

CASE NO.:
Appeal (civil) 945-946 of 2003

PETITIONER:
Venkatappa @ Moode (D) by LRs.

RESPONDENT:
M. Abdul Jabbar & Ors.

DATE OF JUDGMENT: 24/02/2006

BENCH:
Arijit Pasayat & R V Raveendran

JUDGMENT:
J U D G M E N T

RAVEENDRAN, J.

These civil appeals by special leave are filed against the judgment of the Karnataka High Court dated 24.9.1998 in R.S.A. No.233/1996 and order dated 10.4.2001 in R.P. No.745 of 2000.

1.1) The first respondent herein filed O.S. No.91/1989 against Venkatappa (of whom appellants 1 to 3 and respondents 2 and 3 are the legal heirs) and Military Karigowda (of whom respondents 4(a) to 4(h) are the legal heirs) in O.S. No.91 of 1985 on the file of the learned Munsiff, Kanakapura, for a declaration that he was the absolute owner of the suit property and for a permanent injunction restraining the defendants from interfering with his possession and enjoyment of the suit property (site measuring 8 guntas in Khata No.3458 being Southern portion of Survey No.622/2, situated at Khalaknagar Road, Khalaknagar, Kanakapura Town, Bangalore district, bounded on the East by Municipal drain and conservancy road, West by houses of Sheriff Khan and house of Mohammed Sabu and Syed Ahmed, North by vacant plot of Rajashekhar and South by Khalaknagar Road). The trial court decreed the said suit, in part, by judgment and decree dated 11.12.1991 declaring the plaintiff to be the owner of 4 guntas of land on the Southern side of Survey No. 622/2 on the Kanakapura village and consequently, restraining the defendants from interfering with his possession in respect of the said land. The suit of the plaintiff in regard to remaining 4 guntas was dismissed.

1.2) The judgment and decree of the trial court were challenged by plaintiff as well as the first defendant. Feeling aggrieved by the rejection of relief in regard to 4 guntas, the plaintiff filed R.A. No.6/1992 on the file of the Civil Judge, Ramnagaram. Being aggrieved by the decree for injunction in regard to 4 guntas, the first defendant filed R.A. No.10 of 1992. Both the appeals were heard and dismissed by the first appellate court (Civil Judge, Ramanagaram) by a common judgment and decree dated 13.11.1995, thereby affirming the decree of the trial court.

1.3) Feeling aggrieved by the rejection of his claim in regard to a portion of the suit property (4 guntas), the plaintiff filed R.S.A. No.233/1996 before the High Court of Karnataka. The said second appeal was allowed by judgment dated 24.9.1998

and the suit was decreed as prayed for, by granting the declaration and injunction as sought, in regard to the entire extent of 8 guntas. The appellants herein (3 out of the five LR's. of first defendant) filed a petition (R.P. No.745/2000) seeking review of the said judgment. The review petition was dismissed vide order dated 10.4.2001. Feeling aggrieved, three of the LR's. of the first defendant (the widow and two sons of Venkatappa) have filed these appeals challenging the Judgment in second appeal and order in the review petition.

1.4) For the sake of convenience, we will refer to the first respondent as plaintiff and the deceased Venkatappa of whom appellants and respondents 2 and 3 are the LR's. as first defendant, with reference to their rank/s in the suit.

2. The plaintiff filed the said suit for declaration of title and permanent injunction alleging that one Puttaswamy was the owner of land bearing Survey No.622/2, Kanakapura; that the said survey number consisted of 8 guntas of cultivable land and 8 guntas of Kharab (land unfit for cultivating); that the said Puttaswamy had two wives and one son (first defendant) through the first wife, and three sons (Kempa Venkata, Venkataraju and Krishna) through his second wife Manchamma; that under a registered Partition Deed dated 27.1.1949, the said land was divided equally between Venkatappa (first defendant) on the one hand and the three minor children of Manchamma on the other hand (certain other properties were also the subject-matter of the said partition which are not relevant for the purpose of these appeals); and that as 8 guntas was kharab land, the partition deed referred to the division of the cultivable land only by mentioning that 4 guntas were allotted to the share of the first defendant and 4 guntas were allotted to the share of the three minor children of Manchamma; and that Venkatappa (first defendant) was in possession of 8 guntas (including 4 guntas of Kharab) and Manchamma's children were in possession of 8 guntas (including 4 guntas of Kharab) from the date of partition.

