LAXMIDEVAMMA & ORS. A

v.

RANGANATH & ORS.

(Civil Appeal No. 176 of 2015)

JANUARY 20, 2015 B

[V. GOPALA GOWDA AND R. BANUMATHI, JJ.]

Code of Civil Procedure, 1908 – s.100 – Second appeal – Concurrent findings of fact – Plaintiffs seeking declaration of title over 'A' schedule property and that the defendants C *encroached upon 'B' schedule property – Concurrent findings by courts below that 'A' schedule property was earmarked for road and no road was formed and the plaintiffs proved their ownership to 'A' schedule property – In second appeal, High Court held that declaration to plaintiffs' right cannot be granted* D *since first plaintiff earmarked 'A' schedule property for road and that she could not have full fledged right – Sustainability of – Held: Not sustainable – In the light of concurrent findings of fact by courts below, based on oral and documentary evidence, no substantial questions of law arose in the High* E *Court and there was no substantial ground for re-appreciation of evidence.*

Allowing the appeal, the Court

HELD: Based upon oral and documentary F **evidences, the courts below recorded concurrent findings that plaintiffs established their right in 'A' schedule property and that the plaintiffs are the owners of 'A' schedule property. The first appellate court recorded the findings of fact that defendants encroached** G **upon suit 'A' schedule property and ordered delivery of possession of 'B' schedule property. The said finding does not suffer from any perversity. In the light of concurrent findings of fact, no substantial questions of**

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A **law arose in the High Court and there was no substantial ground for re-appreciation of evidence. While so, the High Court proceeded to observe that the first plaintiff has earmarked the 'A' schedule property for road and that she could not have full fledged right and on that premise**
B **proceeded to hold that declaration to plaintiffs' right cannot be granted. In exercise of jurisdiction under Section 100 C.P.C., concurrent findings of fact could not be upset by the High Court unless the findings so recorded are shown to be perverse. The High Court did**
C **not keep in view that the concurrent findings recorded by the courts below, are based on oral and documentary evidence and the judgment of the High Court cannot be sustained. The judgment passed by the High Court is set aside and that by the courts below is restored. [Para 13, 15] [928-G, B, E, H; 829-A-B]**
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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 176 of 2015.

From the Judgment and Order dated 27.09.2012 of the
E High Court of Karnataka at Bangalore in RSA No. 297 of 2007.

G. V. Chandrashekar, Anjana Chandrashekar for the Appellants.

S. N. Bhat, for the Respondents.

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The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. This appeal arises out of the judgment dated 27.9.2012 passed by the High Court of Karnataka in R.S.A. No.297/2007, wherein the High Court
G allowed the appeal in part, modifying the concurrent judgment and decree passed by the courts below and holding that the appellants–plaintiffs are entitled to compensation for the space earmarked for road as and when the competent authority acquires the same.

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2. Appellants–plaintiffs are the owners of the revenue land bearing Survey No.1/1 of Chikmagalur village which was converted for non-agricultural purpose under the order dated 2.4.1987 of the Deputy Commissioner, Chikmagalur. Layout was formed from the above said land and the site Nos.12 and 13 and portions of site Nos.11 and 14 were sold to the first defendant by the appellants–plaintiffs by executing two sale deeds dated 11.7.1988 and 3.1.1992. To the south of the property sold to the respondents–defendants, 'A' schedule property as shown in the suit was earmarked for the purpose of road. However, the City Development Authority did not approve the same and hence no road was formed. Case of the appellants-plaintiffs is that since no road was formed, they continued to be the owners of the 'A' schedule property and they are the absolute owners of the same.

3. In the year 1992, first respondent–defendant sold the property purchased from the appellants–plaintiffs to second and third defendants who constructed a house on the same alongwith a compound wall. Grievance of the appellants–plaintiffs is that towards the northern side of 'A' schedule property, the respondents encroached upon 80' x 21/2 which is described as 'B' schedule property in the suit, despite protest from the appellants-plaintiffs. Inspite of repeated demands, the respondents have not handed over vacant possession of the encroached property. Therefore, appellants–plaintiffs filed a suit for declaration that they are the absolute owners of 'A' schedule property and for possession of the 'B' schedule property in the court of Addl. Civil Judge (Jr. Divn.), Chikmagalur.

