
(2015) 01 KAR CK 0080

Karnataka High Court

Case No: Regular Second Appeal No. 177/2008

K.S. Balasundar

APPELLANT

Vs

Ramappa

RESPONDENT

Date of Decision: Jan. 20, 2015

Acts Referred:

- Karnataka Land Revenue Act, 1964 - Section 136(2)

Hon'ble Judges: B.S. Patil, J.

Bench: Single Bench

Advocate: S. Shivanand, Advocate, for the Appellant; B. Rudragowda, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

B.S. Patil, J.

This regular second appeal is directed against the judgment and decree dated 14.08.2007 passed by the I Addl. Civil Judge (Sr. Dn) & CJM, Shivamogga dismissing the Regular Appeal No. 14/2002 filed by the appellant confirming the judgment & decree passed by the Trial Court in OS No. 662/1990.

2. Appellant herein is the plaintiff before the Trial Court. He filed the suit seeking relief of declaration that, he is the owner of the suit schedule property and the occupancy certificate issued by the Tahasildar registering the defendant as tenant was not binding on him as the same was illegal. Plaintiff also sought for a direction to the defendant to hand over possession of the suit schedule property and for permanent injunction restraining the defendant from interfering with his enjoyment of the property.

3. Subject matter of the suit schedule property is 1 acre 6 guntas of land situated at Horabyly Village, Kumsi Hobli, Shivamogga Taluk. According to the plaintiff total extent of land in Sy. No. 11 is 7 acres 18 guntas. This land was purchased in public auction by one Sri. Ramachandrappa, grand father of the plaintiff. Ramachandrappa

had three children by name Sri. Gundappa, Sri. Krishnamurthy and Sri. Subbarao. During the life time of Ramachandrappa family settlement took place on 31.05.1952 where under 1 acre 20 guntas fell to the share of Sri. Gundappa, 2 acre 02 guntas to the share of Sri. Krishnamurthy whereas Sri. Subbarao, father of the appellant was given 2 acre 30 guntas.

4. It is urged by the plaintiff that total extent of land which was the subject matter of the settlement deed worked out only to 6 acre 12 guntas. Therefore, another extent of 1 acre 1 gunta remained with the grand father of the plaintiff. It is out of the said 1 acre 1 gunta, plaintiff claimed right over the remaining 32 guntas of suit scheduled land. Plaintiff alleged that defendant who claimed tenancy rights over a portion of the land that had fallen to the share of Sri. Gundappa had illegally encroached upon the land that the grand father of the plaintiff had retained (1 acre 1 gunta). It is also urged that though the defendant was granted occupancy rights in respect of 1 acre 20 guntas he had managed to secure occupancy certificate in respect of 2 acre 20 guntas, contrary to the order passed by the Tribunal. Thus, the plaintiff claimed that he was entitled for possession of the suit scheduled property from the defendant and for a declaration that he was the absolute owner of the same.

5. The suit was resisted by the defendant denying plaintiff averments. Both the courts below have held, upon appreciation of the evidence on record, that plaintiff had failed to establish that he was the absolute owner of the suit schedule property and that the defendant had illegally encroached the land belonging to the plaintiffs grand father.

6. This appeal has been admitted to consider the following substantial questions of law:

"a) Whether the Court is justified in holding that the Plaintiff is not the owner of the suit Schedule property despite the Defendant admitting the source of title of both the Plaintiff and the Defendant is one and the same?

b) When the source of title is one and the same for the Plaintiff and the Defendant, whether the Defendant can be allowed to dispute the source of title of the Plaintiff in respect of 32 Guntas of Land which is the subject matter of form No. 10 issued by the Land Tribunal?

c) Whether the Courts below are justified in holding that the Plaintiff has not established his right of ownership, particularly in the absence of any other documents, and particularly when both the Plaintiff and the Defendants are claiming their right under the Kethuvar register and particularly when the said khetuvar extract is not disputed by the Defendant?

d) Whether the reasons assigned by the Trial Court is proper and correct in holding that the non-filing of the appeal under Sec. 136(2) of KLR Act is fatal particularly

when the possession of the Plaintiff was admittedly taken forcibly by the Defendant after the order made by the High Court directing the Plaintiff to approach the Civil Court and the Tahasildar ordering to mutate only 14 Guntas of land in the name of the Plaintiff?

e) When the suit is for declaration and possession whether the filing of the Appeal under Sec. 136(2) of KLR Act is mandatory?"

7. I have heard the learned counsel for both the parties on the substantial questions of law framed.

8. On perusal of the judgment under challenge and on consideration of the entire material on record, I find that plaintiff was required to establish that as per the settlement deed after the property was settled in favour of the three sons of Ramachandrappa an extent of 1 acre 1 gunta was retained by the grand father over which plaintiff had right and that the said land was illegally claimed by the defendant. In fact the trial court has framed specific issues in this regard placing burden on the plaintiff to establish that he was owner in possession of the suit scheduled property and that defendant had taken possession of the land forcibly from him.

9. Both the Courts below have found that Ex. P-25 settlement deed dated 31.05.1952 on which reliance was placed by the plaintiff himself, Sy. No. 11 was allotted in favour of the three brothers. Subbarao, the 3rd brother i.e., father of the appellant herein was given 2 acres 30 guntas. There is nothing in this document to show that 1 acre 1 gunta of land remained after the distribution among the three brothers and the said remainder was retained by the grand father of the plaintiff. This is the most important factor which has to be taken into consideration to appreciate the case of the plaintiff. In Ex. P-25, nothing is stated regarding the remaining land nor has it been evidenced by any entries in the revenue record showing the name of Ramachandrappa, grand father of the plaintiff as owner of 1 acre 1 gunta of land after the settlement deed. Therefore, there are no documents at all to show what had happened to the said 1 acre 1 gunta of land.

10. Plaintiff has produced the khatewar extract before the First Appellate Court. The first Appellate Court has permitted the document to be marked in evidence based on the saying. It is urged by the learned counsel for the appellant that the First Appellate Court has failed to appreciate this document and the matter was remanded for reconsideration with reference of this document.

11. I have perused this document with the help of learned counsel appearing for both the parties. It does not disclose anything to advance the case of the plaintiff. Therefore, contention urged by the learned counsel for the appellant to remand the matter for reconsideration does not merit acceptance. It is true, the Tribunal has granted occupancy right only in respect of 1 acre 20 guntas of land in favour of the defendant. However, it is mentioned in the course of the order that the said

measurement would be subject to actual measurement. It was perhaps because of this reason, after the order was passed by the Tribunal, actual measurement was carried out and while issuing occupancy certificate the Tahasildar has issued occupancy certificate in respect of 2 acre 12 guntas of land. This discrepancy in the order of the Tribunal and the occupancy certificate issued with regard to the extent of land cannot result in proving the case of the plaintiff. Plaintiff has to establish his case. The weakness in the case of the defendant will not result in plaintiff succeeding to get his title over the suit schedule property established. Therefore, both courts have rightly held that plaintiff failed to establish his title and possession at any point of time over property in question.

12. There is no perversity in the appreciation of evidence. Both courts below have not misread or misconstrued any admission or any statement made by the parties nor have they committed any error in construing the documents including the khathewar certificate that was produced by the plaintiff as additional evidence.

13. Hence, no substantial questions of law arises for consideration. In the result, appeal fails and the same is dismissed. In the circumstances, parties shall bear their respective costs.