

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF NOVEMBER, 2019

BEFORE

THE HON'BLE MR.JUSTICE B.M.SHYAM PRASAD

REGULAR SECOND APPEAL No. 627 OF 2016 (INJ)

BETWEEN:

SRI G. POORNARAM
SON OF GHISARAMJI,
AGED ABOUT 63 YEARS,
RESIDENT OF NO. 29/1,
24TH CROSS, KILLARI ROAD,
BENGALURU - 560 002.

... APPELLANT

(BY SRI. RAVINDRA V S., ADVOCATE)

AND:

SMT. S PUSHPA
WIFE OF K. SRINATH,
AGED ABOUT 45 YEARS,
RESIDENT OF NO. 507,
3RD MAIN ROAD, 2ND STAGE,
RAJAJINAGAR, BENGALURU - 560 055.

... RESPONDENT

(BY SRI. M.ASWATHANARAYANA REDDY., ADVOCATE)

THIS REGULAR SECOND APPEAL IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 28.01.2016 PASSED IN R.A.NO. 310/2012 ON THE FILE OF THE VII ADDL. DISTRICT AND SESSIONS JUDGE, C/C I ADDL. DISTRICT AND SESSIONS JUDGE, BENGALURU RUAL DISTRICT, BENGALURU, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 11.01.2012 PASSED IN OS NO. 1392/2007 ON THE FILE OF

THE II ADDL. CIVIL JUDGE (JR.DN), BENGALURU RURAL DISTRICT, BENGALURU.

THIS REGULAR SECOND APPEAL COMING ON FOR ADMISSION THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is by the defendant in O.S.No.1392/2007 on the file of the II Additional Civil Judge (Jr.Dn.), Bengaluru Rural District, Bengaluru (for short, '*the Civil Court*') calling in question the judgment dated 11.01.2012 in such suit and the judgment dated 28.1.2016 in the first appeal filed by him in R.A.No.310/2012 on the file of the I Additional District and Sessions Judge, Bengaluru Rural District, Bengaluru (for short, '*the appellate Court*').

2. The civil Court by its judgment dated 11.1.2012 has decreed the respondent's suit in O.S.No.1392/2007 for permanent injunction restraining the appellant from interfering with the respondent's possession of the vacant site bearing No.421 situated at Herohalli village, Magadi

road, Yeshwanthpura hobli, Bengaluru North Taluk (for short, '*the subject property*') and the same is confirmed by the appellate Court by its judgment dated 28.1.2016.

3. The appellant and the respondent do not dispute M/s Bharath Electronics Employees Co-operative House Building Society Limited (for short, '*the Society*') allotted the subject property to the deceased Smt.Vasantha on 30.3.1991 and the Society absolutely conveyed title thereto in favour of Smt.Vasantha under the Sale Deed dated 3.5.1993. The dispute between the appellant and the respondent is because the respondent/ plaintiff contends that after the demise of Smt.Vasantha, her husband Sri Rangaprasad, who had obtained mutation entries for the subject property in his favour with local authority, transferred the same in favour of the respondent under the Sale Deed dated 1.3.2006. The respondent is in possession of the subject property ever since, and even the revenue entries have been made in the name of the respondent. On

the other hand, the appellant contends that Smt.Vasantha executed power of attorney dated 3.12.1999 constituting a certain, Sri M.H. Anjana Murthy, who is examined as DW.2, as her agent. The agency in favour of Sri M.H.Anjana Murthy is coupled with interest inasmuch as Smt.Vasantha executed contemporaneous affidavit acknowledging that such agency is constituted in consideration of receipt of Rs.1 lakh. Sri M.H.Anjana Murthy, being thus vested with the authority to sell the subject property, has transferred the same in favour of the appellant under the Sale Deed dated 22.2.2006.

4. The respondent has filed the suit for permanent injunction relying upon the aforesaid assertions contending that the appellant tried to trespass into the subject property on 14.7.2007. The appellant and the respondent have led their respective evidence/s. The respondent has examined her husband, Sri.K.Shrinath as PW.1 and marked exhibits P.1 to P.17 which include the Sale Deed dated 1.3.2006,

revenue records and photographs. The appellant has examined himself as DW.1 and the aforesaid power of attorney, Sri. M. H. Anjana Murthy, as DW.2. The appellant has marked the Possession Certificate, Allotment letter, Power of Attorney, and the Sale Deed in favour of Smt. Vasantha as well as his favour.

5. The civil Court, while considering the Issues which required the respondent to show that she was in lawful possession and enjoyment of the subject property and interference by the appellant, has concluded that the respondent has discharged such burden. The civil Court has examined the evidence on record from the perspective of the admitted fact that the subject property is a vacant site and therefore, possession will have to be decided on the basis of title. The civil Court has concluded that the respondent is able to produce consistent title documents and the revenue records, but the appellant has not produced revenue records that would substantiate title.

6. The appellant, being aggrieved by this judgment, has filed the first appeal. The appellate Court has re-appreciated the entire evidence on record and on such re-appreciation of the evidence has concurred with the Civil Court's judgment. The appellate Court, in endorsement of the approach taken by the civil Court to decide the question of possession based on the title and nature of the subject property, has concluded that the respondent is able to establish the title to the subject property, and therefore possession thereto, based on the documents that are consistent. The appellate Court has held that the appellant, who has not filed any suit denying the respondent's title to the subject property and who has not produced documents to establish that the power of attorney in favour of DW.2 is irrevocable, has not established either title or possession of the subject property. It is undisputed that Smt. Vasantha died on 10.12.1999 and on her demise, the power of attorney executed by her is also terminated. As such, the

attorney/agent-DW 2 could not have executed the sale deed dated 22.2.2006. The appellate Court has also considered that the appellant had not been able to establish payment of consideration despite the power of attorney, examined as DW.2, stating that he had disclosed the payment of consideration in his income tax returns.

7. The appellate Court has re-appreciated the evidence and on such reappreciation of the evidence, has concluded that the respondent is able to establish possession. It is settled that in any second appeal, there can be interference only if a substantial question of law is made out, and such substantial question of law would arise only if the findings of the courts below are without evidence or is overlooking the evidence on record, or is otherwise contrary to law. The learned counsel is unable to point out that there is any material on record to establish either the payment of consideration by the agent/attorney – DW.2 to Smt. Vasantha or that the power of attorney

executed in favour of DW.2 by her is coupled with interest. Further, the learned counsel for the appellant is unable to point out that the appellate Court's decision is contrary to the evidence on record or is based on material which is not part of the record as evidence, or that the finding is perverse being contrary to settled law. As such, no substantial question of law is made out, and the appeal is accordingly dismissed.

In view of dismissal of the appeal, IA No.1/2016 does not survive for consideration and the same is dismissed.

**SD/-
JUDGE**

SA
Ct:sr