

Hanumanthappa and ors. Vs. Gurappa (Dead) by L.Rs and ors.

Hanumanthappa and ors. Vs. Gurappa (Dead) by L.Rs and ors.

SooperKanoon Citation : sooperkanoon.com/386880

Court : Karnataka

Decided On : Apr-16-2003

Reported in : 2004(1)KarLJ573

Judge : V.G. Sabhahit, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100; [Limitation Act, 1963](#) - Schedule - Article 65; [Evidence Act, 1872](#) - Sections 101 and 104

Appeal No. : Regular Second Appeal No. 437 of 1988

Appellant : Hanumanthappa and ors.

Respondent : Gurappa (Dead) by L.Rs and ors.

Advocate for Def. : Kesthur N. Chandrashekar, Adv. for Respondents 1 to 4, ;A.V. Gangadharappa, Adv. for Respondents 6 to 9 and ;H. Sreenivasa Rao, Adv. for Respondent 9

Advocate for Pet/Ap. : N.S. Sanjay Gowda, Adv.

Disposition : Suit dismissed

Judgement :

V.G. Sabhahit, J.

This appeal is directed against the judgment and decree passed by the Civil Judge, Madhugiri, in R.A. No. 51 of 1984, dated 22-2-1988 confirming the judgment and decree passed by the Court of Munsiff, Pavagada, in O.S. No. 111 of 1980, dated 16-7-1984.

2. The essential facts of the case leading upto this appeal are as follows.

The parties would be referred to with reference to the rank before the Trial Court. The plaintiff filed the suit O.S. No. 111 of 1980 seeking for declaration of title to the schedule property and for cancellation of sale deed dated 3-5-1984 executed by second defendant in favour of first defendant and for permanent injunction against the defendant from interfering with the peaceful possession and enjoyment of the suit schedule property by the plaintiff. It is the case of the plaintiff that Yengappa had two sons, the plaintiff and his elder brother Akkalappa and they constitute joint in the family, Akkalappa died in the year 1958 being issueless and his widow Gangamma died in the year 1979. The suit schedule property was granted in favour of Akkalappa during the year 1952-53. Though the grant was made in favour of Akkalappa it was treated as joint family property and was in possession and enjoyment of Akkalappa and the plaintiff and after the death of Akkalappa and the suit schedule property was devolved upon the plaintiff who was the sole surviving coparcener of the joint family and he has been in possession and enjoyment of the schedule property along with members of the family.

3. It is further averred that every year plaintiff has been raising dry crop in the schedule property and defendant obstructed plaintiff from an agricultural operation saying that they had got right in the suit property and the first defendant said that she has purchased half of the suit property from the second defendant under a sale deed dated 3-5-1954 for a consideration of Rs. 200/- (Rupees two hundred only) and even the entries in the record of rights have been falsely written in the name of Ramaiah-deceased husband of the first defendant and defendants have not been in possession and enjoyment of suit schedule property at any time. The defendants who are the powerful persons in the village having the support of the large number of persons are denying the title of the plaintiff and attempting to interfere with the peaceful possession and enjoyment of the suit properly by the

plaintiff. In the alternative, it was also observed that for any reason the Court comes to the conclusion that the plaintiff or his deceased brothers are not the owners of the suit property, the plaintiff or his deceased brothers have been in possession and enjoyment of the suit property since the year 1952-53 for over a statutory period to the knowledge of the persons interested in the suit property and have perfected their title to the suit property by adverse possession.

4. The suit was resisted by the defendants. The second defendant denied the averments made in the plaint and averred that Akkalappa was not a grantee in the pure sense or was not a grantee of the suit land. The said land originally belong to the family of first defendant it was classified as pada land for non-payment of revenue and it was auctioned for the arrears of land revenue and said Akkalappa got it in public auction on 10-12-1952 and the same was confirmed. However, the first defendant preferred appeal against the orders of confirmation before the Revenue Commissioner in R.A. No. 254 of 1953 and the appeal was allowed on the condition that he should pay the entire arrears of revenue and compensation to the bidder. Accordingly, he paid the entire arrears of land revenue and compensation as ordered and katha was restored in the name of first defendant as per the endorsement. Akkalappa the auction purchaser was not given possession of the suit land and all along the second defendant was and is in continuous possession and enjoyment of the suit land in his own right and his name finds a place in pahani upto 1972-73 and thereafter it was wrongly omitted and the name of Akkalappa is entered mechanically without any basis. It is also averred that second defendant has sold half of the suit property under a registered sale deed in favour of the first defendant on 3-5-1954 for valuable consideration and has put the first defendant in possession of the half share of the schedule property sold to him under the said sale deed. It is averred that second defendant is the owner in possession and enjoyment of half of the suit property continuously in his own right and the other half being enjoyed by the first defendant as the owner. It is averred that the second defendant has filed petition before the Civil Judge, Pavagada, for changing the katha and pahani in his name and having known this the plaintiff has rushed to the Court for the relief to which he is entitled to. Defendant 1 adopted the written statement filed by the second defendant and additional written statement was filed denying the averment made in the plaint regarding the fact

