NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5217 of 2011

PRASANNA AND OTHERS ...APPELLANT(S)

Versus

MUDEGOWDA (D) BY LRS. ...RESPONDENT(S)

J U D G M E N T

Aravind Kumar, J.

1. The father of the appellants late Srinivas Shetty filed a suit for declaration of title and perpetual injunction as an indigent person in Misc. Petition No. 24 of 1984 which came to be dismissed by the Trial Court on 5.5.1984. A suit in O.S. No. 22 of 1986 was filed by the appellants herein seeking partition and separate possession against their father late Srinivas Shetty and the purchaser of suit schedule property, namely, Mudegowda (the deceased respondent) who was arrayed as 2nd defendant. The said suit O.S. No. 22 of 1986 came to be dismissed vide judgment dated

10.9.1987 on the ground that on the date when Srinivas Shetty executed the sale deed in favour of Mudegowda, he was not married and appellants were not even born. However, an observation came to be made by the learned Trial Judge that late Mudegowda was not in possession of the suit schedule property and he had to file appropriate suit for possession of suit schedule property. It was also held that there was valid conveyance of title executed by Srinivas Shetty in favour of Mudegowda.

2. Appellants herein had filed suit O.S. No. 448/1987 against Mudegowda for perpetual injunction in respect of suit schedule property, which suit came to be dismissed on 22.08.1988 whereunder it was held that Mudegowda possessed a valid title to the suit property and the sale deed executed by Srinivas Reddy in favour of Mudegowda had not been challenged. It was also observed that appellants herein who were the plaintiffs in the said suit had failed to establish that they were in possession of the suit schedule property, nor did they contended that they have perfected their title by adverse possession.

3. In the light of observation made in O.S. No.22 of 1986 to the effect that Mudegowda was at liberty to seek for possession of suit schedule property resulted in Mudegowda filing a suit in O.S. No. 131/1988, which was decreed in his favour vide judgment dated 6.11.1992 by the Principal Munsif and Judicial Magistrate First Class. However, the appeal in R.A. No. 88/1992 filed by the appellants herein against the judgment in O.S. No. 131/1988 came to be allowed on the ground that the Munsif Court had no pecuniary jurisdiction to deal with the matter. Plaint was ordered to be presented before the proper court. Accordingly, plaint was presented before the Court of Additional City Civil Judge, (Senior Division), Mandya which was registered as O.S. No. 69 of 1994 for possession which came to be dismissed vide order dated 17.7.2003 on the grounds of : (a) suit being bad for non-joinder of necessary parties; and (b) suit was barred by limitation.

3.1 Being aggrieved by the aforesaid judgment and decree dated 17.7.2003, appeal bearing RFA No. 1141 of 2003 was filed wherein the issue of limitation apart from other grounds was canvassed by the defendants, namely, the appellants herein. It

was contended that suit for possession filed beyond the period of 12 years as prescribed under Article 64 of the Limitation Act, 1963, was bad in law or in other words suit was barred by limitation. The High Court held that there was no necessity for plaintiff to have filed suit for declaration of title since his title had been declared as valid in the earlier litigation between the same parties and on the issue of limitation it was held that in view of specific finding recorded in O.S. No.22 of 1986 suit filed within six months thereof was not barred by limitation. Hence, this appeal.

4. We have heard the arguments of Ms. Vrinda Bhandari, Mr. N.K. Verma, Ms. Anjana Chandrashekar, learned counsel appearing for the appellants (defendants) and Ms. Hetu Arora Sethi, Ms. Lalit Mohini Bhat, Mr. Abhimanyu Verma, Mr. K.S. Doreswamy, learned counsel appearing for the respondent 1 to 7.

4.1 It is the contention of learned counsel appearing for the appellant that appellate court ought not to have interfered with the well-reasoned finding recorded by the learned Trial Judge. The High Court had erroneously allowed the appeal ignoring the fact

that suit for possession by Mudegowda was filed 22 years after the execution of the sale deed on 26.1.1966 which ought to have been filed within 12 years from the date of execution of the sale deed as prescribed under Article 64 of the Limitation Act, 1963. It is also the contention of the learned counsel for the appellant that plaintiff ought to have instituted the suit within 12 years from the date of alleged dispossession. He would also contend that findings recorded by the Trial Court in O.S. No. 69/1994 has been completely ignored by the High Court and as such they prayed for setting aside the judgment of the High Court and the judgment of Trial Court being restored.

4.2 Per contra, the learned counsel appearing for the respondents would support the impugned judgment and has prayed for dismissal of the appeal.

