

RanialingegowdA. Vs. SidduregowdA.

RanialingegowdA. Vs. SidduregowdA.

SooperKanoon Citation : sooperkanoon.com/925428

Court : Karnataka

Decided On : Apr-12-2012

Judge : Huluvadi G Ramesh, J.

Acts : Land Revenue Act ; Evidence Act.

Appeal No. : Regular Appeal. 2361 Of 2005

Appellant : Ramalingegowda,

Respondent : Sidduregowda,

Advocate for Pet/Ap. : Sri B J Somayaji. Adv

Judgement :

1. This is a plaintiffs second appeal aggrieved by the judgment and decree passed by the Addl. Civil Judge (Sr.Dvn.). Mandya in RA 4/2004 on 6.8,2005 reversing the judgment and decree in OS 241/2002 by the Prl Civil Judge (JnDvn.), Mandya on 2.12.2002 Plaintiff filed a suit for declaration and permanent injunction against the defendant in respect of the suit property. It is stated, one Lingegowda S/o Hotle Lingegowda hid no issues. Lingegowda took the father of the plaintiff in adoption as per customs and all essential ceremonies were performed at the time of adoption ceremony which took place about seventy years back. Thus, the father of the plaintiff became a member of the family of Lingegowda. Lingegowda and the father of the plaintiff were lining together as co parceners by enjoying the properties of Lingegowda. Lingegowda and his brothers were divided and several

properties had fallen to his share under the partition and separate khata and revenue entries were made in the name of all the three brothers. The suit property was the property allotted to the share of defendant's father. Boregowda in the partition. Property situate on eastern side of the suit property was allotted to the share of grandfather of plaintiff i.e.. Lingegowda. The defendant's father was in possession and enjoyment of suit property till he sold the same in favour of the plaintiff's grandfather under a registered sale deed dated 2.8.1954 for a valuable consideration.

2. On the death of the plaintiff's grandfather, the father of plaintiff being the only legal representative succeeded to all the properties of late Lingegowda and he became the absolute owner of all the properties of Lingegowda including the suit property. It is stated, by virtue of the registered sale deed by the father of defendant in favour of the grandfather of the plaintiff, the concerned revenue authorities should have changed the khata of the suit property in the name of plaintiff's grandfather. However, there was no such change of entry made by the revenue authorities. On noticing the same, the plaintiff's father made an application to the authorities requesting to correct the same under the provisions of the Land Revenue Act and Rules. Thus, as per M R 4/1994, the khata and RTC are standing in the name of the plaintiff's father Kullegowda. It is further stated, the plaintiff's father died three months prior to the filing of the suit. During the life time of plaintiff's father, there was an oral partition in the family and in the said partition, the suit property fell to the plaintiff's share and the property situate on the eastern side of the suit property has been allotted to the share of brother of plaintiff by name Siddegowda. From the date of partition, plaintiff has been in possession and enjoyment of the suit property as its absolute owner and has raised paddy crop. The defendant having no manner of right, title or interest over the property is unnecessarily interfering with the plaintiff's possession stating that there is failure on the part of plaintiff's father in obtaining khata and there is an order passed by the revenue authorities confirmed by this Court. It is stated, the revenue authorities have no jurisdiction to decide the title and civil rights and therefore, the defendant has no right to cause interference with plaintiff's possession of the property based on the alleged revenue court orders. On 24.8.2002, since the defendant attempted to dispossess the plaintiff the suit came to be filed. Defendant resisted the suit. In his

