

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 2nd day of January, 2007

BEFORE

THE HON'BLE MR. JUSTICE N KUMAR

Regular Second Appeal No. 1911 of 2005

BETWEEN:

Mallikarjunappa
S/o Shivananjappa
Age 45 years
R/at Guntapura Village
Satyamangala Taluk
Talavadi Pirka
Pin 415 719

...Appellant

(By Sri V Rangaramu,
M/s Rangaramu & Associates
Advocates)

AND:

G S Ravichandra
Age 36 years
S/o G P Shivanna
R/at Basavapura Village
Haradanahalli Hobli
Chamarajanagara District

...Respondent

(By Sri K V Narasimhan, Advocate)

RSA filed u/s 100 of CPC against the judgment and
decree dated 10-6-2005 passed in RA No.4/2005 on the file of


the Civil Judge (Sr.Dn.) and CJM, Chamarajanagara, allowing the appeal and setting aside the judgment and decree dated 30-11-2004 passed in OS No.60/1998 on the file of the Prl. Civil Judge (Jr.Dn.), Chamarajanagar and JMFC, Chamarajanagar.

This RSA coming on for admission this day, the Court delivered the following:

J U D G M E N T

This is a defendant's second appeal. One Puttamadappa left behind his sons G.P. Mahadevappa, G.P. Bsavanna, G.P. Shivnanjappa, G.P. Chandrappa, G.P. Shivarudrappa and G.P. Shivanna. Plaintiff is the son of G.P. Shivanna. In the year 1966, there was a palupatti entered into between the aforesaid sons effecting partition of all the joint family properties. In the said partition, the suit schedule properties which are situated in Punajur village, Chamarajanagar Taluk in Karnataka State fell to the share of plaintiff's father. The defendant's father was a permanent resident of Guntapur village in Madras State. The plaintiff's father became permanent resident of Basavapura village, in Karnataka State. As both these parties felt difficult to cultivate the lands which fell to their share as they were situated in different States, on

18.11.1993, they entered into an agreement to exchange the properties. Subsequently, on 28.06.1995 an unregistered partition deed was also executed by defendant's father and other sharers under which this exchange was also given effect to and assented to, by all the family members. In fact, the defendant's father and the defendant also sworn to an affidavit affirming this understanding entered into between the parties which affidavit was sworn to before the Advocate of the defendants who represented the defendant in the proceedings before the trial Court. On the basis of all these documents, mutation entries were made in favour of the plaintiff after the death of his father in respect of the suit schedule properties. When the defendant threatened to interfere with the plaintiff's peaceful possession and enjoyment of the suit schedule property, the plaintiff was constrained to file a police complaint, which was followed by a criminal case. Thereafter, he filed a suit for injunction restraining the defendant from interfering with his lawful possession of the suit schedule property.




2. The defendant contested the matter. His defence is a blanket denial of the plaintiff's case. He has not set out what his defence is. He contended that plaintiff's father executed a sale deed in his favour in respect of the properties which has fallen to his share in the earlier partition and which are situated in Guntapura village. Thus, it was contended that plaintiff has no manner right, title or interest over the suit schedule property or the property which was allotted to his share in the earlier partition.

3. The trial Court after framing of issues, recorded the evidence. When the agreement of exchange as well as the partition deed dated 28.06.1995 were sought to be marked, it was objected to on the ground that they have not been duly stamped and they are not registered. Objections were up held and plaintiff was directed to pay the duty and penalty, which the plaintiff did not pay. Therefore, those documents were excluded. The trial Court held that even if Ex.P-1 to P-17 the mutation records show the name of the plaintiff as the cultivator in respect of the suit schedule properties, as the said

entries were made on the basis of documents which are not valid, no presumption would arise. On the contrary it held that the plaintiff himself admits the execution of the sale deed by his father in favour of defendant and the suit is not one for declaration of title. The suit of the plaintiff came to be dismissed holding that the plaintiff has failed to prove his lawful possession over the suit schedule property.

