

Krishnagouda Vs. Basappa

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Court : Karnataka Dharwad

Decided On : Oct-08-2015

Judge : B. Veerappa

Appeal No. : Regular Second Appeal No. 5593 of 2012 [POS]

Appellant : Krishnagouda

Respondent : Basappa

Advocate for Def. : Sri. M.C. Hukkeri

Advocate for Pet/Ap. : Sri. B.D. Hegde-learned

Judgement :

(Prayer: This RSA is filed u/s. 100 of CPC., against the judgment and decree dated 28-11-2011 passed in R.A.No. 25/2007 on the file of the Senior Civil Judge, Mudhol, dismissing the appeal, filed against the judgment dated 15-03-2007 and the decree passed in O.S.No.215/2006 on the file of the Prl. Civil Judge (Jr.Dn) Mudhol, decreeing the suit filed for possession.)

1. This is an unsuccessful defendant's second appeal against the judgment and decree dated 28.11.2011 made in RA No.25/2007 on the file of the Senior Civil Judge, Mudhol, confirming that the judgment and decree dated 15.03.2007 made in O.S.215/2006 on the file of the Principal Civil Judge (Jr.Dn.) Mudhol, decreeing the suit of the respondent/plaintiff, directing the defendant to handover the

possession of the suit land measuring 3 guntas to the plaintiff as shown in the plaintiff hand-sketch map by red ink, within three months from the date of the judgment and the relief of declaration of ownership as well as the relief of permanent injunction as sought by the defendant are dismissed.

2. The respondent/plaintiff filed the suit in OS No.215/2006 contending that he is the owner of the suit schedule property bearing RS No.98/1 measuring 9 acres 37 guntas situated at Budni BK Village. The defendant claiming to be the owner of land bearing RS No.97/2 measuring 9 acres 6 guntas of the same village and both the lands of plaintiff and defendant are adjoining. The land of the defendant is situated on the eastern side of the land of plaintiff. The plaintiff has submitted hand-sketch map along with the plaint, depicting the true state of things and the defendant is not in good terms with the plaintiff and he deliberately started to encroach upon the land of the plaintiff. The plaintiff, being suspected by the activities of defendant, filed an application before the survey authorities for fixation of boundaries. Accordingly, the surveyor has surveyed the lands of the plaintiff, defendant and other neighboring land owners on 22.05.2000, in the presence of all the concerned parties and fixed the boundaries in the presence of all the parties concerned on 01.08.2000. Accordingly, he has prepared a BND Map bearing No.HUB/MDL/314/98, in which it is clearly shown that the defendant has encroached the land of plaintiff to the extent of 3 guntas which is shown by red ink in the map. It is also contended that in the month of August 2000, the plaintiff requested the defendant to hand-over the possession of suit land i.e., 3 guntas of land as shown in the plaint sketch by red ink, for which the defendant requested and asked for some time and subsequently, he went on prolonging for handing over the possession of suit property till now and also contended that the defendant is adamant in nature and is not ready to heed to the request of plaintiff and elderly persons. Therefore, the plaintiff was constrained to fill the suit for the relief sought for.

3. The defendant filed written statement, denied all the plaint averments and admitted that the plaintiff is the owner of the land bearing Sy.No.98/1 measuring 9 acres 37 guntas of same village. It is also admitted by the defendant that the lands of the plaintiff and defendant are adjoining and that the land of defendant is

