

Annappa Vs. Laxmi Devi Devar Temple and Nulichandayya Devasthan Committee and Others

Annappa Vs. Laxmi Devi Devar Temple and Nulichandayya Devasthan Committee and Others

SooperKanoon Citation : sooperkanoon.com/1182835

Court : Karnataka Dharwad

Decided On : Jun-09-2016

Judge : A.N. Venugopala Gowda

Appeal No. : RSA.No. 5789 of 2010

Appellant : Annappa

Respondent : Laxmi Devi Devar Temple and Nulichandayya Devasthan Committee and Others

Judgement :

(Prayer: This RSA is filed U/Sec.100 of CPC., 1908, against the judgement and decree dtd:19-06-2010 passed in R.A.No.21/2007 on the file of the Presiding Officer, Fast Track Court, Jamkhandi, dismissing the appeal by confirming the judgment and decree dtd:26-02-2007 passed in O.S.No.13/1998 on the file of the Civil Judge (JR.DN) Banahatti, and etc.)

1. Appellant was the plaintiff and the respondents were the defendants in O.S.No.13/1988 on the file of the Civil Judge (Jr.Dn), Banahatti. The suit was filed to pass a decree of declaration of title and permanent injunction against the defendants in respect of the suit schedule property bearing Municipal No.2524 (Old No.2024), shown as 'ABCD' portion in the suit map and situated at Terdal

village, Jamakhandi taluk, Bagalkot District. The case of the plaintiff is that his ancestors were owners of the suit land and that he is in possession and enjoyment of the same and the vendors of defendants 1 to 6 denied his right, title and interest and also interfered with his peaceful possession.

2. The defendants filed joint written statement and denied the case of the plaintiff. They denied averments made in the plaint and the appended hand sketch showing situation of the suit property. They denied the title and possession of the plaintiff over the suit property bearing Municipal No.2024 (old) and at present Municipal No.2524 and also the allegation that the plaintiff inherited the suit property from his ancestors. It was contended that the property bearing TMC No.2024 (old), at present bearing TMC No.2524 as belonging to one Satyappa Bhimappa Kagi and Bhagawant Dharmappa Kagi, who were the actual owners in possession of the same and the plaintiff fraudulently and by misrepresentation of facts to the municipal authority having got entered his name to TMC No.2024/2524 prior to the filing of the suit and the original owners on coming to know of the illegality and wrong mutations entered in the TMC records having filed O.S.22/1998. The execution of the sale deed dated 7.4.1995 was stated and the suit was contested on multiple grounds.

3. Based on the pleadings of the parties following issues were raised by the trial court:

1. Whether the plaintiff proves that he is owner of ABCD property bearing Municipal No.2554 in Ward No.V of Terdal plot property?
2. Whether the plaintiff proves that he is in lawful possession and enjoyment of the suit property as on the date of the suit?
3. Whether the plaintiff proves the alleged interference?
4. Whether the plaintiff has no locus-standi to challenge the sale deed in favour of the defendants dated 7.4.1995?
5. Whether the suit is not maintainable without seeking necessary sale deed declaration dated 7.4.1995, which is stands in favour of the defendants?

6. Whether the plaintiff has not paid the proper court fee and not valued the suit properly?

7. Whether the defendants are entitled for the compensatory costs of Rs.2,000/-?

8. Whether the plaintiff is entitled for the reliefs as sought for?

9. What order or decree?

4. PWs.1 and 2 deposed in support of the suit claim and Ex.P.1 to P.18 were marked. In support of the pleading made in the written statement, defendants 1 and 3 deposed and exhibits D.1 and D.2 were marked.

5. The trial court answered issue no.1 partly in the affirmative, issue Nos.2 and 3 in the negative, issue no.4 in favour of the defendants and issue nos.5 to 7 in the affirmative, issue no.8 in the negative and as a consequence, the suit was dismissed with compensatory costs.

