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Court : Karnataka Dharwad

Decided On : Aug-10-2015

Judge : B. Veerappa

Appeal No. : Regular Second Appeal No. 5763 of 2010 [SP]

Appellant : Nagappa

Respondent : Neelavva and Others

Advocate for Def. : Shri. A.S. Patil

Advocate for Pet/Ap. : Shri. Hanumanthareddy Sahukar

Judgement :

(Prayer: This RSA is filed U/S. 100 of CPC, against the Judgment and Decree dtd: 23-02-2010 passed in R.A. NO. 190/2009 on the file of the Fast Track Court-II, Dharwad, dismissing the appeal, filed against the Judgment dtd: 21-12-2001 and the decree passed in O.S. No. 652/1999 on the file of the Principal Civil Judge (Jr. Dn.) Hubli, dismissed the suit filed for specific performance of contract, declaration and injunction.)

1. This is a plaintiff's regular second appeal, against the judgment and decree dated 23.02.2010 made in R.A. No. 190/2009 on the file of the Fast Track Court-II, Dhrawad, sitting at Hubballi, confirming the judgment and decree of the trial court dated 21.12.2001 made in O.S.No. 652/1999, on the file of the Principal Civil

Judge (Jr.Dn.), Hubballi, dismissing the suit for specific performance, with costs of defendant Nos. 3 to 8.

2. The plaintiff/appellant filed O.S. No. 652/1999 for specific performance of contract contending that the 1st defendant being the absolute owner of 4 acres of land in eastern side of Sy. No. 54, had entered into an agreement of sale on 22.04.1986 and received a sum of Rs. 35,000/- as part consideration amount and handed over the possession of the suit land to the plaintiff and agreed to execute the registered sale deed as and when called upon by the plaintiff, since he has been in lawful possession and vahivat with the suit property and also contended that defendant Nos. 3 to 8 absolutely have no right or interest over the suit schedule property and inspite of the same, they have colluded with defendant Nos. 1 and 2, and obtained a collusive decree in O.S.No. 100/1987 and the same was confirmed in R.A. No. 92/1992 and reaffirmed in RSA No. 538/1996 before the High Court of Karnataka, only with an intention to defeat the rights of the plaintiff under the agreement dated 22.04.1986 and he was always ready and willing to perform his part of the contract by paying remaining balance amount of Rs. 5,000/- to get registered the sale deed in his favour and inspite of repeated requests, the 1st defendant denied execution of the registered sale deed. Therefore, he filed the suit.

3. The defendants 1 and 2 appeared through advocate and inspite of sufficient time grated, they have not filed any written statement. Defendants 3 to 8 have filed the written statement and contended that the suit filed by the plaintiff is false, frivolous and vexatious and the same is not maintainable and denied the allegation in the plaint that 1st defendant was the owner of 4 acres of eastern portion of the land in Sy. No. 54 and had entered into an agreement with the plaintiff and specifically contended that Sy.No. 54 measuring 10 acres 13 guntas belongs to the husband of 3rd defendant namely Siddappa and after his death, defendant Nos. 3 to 8 have succeeded to the same as owners and they are in lawful enjoyment and possession of the same. In the year 1986, the elders of the village obtained the signature of the defendant " Gouravva and created the alleged records by entering the name of 1st defendant for 4 acres in Sy.No. 54 and immediately, she has filed O.S. No. 100/1987 challenging the said entries for

declaration of title of the defendants 3 to 8 as owners to the entire extent and for permanent injunction and the said suit came to be decreed. Against the said judgment and decree, the defendants 1 and 2 filed the appeal in RA No. 92/1992 before the appellate court. The same came to be dismissed. Against the said judgment and decree, defendant No. 1/Neelavva has preferred RSA No. 538/1996 before High Court of Karnataka. The same came to be dismissed on 17.09.1998 and throughout the said litigation, defendants 3 to 8 have been declared as owners and possessors of the suit schedule property and after failing in a legal battle, defendant No. 1 colluded with the plaintiff for creating the document purported to be an agreement. Therefore, the same cannot be enforced against the 1st defendant or against the other defendants and also contended that the alleged agreement dated 22.04.1986 is barred by law of limitation as the plaintiff has slept for more than 13-14 years, etc. and hence, prays for dismissal of the suit.

