Rajappa Vs. Somappa

Rajappa Vs. Somappa

SooperKanoon Citation : sooperkanoon.com/384969

Court : Karnataka

Decided On : Jun-27-1995

Reported in : ILR1995KAR3275; 1995(6)KarLJ737

Judge : Hari Nath Tilhari, J.

Acts : Karnataka Village Panchayats and Local Boards Act, 1959 - Sections 50; Karnataka Village Panchayat (Acquisition and Transfer of Moveable and Immovable Property) Rules, 1960 - Rules 3, 5, 6, 7 and 8; Code of Civil Procedure (CPC) , 1908 - Sections 100; Karnataka Village Panchayats and Local Boards Rules, 1959

Appeal No. : R.S.A. No. 207 of 1985

Appellant : Rajappa

Respondent : Somappa

Advocate for Def. : B. Pape Gowda and ;Sowbhagya, Advs.

Advocate for Pet/Ap. : Rukmani Devi and ;M.S. Gopal, Advs.

Disposition : Appeal allowed

Judgement :
ORDER

Hari Nath Tilhari, J.

1. This is the defendants' Second Appeal filed under Section 100 of Code of Civil Procedure from the judgment and decree dated 6.8.1984 passed by Sri K.R. Prasad Rao, the Principal Civil Judge, Kolar in Regular Civil Appeal No. 26/1983, whereby the learned lower Appellate Court viz., the learned Principal Civil Judge allowed the plaintiff's appeal and set aside the judgment and decree dated 29.9.1983 passed by the Principal Munsiff, Kolar in Original Suit No. 241/1979 and decreed the plaintiff's claim for declaration and injunction. Before I proceed further I may mention it here that although this matter had been listed on three days and appellants' Counsel argued and heard the matter and waited for the respondent's Counsel but none appeared to argue the matter on behalf of the respondent. After conclusion of the arguments for the learned Counsel for appellants I proceeded to decide the Appeal in absence of respondent's Counsel.

2. The facts of the case in brief are that plaintiff/respondent claimed the decree for permanent injunction restraining the defendants/appellants from interfering with peaceful possession and enjoyment of the property in dispute as described in the schedule attached to the plaint. The plaintiff's/respondent's allegation is that the plaintiff has been owner in possession and enjoyment of the property in dispute i.e. site in dispute as mentioned in the schedule attached to the plaint for several years and his name has been entered in the Assessment Register and house tax extract of 1961-62 relating to the Shapur Group Panchayat in respect of the said site and that according to the plaintiff the same has been confirmed by the panchayat authorities. The plaintiff claimed to be in possession and enjoyment of the said site by making use of the same for tethering cattle and for having put up a sheep-pen. The plaintiff alleged that the defendants without any right, title and interest in the property in dispute threatened and made unlawful and illegal attempts to dispossess the plaintiff from the site in dispute. According the plaintiff the attempts were so made on 10.6.1979, giving the cause for filing the suit.

3. The plaintiff's claim has been denied by the defendants viz., the present appellants who filed written statement denying the plaintiff's title as well as denying the plaintiff's possession over the site in dispute. According to the defendants the

site was not granted at all to the plaintiff. The defendants' case is that the plaintiff in collusion with the previous panchayat people has got documents concocted and created. According to the defendants' their case is that there is no panchayat land bearing No. 74 said to have been granted; the 'sites' bearing numbers upto No. 73 alone were formed and granted by the Village Panchayat. It was also stated that the Village Panchayat was a necessary party and suit was bad and not maintainable for non-joinder as according to the defendants the site in dispute belongs to the Village Panchayat. The defendants further recited that on 9.10.1979 the plaintiff made an application to the Village Panchayath for grant of a site at Sirayamandra Village and no final decision has been taken on his application. According to the defendants the land in dispute viz., the site in dispute is actually in possession and enjoyment of defendants 2 and 3 viz., Yelachappanavara Muneppa and Hanumanthappa and they are tethering cattle thereon and also put up a sheep-pen.

4. On the basis of pleading of the parties the trial Court framed the following issues:

'1. Does the plaintiff prove his lawful possession and enjoyment of the suit property the date of the suit?

2. Does the plaintiff prove that the defendants interfered with his possession and made attempts to dispossess him?

3. Is the plaintiff entitled to permanent injuction?

4. What order?'

The additional issues were also framed which read as under, which are given the numbers according to the following as issues Nos. 5, 6 and 7:

5. Whether defendants 2 and 3 are in possession and enjoyment of suit site by tethering cattle and having a sheep pen therein as alleged?

