

SUPREME COURT OF INDIA

H.P.Puttaswamy

Vs.

Thimmamma

C.A.No.3975 of 2010

(Deepak Gupta and Aniruddha Bose ,JJ.,)

24.01.2020

JUDGMENT

Aniruddha Bose.J.,

1. The main dispute involved in this appeal concerns the question of necessity of presence of a purchaser of immovable property before the authority under the Registration Act, 1908 at the time of effecting registration of a deed of conveyance. In the suit, out of which this appeal arises, the plaintiff claimed declaration of himself as the lawful owner in possession of the suit property. The plaintiff is the appellant before us. This suit was instituted on 31st March 1989 and was registered as Original Suit No.132 of 1989 in the Court of Civil Judge (Junior Division) Malavalli. The plaintiff also claimed permanent injunction against the defendants restraining them from interfering with his peaceful possession of the suit property and enjoyment thereof. The property in question comprises of approximately 4500 square ft. of land in a village by the name of Hittanahalli Koppalu in Malavallu Taluk in the State of Karnataka. Originally, this property bore site No.21 which was subsequently numbered 23. The plaintiff's case before the Trial court was that this property was allotted to one Gende Veeregowdana Nathegowda under a village shifting scheme. In the suit, the plaintiff contended that he had come in possession of the subject property initially as a tenant and subsequently as the purchaser thereof. He has run a case before the Trial Court that he has been in possession of the suit property for about twenty years prior to filing of the suit. Respondent Nos. 7 to 9 in this appeal derived their interest in the property through one Madegowda (since deceased), son of the original allottee Gende Veeregowdana Nathegowda. In the suit, these three respondents were defendant Nos.1(a), 1(b) and 1(c). Their predecessor, Madegowda was originally impleaded as defendant No.1. The Respondent Nos. 1 to 6 are legal representatives of one Manchegowda (since deceased), who contested the claim of ownership of the plaintiff over the subject- property. Said Manchegowda was impleaded as the second defendant in the suit. On his demise, respondent Nos.1 to 6 were substituted as defendant Nos.2(a) to 2(f). They have disputed plaintiff's possession of the suit property. They claim to be actual owners of the property through their predecessor.

2. There have been litigations in the past over the same property among the same set of parties or their predecessors. Madegowda had instituted a suit for declaration and permanent injunction against Manchegowda. The earlier suit registered as O.S. No.675 of 1971, was instituted in the Court of Munsiff at Mandya in the year 1971 (subsequently renumbered as O.S. No. 61/1974) in the Court of Munsiff, Malavalli. Madegowda had impleaded the plaintiff and Manchegowda as defendants in the said suit. Complaint of Madegowda in that suit was disturbance of his possession. After contest at different levels of the judicial hierarchy, that suit was ultimately dismissed on 23rd March, 1989 at the instance of the plaintiff Made gowda only. The order of dismissal was made on as it appears from paragraph 4 of the plaint of the suit from which the present proceeding originates records:-

“For objection if any objection filed. Heard Sri N.G., C.S.S. K.S.S. The defts. 2 right as a tenant shall not be affected by disposes of the suit as per memo filed by plff. Suit is dismissed without cost.”

(quoted verbatim from the paper book)

3. In the present proceeding, basis of the plaintiff's claim was an agreement for sale executed on 10th April, 1981 between the plaintiff and Madegowda in respect of the same property, which was followed by execution of a deed of sale on 28th May 1981. We must point out here that the date of execution of sale deed in favour of the plaintiff has been referred to in the Trial Court judgment in some places as 21st May 1981. But that factor does not have any major impact on the outcome of the case as both these dates are subsequent to the date on which sale is claimed to have been executed by Madegowda (since deceased) in favour of Manchegowda (since deceased). That is the source of dispute in the subject suit. We shall, however, treat 28th May 1981 as the date of registration of the said deed as in course of submission, that was the date referred to by the learned counsel for the appellant. The subject suit was contested by the two sets of defendants, being legal representatives of said Madegowda (the first set) and the legal representatives of Manchegowda (the second set). First set of defendants disputed genuineness of the sale deed of 28th May 1981 which formed foundation of the plaintiff's claim. Plea was taken by the second set of defendants that the original owner, on 21st April, 1981, had executed a deed of sale in favour of Manchegowda (since deceased). This set of defendants have also disputed title of Madegowda over the suit property. It has been contended on their behalf that the Village Panchayat had cancelled the allotment to Gende Veeregowdana Nathegowda and had resolved to issue grant certificate in respect of the same site on 15th November, 1963 in favour of Manchegowda and the latter was put in possession thereof.

