

Ranganathappa vs Bhoothanna

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Court : Karnataka

Decided On : Sep-25-2024

Judge : Ashok S.Kinagi

Appeal No. : RSA/538/2013

Appellant : Ranganathappa

Respondent : Bhoothanna

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF SEPTEMBER, 2024 BEFORE THE
HON'BLE MR JUSTICE ASHOK S.KINAGI REGULAR SECOND
APPEAL NO. 538 OF 2013 (INJ) BETWEEN:

1. RANGANATHAPPA S/O CHIKKARANGAPPA, AGED ABOUT 50
YEARS R/AT MADHUGIRI VILLAGE, KASABA HOBLI, SIRA TALUK,
TUMKUR DISTRICT - 572 101
2. LAKSHMAMMA W/O RANGANATHAPPA, AGED ABOUT 42 YEARS
R/AT MADHUGIRI VILLAGE, KASABA HOBLI, SIRA TALUK, TUMKUR

DISTRICT - 572 101 Digitally APPELLANTS signed by R (BY SRI. SOMASHEKAR ANGADI, ADVOCATE) DEEPA Location: AND: HIGH COURT OF KARNATAKA BHOOTHANNA S/O BHOOTHANNA, AGED ABOUT 51 YEARS, R/O MADIGERE VILLAGE, KASABA HOBLI, SIRA TALUK, TUMKUR DISTRICT - 572 101 RESPONDENT (BY SRI. VIVEK S., ADVOCATE) -2- THIS RSA IS FILED U/S. 100 OF CPC AGAINST THE

JUDGEMENT & DECREE DTD 29.1.2013 PASSED IN

R.A.NO.47/2011 ON THE FILE OF SENIOR CIVIL JUDGE AND JMFC, SIRA, DISMISSING THE APPEAL AND CONFIRMING THE

JUDGEMENT AND DECREE DTD 13.9.2011 PASSED IN

OS.NO.110/2006 ON THE FILE OF CIVIL JUDGE AND JMFC, SIRA. THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER: CORAM: HON'BLE MR JUSTICE ASHOK S.KINAGI

ORAL JUDGMENT

This regular second appeal is filed by the appellants challenging the judgment and decree dated 29.01.2013 passed in R.A.No.47/2011 by the learned Senior Civil Judge and JMFC, Sira, and the judgment and decree dated 13.09.2011 passed in O.S.No.110/2006 by the Civil Judge and JMFC, Sira.

2. For convenience, the parties are referred to according to their ranking before the trial Court. The appellants are the defendants, and the respondent is the plaintiff. -3-

3. Brief facts leading rise to the filing of this appeal are as follows: The plaintiff filed a suit for permanent injunction

restraining the defendants from interfering with the peaceful possession and enjoyment of the land bearing Sy.No.67 measuring 1 acre 30 guntas. It is the case

of the plaintiff that said land was granted in favour of the plaintiff vide resolution dated 17.02.2004 by the land grant committee, Sira. Based on the grant, the property was transferred in the name of the plaintiff, and he paid T.T. charges to the Government on 19.07.2004; since then, the plaintiff has been in peaceful possession and enjoyment of the suit schedule property. He has paid land

revenue to the Government. It is contended that the defendants are nowhere concerned with the suit schedule property and are trying to interfere with the peaceful possession. Hence, the plaintiff was constrained to file the suit for permanent injunction. -4-

4. Defendants filed a written statement denying

the averments made in the plaint, and it is contended that the plaintiff created the documents in regard to the grant. It is contended that originally, the land bearing Sy.No.67 belonged to the Government, i.e., Begur Hukum land. In the said land, the defendants unauthorizedly cultivated the land measuring 3 acres 20 guntas for 20 years. The defendants paid T.T. charges for the Government for the entire land, but the plaintiff illegally granted the grant certificate to the extent of 1 acre of 30 guntas in Sy.No.67, out of 3 acres of 20 guntas which is a part of the defendant's property in collusion with concerned

authorities. The defendants challenged the grant order

made in favour of the plaintiff before the Assistant Commissioner, Madhugiri, obtained the interim order, and the appeal was dismissed. It is contended that the plaintiff is not in physical possession of the suit schedule property. The defendants filed the appeal before the Deputy Commissioner in R.A.No.65/2010-11 against the order of

the Assistant Commissioner. The deputy commissioner -5- has passed the interim order, and the appeal is pending consideration. Hence, prayed to dismiss the suit.