4. Aggrieved by the same, the plaintiff preferred a Regular Appeal. The lower appellate Court reappreciated the entire evidence on record. It held that an agreement of exchange does not require any registration and it is on Rs.11/- stamp paper and therefore the trial Court was in error in ignoring the said document. It also held that a family settlement where party records an earlier partition do not require registration. Therefore, the trial Court was in error in not looking into the document dated 28.06.1995. It further took note of the entries in Exs.P-1 to P-17 which showed that the plaintiff was in lawful possession of the suit schedule property. On the contrary, the defendant has not produced a


scrap of paper to show his possession over the suit schedule property. It also looked into the affidavit sworn to by the defendant and his father where under, they have recorded the exchange agreed to between the parties. The said affidavit is sworn to before the very Advocate who was fighting the litigation on behalf of the defendant in the trial Court. Therefore the appellate Court held that these materials on record clearly show that there was an agreement of exchange, in terms of the agreement of exchange the plaintiff has performed his part by executing a registered sale deed in favour of the defendant and it is the defendant who has failed in performing his part of the agreement and on the contrary he has totally denied the signature on the affidavit, denied the signature on the agreement of exchange as well as the partition, which is unjust and therefore it held that, as the suit is only for a bare injunction, all that the Court has to see is whether the plaintiff is in lawful possession on the date of the suit.




5. Ex.P-1 to 17, the revenue records shows that plaintiff is in uninterrupted possession of the suit schedule property from 1993 till today and on the contrary, no revenue records are produced by the defendant to show his possession over the suit schedule property. In the facts of the case, the relationship of the parties and nature of transaction entered into between the parties, the plaintiff has proved his lawful possession over the suit schedule property on the date of the suit. The further material on record shows that the defendant is not in possession of the suit schedule property. When the affidavit sworn to by the defendant and his father before the very same Advocate who was contesting the matter, shows that the parties agreed to exchange their properties as it was inconvenient to cultivate the properties as they are situated in two different States. The lower appellate Court felt that the justice of the case would demand that the plaintiff to be granted the relief of injunction leaving the parties to agitate their ^{rights} ~~respective possession~~ in a comprehensive civil suit.

6. Aggrieved by the judgment and decree, the defendant is in appeal.

7. I have heard learned Counsel for the parties. The suit is not for declaration of title. The relationship between the parties is not in dispute. The partition is of the year 1966 and the properties which fell to the share of plaintiff's father and the defendant's father is not in dispute. Defendant is a permanent resident of Madras State, whereas, the plaintiff is a permanent resident of Karnataka State. Unfortunately, in the partition, the properties in Karnataka State was given to the defendant's father and the plaintiff's father was given some of the properties which is situated in Madras State and as such they are finding it difficult to cultivate the same. It is in this context, on 18.11.1993, they have entered into an agreement to exchange the properties. An agreement to exchange the properties does not require registration and it need not be on the stamp paper as well, as the parties are family members. The said agreement forms part of the affidavit sworn to by defendant and his father, which is sworn to before their



Advocate who was contesting the matter for them in the trial Court. In fact, on 28.06.1995 all the members of the family have entered into a partition agreement confirming this exchange. Acting on this exchange, from 1993 till today, mutation entries are made in the name of the plaintiff. On the contrary, no entry is found in the name of the defendant for the last 14 years. The trial Court was thoroughly wrong in rejecting the case of the plaintiff on the ground that the documents are inadmissible as they are not duly stamped and requires registration. The first appellate Court was justified in reversing the said finding which is *ex facie* illegal and holding that the plaintiff is in lawful possession and granted the decree of permanent injunction. Therefore, the first appellate Court was satisfied with the exchange as it was admitted in the affidavit filed and sworn to by the defendant and his father coupled with the fact that from 1993 till the date of the suit, the mutation entries stood in the name of the plaintiff. It was justified in holding that the plaintiff is in lawful possession and he is entitled to a decree of permanent injunction.



9. No substantial question of law do arise for consideration in this second appeal which merits admission. ***No merit in this appeal. Dismissed.*** However, it is open to the parties to seek declaration of title in a comprehensive suit before the appropriate forum. Any of the observations made in this proceedings would not come in the way of the said Court deciding the case on merits and in accordance with law.

Sd/-
JUDGE

ksp/-