that the plaintiff has perfected his title by adverse possession and it was denied that plaintiff has ever been in possession of the schedule property for any time. The Trial Court framed appropriate issues.

5. On behalf of the plaintiffs, P.Ws. 1 to 3 were examined and Exs. P. 1 to P. 37 were got marked. On behalf of the defendants, D.Ws. 1 to 3 were examined and Exs. D. 1 to D. 40 were got marked. The Trial Court after considering the oral and documentary evidence on record by its judgment dated 22-2-1988 held that the plaintiff has failed to prove his title to the property under the grant in favour of Akkalappa, however the plaintiff is entitled to decree as the plaintiff has been able to prove that he has perfected his title to the schedule property by adverse possession only to the extent of northern half of the schedule property and accordingly held that plaintiff is entitled to declaration, injunction as sought for in respect of the northern half of the schedule property. The Trial Court has held that so far as southern half portion of the schedule property is concerned, the sale in favour of defendant 1 is valid and to that extent the plaintiff is not entitled to the relief. During the pendency of the suit, the plaintiff died and his legal representatives were brought on record and second defendant died and his legal representatives have been brought on record.

6. Being aggrieved by the said judgment and decree the second defendant filed R.A. No. 51 of 1984 on the file of Civil Judge, Madhugiri, and the lower Appellate Court by its judgment dated 22-2-1988 confirmed the judgment and decree passed by the Trial Court and dismissed the appeal. Being aggrieved by the above said judgment and decree passed by the first Appellate Court in R.A. No. 51 of 1984, dated 22-2-1988, the legal representatives of the second defendant have preferred this appeal. This appeal was disposed of on 8-8-1997. Being aggrieved by the said order Civil Appeal No. 4951 of 2002 was filed by the legal representatives of the plaintiff and the Hon'ble Supreme Court by its order dated 8-9-2000 set aside the order passed by this Court on the ground that no substantial question of law was framed in the second appeal and accordingly, judgment and decree passed by this Court was set aside and the matter was remitted back to this Court for disposal in accordance with law.

7. I have heard the learned Counsel appearing for the appellants and the learned Counsels appearing for the respondents. This appeal has been admitted for consideration of the following substantial question of law:

'Whether on the facts and circumstances of the case, the Courts below were right in law in holding that the plaintiffs' title to the suit property had been made out by adverse possession after plaintiffs have admittedly failed to establish their title otherwise?'

and I answer the substantial question of law in the negative and in favour of the appellant for the following reasons:

8. Both the Courts below have held that the plaintiff has failed to prove that Akkalappa became the owner of the schedule property by virtue of the grant as averred in the plaint and that the plaintiff has succeeded to the said property as the owner and wherefore the plaintiff has failed to prove that he is the owner of the suit schedule property. Both the Courts have held that the southern portion of the schedule property has been sold by defendant 2 in favour of defendant 1 under the sale deed dated 3-5-1954 and in favour of defendant 1 and he has been in possession and enjoyment of the southern portion of the schedule property and wherefore the suit of the plaintiff in respect of southern half of the schedule property is liable to be dismissed and the said finding has not been challenged by the legal representatives of the plaintiff and has become final. However, the Courts below have decreed the suit of the plaintiff to the [southern half] sic portion of the schedule property on the ground that the plaintiff had perfected his title to the schedule property by adverse possession and wherefore, he is entitled to declaration and injunction as sought for in respect of [northern half] sic portion of the schedule property.