written statement he has contended that Hotte Lingegowda had four daughters - Dollamrna, Doddaihyamma, Chikkathayamma and Channama and has also admitted that Lingegowda had no male issues. However, the adoption of plaintiffs father is denied and it is stated there was no adoption at all. The date of adoption is imaginary. The suit property was neither allotted to the share of Kullegowda nor was in his possession. It is admitted the suit property was allotted to the share of defendant's father and that to the east of the suit land, the land of Lingegowda is situate. Hence, the eastern boundary ought to have been given as the land of Lingegowda but that Lingegowda is not the grandfather of the plaintiff and he died issueless without adopting anybody. After his death, both father of defendant - Boregowda and elder brother Siddegowda were enjoying his property equally. The eastern portion of Lingegowda's property is enjoyed by the sons of Boregowda and Siddegowda. Further, the sale deed dated 2.8.1954 is also not admitted. It is stated, plaintiffs father was neither adopted nor plaintiff is the only grandson of Lingegowda and there was no sale deed executed by the defendant's father in favour of plaintiffs father at any time. The suit property originally belonged to defendant's father and he sold the same in favour of his wife under a registered sale deed dated 28.8.1937. The mother of the defendant, in MR 1/80-81 dated 31.5.1980 got the katha changed in the name of her son i.e., the defendant and the katha of the suit property stands in the defendant's name since then. It is stated, the proceedings in MR 4/1994-95 under which the katha of suit property was changed in the name of plaintiffs father, is without the knowledge of the defendant. However, this was denied by the plaintiff and his mother in RP 125/1996 before the Deputy Commissioner, Mandya. However, Deputy Commissioner has set aside the order of the Tahsildar. Thus, the katha changed in the name of defendant in MR 1/80-81 on 30.4.1980 remains undisturbed. Further, the plaintiff had filed a writ petition in WP 398/1998 which also came to be dismissed. It is contended the suit is filed just to make unlawful gain and it is also barred by limitation and accordingly, has prayed for dismissal of the suit.

3. Based on the pleadings, the trial court has raised many as eight issues and after hearing, while answering the relevant issues in favour of the plaintiff, decreed the suit with cost and declared the plaintiff as the absolute owner of the suit property and permanently restrained the defendant, his agents, servants or

anybody from interfering with the plaintiffs possession and enjoyment. Against the said order, defendant preferred an appeal before the Addl. Civil Judge (Sr.Dvn.), Mandya who has dismissed the suit of the plaintiff. Hence, this second appeal by the plaintiff.

4. On 24.1.2008. while admitting the appeal, the following substantial question of law has been framed: Whether the lower appellate court was justified in reversing the judgment and decree of the trial court reiving on the contents of Ex.PI, the subject matter of which is totally different from Ex.DI. Heard the counsel representing the parties.

5. The lower appellate court in its judgment has noted that the sale deed of 1937 is produced from proper custody which prevails over the 1954 sale deed. Referring to the provisions of the Evidence Act regarding the document being more than thirty years old, it has opined that the plaintiffs father Kullegowda admitted in the proceedings before the High Court and also before the Dcpury Commissioner that the property in question sold under Ex.DI is the said schedule property. Also, there is an admission on the part of PW I that the suit schedule property belongs to the defendant's father and he executed the deed in his favour pertaining to this property. Even in Kannada u reads as under:

6. In the cross-examination of PW 2. it is stated, defendant has executed the document in favour of his wife. However, he volunteers that fraudulently the said deed has been executed. What is being noticed is, from 1954 till 1994, the appellant never sought for change of katha. Even in the evidence of plaintiff, it is admitted that he knew that in 1937 there is a sale deed in favour of respondent. The trial court has decreed the suit stating that the survey number is different. But the lower appellate court reversed it. The contention of the appellant herein is, it is for the respondent to prove that the schedule property is sold under the sale deed dated 26.8.1937 and the respondent did not adduce any evidence. When there is a clear admission on the part of the plaintiff that he knew the sale deed in favour of the respondent, question of proving the execution of the sale deed does not arise. Further, in pages 19 and 20 of the judgment of the lower appellate court, it is observed that there was a partition among the three sons of Hoftelmge Gowda. On

the stand of the plaintiff that the sale deed executed in the year 1997 has not been acted upon, the lower appellate court has opined that it is for the plaintiff to establish that the sale deed has not been acted upon. It appears, plaintiff has not discharged his burden. In para 38 of the order, the lower appellate court has observed that during 1994, after forty years, plaintiff made an attempt without notice to the defendant, to change the property in his name which was standing in the name of the defendant. The finding of the lower appellate court is that plaintiff established that his father was given in adoption to Lingegowda but, he failed to establish Boregowda had marketable title to tell the suit property in favour of Lingegowda to get title over the suit schedule property.

7. Thus, while answering the substantial question of law accordingly, it is held that the lower appellate court is justified in reversing the judgment and decree of the trial court in view of the factual and legal position. Appeal is dismissed. Parties to bear their own costs.

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