6. Whether the boundaries to the suit site given in the plaint schedule are the boundaries of a site No. 70 as alleged?

7. Whether the plaintiff is entitled to the declaration of his title to the suit property?'

5. The trial Court viz., the learned Munsiff after having recorded the evidence and tried the case held that the plaintiff has failed to prove the lawful possession and enjoyment of the suit property on the date of the suit. The trial Court held that the documentary evidence is not sufficient to establish the plaintiff's ownership and possession over the suit property. The trial Court further held that both the parties were in possession of the property by tethering cattle. The trial Court further found that as the plaintiff has not been in possession of the suit property on the date of filing of the suit no question arises for interference by the defendants in the plaintiff's possession and as such issue does not arise. Having recorded the findings as above the trial Court held that the plaintiff viz., the present respondent has not been entitled to get declaration or to get decree for injunction. After having recorded the above findings the trial Court dismissed the above mentioned suit. Having felt aggrieved by the judgment and decree of the trial Court the plaintiff preferred the appeal viz., Regular Appeal No. 26/1983. The learned lower appellate Court reversed the judgment and decree of the trial Court and allowed the appeal of the plaintiff/respondent and decreed the suit for the reliefs claimed.

6. The lower Appellate Court held that the plaintiff to be in possession and enjoyment of the suit properly for more than 20 years. The lower appellate Court assuming that there is no valid grant of the plaint schedule site in favour of the plaintiff as required under the Rules as the plaintiff has been in possession and enjoyment of the said site for more than 20 years i.e. prior and subsequent to 1961-62 held that he is entitled to seek decree for declaration and for permanent injunction on the basis of his possessory title. According to the lower appellate Court the possession is 100% title against all except the true owner. The learned appellate Court held that the title on the basis of new theory otherwise of implied grant of the site in favour of the plaintiff/respondent. With these findings the learned lower appellate Court allowed the plaintiff's appeal and set aside the judgment and decree passed by the trail Court and decreed the plaintiff's claim for declaration and injuction.

7. Feeling aggrieved from the judgment and decree of the lower appellate Court the defendants/appellants have come up before this Court by filing the Second Appeal under Section 100 of Code of Civil Procedure. I have heard Smt. Rukmani Devi, learned Counsel for the defendants/appellants at length. As I mentioned earlier none has put in appearance on behalf of the plaintiff/respondent.

8. On behalf of the appellants Smt. Rukmani Devi, learned Counsel, submitted that the learned lower appellate Court committed substantial error of law in reversing the findings recorded by the trial Court relying on Ex.P-1, 2 and 3 which were inadmissible in evidence to prove the possession and title. She submitted that a perusal of Ex.P-1 discloses that there is no mention of any such plot No. 74 i.e. property or site No. 74. She further submitted that Ex.P-2 discloses that column No. 2 meant for the number and the division of the property and those columns are blank they do not mention the property No. 74. Column No. 2 in Ex.P-2 can be read as Swathe No. or Division No. Column No. 1 is Serial No. and is distinct from property number, as such these two documents are inadmissible to prove the title and possession of the plaintiff. The learned Counsel for the appellants further submitted that Ex.P3 is the receipt showing payment of the tax of Rs. 20/- (Rs. 19/- arrears for 19 years, and Re. 1/-for current year) by the plaintiff on 22.5.1979 while the suit had been filed on 18.6.1979. Ex.P-3 does not indicate whether the tax had been paid in respect of property No. 74, this can only be read as evidence of some tax being paid. Smt. Rukmani Devi, learned Counsel further submitted that Exhibit P-3 which is alleged to be the receipt of the tax alleged to have been paid by the respondent is also inadmissible in evidence. As this document, which is dated 22.5.1979 and which perhaps to have been executed only the month earlier to filing of the suit, has not been proved in accordance with the evidence by production of the person who issued the receipt or by some person who is alleged to have executed that document, or who had seen the execution of the document nor by production of any Register so that the tax could be taken to have been entered and to have been deposited by the person collecting the alleged tax, Thus, Smt. Rukmani Devi, learned Counsel submitted that Exs.P-1, 2 and 3 are inadmissible in the evidence. She submitted that these findings regarding the possession and title of the plaintiff/respondent are vitiated by substantial error of law. She further submitted that there could not be any such thing implied grant

