

Puttaningamma and ors Vs. Thippeswarny and ors

Puttaningamma and ors Vs. Thippeswarny and ors

SooperKanoon Citation : sooperkanoon.com/907699

Court : Karnataka

Decided On : Nov-08-2010

Judge : Subhash B.Adi J.

Appeal No. : REGULAR FIRST APPEAL NO. 198 OF 2005 (DEC-PAR)
BETWEEN

Appellant : Puttaningamma and ors

Respondent : Thippeswarny and ors

Advocate for Def. : Sri. M.R. Ravindra, Adv ; N.M. Vinod Kumar, Adv.

Advocate for Pet/Ap. : Sri. F.S. Dabali Prakash K.K., Adv ; Nagaraju T.S., Advs

Judgement :

1. This is plaintiffs appeal against the judgment and decree dated 28.10.2004 in O.S. No.53/1996 on the file of the Civil Judge (Senior Division), Chitradurga.
2. For convenience, the parties will be referred to as per their ranking in the trial court.
3. The plaintiffs sought for declaration that, the sale transaction dated 04.01.1982, is not binding on them. Consequently, to declare that, they are the owners in peaceful possession and enjoyment of the suit schedule property and for permanent injunction against defendant nos. 1 and 2 and their men and agents.

Alternatively, they also claim that plaintiffs nos.2 to 4 are entitled for 1/4 share each in the suit schedule property by making partition and separate possession out of their suit schedule property.

4. Plaintiff No. 1 is the wife of defendant no. 3, plaintiff nos.2 & 4 are the children of plaintiff no.1 and defendant No.3. Defendant nos.1 and 2 are brothers.

5. The case of the plaintiffs is that, the third defendant's father by name Ranganna purchased the suit Schedule property bearing survey No. 96/1, measuring 15 acres, 7 guntas situated at Ikkanur Village in Dharmapuri Hohli, Hirryur Taluk from Maiga. He died intestate leaving behind defendant No.3, the only sole surviving son. Defendant No.3 inherited the property and during the lifetime of defendant No.3, he cultivated the land. However, after the death of defendant No.3, the plaintiffs are in possession and enjoyment of the suit schedule property. When the defendant nos. 1 and 2 obstructed their cultivation and tried to cultivate the land, they came to know that about 13 years prior to the filing of the suit, the defendants got created concocted documents of transfer of suit schedule property in favour of defendant No.1.

6. Defendant nos.1 and 2 on the basis of the concocted documents in collusion with the Revenue Officer got their names mutated in the Revenue Records, Plaintiffs amended the plaint, inter alia, claiming that the suit schedule property is an ancestral and joint property of third defendant and the third defendant had no manner or right to sell the property in favour of defendant nos. 1 and the sale transaction was with an intention to defeat the right of the plaintiffs. Further, Plaintiffs nos.2 to 4 are entitled for 1/4* share in the suit schedule property. The suit property has been sold for a meager sum of Rs.3,000/- though the extent of land is 15 acres.

7. Defendant nos.1 and 2 on service of notice appeared before the trial court and filed their written statement. They claimed that, the suit, schedule property is situated at 3 kms. away from Hirivur Taluk. First plaintiff and third defendant had no male issues they were unable to cultivate the land and in the year 1982 first plaintiff and third defendant intended to perform the marriage of the daughter and they were in financial need Accordingly, defendant No.3 sold the property on

04.01.1982 under a registered sale deed. The second plaintiff was major and she was living with her husband as on the date of the sale. Plaintiff nos.3 and 4 were minors and defendant No.3 sold the property for the family necessity and defendant is a bonafide purchaser and pursuant to the partition, the names of the defendant nos.1 and 2 has been mutated in the Revenue Record.

8. Since defendant No.3 has acquired the land by way of succession and sold the property to defendant No.2, the wife of defendant No.3 and the children have no right to claim partition as the suit schedule property was a separate property of defendant No.3. The Trial Court on the basis of the pleadings, framed issue nos.1 to 7 and additional issues 1 and 2, which are as follows:

" 1. Whether the plaintiffs prove that the sale deed executed by third defendant on 04.01.1982 in respect of the suit schedule property to without consideration and not for any family necessity?

2. Whether the plaintiffs prove that they are the owners and in lawful possession of the suit schedule properties?

3. Whether the defendant nos, 1 and 2 prove that they are bonafide purchaser of the suit schedule property for valuable consideration?

4. Whether the defendants 1 and 2 prove that they have perfected their title over the suit schedule property by way of adverse possession?

5. Whether the suit is barred by law of limitation?

6. Whether the plaintiffs are entitled for the relief sought for?

7. To what order or decree?"

Addl Issues:

7. "Whether plaintiffs 2 to 4 are entitled to 1/4 share each in the suit schedule properties?

8. Whether plaintiffs 2 to 4 are entitled for partition and separate possession for their respective shares?"

9. Second plaintiff got examined as PW-1, and evidence as FW-2. Exhibit PI to P5 were got marked in their evidence- First defendant was examined as DW-1 and Exhibit DI to D22 were got marked in their evidence.

10. The Trial Court on appreciation of the evidence held that, the plaintiffs have failed to prove that the sale transaction was not for family necessity and failed to prove that they &rv. the owners in lawful possession of the suit schedule property. Defendant nos.1 and 2 have proved that they are bonafide purchasers of the suit schedule property for a valuable consideration and plaintiffs nos.2 to 4 have also failed to prove that, they are entitled for 1/4 share in the suit schedule property by partition and separate possession. It is against the said judgement and decree the plaintiffs are in appeal before this Court.