2.1) The plaintiff alleged that the first defendant who was in possession of 8 guntas of land, sold the entire land under 3 sale-deeds, namely, 2.75 guntas in favour of Venkatamma on 7.9.1949, 2.75 guntas in favour of Siddayya on 7.4.1949 and the balance shown as 2.75 guntas in favour of Manchayya on 30.9.1963 and did not retain any land in the said Survey Number. On the other hand, Manchamma and her two sons sold their portion of 8 guntas in Survey No.622/2 to the plaintiff under registered Sale Deed dated 29.9.1978; that the plaintiff thereafter got the 8 guntas of land purchased by him, measured through a surveyor, and fixed boundary stones; that he obtained conversion of the said 8 guntas of land (measuring about 70'X125') to non-agricultural use, vide order dated 30.7.1979 of the Tahsildar, Kanakapura Taluk; that he made an application to the Town Municipal Council, Kanakapura and got the Khata of the said land registered in his name in the Assessment Register of the Town Municipal Council vide Khata No.3458 and had been regularly paying the property tax to the Municipality.

2.2) The plaintiff alleged that Venkatappa (the first defendant) forcibly removed the boundary stones fixed by the plaintiff and by misrepresenting the facts, obtained Khata No.3404 in his name and immediately sold 4 guntas to second defendant on 19.2.1979. It is in these circumstances the plaintiff filed the suit for declaration and permanent injunction against the defendants in regard to 8 guntas of land.

3. The first defendant filed a written statement wherein he specifically admitted that the extent of Survey No.622/2 was 16 guntas, as alleged by the plaintiff. He, however, contended that the entire extent (i.e. 8 guntas of cultivable land and 8 guntas of kharab land) fell to his share under the partition and, accordingly, he was in possession of the entire extent of Survey No.622/2. He alleged that as Manchamma and her children did not have any right, title, interest or share in the said land and therefore, the plaintiff neither got possession nor title in regard to any portion of Survey No.622/2. He also admitted that he had alienated three portions, as alleged in the plaint, but contended that he was in possession of the remaining extent out of the 16 guntas of land and that the remaining extent was numbered as Khata No.3404 and he sold the same to the second defendant.

4. The trial court and the first appellate court held that as the Partition Deed showed that the extent of Survey No. 622/2 was eight guntas and the Northern half was allotted to the share of the first defendant, and Southern half was allotted to the children of Manchamma; and that therefore, plaintiff who purchased the portion of Survey No. 622/2 from the three sons of Manchamma was entitled to a declaration and permanent injunction in regard to the said extent of 4 guntas being the Southern half portion of Survey No.622/2. On second appeal by the plaintiff, the learned Single Judge of the High Court held that as the plaintiff and first defendant both admitted in the pleadings and their evidence that the extent of Survey No.622/2 was 16 guntas consisting of 8 guntas of cultivable land and 8 guntas of Kharab land and as the said land was equally divided between the first defendant on the one hand, and Manchamma's sons on the other hand under registered Partition Deed dated 27.1.1949, the plaintiff who purchased the portion of Manchamma's sons is entitled to the decree in respect of 8 guntas (including 4 guntas of kharab land) as prayed in the suit, and not just four guntas.