situated on the eastern side of the land of plaintiff. Further, he denied that the plaintiff filed an application before the Survey authorities for fixation of boundaries and also denied that the Surveyor has surveyed the lands of the plaintiff and defendant and other neighbouring land owners on 22.05.2000 in the presence of all the concerned parties and fixed the boundaries in the presence of all the parties concerned on 01.08.2000. Further, it is denied that, accordingly P.T. sheet was prepared under No.HUB/MDL/314/98. It is also denied that defendant has encroached in the land of plaintiff to the extent of 3 guntas which is shown by red ink in the map. The plaintiff has not described the suit property clearly, so as to identify it clearly. It is specifically denied that in the month of August 2000, the plaintiff requested the defendant to hand-over the possession of suit land to the extent of 3 Guntas as shown in the plaint sketch by red ink. Further, it is contended that the defendant is in peaceful possession and enjoyment of the suit land measuring 3 guntas as described by the plaintiff in his plaint hand-sketch map, since more than 12 years peacefully, publicly and continuously, as of right to the knowledge of plaintiff and to the knowledge of resident of that locality, he is in possession of the suit property. Such being the case, the defendant has perfected his title over the suit property by way of adverse possession. The defendant prior to his predecessors-in-title are in possession of 3 guntas of suit land. Since, 16.10.1959, prior to defendant, his predecessors-in-title were and are in peaceful possession and enjoyment of the suit land adverse to the interest of plaintiff and his predecessors in title. Since more than 55 years, defendant is in peaceful possession of the suit land adverse to the interest of plaintiff and he is enjoying the suit land property peacefully, publicly, continuously, as of right, to the knowledge of the plaintiff. Such being the case, plaintiff is adamant in nature and he is not ready to heed to the request of defendant, hence, the defendant had no other alternative way, but to make counter claim seeking declaration that defendant has become owner of the land by way of adverse possession. Therefore, he sought for dismissal of the suit.

4. The trial court on the basis of the pleadings, framed the following issues:

(i) Whether the plaintiff proves that he is the owner of land bearing RS No.98/1 measuring 9 acres 37 guntas situated at Budni B.K. Village, Tq. Mudhol?

(ii) Whether the plaintiff further proves that the defendant has encroached in the land of plaintiff to the extent of 3 guntas shown by red ink in the hand sketch map as alleged in para No.5 of the plaint?

(iii) Whether the plaintiff proves that he is entitled for the possession as sought?

(iv) Whether the defendant proves that he is in peaceful possession and enjoyment of suit land measuring 3 guntas as described by the plaintiff in his plaint hand-sketch map?

(v) Whether the defendant further proves that he is in possession and enjoyment of suit land since more than 55 years peacefully, publicly, continuously as of right to the knowledge of plaintiff and residence of that locality and as such, he has perfected his title over the suit property by way of adverse possession?

(vi) Whether the defendant proves that he is entitled for the relief of declaration by way of adverse possession as sought?

(vii) Whether the defendant proves that he is entitled for the relief of permanent injunction against the plaintiff as sought by way of counter claim?

(viii) What order or decree?

5. In order to prove his case, the plaintiff examined himself as PW-1 and also examined one more witness as PW-2 and got marked documents Exs.P-1 to 3. On the other hand, the defendant, in order to prove his case, examined himself as DW-1 and also examined two more witnesses as DW-2 and 3 and got marked documents Exs.D-1 to 3.

6. The trial court, after considering the entire material on record, recorded a specific finding that the plaintiff has proved that he is the owner of land bearing RS No.98/1 measuring 9 acres 37 guntas situated at Budni B.K. Village, Tq: Mudhol and the plaintiff further proved that the defendant has encroached the land of plaintiff to the extent of 3 guntas shown by red ink in the hand sketch map as alleged in para No.5 of the plaint and that he is entitled for the possession as sought. The trial court also recorded a finding that the defendant is not in peaceful

possession and enjoyment of suit land measuring 3 guntas as described by the plaintiff in his plaint hand-sketch map and further held that the defendant failed to prove that he is in possession and enjoyment of suit land since more than 55 years peacefully, publicly, continuously as of right to the knowledge of plaintiff and residents of that locality and as such, he has perfected his title over the suit property by way of adverse possession and defendant failed to prove that he is entitled for the relief of declaration by way of adverse possession as sought and also held that the defendant failed to prove that he is entitled for the relief of permanent injunction against the plaintiff as sought by way of counter claim. Accordingly, the trial court decreed the suit and directed the defendant to hand-over the possession of the suit land measuring 3 guntas to the plaintiff as shown in the plaint hand-sketch map by red ink, within three months from the date of the order and the relief of declaration of ownership as well as the relief of permanent injunction as sought by the defendant by way of counter-claim are dismissed.