4. Respondents–defendants filed written statement admitting that layout was formed out of the above Survey No. 1/1 of Chikmagalur village and that first appellant has sold site Nos. 12 and 13 and portions of site Nos.14 and 11 by two sale deeds dated 11.7.1988 and 3.1.1992 (Ex. D 16 Ex. D17). While selling the above sites, the first plaintiff has reserved 'A' schedule property for the purpose of road on the southern side

A of respondents' property. Pursuant to the request of the municipality, the adjacent property of 'A' schedule property was acquired by the authorities for the purpose of road. The defendant No.1 has constructed houses facing towards southern side of the road and the municipality has constructed B a footover bridge in between the channel and 'A' schedule property. According to the respondents–defendants, 'A' schedule property is very much necessary for the purpose of road. The respondents contend that having sold the sites to the general public and also to the defendants earmarking the space C as road, the plaintiffs are not justified in seeking a declaration of their title over 'A' schedule property. According to the respondents–defendants they have encroached 21/2' measuring in width on the northern side of his house property and not on the southern side, and the appellants have filed a D suit with intention to shift the encroached area towards south. According to the respondents–defendants if the plaintiffs' title over 'A' schedule property is declared, the defendants and the general public who have purchased the house/sites from the plaintiffs will be put to inconvenience and hence they prayed for dismissal of the suit.

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5. Upon consideration of oral and documentary evidence, the trial court decreed the suit holding that the plaintiffs are the absolute owners of 'A' schedule property and entitled to possession of 'B' schedule property to an extent of 2' x 781/4' F i.e. 2 feet north-south 781/4 feet east-west and defendants 2 and 3 were directed to deliver vacant possession of the said land to the plaintiffs. Being aggrieved, the defendants filed appeal before the first appellate court–Fast Track Court, Chikmagalur. The first appellate court confirmed the judgment G and decree of the trial court and dismissed the appeal vide judgment dated 13.10.2006. The unsuccessful defendants preferred second appeal before the High Court, which by the impugned judgment dated 27.9.2012 allowed the second appeal in part and modified the judgment and decree passed

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by the courts below holding that the plaintiffs are entitled for compensation for the space which was earmarked for road if the same was acquired by the competent authority. High Court held that the plaintiffs are not entitled for a declaration that they are the absolute owners of the suit 'A' schedule property and consequently their claim for injunction was also not granted.

6. Learned counsel for the appellants contended that the courts below have recorded concurrent findings that 'A' schedule property was earmarked for road and that no road was formed and the plaintiffs have proved their ownership to 'A' schedule property and that the defendants have failed to prove that it is a road having the nearest approach. It was submitted that when the courts below have recorded concurrent findings, in exercise of its jurisdiction under Section 100 C.P.C., the High Court erred in re-appreciating the evidence and in interfering with the findings. It was further contended that the High Court erred in holding that there is a delay in instituting the suit for relief for mandatory injunction as both the courts below have rightly held that the suit is within limitation and that the defendants have encroached upon the plaintiffs' property.

7. Per contra, learned counsel appearing for the respondents–defendants contended that the plaintiffs failed to produce any documents of title for declaration of their title over 'A' schedule property and that the defendants have encroached upon the 'B' schedule property. It was further contended that as the plaintiffs themselves have stated that the space was left for proposed road which indicates that the plaintiffs did not have full fledged valid right over 'A' schedule property, the High Court rightly set aside the judgments of the courts below.

8. We have carefully considered the rival contentions and perused the judgments of the courts below as well as the High Court and the materials on record.

9. Facts are not in dispute. Plaintiffs owned 1.00 acre of land in Survey No.1/1 at Chikmagalur village which was

A converted for non-agricultural purpose and layout was formed with fourteen sites thereon. Ex P.7 is the copy of the order issued by the Deputy Commissioner granting permission to the plaintiff No.1 for converting the agricultural land into non-agricultural purpose. As per condition No.9 therein, except two B guntas of land taken over by the municipal authorities for the purpose of road at the rate of two guntas per acre, permission was granted in respect of remaining 38 guntas. Plaintiffs sold site Nos. 12 and 13 and portions of site Nos. 11 and 14 to defendant no.1 under two sale deeds. In the first sale deed C dated 11.7.1988 an extent of 80' x 50' was sold and in the second sale deed dated 3.1.1992, 22' x 76' was sold. Subsequently, first defendant sold the property purchased by him from the plaintiffs to the second and third defendants under Exs. D16 and D17 dated 11.7.1988 and 3.1.1992 respectively. D In its judgment in paragraphs 11 to 13, the first appellate court elaborately discussed the above sale deeds and pointed out discrepancies in the boundaries of the property between the earlier sale deeds and Ex. D16 sale deed in favour of defendant No. 2.

