

Basappa Vs. Kodliah

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Court : Karnataka

Decided On : Apr-01-1958

Reported in : AIR1959Kant46; AIR1959Mys46; ILR1958KAR237;
(1958)36MysLJ491

Judge : K.S. Hegde, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 55 and 55(2)

Appeal No. : Second Appeal No. 177 of 1954

Appellant : Basappa

Respondent : Kodliah

Advocate for Pet/Ap. : K.R. Gopivallabha Iyengar, Adv.

Judgement :

1. The plaintiff is the appellant. The suit is for damages against the defendants for breach of the implied warranty of title under Section 55(2) of the Transfer of Property Act. The first defendant sold some lands, to the husband of the second defendant as per sale deed dated 16-12-1926 for Rs. 200A. After the death of the original vendee, the second defendant his widow, sold those and other lands to the plaintiff for Rs. 2,000/- as per the sale deed dated 11-4-1945.

Subsequent to this, the son of the first defendant filed O.S. No. 18 of 1945-46 challenging the alienation contained in the sale deed dated 16-12-1926 and claiming his half share of the property on the ground that the property in question is a joint family property. The first defendant purported to have sold the same as his individual property.

This suit was decreed and the said decree was confirmed by the first appellate Court, as well as by the High Court in Second Appeal. In pursuance of this decree the half share of the plaintiff therein was delivered to him in January 1949. The vendee had to pay mesne profits and costs. Hence the present suit for damages.

2. The trial Court decreed the suit against the second defendant for a sum of Rs. 425-8-0. But the suit against the first defendant was dismissed. The plaintiff's appeal was also dismissed. The first appellate Court has set out three grounds in support of its judgment. They are:

1. The sale deed in favour of the plaintiff has not been produced. Hence it is not known as to whether there is any warranty of title.

2. The plaintiff as well as the original vendee are likely to have known the defect in the title, and

3. The suit is brought nearly 25 years after the transaction.

3. The Courts below have wholly misconceived the scope of the suit and consequently came to erroneous conclusions.

4. The factum of the sale in favour of the plaintiff as well as in favour of the second defendant's husband is established. This is found for the plaintiff by both the Courts below. The warranty of title pleaded is a statutory one. No contract to the contrary is pleaded. The covenant in question runs with the land. Hence the non-production of the sale deed is immaterial, as there is the statutory warranty of good title. See *Ramayya v. Kotayya* : AIR1930 Mad748 and *Avadesh Kumar v. Zakaul Hushain* : AIR1944 All243 .

5. Even if the vendee knew the defect in the title of the vendor still he can avail himself of the statutory warranty. Vide : AIR1944 All243 and Mt. Saraswatibai v. Madhukar AIR 1950 Nag 229.

6. In such a suit the cause of action arises on the date of dispossession and not on the date of the sale deed. See Mohamad Raza Ahmad v. Zahoor Ahmed : AIR1930 All858 and : AIR1944 All243 .

7. In the result, this appeal succeeds. The decree of the trial Court is modified by decreeing the suit against both the defendants for Rs. 425-8-0. As regards costs, the first defendant (Respondent in this appeal) is liable to pay the costs of the plaintiff in all the Courts. The second defendant is also liable to pay the costs of the plaintiff incurred in the trial Court.

8. Appeal allowed.

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