

Putlabai Vs. Vaijnath and ors.

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Court : Karnataka

Decided On : Aug-19-2005

Reported in : AIR2005Kant419; ILR2005KAR5155; 2005(6)KarLJ369

Judge : V.G. Sabhahit, J.

Acts : [Specific Relief Act, 1963](#) - Sections 38

Appeal No. : Regular Second Appeal 538/2003

Appellant : Putlabai

Respondent : Vaijnath and ors.

Advocate for Def. : K. Appa Rao, Adv. for R1

Advocate for Pet/Ap. : Jayakumar's Patil and Assts

Judgement :

V.G. Sabhahit, J.

1. This appeal by the plaintiff is directed against the judgment and decree passed by the Court of Civil Judge (Sr. Dn.), Sedam, in RA. No. 140/2002 dated 25.2.2003 reversing the judgment and decree passed by the Court of Civil Judge (Jr.Dn.), Chincholi, in O.S. No. 29/1978 dated 30.9.1999 and dismissing the suit of the plaintiff for injunction holding that the suit for bare injunction without seeking for

declaration of title is not maintainable.

2. The essential facts of the case leading upto this appeal with reference to the rank of the parties before the Trial Court are as follows:

The plaintiff filed the suit O.S. No. 29/78 seeking for permanent injunction against the defendants from interfering with the peaceful possession and enjoyment of the suit schedule property by the plaintiff. The suit schedule property comprises of three items of landed properties and a house as described in para-2 of the plaint.

3. It is the case of the plaintiff that Ningappa was the owner in possession of the house and the landed properties and the plaintiff was living with Ningappa. Ningappa had executed a registered will in favour of the plaintiff on 15.9.1961 and Ningappa died in 1976 and thereafter plaintiff has continued to be in possession of the suit schedule properties. The defendants having no right, title or interest are trying to interfere with the peaceful possession and enjoyment of the suit property and wherefore the suit for bare injunction.

4. The suit was resisted by defendants 1 to 4 denying the material averments made in the plaint that plaintiff is in possession of the schedule property. It is further averred that the averment made in the plaint that Ningappa has executed a will in favour of the plaintiff is false and second defendant was adopted son of Ningappa on 22.11.1960 and suit schedule properties are in possession of defendant No. 2 in his own right as the adopted son of Ningappa and since the plaintiff claims title to the property on the basis of the will executed by Ningappa subsequent to adoption of defendant No. 2, the suit for bare injunction without seeking for declaration of title is not maintainable.

5. The Trial Court framed appropriate issues. On behalf of the plaintiff, the plaintiff got examined herself as PW1 and she also examined PWs 2 to 4 and got marked Exs. P1 to P7. On behalf of the defendants, defendant No. 2 examined himself as DW1 and he also examined DW2 and got marked the documents Exs. D1 to D14. The Trial Court after considering the contentions of the counsel appearing for the parties and the material on record, answered the issues in favour of the plaintiff and held that the plaintiff has proved that she is in possession of the suit

properties as the legal heir of Ningappa and since the defendants tried to interfere with the peaceful possession and enjoyment of the suit properties by the plaintiff, granted decree for injunction as sought for in the suit by its judgment dated 30.09.1999. Being aggrieved by the said judgment and decree, the defendants preferred Regular Appeal before the Civil Judges (Sr. Dn.), Gulbarga, and after the establishment of the Court of the Civil Judge (Sr. Dn.), Sedam, the same was transferred to the said Court and numbered as R.A. No. 140/2002 and the first appellate Court by its judgment dated 25.02.2003, held that in view of the fact that the plaintiff is claiming relief on the basis of the Will contending that she has succeeded to the properties of Ningappa as a heir and in view of the fact that defendant No. 2 claiming to be the adopted son of Ningappa has disputed the title of the plaintiff, the suit for bare injunction without claiming the relief for declaration of title, is not maintainable and accordingly, reversed the judgment and decree passed by the Trial Court and dismissed the suit of the plaintiff as not maintainable and being aggrieved by the said judgment and decree, the plaintiff has preferred this appeal which was admitted on 31.10.2003 for consideration of the following substantial question of law:

Whether the Appellate Court was justified in holding that without a relief of declaration, suit is not maintainable and committed an error in setting aside the judgment and decree of the Trial Court in granting a relief of injunction in favour of the plaintiff and whether the finding of the Appellate Court in that regard is contrary to the law?