4. This stand of the second set of defendants was not accepted by the Trial Court and the First Appellate Court. The Trial Court sustained the plaintiff's case primarily on the ground that the sale deed through which legal representatives of Manchegowda staked their claim over the property was not genuine. The Trial Court found that the original defendant No.2 i.e. Manchegowda, as a purchaser was not present at the time of execution of the sale deed before the Sub-Registrar and on that count the aforesaid finding was rendered. Otherwise, the execution of the deed in favour of Manchegowda, as claimed, was prior in point of time (on

21st April 1981). The Trial Court proceeded on the basis that the sale deed through which the plaintiff claimed to be the owner of the property was valid. We find from the judgment of the Trial Court that the plaintiff had proved the sale deed in course of the trial. The claim of cancellation of the allotment of the suit property in favour of Madegowda's predecessor and subsequent allotment in favour of Manchegowda was not believed by Trial Court and the First Appellate Court. The second set of defendants were unsuccessful before the First Appellate Court. The First Appellate Court on the whole accepted the reasoning of the Trial Court. In the appeal filed by the legal representatives of Manchegowda under Section 100 of the Code of Civil Procedure, 1908, the High Court found the sale deed dated 21st April, 1981 to be valid relying on Sections 32, 34 and 36 of the Registration Act, 1908 read with Rule 41 and 71, Karnataka Registration Rule 1965. The High Court observed and held:-

“14.A combined reading of the above sections of the Registration Act and the Rules mentioned above makes it clear that the presence of the purchaser is not required when the document is presented for registration before the Sub-Registrar. The Trial Court has failed to take note of the aforesaid provision of law of the Registration Act and has erred in holding that merely because the defendant was not present the sale deed in his favour cannot be taken as valid in law. The said conclusion reached is contrary to the above mentioned provisions of the Registration Act and the Rules. As such, the said finding cannot be sustained in law.

15.Once the sale deed in favour of the defendant is held to be valid in law and the said sale deed Ex.D-1 being executed earlier in point of time by the vendor Manchegowda, the question of the said vendor Manchegowda retaining any interest in the suit property will not arise and, as such, he could not have once again sold the very same property on a later date i.e. 28.5.1981 in favour of the plaintiff. Therefore, the substantial question of law raised is answered in the negative.”

5. On the question of possession of the suit property asserted by the second set of defendants, however, the High Court held:-

“Coming to the possession aspect of the case, though the learned counsel for the appellants referred to the evidence of D.W.4 to submit that the plaintiff was thrown out of the suit property by the police and the panchayat members, yet the evidence of the said witness will have to be assessed in the light of the other evidence on record and more particularly, the evidence of the plaintiff himself. The plaintiff, in the course of his evidence, has denied all the suggestions put to him and has reiterated that he has been in possession of the suit property from a very long time and right from the agreement of sale. Considering the overall evidence placed on record, the trial court has held that the possession has been with as plaintiff and the lower appellate court also concurred with the trial court. As such, the said finding, being a concurrent finding of fact of the courts below and also not appearing to be either a perverse finding or a finding based on no evidence, in so far as the conclusion reached by the trial court as regards the plaintiff being in possession of the suit property is concerned, the said finding requires no interference.”

6. So far as the provisions of Registration Act, 1908 is concerned, the law requires presentation of the document to be registered at the proper registration office by following categories of persons:-

“32. Persons to present documents for registration.—Except in the cases mentioned in [Sections 31, 88 and 89], every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office,-

(a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or

(b) by the representative or assign of such a person, or

(c) by the agent of such a person, representative or assign, duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned.”

7. The plaintiff has not disputed that the vendor or seller i.e. Madegowda had executed the document (first sale deed) and we do not find any doubt expressed over his presence before the Registering Authority. No case has been made out either that the deed of conveyance carried any collateral obligation on the part of the purchaser, in this case being Manchegowda (since deceased). The plaintiff has not made out a case of acquiring title under the principle of part performance as incorporated in Section 53 (A) of the Transfer of Property Act, 1882. No pleading to that effect in the plaint has been made out.

8. We find from the judgment of the Trial Court and the First Appellate Court that the respective parties had led evidence of execution and subsequent registration of the deeds but the first two courts did not reject the contention of the second set of defendants that there was no execution by Madegowda (since deceased) of the deed of sale to Manchegowda (since deceased). The case has been decided in favour of the plaintiff on the ground that the buyer was not present at the time of registration of sale deed. There is evidence to the effect that the second defendant (Manchegowda) had not come to the office of the Sub-Registrar at the time of execution of the sale deed. But as per law as it stood at the material point of time, there was no necessity of presence of purchaser at the Registration Office during the registration of sale deed. The deed was executed by Madegowda and that aspect has not been disputed. The deed in question does not fall within Sections 31, 88 and 89 of the Registration Act. Section 32 of the said Act does not require presence of both parties to a deed of sale when the same is presented for registration. In such circumstances, we do not find any reason to interfere with the judgment of the High Court. The present appeal is accordingly dismissed.