

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD

DATED THIS THE 31ST DAY OF AUGUST, 2012

BEFORE

THE HON'BLE MR. JUSTICE ASHOK B. HINCHIGERI

REGULAR SECOND APPEAL NO. 2787/2007 (INJ)

BETWEEN:

B. Shivalingappa
S/o. B. Ayyappa
Aged about 47 years,
Occ. Agriculture,
R/o. Nanyapura village,
Post: Nanyanapura
Taluk H.B. Halli-583212,
District Bellary-583101.

... Appellant

(By Shri M.H. Patil for Shri K.G. Shanthappa, Advocate)

AND:

1. N. Nagaraj
S/o. Pampappa
Aged about 29 years,
Occ. Agriculture,
R/o. Nanyapura village,
Post: Nanyanapura
Taluk H.B. Halli-583212,
District Bellary-583101.
2. Barli Channappa
S/o. Channavva

Aged about 31 years,
 Occ. Agriculture,
 R/o. Nanyapura village,
 Post: Nanyanapura
 Taluk H.B. Halli-583212,
 District Bellary-583101.

3. B. Kattebasappa
 S/o. B. Ayyappa
 Aged about 50 years,
 Occ. Agriculture,
 R/o. Nanyapura village,
 Post: Nanyanapura
 Taluk H.B. Halli-583212,
 District Bellary-583101.

... Respondents

(By Shri Hanumantha Reddy Sahukar, Advocate
 for respondent No.1; Respondent Nos. 2 and 3 are
 served)

This Regular Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree, dated 31.07.2007 passed in R.A.No.3/2007 on the file of the Addl. Civil Judge (Sr.Dn.), Hospet, allowing the appeal and setting aside the judgment and decree dated 23.12.2006 passed on issue Nos.1 to 3 in O.S.No.101/2005 on the file of the Civil Judge (Jr.Dn.) and JMFC, H.B. Halli, dismissing the suit for perpetual injunction filed under Order 7 Rule 1 of the Code of Civil Procedure, 1973.

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

JUDGMENT

This is the 1st defendant's appeal against the judgment and decree dated 31.07.2007 passed by the Court of the Civil Judge (Sr.Dn.), Hospet, in R.A. No.3/2007.

2. The parties are referred to as per their ranks in the Trial Court proceedings.

3. The facts of the case in brief are that the plaintiffs (respondent Nos. 1 and 2) filed the suit for injunction in respect of two items of a property – (i) 2 acres 10 cents at Survey No. 314/2 and (ii) 3 acres 50 cents at Survey No. 315/2 both of Hosakeri village, Hagaribommanahalli taluk. The plaintiff Nos. 1 and 2 are the nephew and uncle respectively. It is their case that the first item of property was granted to the 1st plaintiff by the Government on 29.01.2002. The second item of the property was granted by the Government to the 2nd plaintiff on 21.06.1997. As the

1st defendant (the appellant herein) and 2nd defendant (3rd respondent herein) were interfering in the agricultural operations of the plaintiffs on the said items of the properties, they approached the Civil Court seeking the grant of decree of perpetual injunction. The 1st defendant (appellant herein) filed the written statement denying the claims of the plaintiffs. He contended that the properties are granted to the defendants and that the defendants are in possession of the said properties. On considering the rival pleadings, the Trial Court formulated the following issues:

1. Whether plaintiffs prove that they are in lawful possession of the suit schedule property as on the date of filing of this suit?
2. Whether plaintiffs prove the alleged interference against the defendant as stated in para V of the plaint?

3. Whether plaintiffs are entitled to the relief sought for?

4. What order or decree?

4. The 1st plaintiff got himself examined as P.W.1 and three more witnesses, namely, Revannavara Veeranna, Setty Veerappa and Papappa were examined as P.Ws.2 to 4 respectively marking the documents at Exs.P-1 to 9. The 1st defendant got himself examined as D.W.1, T.Malleshappa, Angadi Veereshi, Mallappa and Bangarappa were examined as D.Ws.2 to 5. No documents whatsoever were marked on behalf of the defendants. On considering the pleadings, oral and documentary evidence placed on its record, the Trial Court answered the contentious issues against the plaintiffs and dismissed the suit. What weighed with the Trial Court in dismissing the suit is that the grant certificate (Ex.P-1) in respect of the land at Survey No. 315P contains no boundary whatsoever; in respect of the second item of the property at Survey No. 314P, the

grant certificate (Ex.P-2) contains the schedule, but the schedule in the grant certificate does not tally with the schedule furnished in the amended plaint.

5. Aggrieved by the dismissal of their suit, the plaintiffs filed the regular appeal. The First Appellate Court allowed the appeal by setting aside the Trial Court's judgment and by decreeing the suit. What weighed with the First Appellate Court in doing so is that the defendants have not produced any documentary evidence, they have not substantiated the basis of their possession in respect of the lands in question. The First Appellate Court has come to the conclusion that the plaintiffs' evidence is better than the defendants evidence and that is why their suit ought to have been decreed.

