

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 9TH DAY OF JANUARY 2012

BEFORE

THE HON'BLE MR. JUSTICE DILIP B. BHOSALE

RSA No 1748 OF 2005

BETWEEN

SIDDAMMA D/O HOMBALIAHNA BORALIAH
AGED ABOUT 65 YEARS
R/O RAMMANAHALLI VILLAGE,
KASABA HOBLI
MYSORE TALUK AND DISTRICT - 570001.

...APPELLANT

(BY SRI. P MAHESHA, ADVOCATE)

AND :

- 1 CHIKKAMMA W/O HOMBALIAHNA SIDDAIAH
AGED ABOUT 75 YEARS,
R/O RAMMANAHALLI VILLAGE,
KASABA HOBLI
MYSORE TALUK AND DISTRICT
- 2 BORAMMA D/O CHIKKAMMA
AGED ABOUT 46 YEARS
R/O RAMMANAHALLI VILLAGE,
KASABA HOBLI
MYSORE TALUK AND DISTRICT
- 3 HOMBALAMMA D/O CHIKKAMMA
AGED ABOUT 41 YEARS
R/O RAMMANAHALLI VILLAGE,
KASABA HOBLI
MYSORE TALUK AND DISTRICT
- 4 SAKAMMA D/O SAKAMMA
AGED ABOUT 36 YEARS

R/O RAMMANAHALLI VILLAGE,
KASABA HOBLI
MYSORE TALUK AND DISTRICT

... RESPONDENTS

(BY SRI. K L SRINIVAS, ADVOCATE FOR R1-R4)

RSA FILED U/S. 100 OF CPC AGAINST THE JUDGEMENT & DECREE DTD:30.8.2004 PASSED IN R.A.NO.42/2001 ON THE FILE OF THE ADDL.CIVIL JUDGE (SR.DN.), SRIRANGAPATNA, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGEMENT AND DECREE DTD:23.2.2001 PASSED IN OS.NO. 181/1989 ON THE FILE OF THE CIVIL JUDGE (JR.DN.), SRIRANGAPATNA ETC.

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

ORAL JUDGMENT

This second appeal is directed against the judgment and decree dated 30.8.2004 passed by the Addl. Civil Judge(Sr.Dn). Srirangapatna, by which an appeal bearing R.A.No.42/2001 filed by respondents/defendants has been allowed. The 1st appeal was directed against the judgment and decree passed in O.S. No. 181/1989 by Principal Civil Judge(Jr.Dn) Srirangapatna.

2. The suit was filed by the appellant for declaration and permanent injunction in respect of 20 guntas out of Sy.No.249/1 situate at Belavadi Village, Srirangapatna Taluk, Mandya District. (for short " suit property"). The appellant/plaintiff claims that he had purchased the suit property by registered sale deed dated 28.10.1966 from the defendants. It appears that in the sale deed Sy.No.249/1 was wrongly mentioned as 247/1. When the plaintiff noticed the error in the sale deed he approached the defendant seeking rectification thereof, sometime in April 1989. The defendants refused to rectify the sale deed and claimed that they never sold Sy.No. 249/1 to the plaintiff. They started interfering with possession of the plaintiff in April 1989 and hence the suit was instituted on 5.6.1989 seeking declaration and permanent injunction.

3. This Court while admitting the appeal framed the following substantial question of law:

" Whether the lower appellate Judge was justified in reversing the judgment and decree of the trial Court on the ground that in absence of the rectification deed, declaration/injunction cannot be granted when the boundaries would prevail? "

The parties addressed the Court only on the aforementioned question of law.

4. The trial Court after having considered the entire evidence on record decreed the suit. The appellate Court however, in the appeal filed by respondents/defendants, allowed the appeal holding that the trial Court was wrong in decreeing the suit in the absence of rectification of the sale deed. It was further held that Sy.No. 249/1 was not subject matter of the sale deed and in view thereof, the suit for declaration was not maintainable and was wrongly decreed in favour of the plaintiff. The defendants also claim that they are the owners of the suit property by adverse possession and further that the sale deed executed by defendant no.1 in favour of the plaintiff is not binding on defendant nos.2 to 4, since they were minors at the time of execution of the sale deed. Admittedly, the defendants did not file counter claim/cross appeal and in view thereof, this contention had not been considered by the Courts below.

