

Abbaiah Vs. Byrappa and ors.

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Court : Karnataka

Decided On : Oct-11-2007

Reported in : 2008(3)KarLJ148; 2007(4)KCCR2607

Judge : V. Jagannathan, J.

Acts : Code of Civil Procedure (CPC) - Sections 100

Appeal No. : Regular Second Appeal No. 199 of 1994

Appellant : Abbaiah

Respondent : Byrappa and ors.

Advocate for Def. : P.S. Manjunath, Adv. for Respondent-5

Advocate for Pet/Ap. : C.B. Srinivasan, Adv. for ;Law Park Associates

Disposition : Appeal dismissed

Judgement :

V. Jagannathan, J.

1. The plaintiff in O.S. No. 456 of 1981 is the appellant herein and he is aggrieved by the lower Appellate Court reversing the judgment and decree passed in his favour by the Trial Court and dismissing the suit by allowing the appeal preferred by defendant 6. Hence, the judgment and decree of the lower Appellate Court in

R.A. No. 30 of 1988 is called in question in this second appeal by him.

2. It is the case of the plaintiff that the suit schedule properties, which are dry lands, are the that service inam lands and were attached to the that office of the village Thirumalashettyhalli of Hosakote Taluk and the plaintiff purchased the said suit schedule properties under registered sale deed dated 16-3-1967 and since then, he has been in possession of the same. The defendants are among the persons who filed application for regrant of the lands in question and the grant was made in favour of the original grantees i.e., defendants 1 to 5, and it is the case of the plaintiff that he too has got a right to enjoy the benefit of the grant made in favour of defendants 1 to 5. The plaintiff and also defendant 6 made application before the Tahsildar questioning the regrant made in favour of defendants 1 to 5 and the said application was rejected.

3. Against the said rejection order of the Tahsildar, the plaintiff preferred Writ Petition No. 2700 of 1981 before this Court and the said writ petition came to be allowed by an order dated 17-2-1981 and the notice issued by the Tahsildar came to be quashed. A further order was passed in the very same writ petition on an application i.e., I.A. No. 1 filed by the appellant herein seeking a direction to the Tahsildar to accept 15 times the land revenue assessment in respect of the lands in question, and the said application was also allowed by directing the Tahsildar to regularise the sale in favour of the plaintiff by recovering 15 times the land revenue. Therefore, pursuant to these orders, the plaintiff has been in lawful possession and enjoyment of the suit lands and the defendants have no manner of right, title or interest over the suit schedule properties. As the defendants attempted to interfere with the suit lands and attempted to damage the standing crops, the plaintiff was constrained to file the suit praying for a judgment and decree in his favour for permanent injunction against the defendants.

4. Defendants 1, 3 and 5 filed their written statement and accepted the case of the plaintiff and even took up the stand that the suit of the plaintiff be decreed as prayed for. However, defendant G seriously questioned the stand of the plaintiff by contending that the plaintiff had suppressed certain truth regarding several legal proceedings and having failed once in an earlier suit O.S. No. 398 of 1967 in

getting the relief of permanent injunction against the defendants, the plaintiff has again taken recourse to file the present suit and, as such, the suit of the plaintiff was not maintainable. Furthermore, the plaintiff has suppressed the fact of the matter being pending before the District Judge in M.A. No. 4 of 1981 and this fact was not brought to the attention of this Court in W.P. No. 2700 of 1981. Apart from this subsequent to the order passed by this Court in W.P. No. 3288 of 1982, and following the order of the Tahsildar being set aside in M.A. No. 4 of 1981, the basis of which the relief had been granted to the plaintiff in W.P. No. 2700 of 1981 also fell to the ground and, therefore, there was no material to show that the plaintiff was the absolute owner in possession of the suit schedule properties. On these grounds, dismissal of the suit was prayed for by this defendant.

5. Based on the pleadings of the parties, the learned Judge of the Trial Court framed as many as four issues and answered issues 1 and 2 in the affirmative and consequently, the suit of the plaintiff was decreed and this led defendant 6 to prefer an appeal before the lower Appellate Court in R.A. No. 30 of 1988. The learned Judge of the lower Appellate Court, after considering the case of the parties in the light of the reasons given by the Trial Court, came to the conclusion that the judgment and decree of the Trial Court was liable to be set aside because, the plaintiff had failed to prove that he is in lawful possession of the suit schedule properties and consequently the appeal preferred by defendant 6 was allowed and the suit of the plaintiff was dismissed. This has given rise to this second appeal by the plaintiff.