7. Aggrieved by the judgment and decree of the trial court, granting decree in favour of the plaintiff in respect of 3 guntas of suit land, the defendant filed R.A.No.25/2007 on the file of the Senior Civil Judge, Mudhol. Admittedly, the defendant has not filed any appeal against the dismissal of his counter claim seeking the relief of declaration of ownership as well as the relief of permanent injunction as sought by the defendant. After hearing both the parties, the learned Senior Civil Judge, Mudhol, by his judgment and decree dated 28.11.2011, dismissed the appeal and confirmed the judgment and decree of the trial court.

8. Against the concurrent findings of fact recorded by the courts below, the defendant did not deter in preferring this regular second appeal as a last ditch attempt.

9. The above matter was posted for admission on 01.10.2012. At the request of the learned counsel for the respondent/caveator, the matter was adjourned. Again, the matter was posted to 23.11.2012 for admission. At the request of learned counsel for the appellant, it was adjourned to 02.07.2013. Against the matter was posted to 03.07.2013. On 03.07.2013, learned counsel for the respondent/caveator was present, but there was no representation on behalf of the

appellant. The matter was posted to next week. Again the matter was posted on 24.03.2013 and on that day, the learned counsel for the respondent/caveator filed a memo along with the copy of order sheet in E.P. No.30/2007 stating that the suit filed by him was decreed and appeal filed by the appellant has been dismissed and decree has been implemented in E.P.No.30/2007 on 21.08.2013. Therefore, he submits that nothing survives in the present appeal.

10. At that stage, Sri. Hanumanthareddy Sahukar, learned counsel representing Sri. B.D. Hegde-learned counsel for appellant, requested for time and the matter was posted for admission on 26.08.2015 and on 01.10.2015. In spite of repeated adjournments granted, none appeared for the appellant. Though, the matter is of the year 2012 and posted for admission, heard learned counsel for the respondent and the matter was posted for dictating judgment to 07.10.2015. On 07.10.2015, again none appeared for the appellant and the case was posted to for dictating judgment today. Today also, none appeared for the appellant. The matter is of the year 2012. In spite of granting sufficient time to the appellant, no representation is made. As the matter was being repeatedly posted for admission and none appeared, this Court has no alternative except to proceed with the case to find out whether the appellant has made out a case for admission or not. Accordingly, both the judgments and decree of the courts below were perused carefully.

11. Heard the learned counsel for the respondent.

12. Sri. M.C. Hukkeri, learned counsel for the respondent, sought to justify the judgments and decrees of the courts below.

13. I have given my anxious consideration to the grounds urged in the memorandum of regular second appeal as well as substantial questions of law framed in the memorandum of regular second appeal and also considered the arguments advanced by the learned counsel for the respondent and perused the entire material on record.

14. The substance of the plaintiff's case is that he is the owner of the suit schedule property bearing RS No.98/1 measuring 9 acres 37 guntas situated at Budni B.K. Village, Tq: Mudhol. According, to plaintiff, his land as well as the lands of

defendant are adjoining to each other. Defendant is the owner of the adjoining land bearing Sy.No.97/2 measuring 9 acres 6 guntas of the same village and he has encroached his land to an extent of 3 guntas of plaintiff's land, i.e., suit schedule property.

15. The defendant filed his written statement denied the plaint averments and contended that he is in possession of 3 guntas of suit schedule property for more than 50 years and claimed his possession adverse to the interest of the plaintiff.

16. The trial court considering the tire material on record and taking into consideration para 2 of the written statement held that the plaintiff is the owner of the land bearing RS No.98/1 measuring 9 acres 37 guntas situated at Budni B.K. Village. Accordingly, issue No.1 was held in the affirmative. The trial court also recorded a finding that according to the defendant, he is in peaceful possession of 3 guntas of suit land, as described by the plaintiff in his plaint hand-sketch map for more than 12 years peacefully, publicly, continuously, as of right to the knowledge of the plaintiff and all the residents of the locality. Therefore, it is the specific defence of the defendant that he has perfected his title over the suit property by way of adverse possession and thereby the defendant has set up a specific defence by filing written statement under Order VIII Rule 6A of the Code of Civil Procedure to declare that he is the owner and in possession of the suit schedule property by way of adverse possession.