6. Sri M.H. Patil, the learned counsel for the appellant submits that the burden of proving the case is on the party, which/who approaches the Court. In

the instant case, the said burden has not been discharged by the plaintiffs.

7. Sri Hanumantareddy Sahukar, the learned counsel for the plaintiffs (respondent Nos.1 and 2) submits that the defendants have no tenable defence to this suit. Only to harass the plaintiffs, who are the lawful grantees of the lands in question, they have filed this appeal. He submits that the suit is for injunction; if the defendants want to set up the title or want to contend that their property is encroached by the plaintiffs, they have to file an independent suit. He repeatedly submits that no documents whatsoever are produced by the defendants. He submits that the plaintiffs in the instant suit have not sought any declaratory relief. They have only sought the relief of injunction by producing the clinching documents to show that they are in possession of the properties in question.

8. The submissions of the learned advocates have received my thoughtful consideration. The certified copies of the records are made available to me at the bar. What cannot be lost sight of is that the plaintiffs have not produced any documentary evidence to show as to what are the boundaries of the land at Survey No. 315. The saguvali chit at Ex.P-1 contains no schedule and no boundaries. In respect of the other piece of the land at 314, the saguvali chit at Ex.P-2 shows the land at Survey No. 313 on the eastern front. However, in the schedule given in the amended plaint, the eastern boundary is shown as Survey No. 312. Thus, the very identity of both the properties is not established in any satisfactory way. The plaintiffs have not produced the documents, which may have been issued subsequent to the issuance of saguvali chits. If no documents were issued, they ought to have requested the Surveyor or the Assistant Director of Land Records to hold the joint survey and demarcate the boundaries. It is also interesting to note that neither of the parties even

made any application to the Trial Court for the appointment of the Court Commissioner nor has the Trial Court appointed the Court Commissioner *suo motu*. The evidence placed on record is not adequate to decree the suit.

9. The written statement of the defendants is also extremely vague. In para 4 of the written statement, the 1st defendant has stated as follows:

“The plaint schedule mentioned properties are originally belongs to Government properties. The Government assigned patta in favour of these defendants in respect of Survey No. 34/2 measuring 2.10 cents. It was in peaceful possession and enjoyment of this defendant. Further in item No.2 i.e., Survey No. 315/2 this respondent is cultivated the 204 acres remaining portion of 1-46 is cultivated by one Barli Channappa. The plaintiff has filed a suit against the wrong person. Barli Channappa is not added as parties to the suit. After the survey of these suit properties, the defendants cultivated suit schedule mentioned property according to the enjoyment. The surveyor also

issued a sketch in favour of this defendant. The respondent paid necessary fees to the Government and obtained patta from the Government. Since from 1981 this defendant has been in peaceful possession and enjoyment of the suit schedule property.....”

10. The above pleadings do not clear the confusion, but they only add to the confusion. The 1st defendant also claims grant of the land, but he does not chose to produce the grant certificate. The non-production of the grant certificate could also be indicative of the advancing of the false claims by the defendants.

11. The extracted para 4 is not clear about the survey numbers of the properties. The 1st defendant claims that a sketch was issued in his favour. If it were issued, it is not known why it was withheld from the Court. The Court may presume the existence of certain facts as per Section 114, Illustration (g) of the Indian Evidence Act, 1872. The First Appellate Court’s

judgment is also not sustainable, as the injunction suit is decreed, even in the absence of any document showing the boundaries of the properties. The reasoning of the First Appellate Court's judgment that whoever produces better evidence has to win the case is not supportable. The party, who or which approaches the Court, has to establish his entitlement by placing the cogent evidence. On the questions of the First Appellate Court not acting in the letter and spirit of Section 114(g) of the Indian Evidence Act, 1872 and its decreeing the suit even in the absence of schedules and boundaries of the properties, I allow this second appeal and set aside the First Appellate Court's judgment.

12. But that does not mean that the Trial Court's judgment has to revive itself. The evidence placed on the record of the Trial Court is not adequate to come to the conclusion this way or that way and therefore, I am of the considered view that the Trial Court's judgment is also required to be set aside and the matter is

required to be remanded to the Trial Court for fresh and/or additional evidence in support of their respective case. I order accordingly.

13. The First Appellate Court has passed the judgment on 31.07.2007. Though this appeal has been pending for the last five years, this Court is not persuaded by the appellant's side to grant any stay of the First Appellate Court's judgment. Therefore, I deem it necessary and just to restrain the defendants from interfering with the plaintiffs' possession of the suit schedule property for a period of six months. The Trial Court shall dispose of the remanded matter within four months from today. Both the sides are directed to co-operate with the trial Court in the speedy disposal of the matter. The parties herein and/or their respective learned advocates are directed to appear before the Trial Court on 10.09.2012 without waiting for any notice from the Trial Court. The reasons given and the observations made herein above are only for

the purpose of disposing of this appeal. The Trial Court shall adjudicate the remanded matter independently of and uninfluenced by the reasons given hereinabove.

Sd/-
JUDGE

hnm/