6. I have heard the learned Counsel appearing for the parties on the above said substantial question of law.

7. Learned counsel for the Appellant submitted that the Trial Court had rightly decreed the suit of the plaintiff after giving a finding that the plaintiff is in lawful possession of the suit properties as a heir of Ningappa and that defendant No. 2 failed to substantiate that he is the adopted son of Ningappa and since the defendants were trying to interfere with the possession of the suit properties by the plaintiff, the Trial Court had decreed the suit of the plaintiff for injunction and the first appellate Court without considering the case on merits has dismissed the suit

as not maintainable on the ground that no relief for declaration of title had been sought for. Learned counsel submitted that the finding of the first appellate Court is contrary to law and the material on record and having regard to the facts of the case, there was no necessity for seeking the relief of declaration of title and the suit for bare injunction was maintainable.

8. On the other hand, the learned Counsel appearing for the Respondents-defendants submitted that the very basis of the suit for injunction is the averment made in the plaint that Ningappa has executed a Will in favour of the plaintiff and she has succeeded to the suit properties as the legatee under the Will and since the execution of the Will has not been proved and defendant No. 2 has taken a contention that he is the adopted son of Ningappa and has denied title of the plaintiff, the plaintiff ought to have filed the suit for declaration of title, especially, in view of the fact that the title of the plaintiff had been denied by the defendants even before filing of the suit in the revenue proceedings. Learned counsel submitted that in view of the decision of this Court in B.P. Sadashivaiah v. Parvathamma, : ILR 1994 KAR2671 the suit for injunction without seeking declaration of title was not maintainable as rightly held by the first appellate Court and when once the first appellate Court has held that the suit is not maintainable, the question of considering the appeal on merits did not arise.

9. I have considered the contentions of the learned Counsel appearing for the parties with reference to the material on record and I have been taken through the pleading, evidence adduced by the parties and the judgment passed by the Trial Court as also the first appellate Court and I answer the Substantial Question of Law in the affirmative by holding that the finding of the first appellate Court that the suit is not maintainable is contrary to law for the following:

REASONS

10. It is clear from the decision rendered by this Court in B.P. Sadashivaiah v. Parvathamma that in view of the provisions of Section 38 of the [Specific Relief Act, 1963](#), the question as to whether the suit for bare injunction can be filed without seeking for declaration of title, necessarily depends on the facts of each case and where the plaintiffs title is not obvious or unassailable and possible to be proved

as not obvious or unassailable, the relief of declaration of title is a must. When the material on record in the present case having regard to the pleading of the parties is considered, it is clear that the plaintiff claimed to be in lawful possession of the suit properties and it is averred in para 4 of the plaint that the plaintiff was living with her father in the suit house and was cultivating the suit lands along with her father jointly and after his death, she has continued to cultivate the suit lands and it is also averred that Ningappa has executed the Will on 15.09.1961, bequeathing the suit properties in her favour and wherefore, she has succeeded to the said properties. It is the contention of defendant No. 2 that he is not a stranger to the family as averred in the plaint, but, he is the adopted son of Ningappa. The material on record clearly shows that so far as two items of suit lands are concerned, i.e. Sy. No. 87/E (new Sy. No. 87/1) and Sy. No. 88/E (new Sy. No. 88/1), measuring 6 Acres 31 Guntas and 7 Acres and 17 Guntas respectively, the said lands were tenanted and an application was filed by the applicants-tenants before the Land Tribunal, Chincholi, seeking for conferment of occupancy right under Ningappa and his daughter, Putlabai, the plaintiff and occupancy right has been granted by order dated 17.04.1979. The same was challenged by the plaintiff in W.P. No. 17715/1979 and the matter was remitted to the Land Tribunal on 20.03.1984 and it is submitted by the learned Counsel for the first Respondent that after remand, occupancy right has been granted in favour of the plaintiff in respect of the said two lands by order dated 08.12.1987. However, the said claim is only in respect of the lands in Sy. No. 87/E (new Sy. No. 87/1) and Sy.No. 88/E (new Sy. No. 88/1) and the suit properties comprised in all, four properties. Apart from the said lands, the suit properties comprise of land bearing Sy. No. 78 measuring 13 Acres 10 Guntas and a house bearing No. 2-42. It is not disputed by the defendants that the plaintiff is the daughter of Ningappa. Though defendant No. 2 claims that he is the adopted son of Ningappa, the said contention is not substantiated as held by both the Courts below. However, the question of title of the parties cannot be gone into in a suit for bare injunction and what was required to be considered by the Courts below was as to whether the plaintiff, undisputably the daughter of Ningappa was in joint possession of the suit properties with her father and has continued to cultivate the same after his death and has been in lawful possession of the suit properties on the date of the suit and as to whether