6. I have heard the submissions made by the learned Counsel Sri C.B. Srinivasan for the appellant and the learned Counsel Sri P.S. Manjunath for respondent 5.

7. It is to be mentioned at this juncture that on an earlier occasion, this Court had disposed of this appeal and aggrieved by this appeal being allowed, defendant 6 preferred Civil Appeal No. 207 of 2000 before the Supreme Court and the said civil appeal was disposed of by the Apex Court by setting aside the order passed by this Court and the Apex Court further directed this Court to dispose of the matter in accordance with law by formulating proper questions of law. In the course of remanding the matter to this Court, the Apex Court had also observed that the

appeal is being disposed of without expressing any opinion on the merits of the case.

8. In view of the above direction given in the civil appeal by the Apex Court, the following substantial questions of law has been formulated for consideration in this second appeal:

Whether on the pleadings and the material brought on record by the plaintiff, the First Appellate Court was right in holding that no case of possession on the date of the present suit was made out, and the plaintiffs suit was liable to be dismissed on the ground of res judicata, more so when such finding was arrived at in reversal of the findings of the Trial Court?

9. Learned Counsel Sri C.B. Srinivasan submitted that the lower Appellate Court erred in holding that the finding given in the earlier suit i.e., O.S. No. 398 of 1967, would operate as res judicata and it is his submission that in respect of the suit filed for permanent injunction, the question of applying the principle of res judicata does not arise. As far as the possession is concerned, the learned Counsel referred to the eviction order passed by the Tahsildar and thereafter the appellant preferring W.P. No. 2700 of 1981 and the said writ petition being allowed. The further order passed by this Court in the said writ petition on the I.A. filed by the appellant and this Court also directing the Tahsildar to receive 15 times the amount of the land revenue, are all indicative of the factum of the possession of the suit properties by the appellant and the lower Appellate Court has, therefore, failed to take note of the order passed in these proceedings and hence, the finding that the appellant has failed to prove that he is in possession of the suit schedule properties is erroneous and contrary to the material placed before the Trial Court. In this connection, he drew my attention to Ex. P. 4, the order passed in W.P. No. 2700 of 1981. Therefore, it was contended that the Trial Court had lightly held that the appellant had proved the factum of possession and, as such, the grant of injunction by the Trial Court was just and proper and, on the contrary, the lower Appellate Court did not appreciate the evidence in proper prospective and, therefore, interference is called for as against the judgment and decree passed by the lower Appellate Court. As far as the scope of this Court under Section 100 of

the CPC is concerned, the learned Counsel referred to a decision of the Apex Court in Santosh Hazari v. Purushottam Tiwari (dead) by L.Rs. : [2001]251ITR84(SC) .

10. Learned Counsel Sri P.S. Manjunath for respondent 5, on his part, submitted that the view taken by the lower Appellate Court does not require any interference at the hands of this Court because, the learned Judge of the lower Appellate Court has appreciated the evidence on record and has arrived at the conclusion and the said conclusion is a possible view emerging from the evidence on record and the documents upon which both the parties had placed reliance were also considered by the lower Appellate Court and, therefore, the finding of fact recorded by the lower Appellate Court, which is not perverse, cannot therefore be interfered with in second appeal by this Court. Secondly, it was submitted that the plaintiff had suppressed an important fact viz., he having filed an earlier suit in O.S. No. 398 of 1967 for the very same relief of permanent injunction against defendant 6 and the said suit came to be dismissed and along after the said event, the appellant has once again filed the present suit for the very same relief without coming out with the fact as to how the appellant came in possession of the suit schedule properties at a later stage. Therefore, having failed to place before this Court the said material fact of dismissal of the earlier suit for the very same relief, the view taken by the lower Appellate Court that the present suit is barred by res judicata cannot, therefore, be termed as an erroneous view of the matter.

11. Nextly, it is contended that this Court in W.P. No. 3288 of 1982 disposed of on 31-1-1985, had observed that in the event of M.A. No. 4 of 1981 being allowed and the order of the Tahsildar being set aside, the basis upon which the order was passed in W.P. No. 2700 of 1981 will also fall to the ground. In view of the said observation of this Court, the plaintiff cannot be said to have proved his title to the suit schedule properties as well as the possession and in the course of the evidence, it is also on record that the mahazar drawn discloses that defendant 6 was also found to be in possession of the suit schedule properties and this is evident from Exs. P. 10 and P. 11. It was, therefore, submitted that the lower Appellate Court has taken note of all these factors and once the order of the Tahsildar stood set aside in M.A. No. 4 of 1981 as per Ex. D. 11, nothing remained

in favour of the appellant to show that he is in lawful possession of the suit schedule properties. Since, consequent to the order passed in M.A. No. 4 of 1981, the matter has been remanded to the Tahsildar for fresh consideration with regard to the claim of the respective parties for regrant, the plaintiff, therefore, has not been able to establish his title to the suit schedule properties and so also possession of the same. As far as suppression of material fact is concerned, it is submitted that the plaintiff is not entitled to the relief sought for by him as he had not approached the Trial Court with clean hands.

