

Nagesha and Another Vs. P. Ramachandra

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Court : Karnataka

Decided On : Apr-05-2016

Judge : A.N. Venugopala Gowda

Appeal No. : Regular Second Appeal No. 1545 of 2015

Appellant : Nagesha and Another

Respondent : P. Ramachandra

Judgement :

(Prayer: This RSA is filed under S.100 of CPC, against the judgment and decree dated 25.06.2015 passed in R.A.No. 8/2013 on the file of the Addl. Senior Civil Judge and JMFC, Puttur, Itinerate at Sullia, D.K., allowing the appeal and setting aside the judgment and decree dated 02.09.2013 passed in O.S.No. 21/2010 on the file of the Civil Judge and JMFC, Sullia.)

1. The defendants - appellants and the respondent - plaintiff are the neighbouring land holders. The defendants' properties are situated towards eastern side of the plaintiff's suit schedule property, which is on the upper side and the defendants' properties are on the lower side. A water channel exists towards northern side of the suit schedule property and passes through the suit schedule property and continues to run into the properties of the defendants. In the matter of mode and manner of drawing water from the said channel, a dispute having arisen, the respondent filed O.S.No.21/2010 in the Court of Civil Judge at Sullia. The

appellants, as the defendants, filed written statement and contested the suit on multiple grounds. Based on the pleadings, issues were raised. The plaintiff, in order to prove the case got examined himself as PW-1 and marked four documents as Exs.P1 to P4. In order to disprove the case of the plaintiff, 2nd defendant got himself examined as DW-1 and marked seven documents as Exs.D1 to D7. A Court Commissioner appointed, after conducting local inspection submitted the report and was examined as CW-1. The Commission report and sketch have been marked as Exs.C1 and C2. By a Judgment dated 02.09.2013 the suit was decreed and the defendants were restrained from installing pipes in the existing water channel which runs in the northern side of the suit property, as shown by the Commissioner in Ex.C2. However, the defendants were held entitled to draw water on the existing water channel to their land, without erecting any pipes.

2. As against the said decree, the defendants filed R.A.No.8/2013, in the Court of the Addl. Senior Civil Judge at Puttur, itinerating at Sullia, D.K. Considering the rival contentions and the record of the suit, four points were raised for consideration. On independent assessment of the evidence, the lower Appellate Court has held that the plaintiff has failed to prove that the defendants made attempt to forcibly install pipes in the existing water channel passing through the suit schedule property. It has further held that the defendants did not cause any interference with the right of enjoyment of the suit schedule property by the plaintiff. By a Judgment dated 25.06.2015, the appeal was allowed, the impugned decree was set aside and the suit was dismissed.

3. However, the defendants having been directed not to enter into the suit schedule property of the plaintiff for installation or repair of the pipeline, without approaching the Tahsildar, under S.90A of the Karnataka Land Revenue Act, 1964, (for short 'KLR Act'), this second appeal was filed, limiting the challenge in so far as the said direction is concerned.

4. Sri Sachin B.S., learned advocate, contended that the Court below having allowed the appeal, has committed illegality in directing the appellants to approach the Tahsildar under S.90A of the KLR Act. He submitted that the decree under

challenge, to the aforesaid extent, is contrary to S.24 of Indian Easements Act, 1882.

5. S.24 of the Indian Easements Act, 1882 reads as follows:

"24. Right to do acts to secure enjoyment.- The dominant owner is entitled, as against the servient owner, to do all acts necessary to secure the full enjoyment of the easement; but such acts must be done at such time and in such manner as, without detriment to the dominant owner, to cause the servient owner as little inconvenience as possible; and the dominant owner must repair, as far as practicable, the damage (if any) caused by the act to the servient heritage.

Accessory rights.- Rights to do acts necessary to secure the full enjoyment of an easement are called accessory rights.

Illustrations

(a) A has an easement to lay pipes in B's land to convey water to A's cistern. A may enter and dig the land in order to mend the pipes, but he must restore the surface to its original state.

(b) xxxx

(c) xxxx

(d) xxxx

(e) xxxx

(f) xxxx

(g) xxxx"

6. Undisputedly, the defendants did not maintain a counter claim in O.S.No.21/2010 and seek relief with reference to S.24 of the Easements Act. The suit filed by the respondent has been dismissed by the lower Appellate Court.

7. The record reveals that the plaintiff holds two acres of land and the defendants own, separately, 1 acre and 59 cents and 9 acres and 29 cents of land respectively. A Court Commissioner was appointed to conduct local inspection and submit the report. The Commission Warrant having been executed, the Commissioner has deposed as CW-1. The report of the Commissioner is Ex.C1. The sketch prepared by the Court Commissioner is Ex.C2. The said report and the sketch show the existence of another water stream passing through the plaintiff's land (marked in blue colour of the sketch - Ex.C2). In view of the alternative source of water and the provisions of S.90A of the KLR Act, the lower Appellate Court has held that there being a special forum provided under the special statute, the parties may seek redressal of their grievance before the Tahsildar, as the granting of permanent injunction would cause prejudice to the rights of the parties.