9. The learned Counsel appearing for the appellants submitted that in the absence of any averment in the plaint and also any evidence to show that the plaintiff was in possession of the suit schedule property, the Courts below were not at all justified in declaring that plaintiff has perfected his title by adverse possession. He submitted that even according to the finding of the Courts below the southern half share of the schedule property was sold by defendant 2 in favour of defendant 1

and the said sale has been upheld and Courts below have held that defendant 1 is in possession of the southern half portion of the schedule property and the material on record clearly shows that defendant 2 is in possession of the northern half portion of the schedule property and plaintiff or the brother Akkalappa have never been in possession of the schedule property at any time and the relief of the plaintiff for declaration of title on the basis of adverse possession is misconceived and wherefore the judgment and decree passed by the Courts below is perverse and arbitrary and is liable to be set aside.

10. On the other hand, the learned Counsel appearing for the respondents submitted that the material on record clearly shows that plaintiff has been in possession of the northern half portion of the schedule property and in view of the averment made in the plaint and the oral and documentary evidence on record including the entries in the record of rights and the concurrent findings of the Courts below that the plaintiff is in possession of the Schedule property adversely to the knowledge of the defendant continuously and uninterruptedly for a period of 12 years is based upon the material on record and the said finding of fact does not call for interference in this second appeal wherein, the scope of interference is very much limited.

11. It is well-settled that the scope of interference, under the appellate jurisdiction in exercise of the power of appellate jurisdiction under Section 100 of the CPC, is limited, if there is a concurrent finding on the question of fact. However, it is also well-settled that when the judgment and decree passed by the Courts below is arbitrary or capricious for non-consideration of the relevant material on record and is not based upon the material on record and the judgment and decree is arbitrary and capricious the same would constitute a substantial question of law calling for interference in exercise of the power under Section 100 of the CPC, as laid down by the Supreme Court in *State of Rajasthan v. Harphool Singh (dead) through his L.Rs.*, : (2000)5SCC652 Further, it is well-settled that a person who pleads the perfection of title by adverse possession has to prove that he has been in continuous, open and uninterrupted possession of the property to the knowledge of the owner for the prescribed period and burden is upon the person who pleads adverse possession as the same would be a defence against the owner of the

property. In *Annasaheb Bapusaheb Patil and Ors. v. Balwant alias Balasaheb Babusaheb Patil (dead) by L.Rs and heirs*, : [1995]1SCR88 the Supreme Court has laid down as follows.

'12. Article 65 of the Schedule to the [Limitation Act, 1963](#) prescribes that for possession of immovable property or any interest therein based on title, the limitation of 12 years begins to run from the date of the defendant's interest becomes adverse to the plaintiff. Adverse possession means a hostile assertion i.e., a possession which is expressly or impliedly in denial of title of the true owner. Under Article 65, burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e., possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e., possession was hostile to the real owner and amounted to a denial of his title to the property claimed.

13. Where possession could be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all'.

12. The pleading of the parties, oral and documentary evidence on record and the finding of the Courts below regarding the perfection of title to the northern half portion of the schedule property by the plaintiff by adverse possession has to be considered in the light of the principles laid down in the above said case. It may be noted at the outset that the plaintiff claim to be the owner of the schedule property

on the ground that the land was granted to his brother Akkalappa and after his death plaintiff being the sole coparcener of the joint family had become the owner of the schedule property and wherefore the plaintiff claim to be the owner of the schedule property by virtue of title to the property under grant to his deceased brother Akkalappa. The said contention is not substantiated by the plaintiff and both the Courts below have held that plaintiff has failed to prove the same. However, regarding the adverse possession the averment made in the plaint reads as follows.--

'Alternatively, if for any reason this Hon'ble Court comes to the conclusion that the plaintiff or his deceased brothers are not the owners of the suit property, it is submitted that the plaintiff or his deceased brothers have been in possession and enjoyment of the suit property since the year 1952-53 for over a statutory period to the knowledge of the persons interested in the suit property and have perfected their title to the suit property by adverse possession'.

The above said averment is denied by the defendants in the additional written statement filed by the defendants.