17. The trial court also recorded a finding that in order to prove the encroachment, the plaintiff has examined himself as PW-1 and he has stated that the defendant was not in good terms with the plaintiff and deliberately, the defendant started to encroach upon his land and that when he suspected the activities of the defendant, he filed an application before the survey authorities for fixation of boundaries. Accordingly, on 22.05.2000, the surveyor has surveyed his land as well as the land of defendant and other neighbouring lands in the presence of all the concerned parties. Therefore, on 01.08.2000, the surveyor fixed the boundaries in the presence of all the parties and accordingly, prepared a BND map showing the encroachment by the defendant to the extent of 3 guntas in the land of plaintiff, which is produced at Ex.P-1. According to the plaintiff, the

surveyor also prepared the map showing the encroachment by the defendant to an extent of 3 guntas. PWs-1 and 2 in their cross-examination, have specifically stated on oath that, defendant is in possession and enjoyment of the land measuring 3 guntas as shown in the map and hand-sketch. DW-1 in his deposition has not disputed the fact that the land of the plaintiff and himself are adjoining to each other and his property is situated towards eastern side of plaintiff's land. During the cross-examination, DW-1 has admitted that he came to know about encroachments of 3 guntas of land in the plaintiff's property, after the survey on 01.08.2000. He also admits that he has not preferred any appeal against the said survey before any other authority. He stated that since 50 to 60 years, he is in possession and enjoyment of land shown in the RTC pertaining to his land. He has not stated in his written statement that he is in peaceful possession of suit land illegally. He also admits that he has not mentioned in the written statement that he has become owner of the land belonging to the plaintiff. He also admits that since from 50 years and within 12 years, he has not filed any suit against the plaintiff. During the cross-examination he stated that during the year 1977, survey was conducted and since, now the plaintiff is objecting for the measurement, he has produced P.T. sheet during the year 1977. Two independent witnesses were also examined by the defendant as DWs-2 and 3. They have stated that the defendant is in peaceful possession and enjoyment of the suit land measuring 3 guntas as described by the plaintiff in the plaint hand-sketch map and they have stated that since more than 12 years, the defendant is in possession and enjoyment of suit land peacefully, publicly, continuously as of right to the knowledge of the plaintiff and residents of locality. However, it is stated that they does not know as to what is the meaning of adverse title or adverse possession. Further, DW-2 has stated that the hand sketch map produced by the plaintiff is not at all correct and he has admitted that he has not seen the hand-sketch map. DW-3 also during his cross examination stated that he was not present at the time of survey of lands and does not know the meaning of adverse title or adverse possession. Therefore, the trial court, based on the material evidence on record, has recorded a finding that the documents and evidence of both sides, it is clear that according to the plaintiff, the defendant has encroached the suit land measuring 3 guntas shown in red ink in his hand sketch map. In the cross-examination, though DW-1 has denied that he

has encroached the suit land recently, but it is the specific contention of the defendant that he is in possession and enjoyment of the suit land measuring 3 guntas, since 50 to 55 years and he has perfected the title over the suit land by way of adverse possession.