under the Karnataka Village Panchayat Act. She further submitted that when there was a dispute as to the fact that whether the site Number did exist or not, the appellate Court should have appointed a Commissioner to locate the site number, if at all, particularly when there appears no such property, which may be said to be bearing as No. 74, mentioned in Ex.P-1. Ex.P-2 also does not contain any such property description and number. The learned Counsel for the appellants further submitted that the findings regarding the plaintiff's having been in possession for the last 20 years or more is based on consideration of oral evidence coupled with inadmissible evidence in the form of Exs.P-1, 2 and 3. The learned Counsel for the appellants submitted that such finding can be held as vitiated by substantial error of law and is not binding on this Court. Smt. Rukmani Devi, learned Counsel further submitted that, that was inadmissible evidence and if it is excluded there remains the oral evidence of the parties, witness supporting the respective parties on whose behalf proof has very important role. No doubt, it is well settled principle of law, the learned Counsel for the appellants submitted that the oral evidence being equally balanced then oral evidence getting support from the documentary evidence is to be relied upon to prove the question of fact. But as in this case, the documentary evidence is inadmissible in law. The lower Appellate lower appellate Court should not have interfered with the trial Court findings and should not have held that the plaintiff has proved the possession over the property in dispute and as such it should not have allowed the plaintiff's appeal and decreed the plaintiff's/ respondent's suit. On behalf of the appellant the appellants' Counsel submitted that the theory of implied grant which has been taken on the basis of title of the plaintiff in respect of the land dispute is false and illegal. She further submitted her argument finds support from the language of Section 50 of the Karnataka Village Panchayats And Local Boards Act, 1959, Smt. Rukmani Devi, learned Counsel submitted that there is no doubt that the power is vested in every Panchayat to acquire and hold property, both moveable and immoveable, whether beyond the limits of the area of the Grama Panchayath. She further submitted that Section 50 of the Act further provides that every Panchayath shall have power to lease, sell or otherwise transfer any moveable or immoveable property that might have vested or been acquired by the Panchayath. But it has to be done subject to the Rules made by the Government and the further restrictions that has been placed by

Proviso of Section 50 i.e. that no lease of immoveable property for a term exceeding five years and no sale or other transfer of any such property shall be valid unless such lease, sale or other transfer has been made with the previous sanction of the Commissioner, unless there is previous sanction of the Commissioner and if it is proved that sale, or lease for more than 5 years is made without previous sanction of the Commissioner, such lease, sale or transfer of any nature would be null and void. That the power to transfer or lease or otherwise has been subjected to the Rules and procedure prescribed under the Rules and been subjected to the previous sanction of the Commissioner in law there could be no implied grant. The grant is to be express and specific by lease or transfer of any nature. Therefore, the learned lower appellate Court's finding on the question of title is as such vitiated by substantial error of law.

9. I have applied my mind to the contentions of the learned Counsel that in a suit for declaration or possession or injunction, it is well settled principle of law that the plaintiff has to stand on his own legs and not on the weakness of the defendant's case. It is no doubt, well settled principle of law that the findings of fact recorded by the appellate Court are ordinarily binding in the 2nd Appeal and are not to be interfered unless it is vitiated by error of law on substantial nature. The findings of fact, if it is vitiated by error of law in the sense that it has been arrived at by relying on inadmissible evidence or by ignoring the material admissible evidence for reasons not warranted by law such a finding can be said to be vitiated by error of law on substantial nature. In case the finding is based on complete misreading of the material on record which is something distinct from mere misappreciation of evidence, the findings may be said to be perverse and liable for interference in the Second Appeal. In the present case I find that firstly the findings on question of fact or possession has been based on inadmissible evidence in the form of Exs.P-1, 2 and 3. That Exhibit P-3 has not been lawfully proved in accordance with law, and the document which has not been proved cannot be taken as the piece of evidence as same is inadmissible. Exs.P-1 and P-2 are also inadmissible to prove the title and possession. Ex.P-3 shows that the plaintiff had paid a sum of Rs. 20/- towards tax but no number of the site is mentioned therein. Ex.P-1, which is the Assessment Register there is no such number as site No. 74 and there is only entry of the name of the plaintiff/respondent. As such this document is

inadmissible to prove that it relates to site No. 74 or that site No. 74 did exist. My attention has also been invited to Ex.P-2 there is a column No. 2 which provides that number, division of property and date has been given. Column No. 3 shows that the entry viz., Swathe number (number of property in question) and column No. 4 indicates the description of the property. Except column No. 1, which is of serial number of entry, the number relating to the property number and the site number and description of property all are blank in Exhibit P-2. Only the name of column relating to the plaintiff's name is mentioned. So, this document is also inadmissible evidence which shows that the plaintiff/respondent has been in possession of the property in question. When the documentary evidence is found to be inadmissible the oral evidence on both sides being balanced and as the finding on the question of possession which has been arrived on the basis of oral and the inadmissible documentary evidence it can be said to be vitiated by error of law. When the evidence is balanced documentary evidence is found to be inadmissible it can be said that the plaintiff has failed to discharge the burden of proving his possession and title.

