

Vishwanathappa and Others Vs. V. Manjunath and Another

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Court : Karnataka

Decided On : Nov-05-2016

Judge : L. Narayana Swamy

Appeal No. : Regular Second Appeal No. 1584 of 2016

Appellant : Vishwanathappa and Others

Respondent : V. Manjunath and Another

Judgement :

(Prayer: This RSA is filed under Section 100 of CPC against the judgment and decree dated 18.06.2016 passed in RA No. 67/2013 on the file of the II Addl. Senior Civil Judge, Davanagere, dismissing the appeal and confirming the judgment and decree dated 29.10.2013 passed in O.S.No.359/2008 on the file of the Addl. Civil Judge, Davanagere.)

1. This is a Plaintiffs second appeal against the Judgment and Decree passed by the II Addl. Senior Civil Judge, Davanagere dismissing the appeal in R.A.No.67/2013 and confirming the judgment and decree dated 29.10.2013 passed in O.S.No.359/2008 on the file of the Addl. Civil Judge, Davanagere.
2. The parties are referred to as they are referred to, in the trial Court.
3. Plaintiff filed a suit for permanent injunction restraining the defendants or their agents from interfering in any manner in running of the Hotel by the plaintiff in the

suit schedule property. The defendant Nos.1 and 2 are brothers of plaintiff and third defendant is the sister of the plaintiff. The plaintiff contended that he is in possession of the suit schedule property since 25 years and is running a Hotel under the name and style Sri Raghavendra Shyavige Hotel in the said property. The suit schedule property is ancestral property of the plaintiff and the defendants. The defendants came to the suit schedule property and threatened the plaintiff to stop business, if not, they would forcibly lock the suit premises. The plaintiff lodged a complaint with the jurisdictional police. When the police did not take action against the defendants, he was constrained to file the above suit.

4. The defendants on receipt of suit summons filed written statement. They contended that plaintiff is not the owner of the property and denied that he is running the business independently in the suit schedule property. They contend that business was run by both the plaintiff and the husband of the third defendant. They contended that the suit schedule property is ancestral property and that the plaintiff has filed vexatious suit. As such, they prayed for dismissal of the suit.

5. On the basis of the pleadings, the trial Court framed the following issues:

1. Whether the plaintiff proves that he is in possession of the suit schedule property as on the date of suit by running a hotel in the name and style as Sri Raghavendra Shyavige Hotel ?

2. Whether the plaintiffs prove that the defendants are causing obstruction for running of the hotel? Defendants No.1 to 3 are their self acquired properties?

3. What order or decree?

6. In order to substantiate the claim made in the plaint, the plaintiff examined himself as P.W-1 and produced four documents, which came to be marked as Ex.P-1 to Ex.P-4. The third defendant filed an affidavit as D.W-1 and produced three documents, which were marked as Ex.D-1 to Ex.D-3.

7. The trial Court on appreciation of the oral and documentary evidence on record held that even though the possession of the plaintiff can be presumed, it cannot be said that the plaintiff is in exclusive possession of the suit schedule property and

running the business independently. It further held that the acts and deeds of the co-shares or co-owners in enjoying the ancestral property or joint family property cannot be treated as interference. Hence the trial Court by its judgment dated 29.10.2013 dismissed the suit of the plaintiff.

8. Aggrieved, the plaintiff preferred an appeal in R.A.No.67/2013. The Lower Appellate Court after hearing the respective Counsel framed the following points:

1. Whether plaintiffs are entitled for relief of permanent injunction against his co-shares/brothers?

2. Whether the impugned judgment and decree of the trial Court is against law, facts, evidence and probabilities of the case and liable to be intervened by this Court?

3. What order or decree?

9. The lower appellate Court re-appreciating the oral and documentary evidence on record concurred with the findings recorded by the trial Court. It held that plaintiff is not entitled for the relief of permanent injunction in simplicitor against his co-sharers/defendants, unless there was partition by metes and bounds. Therefore, the lower appellate Court by its order dated 18th June, 2016, dismissed the appeal confirming the judgment and decree passed by the trial Court.

10. Aggrieved by the said judgment and decree of the Courts below, the plaintiffs are in this second appeal.

11. The learned Counsel appearing for the appellants contended that the Courts below have not considered the fact that the appellants are running hotel business for over a period of 25 years in the suit schedule property. They are running the business independently and without the help of the defendants. As the defendants tried to obstruct and interfere with their possession, they were constrained to file the suit for injunction. Hence they pray for allowing the appeal and setting aside the judgment and decree passed by the Courts below.

12. From the aforesaid facts and contentions, it is clear that defendant Nos.1 and 2 are brothers of plaintiff and third defendant is the sister of the plaintiff. As the first defendant is the elder brother of the plaintiff who is aged 63 years, it can be easily presumed that the plaintiff is doing business under his guidance. It is not in dispute that the suit schedule property is ancestral property and no partition has taken place. It is submitted that defendants have filed a suit for partition.

13. The trial Court as well as the Lower Appellate Court by a reasoned judgment have concurrently held that plaintiffs are not entitled for a decree of permanent injunction. It is settled principle that injunction cannot be granted against a co-sharer or a co-owner. The appeal is to be dismissed on this ground alone. As it is submitted that defendants have filed a suit for partition, it is open for the appellants-plaintiff to agitate their rights in the said suit. The finding recorded by the Courts below are based on legal evidence. Therefore no grounds are made out to interfere with the order passed by the Courts below. Hence I pass the following order:

The Regular Second Appeal is hereby dismissed.

No order as to costs.

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