of the subsequent sale deed executed on 25.04.2000, in respect of the very same property. Defendant No. 1 having already acquired the right, title and interest in the suit property, the execution of the sale deed dated 25.04.2000 in favour of the plaintiff i.e., in respect of the very same property has not conferred any legal right, title or interest in the plaintiff. The plaintiff has neither previous title deed nor the possession of the property. The unregistered sale agreement dated 23.07.1998 has not created any right or title in favour of Mahadevappa. It was only an enforceable document.

18. The question of possession and enjoyment of the suit land is essentially one of fact. The Trial Court on appreciation of oral and documentary evidence on record, declined to accept the case of the plaintiff and recorded positive finding based on the oral and documentary evidence led by both parties, that the title and possession of the suit property is with defendant No.1. The lower appellate Court, which is the final court of fact, on a fresh assessment of the oral and documentary evidence led by the parties, confirmed the finding of the Trial Court regarding the title and possession of defendant No. 1 over the suit property and upheld the

Judgment of the Trial Court dismissing the suit of Mahadevappa and decreeing the suit of Uday Kumar. The findings recorded by the Courts below having the support of credible evidence cannot be termed as either perverse or illegal. There is neither any misreading of evidence nor omission to consider any relevant evidence. Hence there is no scope to interfere with the concurrent findings recorded by the Courts below, in exercise of the jurisdiction under S.100 CPC.

As these appeals do not involve any substantial question of law shall stand rejected. Ordered accordingly.

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