
(2015) 11 KAR CK 0244

Karnataka High Court

Case No: R.S.A. No. 1521/2015 (INJ)

Liyakath and Others

APPELLANT

Vs

Dilsadbi

RESPONDENT

Date of Decision: Nov. 3, 2015

Hon'ble Judges: B. Sreenivas Gowda, J.

Bench: Single Bench

Advocate: Mohamed Shafi S., Advocate, for the Appellant; M.R. Hiremathad, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

B. Sreenivas Gowda, J.

This regular second appeal is filed by the defendants in O.S. No. 263/2009 on the file of the Principal Civil Judge and JMFC, Channagiri, challenging the concurrent findings of the Courts below, whereby the trial Court has decreed the suit of the plaintiff and granted permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the plaintiff over the suit property, which was confirmed by the lower appellate Court.

2. I have heard the learned Counsel appearing for the parties and perused the judgments and decrees of the Courts below.

3. For the sake of convenience, parties are referred to as they are referred to in the suit before the trial court.

4. The point for consideration is, whether there is any substantial question of law which arises for consideration in this second appeal.

5. My answer is in the negative for the following reasons :

"The case of the plaintiff is, suit property measuring 50 x 100 feet bearing site No. 71 at Karekatte village, Channagiri taluk (herein after referred to as suit schedule property),

originally Government property and it was granted by the Government in favour of Abdul Khuddus @ Khuddus Sab, son of Mohammed Hayath Sab and a grant certificate was issued in his favour. As per the grant certificate, Panchayath has effected khata in the name of the said Abdul Khuddus. He has constructed a shed in the said site by obtaining licence from the Gram Panchayath in the year 1999 and khata number of the site is re-numbered as 568, 596 and 155. Thereafter, the said Abdul Khuddus has sold the suit property in favour of the plaintiff through a registered sale deed, and as per the sale deed, khata was effected in the name of the plaintiff. Ever since the date of purchase of the suit property, plaintiff has been in possession and enjoyment of the suit property and defendants having no right, title or possession, tried to interfere with her possession. Hence, she has filed this suit for the relief of permanent injunction."

6. The second defendant has filed written statement which was adopted by defendants 1 and 3 by filing a memo to that effect. In the written statement, defendants have denied the case of the plaintiff, inter alia contended that, within the suit boundary the property of the defendant bearing khata No. 649 Asti No. 83, measuring 50 x 100 feet is situated and permanent injunction granted in O.S. No. 276/1992 by the Court on 15-11-1994 against the vendor of the plaintiff is in force and vendor of the plaintiff is not in possession of the suit property at any point of time and by mentioning wrong khata No. 155, he has sold the property of this defendant in favour of the plaintiff and has created unnecessary litigation between the parties. With this and other grounds, they prayed for dismissal of the suit.

7. The trial Court based on the rival pleadings of the parties, has framed the following issues :

"1) Whether the plaintiff proves that she is in lawful possession and enjoyment of the suit property?

2) Whether plaintiff proves the interference of defendants as alleged in the plaint?

3) What order or decree?"

The plaintiff in support of her case, has examined her husband - Mahammed Maqbul Sab as P.W.1 and one Mahammed Rizwan as P.W.2 and has produced 24 documents which were marked as Exs. P.1 to P.24. On behalf of the defendants, second defendant was examined as D.W.1 and three more witnesses were examined as D.Ws. 2, 3 and 4 respectively and they have produced 7 documents which were marked as Exs. D.1 to D.7.

8. The Trial Court after hearing the learned Counsel appearing for the parties and perusing the oral and documentary evidence on record, has answered issue Nos. 1 and 2 in the affirmative and decreed the suit granting permanent injunction, restraining defendants from interfering with the peaceful possession of the plaintiff over the suit property.

9. Defendants aggrieved by the said judgment and decree of the trial Court, challenged the same in R.A. No. 37/2013 before the lower appellate Court.

10. The lower appellate Court on re-appreciation of the entire oral and documentary evidence on record, dismissed the appeal and confirmed the decree passed by the trial Court. It is against the said concurrent findings of the Courts below, the defendants have brought this second appeal.

11. Learned Counsel for the defendants -appellants herein submits, in spite of permanent injunction granted in O.S. No. 276/1992 against the vendor of the plaintiff in respect of the very suit property the courts below have committed an error in holding, plaintiff is in possession of the suit property and decreeing the suit of the plaintiff. He submits, documents produced by the parties would show, plaintiff is not in possession and enjoyment of the suit property. In spite of that, Courts below have committed an error in decreeing the suit of the plaintiff. He submits, there is substantial question of law which needs to be considered and answered in favour of the appellants.

12. Per contra, learned Counsel appearing for the plaintiff - respondent herein submits, there is no illegality or infirmity in the Judgments and decree of the courts below, warranting interference of this Court, and he prays for dismissal of the appeal.

13. Ex. P.1 - grant certificate produced by the plaintiff would show suit site measuring 50 x 100 feet bearing No. 71, situated at Karekatte village, Channagiri taluk was granted by the Government in favour of one Abdul Khuddus. Ex. P.2 - licence issued by the concerned Panchayat would show, the Panchayat had granted licence in favour of Abdul Khuddus, permitting him to construct a house in the suit site. Exs.P.3 to P.9 would show suit schedule property was standing in the name of Khuddus Sab, In Ex. P.10 - DCB register extract of the year 2009-10 name of plaintiff appeared. Ex. P.23 the sale deed executed by Abdul Khuddus would show, the said Abdul Khuddus sold the suit property in favour of the plaintiff. Ownership of the plaintiff and his vendor to the suit property are not only supported by documentary evidence produced at Exs.P.1 to P.23, they are corroborated by the oral evidence of plaintiff examined as P.W.1 and a witness examined as P.W.2. Further, second defendant examined as D.W.1 in his cross examination has admitted that Government has not issued any grant certificate in his favour. In his further cross examination, he deposed :

14. He has admitted that both properties are different and Government has not issued grant certificate in his favour.

D.W.2 in his cross examination has admitted that

15. If the above portion of evidence is taken into consideration, D.W.1 himself admits that there is no connection between the suit property and his property.

16. D.W.3 has also admitted, site No. 71 was granted to Abdul Khuddus and admits its boundaries. D.W.4 in his cross examination has admitted that Panchayath has issued an endorsement stating that there is no property bearing khata No. 649. This would show property bearing khata No. 649 is not in existence. Defendants have not produced documents to show the existence of the property situated within the boundaries mentioned in Ex. D.7. Perusal of the permanent injunction granted in O.S. No. 276/1992 produced at Exs.D.1 and D.2 would show, site number and boundaries mentioned in the schedule of O.S. No. 276/1992 are altogether different from that of the number and boundaries of the plaint schedule property. Considering this, trial Court was justified in holding, plaintiff has proved that he is in lawful possession and enjoyment of the suit property and defendants are trying to interfere with the said possession and granting a decree of permanent injunction restraining defendants from interfering with the possession of the plaintiff over the suit property.

17. The lower appellate Court on re-appreciation of the entire oral and documentary evidence on record was justified in dismissing the appeal and confirming the decree passed by the trial Court.

18. I have carefully gone through the concurrent findings of the courts below and do not find any illegality and infirmity in the judgments and decrees of the courts below, warranting my interference, much less there is no substantial question of law which arises for consideration.

19. Accordingly, appeal is dismissed as devoid of merits.

No order as to costs.

In view of dismissal of main appeal, I.A. No. 1/2015 for stay does not survive for consideration and it is rejected.