18. Considering the various judgments of this Court and Hon'ble Supreme Court relied upon by the learned counsel for the parties of the lis in respect of the law relating to adverse possession, the trial court also recorded a finding that though the defendant is in possession and enjoyment of the suit land measuring 3 guntas, but the other ingredients like adverse animus is missing. DW-1 in his cross-examination has clearly stated that he is not enjoying the suit land against the interest of anybody else and there was no dispute regarding suit land between himself and the plaintiff. He also admits that he came to know of suit land only after the survey done during the year 2000. Under these circumstances, it cannot be said that the defendant has perfected his title over the suit property by way of adverse possession even though he is in possession and enjoyment of the suit land. The trial court also recorded a finding that the defendant failed to prove his adverse possession and enjoyment of the suit land since more than 55 years continuously, as of right and knowledge of the plaintiff and the residents of locality. The trial court also recorded a finding that the plaintiff is seeking possession of the land measuring 3 guntas from the defendant on the basis of Ex.P-1 map prepared by the surveyor. The defendant has though denied that the surveyor has measured the land of plaintiff and defendant as well as other neighbouring lands in the presence of concerned parties, but, there is no specific denial of encroachment as stated in the plaintiff hand-sketch map. Admittedly, the plaintiff has prepared the plaintiff hand-sketch map on the basis of Ex.P-1/ ?BND sheet prepared by surveyor. Though, the defendant has sought for the relief of declaration by way of counter-claim to the effect that he has become the owner of the suit property by way of adverse possession, but he has failed to establish that he has perfected his title over the suit property by way of adverse possession. Therefore, he is not entitled for the relief of declaration as sought for. Therefore, the trial court directed the defendant to hand-over the possession of the suit land measuring 3 guntas to the plaintiff as shown in the plaintiff hand-sketch map by red ink, within three months from the date of the order and the relief of declaration and permanent injunction

sought for by the defendant by way of counter claim were dismissed.

19. Though the defendant filed a detailed written statement as well as counter claim under Order VIII Rule 6A of the Code of Civil Procedure, taking a specific defence that he is the owner of the suit schedule property and for permanent injunction, the trial court considering the entire material on record dismissed his counter claim holding that he has not proved his title over the suit property by way of adverse possession. Admittedly, the defendant has not filed any appeal against the dismissal of the counter claim before the lower appellate court. He has filed the appeal before the lower appellate court only against granting decree in favour of the plaintiff declaring that the plaintiff is the owner and he is entitled for the possession of 3 guntas of suit schedule property.

20. It is not in dispute that survey was done in the year 2000 as admitted by the defendant/DW-1 in the cross-examination. But, he has not challenged the survey made by the surveyor showing the encroachment of 3 guntas by the defendant in the plaintiff's land. Therefore, Ex.P-1/BND sheet prepared by the surveyor is binding on the defendant.

21. On re-appreciating the material on record, the lower appellate court, concurring with the finding of fact recorded by the trial court, has recorded a finding that the defendant, examined as DW-1, has reiterated the contents of the defence in the cross-examination. He has clearly admitted that:

(Language)

22. Further in the cross examination, he clearly admitted that:

(Language)

23. The lower appellate court further recorded a finding that in view of the said categorical admission made by the defendant, it clearly goes to show that the contentions taken in the written statement by the defendant that the defendant and his predecessor-in-title enjoyed the suit land with due knowledge of the plaintiff and their predecessor in title as openly, peacefully, with the knowledge of the plaintiff and perfected the title to the suit property by virtue of principle of adverse

possession, will have no force at all. The defendant clearly admitted in the cross-examination that, he has no knowledge of encroachment of suit land belonging to the plaintiff with due knowledge to the plaintiff, he came to know only after measurement. When it is so, then, the contention of the appellant/defendant that the plaintiff given admission in his cross examination, as such the said admissions are sufficient to dismiss the suit of the plaintiff and decree the counter claim claimed by the defendant, cannot be accepted at all. The admission made by the defendant in his cross-examination is sufficient to decree the suit of the plaintiff. The defendant admittedly not preferred any appeal against the measurement carried out by the survey authorities. If at all the defendant has aggrieved by the measurement of the survey authorities, he could have preferred an appeal before the concerned authorities challenging the correctness of the P.T. Sheet. But, it is not done. Therefore, the contention of the defendant cannot be acceptable. DWs-2 and 3 have also given the evidence before the court. Both have clearly stated in the cross-examination that they have no idea about the adverse possession and hostile title of the defendant. When it is so, then, the evidence of DWs-2 and 3 is also not helpful to the defendant. Accordingly, the lower appellate court dismissed the appeal and confirmed the judgment and decree of the trial court.