5. The Trial Court, on the basis of the above said pleadings, framed the following issues:

1) Whether the plaintiff proves that, he is lawful possession and enjoyment of the suit schedule property? 2) Whether the plaintiff proves the interference by the defendants? 3) Whether the plaintiff is entitled for the relief sought for in the plaint? 4) What order or Decree?

6. To establish the plaintiff case, the plaintiff

examined himself as PW.1 and marked five documents as Exs.P1 to 5 and examined two witnesses as PWs.2 and 3. Since PW.3 has not been tender for cross-examination, evidence of PW.3 was discarded by the trial Court. On the other hand, defendant No.2 was examined as DW.1 and examined two witnesses as DWs.2 and 3 and marked 3 documents Exs.D1 to D3. The trial Court, after recording

the evidence, hearing on both sides and on the -6- assessment of oral and documentary evidence, answered

issues Nos.1 to 3 in the affirmative, issue No.4 as per the

final order. The suit of the plaintiff was decreed with costs.

interference with the peaceful possession and enjoyment of the suit schedule property by an order of permanent injunction.

7. The defendants, aggrieved by the judgment and decree passed in O.S.No.110/2006, have preferred an appeal in R.A.No.47/2011 on the file of learned Senior Civil Judge and JMFC, Sira.

8. The First Appellate Court framed the following points for consideration:

1) Whether the appellant has made out a ground for production of additional evidence as per I.A. filed u/o 41 Rule 27 of CPC? 2) Whether the appellant made out a ground that, the judgment and decree passed by the trial Court in O.S.No.110/2006 dated 13.09.2011 is not in accordance with law, -7- which requires interference by this Appellate Court? 3) What order or decree?

9. On reassessing oral and documentary evidence,

the first Appellate Court dismissed the appeal with costs and confirmed the judgment and decree passed by the trial Court. The defendants, aggrieved by the judgments and decrees passed by the courts below, have filed this regular second appeal.

10. Heard the learned counsel for the defendants and learned counsel for the plaintiff.

11. Learned counsel for the defendants submits

that the defendants are in possession of the suit schedule property and are cultivating the suit schedule property unauthorisedly. The Land Grant Committee granted the said land in favour of the defendants. The plaintiff colluded with the revenue officials, created the documents and obtained a grant certificate. He submits that the said suit schedule property is part and parcel of the property -8- granted in favour of the defendants. He submits that the plaintiff is not in possession of the suit schedule property.

He submits that defendants aggrieved by the grant order

made in favour of the plaintiff have preferred an appeal before the Assistant Commissioner and the appeal preferred before the Deputy Commissioner, which is pending consideration. Hence, both the courts below committed an error in passing the impugned judgments. On these grounds, he prays to allow the appeal.

12. Per contra, learned counsel for the plaintiff

submits that suit schedule property is granted in favour of the plaintiff, and a grant certificate was issued in favour of the plaintiff. By virtue of the grant certificate, the name of the plaintiff was entered in the revenue records, and the plaintiff has paid the land revenue to the Government, and the revenue records stand in the name of the plaintiff. Hence, the plaintiff is in possession and enjoyment of the suit schedule property. He submits that both the courts

-9- below were justified in passing impugned judgments and prayed to dismiss the appeal.

13. This court admitted the appeal on the following substantial question of law :
"Whether the plaintiff proves his

possession by virtue of regularization order

dated 17.02.2004 and whether the impugned

judgment and decree is perverse for not

considering the evidence of PW's 1 and 2 properly?"

14. Perused the records and considered the submissions of the learned counsel for the parties.

15. SUBSTANTIAL QUESTION OF LAW : It is the

case of the plaintiff that, the suit land was granted in favour of the plaintiff, and a grant certificate was issued. The plaintiff paid TT charges to the Government, and the Government issued a grant certificate in favour of the plaintiff. On the basis of the grant certificate, the name of the plaintiff was entered in the revenue records, and further, the plaintiff is paying land revenue with respect to

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the suit schedule property. Further, the plaintiff, to substantiate his case, has produced documents. Ex.P1 is the grant certificate, which discloses that the Government has granted 1 acre 30 guntas of land in Sy.No.67 in favour of the plaintiff, and Ex.P2 is the mutation extract, which discloses that the revenue authorities, after due enquiry based on the grant certificate entered the name of the plaintiff in the revenue records. Ex.P3 is the copy of the RTC extract, which discloses that the plaintiff is in

possession of the suit schedule property. Ex.P4 is the copy of the sketch which discloses the location and identity of the suit schedule property. Ex.P5 is the endorsement issued by the revenue authority.