12. Sri C.B. Srinivasan, learned Counsel for the appellant, by way of reply to the above submissions, particularly with regard to the 'suppression of material fact ground' is concerned, submitted that the question as to whether a party had suppressed a material fact and had not approached the Court with clean hands will arise only at an interlocutory stage but not in the final stage and in support of the above submission, the learned Counsel placed reliance on the decisions in *Lakshminarasimhiah v. Yalakki Gowda* : AIR1965 Kant310 ; *Seemax Constructions (Private) Limited v. State Bank of India* AIR 1992 Del. 197; *Gujarat Bottling Co. Limited and Ors. v. Coca Cola Company and Ors.* : AIR 1995 SC2372 and *Prestige Lights Limited v. State Bank of India* : (2007)8SCC449 . Particular focus was drawn to the observations of the Apex Court in the case of *Prestige Lights Limited*.

13. In the light of the aforesaid submissions made and the decisions cited and having regard to the substantial question of law that is formulated, the point for consideration is whether the lower Appellate Court was justified in dismissing the suit of the plaintiff on the footing that the plaintiff had failed to establish that he is in possession of the suit schedule properties and also on the ground arise *judicata*.

14. The plaintiff filed the suit claiming the relief of permanent injunction against the defendants basing his claim on the order passed by this Court in W.P. No. 2700 of 1981 (Ex. P. 4). It is his case that pursuant to the above writ petition being allowed and the order of the Tahsildar being set aside, there was a further direction given on the I.A. filed by the appellant by which the Tahsildar was directed to receive 15 times the amount of land revenue from the appellant and to regularise the

appellant as khathedar in respect of the lands in question. It is these two orders of this Court that led the appellant to file the present suit for grant of permanent injunction. From a perusal of the pleadings as well as the documents produced by both sides, it becomes clear that there was also an order passed in favour of defendant 6 by this Court in W.P. No. 3288 of 1982 (Ex. D. 15) and while dismissing the writ petition, this Court made the following observations:

4. ...The very regrant order is the subject-matter in M.A. No. 4 of 1981. If the petitioner succeeds in his claim in M.A. No. 4 of 1981 and if the Appellate Authority sets aside the order passed by the Tahsildar, the basis on which a writ was issued in favour of Abbaiah, falls to the ground....

15. From the above observations of this Court, it becomes clear that once M.A. No. 4 of 1981 stands allowed and the order passed by the Tahsildar is set aside, the very basis upon which the writ filed by the appellant was allowed, therefore, will fall to the ground. In other words, the fate of the relief granted to the appellant in W.P. No. 2700 of 1981 depended upon the fate of the decision in M.A. No. 4 of 1981.

16. It is not in dispute between the parties that M.A. No. 4 of 1981 was allowed and the learned District Judge, by his order dated 17-7-1985, set aside the order passed by the Tahsildar in No. HO A-192/69-70 and remanded the case to the Tahsildar for fresh consideration. As a consequence of the order passed in M.A. No. 4 of 1981 and the order of the Tahsildar being set aside, the very basis upon which the appellant rested to claim his rights over the suit schedule properties also disappeared by virtue of the observations of this Court in W.P. No. 3288 of 1982 (Ex. D. 15).

17. It was, therefore, incumbent on the part of the appellant to have established his possession over the suit schedule properties by placing evidence to the said effect. As has been rightly pointed by the learned Counsel for respondent 5, the documents Exs. P. 10 and P. 11 indicate that both the plaintiff as well as defendant 6 are in possession of the suit schedule properties. The learned Judge of the lower Appellate Court, therefore, discarded these two documents. But, however, upon an examination of the other documents produced by the parties,

the learned Judge of the lower Appellate Court found that the respondent-defendant had placed sufficient documentary evidence in proof of he being in possession of the suit schedule properties. The said finding is a finding of fact based upon appreciation of the documents produced by the parties before the Trial Court. The lower Appellate Court found that Exs. D. 2, D. 3, D. 13 and D. 14, which are R.T.C. extracts, reveal that the name of defendant 6 is found in the cultivator's column. The Court also found that in view of the order passed in M.A. No. 4 of 1981 coupled with the observations made by this Court in W.P. No. 3288 of 1982 (Ex. D. 15), the case of the plaintiff that he is the absolute owner of the suit schedule properties cannot be accepted despite the documents produced by him. The said appreciation of evidence by the lower Appellate Court cannot be termed as contrary to the evidence on record nor it can be said that the said finding was based on no evidence. As such, the view taken by the lower Appellate Court is a possible view emerging from the entire material on record.