11. The learned Counsel appearing for the appellant submitted that defendant No.3 acquired the property by remitting the same from his father. At the time of sale transaction, plaintiffs Nos.3 and 4 were minors. There was no legal necessity to sell the property. Hence, the sale transaction is not binding on the plaintiffs. He further submitted that, the Land measures 15 acres and has been sold for a sum of Rs.3,000/-, which is not genuine and bonafide sale, but it is a concocted sale to defeat the interest of the plaintiffs. It is further alleged that the Trial Court without appreciating the evidence on record has erroneously dismissed the suit.

12. On the other hand, the learned Counsel appearing for defendant nos. 1 and 2 submitted that the plaintiffs have admitted that the property was purchased by the grandfather of plaintiffs Nos. 2 to 4 and he died intestate and the property devolved on defendant No.3. Defendant No.3 in his lifetime has executed a sale deed in favour of defendant No.1, After the purchase the said property was partitioned between defendant Nos.1 and 2 and their names were mutated and though defendant No.3 was made party to the suit, he has not chosen to appear and contest the suit, he was placed ex parte before the Trial Court, and subsequent he died.

13. Exhibit D1 is a certified copy of the records of right showing Ranganna son of Ranganna purchased the suit property from Maiga. Exhibit - D2 is the index of the lands, showing the name of defendant No.3. Exhibit D3 is the registered sale deed in favour of defendant No.1 and Exhibit D4 is the copy of RTC extract wherein, the name of First defendant and name of third defendant has been rounded off. Exhibit D5 shows the name of both defendants. As per Exhibit D6 and D7 the name of defendant No.3 was rounded off. Subsequently, even mutation register, katha, patta book stood in the name of defendants No.1 and 2 rights from the year 1982 to 1996. Neither the defendant No.3 nor anybody objected as against the sale transaction. It is as an afterthought, the plaintiffs have filed a suit.

14. PW-1 in his cross-examination has deposed that defendant No.3 was living along with the plaintiffs, till his death. The trial court on appreciation of the evidence dismissed the suit as no ground was made out for interference in the said judgment.

15. In the light of the above, the question that arises for consideration is:

"As to whether the plaintiffs have proved that the Buit schedule property- is an ancestral property and the sale transaction between defendant nos.3 and 1 is not for family necessity?

16. To prove the case, the plaintiff No.2 has entered the witness box, who is examined as PW-1. Undisputedly, as per Exhibit D1 the land stood in the name of Ranganna father of defendant No.3, which is not in dispute. After the death of Ranganna, defendant No.3 inherited the property, plaintiffs have also not disputed there was no other heir left behind by the Ranganna and the defendant No.3 was only sole surviving legal heir. Suit property had bourn separate property defendant No.3. Defendant No.3 has executed a registered sale deed, he was made party to the proceedings in the suit,. However, despite of notice he remained absent. In pursuance of the sale transaction the entry of the name of defendant No.1 is made in the revenue record, as per Exhibit D4 and Exhibit D5 shows that the name of third defendant was rounded off after the purchase by defendant No.1 and defendant No.1 entered into partition with defendant No.2 and the land was divided and accordingly, the name of defendant Nos.1 and 2 were entered in

revenue records as per Exhibit D6 and 7 and column No. 10 of the revenue records reveal the partition between defendant Nos. 1 and 2. Exhibit DS is the mutation register, which reveals the sale transaction by virtue of which the name of defendant No.1 was entered in the revenue records. Exhibit D9 is the mutation records where the name of defendant Nos. 1 and 2 is shown. Exhibit D10 is the katha extract, Exhibit DI 1 is Form No.1 which again reveals the deletion of name defendant No.3 and entry of name of defendant nos.1 and 2, Exhibit D12 to 16 are the revenue receipts for having paid the Kandayam by defendant No.2. Exhibit D17 is kathe standing in the name of defendant nos.1 and 2 from the year 1982-83. Exhibit D18 is another receipt for having paid the Kandayam for the year 1995-96.

17. All these documents do reveal that during the lifetime of the defendant No .3, sale transaction took place and the mutation entries were made, records also reveal that defendant No.3 was issued notice and he has not filed any objection. To prove that the property is an ancestral property, no evidence is produced. In turn, document Exhibit DI reveals that it is a land purchased by the father of defendant No.3 and after his death it devolved only on defendant No.3. Hence, the property which is exclusively devolved on defendant No.3 and defendant No,3 having sold the same to defendant No.1, the plaintiffs have no right either to claim for setting aside the sale deed or for partition. Defendant No.3 has not sought for setting-aside the Bale deed despite he being made party, he remained expert,

18. The Trial Court on consideration of the records by rightly appreciating the legal evidence has found that the plaintiffs have failed to prove that the suit schedule property is an ancestral property and also held that merely because the sale consideration was Rs.3.000/-. it does not invalidate the sale transaction. In his cross-examination PW-1 lias admitted that the land is a dry land.

19. Even on appreciation of the entire evidence, I do not find any error in the judgment and decree passed by the Trial Court, which calls for interference in this appeal. Hence, this appeal is liable to be dismissed. Accordingly, I pass the following order:

ORDER

Appeal dismissed. However, parties to bear their own cost.

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