4. On the basis of the pleadings, the Trial Court has framed the following issues:

1. Whether plff. proves that, deft No. 1 and 2 were and are the owners of the suit property as on 22.04.1986?
2. Whether the plff. further proves that, on 22.04.1986, entered into the agreement of sale of suit property for Rs. 40,000/- and executed a sale agreement and handed over the actual possession of the same to her?
3. Whether the plff. further proves that as part of the contract, she has paid Rs. 35,000/- to the Deft No. 1 and 2 and remaining amount of Rs.5,000/- was agreed to be paid at the time of execution of the alleged registered sale deed?
4. Whether the plff. further proves that execution of the registered sale deed by deft. No. 1 and 2 as and when called for to do so by her is one of the condition of the agreement of sale and inspite of such terms, deft No. 1 and 2 are postponing the same for one reason or the other?
5. Whether the plff. further proves that she has been in lawful possession and vahivat of the suit property ever-since from the date of alleged agreement of sale

upto the date of suit and subsequent thereto?

6. Whether the Plff. further proves that Deft No. 3 to 8 are illegally interfering in her possession without any right, title and interest over the suit property?

7. Do the plff. further proves that decision of legal proceedings of O.S. No. 100/1987, R.A.No. 92/1992 and R.S.A. No. 538/1996 are not binding on him as the same are the outcome of collusive proceedings as stated in para No. 6 of the plaint?

8. Whether the plff. further proves that he is entitled for the relief of specific performance of contract against all the defts. as prayed?

9. Whether the suit is within limitation?

10. Whether the plff is entitled for the relief of declaration and consequential relief of permanent injunction as prayed in the suit?

11. What order or decree? ?

5. In order to establish his case, the plaintiff examined as P.W.1 and witness as P.W.2 and marked documents as Exs.P-1 and P-2. The third defendant Gouravva entered into witness box and examined as D.W.1 and marked documents Exs.D-1 to D-12. After considering the entire material on record, the Trial Court has recorded a finding that the plaintiff failed to prove that defendant Nos.1 and 2 were and are the owners of suit property as on 22.04.1986 and failed to prove on 22.04.1986 defendant Nos. 1 and 2 entered into an agreement of sale for Rs. 40,000/- and executed agreement and handed over the actual possession of the same and further failed to prove that as part of the contract, she has paid Rs. 35,000/- to the defendant Nos. 1 and 2 and remaining Rs. 5,000/- was agreed to pay as on the date of the registration of the sale deed. The Trial Court further held that the plaintiff failed to prove that the execution of the registered sale deed Exs. D-1 and D-2 as and when called for to do so, is one of the condition that in the agreement of sale and inspite of such terms, defendant Nos. 1 and 2 are postponed in the same etc. and also held that the suit is barred by limitation and ultimately dismissed the suit. Against the said judgment and decree, the plaintiff

filed appeal in R.A. No. 190/2009 on the file of the Fast Track Court II, Dharwad sitting at Hubli, who after hearing both the parties, by the impugned judgment and decree of the Trial Court dated 23.02.2010 had dismissed the appeal and confirmed the judgment and decree of the Trial Court. Hence, the present second appeal is filed.

6. I have heard the learned counsel for the parties to the lis.

7. Shri Hanumanthareddy Sahukar, learned counsel for the appellant has contended that the impugned judgment and decree passed by the Courts below are otherwise erroneous, contrary to law. Both the Courts failed to notice that after the agreement executed by the 1st defendant, they have colluded with the other defendants and filed the suit and they got declaration in O.S. No. 100/1987 by the defendant Nos. 3 to 8 and same is not binding on the plaintiff.

8. Learned counsel further contended that before entering into agreement, the plaintiff examined the revenue entries and purchased. Therefore, he is a bona fide agreement holder. Therefore, both the Courts below has ignored Ex.P-1 without any basis. Therefore, he sought to set aside the impugned judgment and decree of the Courts below. The defendant Nos. 1 and 2 not filed any written statement. Therefore, the Trial Court ought to have decreed the suit as contemplated under Order 8 Rule 10 of the Code of Civil Procedure. On these grounds sought to set aside the impugned judgment and decree of the Courts below.

9. Per contra, Shri A.S. Patil, learned counsel for the respondent Nos. 3 to 8 sought to justify the impugned judgment and decree of the Courts below and contended that in order to deprive the valuable right of the 3rd defendant, the plaintiff and 1st defendant colluded and created agreement Ex.P-1 and also contended that the 3rd defendant is the owner of the property, 1st defendant has no manner of right executed agreement in favour of the plaintiff which is not binding and is void contrary to law and merely because defendant Nos. 1 and 2 have not filed written statement, the contention of the appellant that the suit has to be decreed as contemplated under Order 8 Rule 10 of the Code of Civil Procedure cannot be accepted, since it is a specific case of the 3rd defendant throughout the proceedings that she is the owner of the suit schedule property and 1st defendant

has no manner of right, title in respect of property in question. Therefore, obviously they have not filed any written statement in collusion with the 1st plaintiff and also contended that 3rd defendant has filed suit for declaration in O.S. No. 100/1987 and after contest by the defendant Nos. 1 and 2, the suit came to be decreed declaring the 3rd defendant and subsequently LRs. become owner of the suit schedule property and same was confirmed in R.A. No. 92/1992 and re-affirmed by this Court in R.S.A. No. 538/1996 on 17.09.1998. Therefore, both the Courts below concurrently held that the plaintiff failed to prove his case and same is in accordance with law and this Court cannot exercise powers under Section 100 of the Code of Civil Procedure, 1908. Therefore, he sought for dismissal of the appeal with exemplary costs.