5. The said judgment of the High Court is challenged, inter alia, on the following grounds :

(i) When the Partition Deed showed that the extent of Survey No. 622/2 was 8 guntas and the plaintiff's vendor Manchamma and her sons were allotted the Southern portion of Survey No.622/2 measuring 4 guntas, the High Court was not justified in decreeing the suit in regard to the 8 guntas.

(ii) Venkatappa, first defendant, had sold only 4 guntas of land under Ex. P-12, P-13 and P-14 and had retained 4 guntas. Therefore, the plaintiff's contention that Venkatappa had sold the entire 8 guntas and did not own or possess any land in Survey No.622/2 was erroneous.

It is seen that what the appellants (LRs. of Venkatappa) have contended in the Special Leave Petition, is contrary to the written statement filed by Venkatappa. In the written statement, Venkatappa clearly admitted that the extent of Survey No.622/2 was 16 guntas consisting of 8 guntas of cultivable land and 8 guntas of Kharab land. He, however, untenably contended that the entire 16 guntas of land was allotted to his share and Manchamma's sons were not allotted any portion of Survey No.622/2. This was disproved by the Partition Deed (Ex. P-11) which showed equal extents in Survey No. 622/2 were allotted to Venkatappa (4 guntas) and to sons of Manchamma (4 guntas). The reason why only 4 guntas were mentioned is explained in the evidence of PW-1 (plaintiff) and PW-2

(Venkatarama, son of Manchamma and predecessor-in-title of plaintiff). Ex.P-1 which is the sale deed in favour of plaintiff executed on 29.9.1978 traces the title of the vendors of plaintiff and gives the measurement of the property sold to plaintiff as East to West : 95' on the Northern side, 70' on the Southern side and North to South : 125'. The conversion certificate (Ex.P3) gives the measurement of plaintiff's property as 70'x125'. The measurements show that what was purchased by plaintiff was about 8 guntas and not 4 guntas.

6. The first defendant Venkatappa admitted the plaint averment that he (the first defendant) had sold an extent of 2.75, 2.75 and 2.75 guntas (in all 8.25 guntas) of land in Survey No.622/2 to Venkatamma, Siddhayya and Manchayya under Sale Deeds dated 7.9.1949, 7.9.1949 and 30.9.1963 (in Para 6 of the written statement). But in the Special Leave Petition filed before this Court, the LRs. of the first defendant are putting forth a wholly different case. They are contending that 8 guntas of land was allotted to first defendant and 8 guntas of land was allotted to the sons of Manchamma. But they now allege that what was sold by Venkatappa (first defendant), under the three Sale Deeds dated 7.9.1949, 7.9.1949 and 30.9.1963 was only 4 guntas and he had retained 4 guntas. This is contrary to the pleadings and evidence. The appellants herein are bound by the pleadings in the written statement filed by the first defendant and cannot be permitted to put forth a new case.

7. In these circumstances, the High Court has held that there was no dispute about the total extent and about the partition of the said land equally and that the plaintiff had made out the title in regard to 8 guntas and decreed the suit for in respect of 8 guntas. The High Court modified the findings of fact in second appeal, as the courts below erroneously proceeded on the basis that the total extent of Survey No. 622/2 was only 8 guntas ignoring the admission contained in the pleadings and evidence of first defendant which supported the plaintiff's case that the total extent of Survey No. 622/2 was 16 guntas. Though what was purchased by the plaintiff was made up of 4 guntas cultivable land and 4 guntas of Kharab land, when the entire extent was converted to non-agricultural use vide order dated 30.7.1979 (Ex.P-3) of Tehsildar, Kanakapura, the land ceased to be 'cultivable land' and 'Kharab land' and became non-agricultural land. The High Court has, therefore, held that the plaintiff has established his title and possession in regard to the 8 guntas and he was entitled for permanent injunction restraining the defendants from interfering with his possession. It is true that the High Court has not given detailed reasons. But on a careful examination, we are satisfied that the ultimate finding recorded in the second appeal does not call for interference. The appeals are, therefore, dismissed.