8. The point for consideration is, whether the Court below has committed any illegality in directing the parties to seek redressal of their grievance before the Tahsildar, under S.90A of the KLR Act?

9. S.90A of the Karnataka Land Revenue act, 1964 being relevant, reads as follows:

"90A. Construction of Water Course through land belonging to other persons:- (1) If the State Government or a co-operative farm or any person (hereinafter in this chapter called the applicant), desires to construct a water course to take water for the purpose of agriculture from a source of water to which he or the State Government or such farm is entitled, but such water course is to be constructed through any land which belongs to, or is in possession of, another person (hereinafter in this Chapter called the neighbouring holder), and if no private agreement is arrived at for such construction between the applicant and the neighbouring holder, the person desiring to construct the water course may make an application in the prescribed form to the Tahsildar.

Explanation:- For the purposes of this Chapter "Co-operative farm" means a co-operative farm as defined in the Karnataka Land Reforms Act, 1961 (Karnataka Act 10 of 1962) and "Neighbouring holder" shall include any person to whom the land belongs and all persons holding through or under him.

(2) On receipt of the application, if the Tahsildar after making an inquiry and after giving to the neighbouring holder and all other persons interested in the land an opportunity of stating any objection to the application, is satisfied that for ensuring the full and efficient use for agriculture of the land belonging to the applicant, it is necessary to construct the water course, he may by order in writing direct the neighbouring holder to permit the applicant to construct the water course subject to the following conditions, namely:-

a) the water course shall be constructed through such land in such direction and manner as is agreed upon by the parties or failing such agreement, as directed by the Tahsildar so as to cause as little damage to the land through which it is constructed, as may be possible;

b) where the water course consists of pipes, the pipes shall be laid at a depth of not less than two feet from the surface of the land;

c) where the water course is a water channel, the channel shall not exceed five feet in width;

d) the applicant shall pay to the neighbouring holder:-

i) such compensation for any damage caused to such land by reason of the construction of the water course injuriously affecting such land; and

ii) such annual rent;

as the Tahsildar may decide to be reasonable.

e) the applicant shall maintain the water course in a good condition and a fit state or repairs;

f) the applicant shall within the prescribed period execute an agreement in the prescribed form in favour of the neighbouring holder,-

g) such other conditions as may be prescribed or as the Tahsildar may think fit to impose.

(3) An order made under sub-section (2) shall direct how the amount of compensation shall be apportioned among, the neighbouring holder and all other persons interested in the land.

(4) Any order made under sub-section (2) shall after the applicant executes an agreement as required under clause(f) of sub-section (2) be a complete authority to him or to any agent or other person employed by him for the purpose to enter upon the land specified in the order with assistants or workmen and to do all such work as may be necessary for the construction of the water course and for repairing or maintaining the same."

10. The reasons for amending the Karnataka Land Revenue Act, 1964 and insertion of S.90A is, that many representations were received from the agriculturists, stating that when it became necessary for them to lay a pipeline or water course for irrigating their lands through the lands of their neighbours, there was obstruction and hence they had to face hardship. The Government having found that there is no law which allows the agriculturists to lay a pipeline or water course and the implementation of irrigation schemes having slackened, in order to overcome the situation, amended the Act and empowered the Tahsildar, to grant permission to the land holders, to lay pipeline through the neighbours' lands, subject to certain conditions and restrictions. The object behind the amendment is to redress the grievances of the agriculturists in the matter of drawing water for irrigating their lands through the lands of their neighbours i.e., wherever there is obstruction. The State Government by amending the Karnataka Land Revenue Act, 1964 has provided a Special Forum for speedy redressal of the grievances and to avoid hardship to the agriculturists and also in the matter of implementation of the irrigation schemes.

11. The penultimate portion of the Judgment passed on 26.05.2015 in R.A.No.8/2013, noticed in para 3 supra, is only making known to the parties, the forum which they can approach for redressal of the grievance. Since a Special Forum has been constituted under the Special Enactment, in respect of matters falling within the purview of the Revenue Authority conferred with jurisdiction under S.90A of the KLR Act, the aggrieved person should approach the Tahsildar and

seek redressal of the grievance.

12. In the said view of the matter, the appeal does not involve any substantial question of law. In the absence of a substantial question of law, second appeal under S.10C CPC cannot be entertained.

In the result, the appeal is rejected. However, it is made clear that the rejection of this appeal would not stand in the way of the appellants approaching the Tahsildar, conferred with the jurisdiction under S.90A of the Karnataka Land Revenue Act, 1964 for redressal of their grievance as against the respondent.

Ordered accordingly.

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