the defendants tried to interfere with the possession of the suit properties, as claimed by the plaintiff. Therefore, having regard to the averments made in the plaint that the plaintiff is the daughter of Ningappa and she was cultivating the suit lands jointly along with Ningappa, her father and after his death, she has continued to cultivate the suit lands, though she claims to have acquired title to the suit properties under the Will dated 15.09.1961, the Trial Court has held that the plaintiff is a legal heir of Ningappa and has been in lawful possession of the suit properties and therefore, entitled to injunction as sought for in the suit and accordingly, decreed the suit of the plaintiff and the said decree was challenged in the first appellate Court. The first appellate Court has proceeded to hold that the suit for bare injunction was not maintainable, in view of the above said decision of this Court in Sadashivaiah's case. However, it is clear from the said decision that the question as to whether it is necessary to seek relief for declaration of title depends upon the facts of each case and if the title of the plaintiff is unassailable and obvious, there is no necessity for seeking declaration of title and in the present case, having regard to the fact that the defendants does not dispute that the plaintiff is the daughter of Ningappa and also the averment made in the plaint and evidence of PW1 that she was jointly cultivating the suit land and she also claimed to be the owner of the suit properties by virtue of the Will executed in her favour by Ningappa, it is clear that it was not necessary to seek declaration of title. Mere fact that defendant No. 2 claimed himself to be the adopted son of Ningappa and denied the title of the plaintiff, would not itself be a ground to seek for declaration of title as the plaintiff would be entitled to relief of injunction if the plaintiff is able to prove that she is the daughter of Ningappa and was cultivating suit lands along with Ningappa jointly and after his death, she has continued to cultivate the suit lands as averred in the plaint and wherefore, the question of seeking declaration of title does not arise and the decision rendered by this Court in Sadashivaiah's case holding that the question as to whether the relief for declaration of title has to be sought depends on the facts of each case and if the title of the plaintiff is unassailable and obvious, declaration of title need not be sought for, would be helpful to the plaintiff in the present case to contend that the suit for bare injunction without seeking declaration of title is maintainable. Therefore, the finding of the first appellate Court that the suit itself is not

maintainable as no relief for declaration of title is sought for, is clearly erroneous and contrary to law and accordingly, I answer the substantial question of law in the affirmative. The first appellate Court has not considered the appeal on merits and dismissed the appeal on the ground that the suit is not maintainable. The first appellate Court, being the final Court on the question of fact and law, has not considered the question as to whether the plaintiff is entitled to injunction as decreed by the Trial Court by considering the appeal on merits and wherefore, it is appropriate that the matter is remitted to the first appellate Court with a direction to consider the appeal on merits and accordingly, I pass the following Order:

The appeal is allowed. The judgment and decree passed by the Court of the Civil Judge (Sr.Dn.), Sedam, in R.A. No. 140/2002 dated 25.02.2003, setting aside the judgment and decree passed by the Trial Court and dismissing the suit as not maintainable is set aside by holding that the suit of the plaintiff for bare injunction without seeking declaration of title is maintainable having regard to the facts of the present case and R.A. No. 140/2002 is restored to the file of the Civil Judge (Sr. Dn.), Sedam, for fresh disposal in accordance with law. All the contentions of the parties are kept open to be urged before the first appellate Court. There shall be no order as to costs in this Appeal.