18. Such being the position, it is not permissible for this Court to substitute its opinion for the opinion of the First Appellate Court unless it is shown that the conclusion reached by the lower Appellate Court was erroneous or was based upon inadmissible evidence or contrary to the settled position on the basis of the pronouncement made by the Apex Court. Therefore, having regard to the observations of the Apex Court in the case of *Mst. Sugani v. Rameshwar Das and Anr.* : AIR 2006 SC2172, where from a given set of circumstances two inferences are possible, one drawn by the lower Appellate Court is binding on the High Court in second appeal. I, therefore, do not see any scope for interference of this Court in second appeal as against the view taken by the lower Appellate Court.

19. As far as suppression of material fact is concerned, it is an admitted fact as could be seen from the pleadings of the parties that the plaintiff had suppressed the fact of an earlier suit having been filed by him in O.S. No. 398 of 1967 for claiming the relief of permanent injunction in respect of the very same suit schedule properties and dismissal of the said suit. The appellant has failed to mention this important fact in his pleading's. Therefore, though the lower Appellate Court took the view that following the dismissal of the earlier suit claiming very same relief of injunction in respect of the very same suit schedule properties, the

subsequent suit is barred by res judicata, in my view, though there is some force in the said view taken by the lower Appellate Court, yet, the more important factor which cannot be lost sight of is the suppression of the material fact by the appellant.

20. Though the learned Counsel for the appellant referred to a number of decisions of the Apex Court to submit that the question of considering the ground of approaching the Court with clean hands arise only at an interlocutory stage and not at the final stage, I am unable to agree with the said submission made by him. In the very decision in the case of M/s. Prestige Lights Limited, the Apex Court has observed that a Court of law is also a Court of equity and, therefore, it is of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. Once it is shown that a party had suppressed a material fact, which will also have a bearing on the outcome of the final decision at a later stage, then, the suppression of material fact will loom large even at the final stage. Therefore, it is inconsequential as to whether suppression of material fact takes place at an interlocutory stage or at a final stage of a legal proceeding.

21. In all the decisions referred to by the appellant's Counsel, nowhere it has been laid down that the question of suppressing material facts or not coming before the Court in clean hands will have to be considered only at an interlocutory stage and not at the final stage. In fact, this Court, in the case of Lakshminarasimhiah, has observed that 'He who comes into equity must come with clean hands' or 'He that hath committed inequity shall not have equity' are well-known maxims of equity. The wrong conduct of the plaintiff in the particular matter or transaction with respect to which he seeks injunctive relief will preclude him from getting such relief.

22. In the light of the aforesaid principles of law and in the decision in the case of M/s. Seemax Constructions (Private) Limited, it having been laid down that in a suit filed for interim and permanent injunction restraining defendants from invoking bank guarantees, if the fact relating to suit filed in other Courts is not disclosed, the same would amount to suppression of material facts and the suit will be liable to

be dismissed without going into the merits, in the instant case also, the aforesaid principles of law will have to be applied and the consequence of such application of the above principles is that the suit of the plaintiff was liable to be dismissed even on the ground of suppression of material fact of the plaintiff having filed an earlier suit for the same relief of injunction and the said suit having been dismissed. Therefore, even from this angle, the dismissal of the suit of the plaintiff by the lower Appellate Court cannot be termed as erroneous and, as such, I answer the substantial question of law framed by holding that insofar the possession is concerned, the view taken by the lower.

23. Appellate Court, having been based on the appreciation of evidence by it, is not liable to be interfered with by this Court in second appeal as it does not suffer from any of the infirmities which give rise to interference in second appeal under Section 100 of the CPC. No occasion, therefore, arises for reversing the view taken by the lower Appellate Court.

24. In the result, the appeal is dismissed. The judgment and decree of the lower Appellate Court in dismissing the suit of the plaintiff stands confirmed. No costs.