6. Against the said judgment and decree the plaintiff filed R.A.No.21/2007 in the District Court. The appeal was assigned to the Presiding Officer of the Fast Tract Court, Jamakhandi. After securing the trial court record and hearing the arguments, the following points were raised for consideration:

1. Whether the plaintiff/appellant proves that the findings one arrayed on issues in O.S.No.13/1998 by the trial court are perverse, capricious and erroneous and deserves to be interfered with?

2. Whether the plaintiff/appellant proves the existence and identity of the suit property as denoted by letters 'ABCD' in the plaint rough hand sketch map measuring 35' East-West and 25' North-South in Ward No.5 of Terdal municipality?

3. Whether respondents No.1 and 3 prove that the judgment and decree passed in O.S.No.13/1998 dated 26.02.2007 deserves to be upheld and confirmed?

4. What order?

7. On an independent assessment of evidence, point Nos.1 and 2 were answered in the negative and point no.3 was answered in the affirmative and as a consequence, the appeal was dismissed.

8. This second appeal is directed against the said judgments and decrees passed by the courts below.

9. Sri Ravi S. Balikai, learned advocate contended that the courts below have committed error in holding that the plaintiff has not proved his title and possession over the suit property. He submitted that the courts below have overlooked the oral and documentary evidence like municipal extracts, tax paid receipts, property register card and in holding that the judgments passed in O.S.19/1994 and R.A.126/2001 as having not been challenged. He submitted that the impugned judgments and decrees have given rise to substantial questions of law.

10. Sri S T Patil, learned advocate for the respondents, on the other hand, submitted that the courts below have rightly dismissed the suit and the appeal respectively, in view of the plaintiff's/appellant's failure to produce any title deed in proof of declaratory relief sought. Learned Counsel made submissions in support of the findings recorded by the courts below and submitted that in view of concurrent findings recorded by the courts below, which are neither perverse nor illegal and no substantial question of law having arisen for consideration the second appeal is liable to be rejected.

11. Considered the rival contentions and perused the record of the case.

12. The appellant claimed ownership, title and possession over the suit property. He is supposed to plead the fact and prove his case by placing evidence. The plaintiff has not produced any title deed. O.S.19/1994 filed against the Chief Officer of the Terdal Town Municipal Council was dismissed and the same was questioned in RA.126/2001 in the District Court and the said appeal was dismissed on 13.02.2006. Assailing the said decrees RSA.No.1599/2006 was filed and the same was dismissed holding that no substantial question of law arise for consideration.

13. The suit being for declaration of title and grant of consequential reliefs, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant the relief to the plaintiff.

14. Mutation entries do not confer title. In *SAWARNI vs. INDER KAUR*, (1996) 6 SCC 223, apex court has held as follows:

"Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. The learned Additional District Judge was wholly in error in coming to a conclusion that mutation in favour of Inder Kaur conveys title in her favour. This erroneous conclusion has vitiated the entire judgment."

15. In the case of *CORPORATION OF THE CITY OF BANGALORE vs. M.PAPAIHAH AND ANOTHER* reported in (1989) 3 SCC 612, apex court has held as follows:

"5. ... It is firmly established that the revenue records are not documents of title, and the question of interpretation of a document not being a document of title is not a question of law."

16. Both the courts below have considered the case of the plaintiff and by well reasoned judgments have dismissed the suit and the appeal respectively. Reliance having been placed on mutation entries and other revenue entries, which do not confer title of the suit property, the same being relevant for the purpose of paying land revenue/municipal tax and having nothing to do with the ownership of the property, the suit and the appeal have been rightly dismissed.

17. The concurrent findings entered by the courts below having support of credible evidence do not suffer from any perversity. Sri Ravi S. Balikai did not point out the omission of any material evidence by either of the courts below or misreading of the evidence placed on record. Hence, the findings entered by the courts below in the impugned judgments cannot be termed as perverse.

The appeal does not involve any substantial question of law and hence is rejected.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com