24. In view of the admitted facts that RS No.98/1 measuring 9 acres 37 guntas belongs to plaintiff and the defendant is the adjoining owner of Sy.No.97/2 measuring 9 acres 6 guntas, the dispute is only in respect of 3 guntas belonging to the plaintiff. As per Ex.P-1, the survey done by the surveyor on 01.08.2000, clearly indicates that the defendant has encroached upon the suit schedule property i.e., 3 guntas, belongs to the plaintiff. The said finding recorded by the revenue authority after following the procedure as contemplated is not questioned by the defendant before any appellate authority. Therefore the said Ex.P-1 made by the surveyor during the course of official business is valid in view of the provisions of Section 114 of the Indian Evidence Act.

25. It is also not in dispute that DW-1/defendant admitted in the cross-examination that he came to know about the encroachment made by him in the plaintiff's land to an extent of 3 guntas on 01.08.2000 and admittedly, the suit was filed by the plaintiff for possession on 22.07.2006, within six years. Therefore, the claim made

by the defendant with regard to adverse possession cannot be accepted. It is also not in dispute that the defendant filed counter claim along with his written statement and contended that he is the owner of the suit schedule property by way of adverse possession.

26. The trial court considering the entire material on record specifically recorded a finding that the defendant failed to prove his adverse possession against the plaintiff and dismissed his counter claim for relief of declaration of ownership as well as permanent injunction. Admittedly, the said decree passed by the trial court rejecting his claim for declaration and permanent injunction is not at all challenged. The appeal filed by the defendant is only insofar as granting relief of possession declaring that the plaintiff is the owner of the suit land has been considered by the lower appellate court and in view of the specific admissions made by the defendant, the lower appellate court dismissed the appeal.

27. The Hon'ble Supreme Court while considering the law of adverse possession in the case of P.T. Munichikkanna Reddy Vs. Rev Amma and Others, reported in (2007) 6 SCC 59 held that adverse possession “burden of proof initially lies on the land owner to prove his title and possession “onus then shifts on the other party to prove the title by adverse possession.

28. In the present case, the plaintiff, who claims to be the owner of the suit property, has proved the initial burden and then, the onus shifts on the defendant to prove his title by adverse possession. Considering the entire material on record, the trial court dismissed the counter claim filed by the defendant holding that he has not proved his title by adverse possession. Admittedly, the dismissal of his counter claim, the defendant has not at all challenged the same before the lower appellate court. Both the courts below have concurrently held that the plaintiff is the owner of 3 guntas of land and he is entitled for possession and accordingly, the suit came to be decreed.

29. The Hon'ble Supreme Court while considering the provisions of Articles 64 and 65 of the Limitation act, in the case of State of Haryana Vs. Mukesh Kumar and Others, reported in (2011) 10 SCC 404, holding illegal acquisition of land by State authorities, by way of adverse possession “such bad faith adverse possession

should be abolished-urgent suitable change in law of adverse possession recommended and held that India inherited the law of adverse possession from the British. The Supreme Court observed that the Parliament would have to consider abolishing the law of adverse possession or at least, the amending the making substantial changes in the law in the larger public interest and the adverse possession sends a wrong signal to the society at large. Such a change would ensure that only those who had established attachments to the land through honest means would be entitled to legal relief.

30. Admittedly, in the present case, no such attempt is made by the defendant to prove his adverse possession against the plaintiff and in fact, he lost his counter claim before the trial court with regard to his title by way of adverse possession, which is not questioned at all.

31. Both the courts below have concurrently held that the plaintiff is the owner of 3 guntas of the suit schedule property and the defendant has failed to prove his adverse possession. Therefore, the plaintiff is entitled for possession and accordingly, the suit came to be decreed and it is based on the cogent, legal evidence on record. Such a findings of fact is recorded by the courts below on scrutinizing the entire oral and documentary evidence on record and this Court cannot interfere with the same in exercise of powers under the provisions of Section 100 of the Code of Civil Procedure. No substantial question of law is involved in the present appeal. The appeal is dismissed at the stage of admission.

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