E 10. Plaintiffs have sought for declaration of 'A' schedule property earmarked for road. 'B' schedule property is the portion of 'A' schedule property measuring 21/2' x 80' which according to the plaintiffs was encroached by the defendants. Upon consideration of oral and documentary evidence, trial F court as well as the first appellate court have recorded concurrent findings of fact to the effect that the plaintiffs have earmarked the land on the southern side intended for road and no road was formed and land of one Advocate V.B.K. Dias was acquired and road was formed therein. From the evidence of G DW-1–President and Councilor of the Municipality and DW-4, Assistant Commissioner, courts below recorded findings that the 'A' schedule property is still in the name of the plaintiffs and that there was no acquisition and payment of compensation made to the first plaintiff in respect of the disputed property.

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11. Ex. P4 – endorsement issued by the City Municipality to the plaintiff No.1, which clearly shows about the mutation of khata of the schedule 'A' property in favour of plaintiff No. 1. Ex. P2 and Ex. P 6 are the tax assessment register extracts which amply prove that the 'A' schedule property stands in the name of plaintiffs and that they are the owners of the disputed property. As against the resolution passed by the city Municipality by cancelling the khata of schedule 'A' property in favour of the plaintiff No.1, he has preferred revision. In the revision petition filed by the plaintiff No.1 against the resolution passed by the City Municipality for cancelling the khata of schedule 'A' property, the said resolution was set aside and Ex. P8 is the said order. Based upon the above documentary evidence and other evidence, first appellate court has recorded concurrent findings that the plaintiffs are successful in showing that they are the owners of 'A' schedule property and that the same is coupled with oral evidence which substantiates the documentary evidence.

12. Based upon oral and documentary evidences, the courts below have recorded concurrent findings that the plaintiffs are the owners of 'A' schedule property. While so, the High Court ignoring the material evidence, erred in interfering with the concurrent findings of fact. While holding that 'A' schedule property has been left for the road and that plaintiffs cannot seek declaration of title, in our considered view, the High Court brushed aside the oral and documentary evidence based on which the courts below recorded concurrent findings of fact that 'A' schedule property though earmarked for road, the same was not formed and that plaintiffs established their right in the 'A' schedule property.

13. Insofar as the encroachment of 'B' schedule property, the sketch prepared by the Assistant Director of Land Records (ADLR), was produced and the same was marked in the trial court as Ex. P5. In the first appellate court, the interlocutory application filed by the plaintiffs, one Sri Basavaraj, Assistant

A Engineer, Public Works Department was appointed as the Court Commissioner, who had inspected the spot and filed the report and also the sketch. Based on the report of the Court Commissioner and Ex. P5 and other evidence, the first appellate court has recorded the findings of fact that defendants B have encroached upon suit 'A' schedule property and the same read as under:-

> "...No doubt shall arise to hold that, it is proved that, defendant Nos. 2 and 3 have encroached upon 781/4' x 2' in schedule 'A' property, which is also corroborated by C Ex-P5. It is also the first rough sketch submitted by the Court Commissioner. But though the extent of the encroachment area reported therein does not absolutely tally with the extent of 'B' schedule property, encroachment of 781/4' x 2' by defendant Nos. 2 and 3 out of it is D proved...."

Based on the report of the Court Commissioner and Ex. P5 and on the above findings the first appellate court ordered delivery of possession of 'B' schedule property. In our view, the E said findings of fact do not suffer from any perversity and the same ought not to have been interfered by the High Court.

14. Before the courts below, defendants have taken a plea that they had encroached a width of 21/2 feet in the road only on the northern side as a result of which width of road towards F northern side is reduced from 30 feet to 271/2 feet. Both the courts below negatived the said plea holding that there are no traces of encroachment of 80' x 3' by the defendants on the northern side.

G 15. Based on oral and documentary evidence, both the courts below have recorded concurrent findings of fact that plaintiffs have established their right in 'A' schedule property. In the light of concurrent findings of fact, no substantial questions of law arose in the High Court and there was no H substantial ground for re-appreciation of evidence. While so,

the High Court proceeded to observe that the first plaintiff has earmarked the 'A' schedule property for road and that she could not have full fledged right and on that premise proceeded to hold that declaration to plaintiffs' right cannot be granted. In exercise of jurisdiction under Section 100 C.P.C., concurrent findings of fact cannot be upset by the High Court unless the findings so recorded are shown to be perverse. In our considered view, the High Court did not keep in view that the concurrent findings recorded by the courts below, are based on oral and documentary evidence and the judgment of the High Court cannot be sustained.

16. In the result, the appeal is allowed, impugned judgment in R.S.A. No. 297/2007 dated 27.9.2012 passed by the High Court of Karnataka is set aside and the judgment passed by the Addl. Civil Judge (Jr. Divn.), Chikmagalur as confirmed by the lower appellate court is restored. Parties are left to bear their own costs.

Nidhi Jain Appeal allowed.