

Virupakshappa Vs. Sharanappa and Others

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Court : Karnataka Dharwad

Decided On : Jun-10-2016

Judge : A.N. Venugopala Gowda

Appeal No. : Regular Second Appeal No. 5181 of 2010

Appellant : Virupakshappa

Respondent : Sharanappa and Others

Judgement :

(Prayer: This RSA is filed u/s.100 of CPC to set aside the judgment and decree dated 06.11.2009 passed in R.A. No.145/2002 by the Civil Judge (SR.DN.) and CJM, Gadag and set aside the judgment and decree dated 03.10.2002 passed in O.S. No.65/2000 by the III Addl. Civil Judge (JR. DN.), Gadag.)

1. The appellant filed O.S. No.65/2000 in the Court of III Addl. Civil Judge (Jr. Dn.) at Gadag to pass a decree of declaration and injunction by adverse possession against the respondents. The defendants filed written statement and contested the suit. The Trial Judge raised six issues. Plaintiff got examined himself as PW-1 and examined two witnesses as PWs 2 and 3 and marked 17 documents as Exs.P1 to P17. Defendant No.1 got himself examined as DW-1 and two witnesses were examined as DWs 2 and 3 and a document was marked as Ex.D1. The Trial Judge on appreciation of the evidence brought on record, answered issue No.1 i.e., the plaintiff having proved that the deceased Rudrappa executed agreement

of sale in his favour on 01.10.1985 in the affirmative and issue Nos.2 to 5 in the negative and the suit was dismissed. The plaintiff filed an appeal under S.96 CPC, registered as R.A. No.145/2002, on the file of Senior Civil Judge and CJM at Gadag. The respondents appeared and attacked the finding entered on issue No.1 and supported the conclusion of the Trial Court i.e., dismissal of the suit. On perusal of the record, five points were raised for consideration. At the time of hearing, a statement having been made by the learned advocate that the appellant is not pressing the relief with regard to acquisition of title to the suit property by the plaintiff by adverse possession, point No.2 raised 'whether the appellant - plaintiff proves that he has perfected the title over the suit property by adverse possession' was held as not surviving for consideration. On independent assessment of the evidence, Appellate Judge held that the plaintiff failed to prove the execution of sale agreement dated 01.10.1985 and in pursuance of the same he being in possession and enjoyment of the suit property. It was held that the plaintiff failed to prove that decree passed in O.S. No.270/1998 was collusive. It was further held that the Judgment and Decree passed by the Trial Court is sound and does not call for interference and the appeal was dismissed. Assailing the said Judgments and Decrees, the plaintiff filed this second appeal under S.100 CPC

2. Sri Hanumanthareddy Sahukar, learned advocate, firstly contended that the Trial Court having entered a finding that the plaintiff was put in possession of suit property by virtue of the agreement of sale and answered issue No.1 in the affirmative, lower Appellate Court is unjustified in answering point No.1 in the negative and in holding that the sale agreement is not proved. He submitted that the finding recorded on issue No.1 by the Trial Court having not been assailed by the defendants by filing cross objection or an appeal, the court below has committed illegality in holding that the sale agreement dated 01.10.1985 is not proved and the plaintiff is not in possession and enjoyment of the suit property. Secondly, there is no proper appreciation of evidence brought on record of the suit. He submitted that the plaintiff having produced credible evidence in proof of he being in possession and enjoyment of the suit property, the dismissal of the suit to the extent of claim made for passing decree of permanent injunction is illegal. He contended that the impugned Judgments have given rise to substantial questions of law and call for interference.

3. The point for consideration are:

i) Is it legally necessary for a party in whose favour the decree has been passed not only on the issues/points found in his favour but also on issues/points held against him by the court below to file appeal or cross objection to support the decree?

ii) If the findings of fact entered into by the First Appellate Court is not shown to be perverse, is it open in second appeal to re-appreciate the evidence brought on record?

4. Re: Point No.(i):

The respondent in an appeal is entitled to support the decree of the Trial Court even by challenging any of the findings that might have been rendered by the Trial Court against himself. For supporting the decree passed by the Trial Court, it is not necessary for the respondent in the appeal, to file a memorandum of cross-objection or independent appeal challenging a particular finding rendered by the Trial Court against him, when the ultimate decree itself is in his favour. Cross-objection is necessary only if the respondent claims any relief which was negated to him by the Trial Court and in addition to what he has already been given in the decree under challenge.

5. In *HARDEVINDER SINGH Vs. PARAMJIT SINGH AND OTHERS*, (2013) 9 SCC 261, Apex Court has held that the respondent may defend himself without taking recourse to file a cross-objection to the extent the decree stands in his favour, but if he intends to assail any part of the decree, it is obligatory on his part to file the cross-objection.

6. In the present case, despite answering issue No.1 in favour of the plaintiff by the Trial Judge, the suit was dismissed. The defendants by filing written statement sought dismissal of the suit and did not make any counter claim. No relief sought by the defendants in the suit was negated by the Trial Court. It is trite that an appeal or a cross-objection can lie against a decree passed by the Court and not against a mere finding on a certain issue or point raised for consideration.

7. In RAVINDER KUMAR SHARMA Vs. STATE OF ASSAM AND OTHERS, (1999) 7 SCC 435, Apex Court has held as follows:

"23. . We hold that the respondent - defendant in an appeal can, without filing cross-objections attack an adverse finding upon which a decree in part has been passed against the respondent, for the purpose of sustaining the decree to the extent the lower court had dismissed the suit against the defendant - respondent. The filing of cross-objection, after the 1976 Amendment is purely optional and not mandatory."

8. In BANARASI Vs. RAM PHAL, (2003) 9 SCC 606, Apex Court has held that unless a person is prejudicially or adversely affected by the decree he is not entitled to file an appeal and that no appeal lies against a mere finding and that Ss.96 and 100 CPC provide for an appeal against decree and not against Judgment.

9. In MANAGEMENT OF SUNDARAM INDUSTRIES LTD. Vs. SUNDARAM INDUSTRIES EMPLOYEES UNION, (2014) 2 SCC 600, Apex Court has held as follows:

"19. The legal position is fairly well settled that a judgment can be supported by the party in whose favour the same has been delivered not only on the grounds found in his favour but also on grounds that may have been held against him by the Court below."

10. In view of the above, there is no merit in the first contention urged by Sri. Hanumantha Reddy Sahukar and hence the point No. (i) is answered in the negative.

11. Re:point No. (ii):

Perused the record. This Court cannot interfere while exercising the power under S.100 CPC with the finding of fact recorded by the First Appellate Court which is final court of facts, unless the finding is found to be perverse. The limited ground on which this court can interfere is that the decision of the Court below is contrary to law and it is only an error of law which can be corrected in exercise of power

under S.100 CPC. If the finding recorded by the lower Appellate Court is one of law or of mixed law and fact, this Court can examine the correctness, but if it is purely one of facts, the jurisdiction of this Court cannot be exercised unless it is shown that there is an error of law in arriving at the finding or that it is based on no evidence at all or is arbitrary, unreasonable and hence, perverse.

12. Sri Hanumanthareddy Sahukar did not contend that there is omission on the part of the Court below in appreciation of the material evidence brought on record or that there is misreading of any evidence. On the other hand, the lower Appellate Court has analysed the evidence in detail and thereafter recorded the findings on point Nos. (1) and (3) raised by it. Hence, lower Appellate Court being the final Court of facts and the findings entered having not been shown to be perverse, no interference with the finding of fact recorded is permissible.

The impugned Judgment has not given rise to any substantial question of law. Hence, the second appeal cannot be entertained and is rejected.

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