16. During the course of cross-examination, except

denying the examination-in-chief, nothing has been elicited from the mouth of this witness to disbelieve the examination-in-chief. Further, the plaintiff to establish his possession over the suit schedule property, examined two witnesses, PWs.2 and 3, who have deposed that the - 11 - plaintiff is in possession of the suit schedule property. By virtue of the grant certificate as per Ex.P1, the name of the plaintiff was appearing in the revenue records, and nothing has been elicited from the mouth of this witness to disbelieve.

17. On the other hand, defendant No.2 was

examined as DW.1, and she reiterated the written statement averments in the examination-in-chief and further to establish the suit schedule property was granted in favour of the defendants produced certified copy of the mahazar drawn by the Tahsildar marked as Ex.D1 and Ex.D2 is the certified copy of the mahazar. Ex.D3 is the

certified copy of notice in R.A.No.15/2010-11. The defendants also examined two witnesses as DWs.2 and 3.

18. During the course of cross-examination, it was

suggested to DW.1 that the suit land was granted in favour of the plaintiff by issuing a grant certificate and by virtue of the grant certificate, the plaintiff is in possession of the suit schedule property. Such suggestion was denied - 12 -

by DW.1. The defendants, in order to prove their defence, examined two witnesses, DWs.2 and 3, who have deposed that the defendants, by virtue of the grant certificate they are in possession of the suit schedule property to the extent of 3 acres 20 guntas and the suit schedule property is part and parcel of the property granted in favour of the defendants.

19. From the perusal of the entire evidence placed

on record, it is the case of the plaintiff that, suit schedule property was granted in favour of the plaintiff under Ex.P1 and on the basis of Ex.P1, the name of the plaintiff was entered in the revenue records as per Ex.P2. Ex.P3 is the RTC

extract with respect to suit schedule property, which discloses that the plaintiff is in possession of the suit schedule property. The defendants have contended that suit schedule property is part and parcel of the property granted in favour of the defendants, and they have not produced any grant certificate to establish that the Government has granted the suit land bearing Sy.No.67

- 13 - measuring 3 acres 20 guntas. The courts below held that the defendants had not produced any record to establish that land measuring to the extent of 3 acres 20 guntas

was granted in favour of the defendants. Though the defendants have taken defence that defendants aggrieved by the grant certificate and grant made in favour of the plaintiff and preferred an appeal before the Assistant Commissioner, the Assistant Commissioner dismissed the appeal filed by the defendants. The defendants aggrieved by the order passed by the Assistant Commissioner have preferred the appeal before the Deputy Commissioner, and it is contended that the appeal is pending for consideration before the Deputy Commissioner. The defendants have not produced the outcome of the appeal.

20. Though they have not produced any record to

show the outcome of the appeal by the Deputy Commissioner, learned counsel for the plaintiff submits that the appeal filed by the defendants before the Deputy Commissioner was dismissed vide order dated 30.06.2021. - 14 -

The said fact is not disputed by the defendants. Both the courts below have considered the evidence placed on record and concurrently recorded the finding of the fact that the plaintiff is in possession of the suit schedule property and the defendants are trying to interfere with the plaintiff's peaceful possession and enjoyment over the suit schedule property. Both the courts below have rightly passed the impugned judgments. I do not find any error

in the impugned judgments. In view of the above discussion, I answer substantial question of law in the negative.

21. Accordingly, I proceed to pass the following:

ORDER

The appeal is dismissed. Impugned judgments and decrees passed by the courts below are hereby confirmed. No order as to the costs. - 15 - In view of disposal of the appeal, I.A.No.1/2014 does not survive for consideration and accordingly disposed of. Sd/- (ASHOK S.KINAGI) JUDGE SKS

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