5. The pleadings as laid before the Trial Court and particularly the averments made in the suit O.S. No.69 of 1994 (old No.131 of 1988) would clearly indicate that in the background of the observation made in O.S. No.22 of 1986 vide judgment dated

10.09.1987 to the effect that deceased respondent (Mudegowda) had valid title to the suit property and he had to file suit for possession, resulted in the present suit i.e. O.S. No. 69 of 1994 being filed. The prime ground on which the learned Trial Judge recorded a finding that plaintiff/the deceased respondent, was not in possession of the suit property was on account of Katha of suit property having not been transferred in the name of the plaintiff, though the tax paid receipts reflected the name of the plaintiff. This would indicate that a presumption would arise thereunder and said presumption had not been rebutted by the defendants. It is in this background on re-appreciation of the material evidence in general and particularly Exhibits P-25 and P-26 which reflected the name of deceased respondent as Kathedar, which had swayed in the mind of the High Court to arrive at a conclusion that finding recorded by the Trial Court being erroneous.

6. On the issue of limitation, the High Court has recorded the following finding:

> "14. So far as the question of limitation is concerned, the suit filed by a party for declaration of title cannot be dismissed when the suit filed by

him is well within 12 years. As a matter of fact, there was no necessity for the plaintiff to institute a suit for declaration of title since his title has been declared as valid in the earlier litigation between the same parties, since the plaintiff was defendant in the suit instituted by the defendants 1 to 4 in O.S. No. 22 of 1986. As a matter of fact, the suit filed by Srinivasashetty to declare that he is the absolute owner against the plaintiff Muddegowda in Misc. No.204 of 1984 has been dismissed, in spite of the orders of the Court, on two occasions, between the same parties, when there was no necessity for the plaintiff to seek the same relief. Be that as it may, even if such a prayer is sought by the plaintiff, the trial court should not have dismissed this suit on the ground that the plaintiff has failed to prove his title. So far as the question of limitation is concerned, even if the suit is filed only for possession, the suit cannot be dismissed in view of the specific finding in O.S. No.22 of 1986, which suit was filed by the defendants against the plaintiff for partition and separate possession. If a suit is instituted by the plaintiff pursuant to a finding in the earlier suit between the same parties, within six months from the date of disposal of the earlier suit, under no stretch of imagination, the suit of the plaintiff could have been held as barred by limitation by the Trial Court. Therefore, we are of the opinion that points 1 and 2, which arise for our consideration, are to be held in favour of the appellants and against the respondents.''

7. The aforesaid finding cannot be construed or termed as erroneous. The plaintiff who has entered the witness box as PW1 in his deposition dated 19.04.2001, has specifically deposed that he was in possession of the suit property after having purchased the same from father of appellants herein. The mother of the defendant who entered the witness box as DW-1 has deposed that she was in possession of the suit property 14 years prior to the recording of a deposition which was in the year 2002. It is for this precise reason the plea that was raised by the appellants before the learned Trial Judge as well as the High Court that they have perfected title to the suit property by adverse possession, has been negatived. It is trite law that once the title of the property has been upheld namely a finding has been recorded by a judgment and decree in the name of plaintiff in an earlier suit, in such circumstances, the onus to prove acquisition by adverse possession lay on the defendant. This proposition gets support from the judgment of this court in **Saroop Singh** Vs. **Banto and Others (**2005) 8 SCC 330. It states:

> **"28.** The statutory provisions of the Limitation Act have undergone a change when compared to the terms of Articles 142 and 144 of the Schedule appended to the Limitation Act, 1908, in terms whereof it was imperative upon the plaintiff not only to prove his title but also to prove his possession within twelve years, preceding the date of institution of the suit. However, a change in legal position has been effected in view of Articles 64 and 65 of the Limitation Act, 1963. In the instant case, the plaintiff-respondents have proved their title and, thus, it was for the first defendant to prove acquisition of title by adverse possession. As noticed hereinbefore, the first defendant-appellant did not raise any plea of adverse possession. In that view of the matter the suit was not barred.'

8. In the present case, the title of the property has been decreed in the name of Mudegowda vide order dated 10.09.1987 passed in O.S. No. 22 of 1986 and thus there was no requirement for the deceased respondent to establish possession prior to the institution of the suit. It is apt and appropriate to note at this juncture that appellants herein had failed to establish that they

were in possession of the suit schedule property to claim the relief of adverse possession.

9. For the cumulative reasons aforestated, we are of the considered view that judgment passed by the High Court does not suffer from any infirmity either in law or on facts and we confirm the same. Hence, we proceed to dismiss the appeal being devoid of merits. Costs made easy.

.....J.
(Rajesh Bindal)

.....J.
(Aravind Kumar)

New Delhi,
April 27, 2023.