4. The contention urged by the learned counsel for the appellant is that the finding recorded by the appellate

Court that suit itself was not maintainable, in view of wrong mentioning of the survey number in the sale deed was an error of law. He submitted that in view of the conflict between survey number and the boundaries, it is well settled that the boundaries would prevail. He further submitted that the boundaries clearly show that the sale deed was in respect of Sy.No.249/1 and that Sy.No.247/1 had nothing to do with the sale. In other words, he submitted that the defendants had no concern whatsoever with Sy.No.247/1 and therefore by no stretch of imagination, it could be accepted/treated that the sale deed was in respect of Sy.No.247/1 and not in respect of Sy.No.249/1. In support of his contentions, he placed reliance on the decision of the Supreme Court reported in **1963 SC Court 1379 (Sheodhyan Singh and others - Vs- Mat. Sanichara Kuer and Others)**

5. On the other hand, learned counsel for the respondent submitted that the question of limitation had not been considered by the appellate Court at all, though it was specifically raised in the memorandum of appeal. He submitted that the plaintiff in her evidence stated that she had noticed the error of survey number in the sale deed

15 years prior to filing of the suit and, therefore, the suit ought to have been filed within three years as provided for under Section 58 of the Limitation Act, 1963. He further contended that the plaintiff ought to have sought rectification of the sale deed within 3 years as provided for under Section 26 of the Specific Relief Act and since no such rectification was sought by the plaintiff till this date, the suit ought to have been dismissed.

6. There is no dispute that the boundaries mentioned in the sale deed clearly indicates that it was Sy.No.249/1 sold by defendantno.1 to the plaintiffs. Further, there is no dispute that the defendants have nothing to do with the Sy.No.247/1 and that the said land belongs to one Manchamma. It is thus clear that though there was some error in mentioning survey number in the sale deed, the boundaries of the suit property were correctly mentioned and no dispute in respect of identity of the property or in respect of the boundaries was raised. The defendants refused to rectify the sale deed in April, 1989 and hence the plaintiffs were forced to file suit in June 1989 i.e. within less than two months from the date of refusal. It is specifically contended by the plaintiff that

the defendants started obstructing their possession in April 1989. It is now well settled that even if there was mis-description of survey number, the identity of the property could be established on the basis of boundaries. In other words, mistake in mentioning of survey number in sale deed at the most would be treated as mis-description and it would not affect identity of the property, if boundaries given in unmistakable terms establishes the identity. The judgment of the Supreme Court (supra) clearly supports the view. The contention of the defendants therefore with respect to suit land must fail.

7. Insofar as the contention raised by the respondents on the point of limitation is concerned, it reveals from the record that though the point was raised in the memorandum of appeal before the 1st appellate Court it was not argued and therefore, it is not open to the respondents to raise this contention in the present appeal. Still I have examined the point of limitation. Having regard to the pleadings and specific case made out on the basis of which the plaintiff sought declaration, in my opinion, the suit was filed well within time. It is clear from the pleadings and the evidence on record that possession

of plaintiff was disturbed in April 1989 and the suit was filed in June 1989. In the result, in my opinion, the appellate Court was not justified in reversing the judgment and decree of the trial Court on the ground that no declaration as sought and injunction be granted since the sale deed was not rectified. Even the contention in respect of Section 26 of the Specific Relief Act also deserves to be rejected. As a matter of fact, it need not be considered in this appeal, in view of the findings recorded on the point of declaration.

B. In the circumstances, the substantial question of law is answered in terms of the judgment and as a consequence thereof, appeal is allowed. The judgment and order dated 30.8.2004 rendered by the lower appellate Court is set aside and the Judgment and Decree passed by the trial Court is confirmed. No order as to costs.

Sd/-
JUDGE

Msu