13. It is clear from the perusal of the oral and documentary evidence on record that the schedule property originally belong to the family of the second defendant. Since arrears of land revenue were not paid the land was treated as pada and auction was ordered for arrears of land revenue and in the said auction Akkalappa was the successful bidder and the Assistant Commissioner confirmed the sale. However, being aggrieved by the order of the Assistant Commissioner the second defendant made an application to the Revenue Commissioner praying for permission to deposit the entire arrears of land revenue and on the said application the Revenue Commissioner by order dated 20-12-1953 set aside the auction sale and directed the applicant-second defendant to deposit the arrears of land revenue with 5% solarium within one month from the date of communication of the order and the same shall be paid to Akkalappa failing which the darkasth sale may be confirmed and in compliance of the said directions the amount of Rs. 261-0-6 was deposited by the second defendant and endorsement Ex. D. 6 was issued on 21-9-1953 which is evidenced from Ex. D. 6 - challan and katha was

restored to the name of the second defendant.

14. The material on record also shows that Akkalappa had drawn the amount deposited by the second defendant as per the order of the Revenue Commissioner. The grant that is claimed by the plaintiff in favour of Akkalappa was passed after the order passed by the Assistant Commissioner and before the order was passed by the Revenue Commissioner. The entries in the revenue records were made on the basis of the order of the Assistant Commissioner and though the said order has been set aside on 23-12-1953 itself, the entry made in favour of Akkalappa was not changed till 1980 wherein the application was filed and thereafter the name has been changed. Though, it is sought to be contended that there is no compliance that the order passed by the Revenue Commissioner and wherefore the grant and darkasth grant are confirmed. The said contention of the defendant is not at all substantiated as the material on record shows that the amount has to be deposited within 30 days from the date of communication of the order and there is nothing in the order of the Revenue Commissioner to show that the same was pronounced in the open Court and that the parties were present and the very fact that it was directed that the amount is deposited would show that after communication the second defendant has deposited the amount and the said amount has in fact been with drawn by Akkalappa and wherefore, it is clear that there was compliance of the order of the Revenue Commissioner and an order has been issued restoring the name of the second defendant in respect of the schedule property. Apart from relying upon the entries in the revenue records which had been entered on the basis of the order of the Assistant Commissioner and continued even after the order of the Assistant Commissioner has set aside, the plaintiff has not produced any material to show that Akkalappa was put in possession of the schedule property and that second defendant was dispossessed of the schedule property. However, the Courts below have overlooked this material fact. Further, even according to the finding of the lower Courts it is clear that according to the finding the alienation made by the second defendant in favour of the first defendant on 3-5-1994 in respect of southern portion of the schedule property has been upheld which would clearly imply that defendant 2, who was in possession of the entire property has put defendant 1 in possession of the southern half portion of the schedule property which would also show that it was

defendant 2 who continued to be in possession of the property and further, it is also clear that having regard to the contentions raised by the plaintiff in the present case and the averment made in the plaint, it is clear that the plaintiff has failed to discharge the burden of proving the fact that he has perfected his title by adverse possession as the date from which the possession according to him became adverse is not pleaded and in the absence of any pleading, no evidence could be lead. Even otherwise, when the plaintiff claimed ownership to the schedule property on the basis of the title that is grant made in favour of Akkalappa he could not have in the alternative claim adverse possession from the defendants without admitting title of the defendants and further, it is clear that mere fact that entries have been made in the name of Akkalappa on the order of Assistant Commissioner which was set aside by the Revenue Commissioner would not by itself show that plaintiff was in possession of the schedule property and the material on record as stated above would clearly show that the Courts below were not at all justified in accepting the contention of the plaintiff that he has perfected his title by adverse possession as the plaintiff has failed to prove that Akkalappa was put in possession of the schedule property and even otherwise the ingredients of the proof of perfection of title by adverse possession has not been pleaded and proved by the plaintiff having regard to the above said material on record. Accordingly, I hold that the finding of the Courts below that plaintiff is entitled to decree on the basis of perfection of his title by adverse possession is arbitrary and perverse for non-consideration of the above said material on record and for relying upon the material which is not relevant viz., entries in the revenue records and wherefore the said perverse and arbitrary finding is liable to be set aside in exercise of the power under Section 100 of the CPC, and accordingly, I answer the substantial question of law in favour of the appellant and pass the following order:

The appeal is allowed with costs. The judgment and decree passed by the Civil Judge, Madhugiri, in R.A. No. 51 of 1984, dated 22-2-1988 confirming the judgment and decree passed by the Munsiff, Pavagada, in O.S. No. 111 of 1980, dated 16-7-1984 decreeing the suit of the plaintiff in respect of northern half portion of the schedule property is set aside and the suit of the plaintiff is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com