10. I have given my thoughtful consideration to the arguments advanced by the learned counsel for the parties to the lis and perused the entire material on record.

11. The plaintiffs filed suit for specific performance to enforce the agreement dated 22.04.1986 said to have been executed by the 1st defendant. According to the 3rd defendant, 1st defendant is nothing to do with the property in question and he has no right. The said property belonged to 3rd defendant who is the absolute owner of the possession. In order to prove the said material fact, the plaintiff produced Ex.P-1, agreement of sale, Ex.P-1(a), signature of plaintiff, Ex.P-1(b), signature of defendant No. 1, Ex.P-1(c), signature of defendant No. 2, Ex.P-1(d), signature of P.W.2 Gurappa and Ex.P-2 record of right. The said records are not documents of title as held by the Hon'ble Supreme Court in the case of Corporation of the City of Bangalore vs. M. Papaiah and another reported in AIR 1989 SC 1809. Wherein the Hon'ble Supreme Court has held that the revenue records are not document of title. Therefore, the agreement entered into by the 1st defendant in favour of the plaintiff is without any title. The defendants in order to prove the case, they have produced Exs.D-10 to D-12 i.e., judgment and decree passed in O.S. No. 100/1987, R.A. No. 92/1992 and R.S.A. No. 538/1996. It is not in dispute that the defendant Nos. 3 to 8 filed O.S. No. 100/1987 for declaration of title and permanent injunction against the defendant Nos. 1 and 2. The suit came to be decreed and the appeal filed by the defendant Nos. 1 and 2 came to be dismissed and R.S.A. filed by the defendant Nos. 1 and 2 before this Court in R.S.A. No.

538/1996 was also dismissed on 17.09.1998. Thus, it is clear that the declaration of title and injunction granted by the Trial Court has reached finality. The said judgment and decree of the Courts below confirmed by this Court on 17.09.1998 is final and conclusive. Throughout the proceedings, the plaintiff proceeded only on the presumption and on the basis that 1st defendant was the owner. When the 1st defendant has not stepped into the box to support the case of the plaintiff, the case of the plaintiff cannot be accepted and in view of the decree reached finality up to this Court in R.S.A. No. 538/1996 holding defendant Nos. 3 to 8 are the owners of the suit property, the alleged agreement executed by the 1st defendant in favour of the plaintiff is invalid and not binding on the defendant Nos. 3 to 8. Therefore, the contention of the learned counsel for the appellant that the suit ought to have been decreed by the courts below, as contemplated under Order VIII Rule 10 CPC cannot be accepted.

12. Considering the entire material on record, the Trial Court recorded a specific finding that the plaintiff failed to prove that defendant Nos. 1 and 2 are the owners of the suit schedule property as on 22.04.1986 and failed to prove that the defendants executed the alleged agreement on 22.04.1986 and the alleged agreement entered into on 22.04.1986, the suit filed by the plaintiff to enforce the agreement filed on 17.12.1999 after lapse of 13 years, the same is barred by limitation in view of Article 54 of Limitation Act, 1963. The said finding of fact recorded by Trial Court based on the material evidence on record has been re-appreciated by the lower Appellate Court and confirmed the judgment and decree of the Trial Court.

13. The concurrent finding of fact that defendant No. 1 was not the owner of the property in question has not been disproved and no material document is produced by the plaintiff to prove that the 1st defendant was the owner of the suit property. In the absence of the same, the judgment and decree passed by the Courts below is in accordance with law. Apart from that original suit filed by the defendant Nos. 3 to 8 in O.S. No. 100/1987 for declaration and permanent injunction in respect of suit schedule property was decreed, declaring that the defendant Nos. 3 to 8 are the owners of the property in question, the same was confirmed in R.A. No. 92/1992 and re-affirmed by this Court in R.S.A. No.

538/1996 on 17.09.1998. Therefore, the judgment and decree of the Courts below is based on the cogent legal evidence on record. The appellant has not made out any case to interfere with the judgment and decree of the Courts below under the provisions of Section 100 CPC. No substantial questions of law involved in this appeal. Accordingly, the appeal is dismissed at the stage of admission itself.

No order as to costs.

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