10. As regards the question of implied grant, in my opinion, the learned lower appellate Court again erred in law in a substantive manner, by taking the view that there can be implied grant in favour of the plaintiff/respondent in view of the Section 50 of the Karnataka Village Panchayats and Local Boards Act, 1959, which reads as follows:

'50. Power of Panchayat to acquire and hold property etc., to be subject to rules:- The power of every Panchayat to acquire and hold property, both moveable and immoveable, whether within or without the limits of the area over which it has authority to lease, sell or otherwise transfer any moveable or immoveable property which may have become vested in or been acquired by its and to contract and to do all other things necessary for the purposes of this Act, shall be subject to the rules made by the Government in this behalf;

Provided that no lease of immoveable property for a term exceeding five years and no sale or other transfer of any such property shall be valid unless such lease, sale or other transfer shall have been made with the previous sanction of the

Commissioner or such other authority as may be prescribed;

Provided also that nothing herein contained shall empower any Panchayat to raise loans except as provided for in Section 79 and without the previous sanction of the Government.'

A perusal of the Section perse reveals that no doubt the power vests in the Panchayath to hold, to lease, sell or otherwise transfer any moveable or immoveable property which may have become vested in or which may have 'been acquired' by the Village Panchayath and to do all other contract as well as to do other things necessary for the purpose of the Act. But that power has been made subject to the Rules made by the Government in this behalf. The power to lease sale and transfer of the immoveable property is again be subjected by Proviso (1) of Section 50 to certain condition viz., in case of lease for more than 5 years not except with the previous sanction of the Commissioner or such authority as described in the Rules. In the same way there is a bar or a restriction in the matter of sale or transfer of other nature viz., the transfer of the property by the Village Panchayath that it cannot be made without previous sanction of the Commissioner or authority as the case may be. A perusal of Rules, 3, 5, 6, 7 and 8 of the Mysore Panchayats (Acquisition and Transfer of Moveable and Immoveable Property) Rules, 1960 to which my attention has been invited by the Counsel for the appellants also reveal that there could not be any such thing as implied grant or implied transfer either by lease, sale or otherwise of the immoveable property. Therefore, the learned lower appellate Court committed substantial error of law by holding the implied grant by the Village Panchayat in favour of the plaintiff/respondent.

In this case there are no documents to evidence transfer, sale or lease or otherwise of the property in dispute. When the law prescribes specific manner for doing certain things while conferring that the authority to make transfer or do certain things, it is well settled principle of law that power has got to be exercised in a specific manner alone not otherwise.

11. In the case of UTTAR PRADESH v. SINGHARA SINGH : [1964]4SCR485 after having referred to the leading case in NAZIR AHMED's case I.A. 372:, and

another of TAYLOR v. TAYLOR (1876) 1 Ch.D, 426, which read as follows:

'The rule adopted in Taylor v. Taylor (1876) 1 Ch.D 426 is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted.'

This leads to me to hold that when Section 50 of the Karnataka Village Panchayats and Local Boards Act, 1959 and Rules framed thereunder prescribe certain conditions in which only the lease can be granted, or the sale or transfer can be made, then no lease or transfer can be made except otherwise in accordance with the provisions of the Act and the Rules. That being so there can be no presumption and there can be no implication of any grant or transfer or like. Unless and until the party i.e. plaintiff/respondent claiming the title establishes by cogent and admissible evidence that the title has been transferred, granted or conferred in regard to the same plaintiff could not acquire the title in regard to suit property.

12. Thus in my opinion, the decision of the Court below i.e. the lower appellate Court on the question of title and possession of the plaintiff/respondent suffers from substantial error of law and the finding of the lower appellate Court suffers from substantial error of law and the lower appellate committed substantial error of law in allowing the plaintiffs' Regular Appeal and setting aside the trial Court decision.

13. Thus, in my opinion, the Second Appeal deserves to be allowed. The Appeal is hereby allowed. The Judgment and Decree of the lower appellate Court is set aside and that of the trial Court dismissing the plaintiff's suit is hereby restored. No order as to costs.