

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

REGULAR FIRST APPEAL No.34 OF 2015 DATED:28-11-2018

Sri. Irshad Baig VS. Smt Chowramma W/ o Late Shastri Inneshappa and Others

JUDGMENT

Heard the appellant's counsel and learned counsel for respondent No.8 at the time of admission.

2. is The plaintiff in O.S.No.27217/2011 on the file of the XXVIII Additional City Civil Judge, Mayo Hall, Bengaluru, has preferred this appeal aggrieved by the order dated 22.09.2014 passed on application filed under Order 7 Rule 11 (a) and (d) by respondent No.8.

3. The appellant's suit is for the following reliefs:

"a) To declare that the sale deed dated P 01.03.2008 executed by defendant Nos. 1 to 6 in favour of defendant No.7 is not binding on the plaintiff in respect of suit schedule property.

b) Permanent Injunction to restrain the defendants or anybody claiming through them from alienating or encumbering or creating third party charge on the suit schedule property situated in Survey No.18, Yelenahalli village, Chandrashekarapura, Begur Hobli, Bengaluru South Taluk, Bengaluru. "

4. The plaintiff has pleaded that he is the absolute owner of the suit schedule property having purchased the same from defendant Nos. 1 to 6 for valuable consideration. On 08.12.1993, defendant Nos. A to 6 executed an agreement of sale in favour of the plaintiff by receiving the sale consideration amount to of 3,24,000/-and on the same day, they also executed Power of Attorney in his favour.According to the plaintiff, the Power of Attorney executed by defendant Nos. 1 to 6 was irrevocable as it was coupled with interest.The plaintiff paid entire consideration amount ***** and he was put in possession of suit schedule property also.The sale deed could not be registered because of *** the restrictions imposed by the State Government.This being the state of affairs, the plaintiff was shocked and surprised when the defendants along with their henchmen came near the suit property, threatened and asked them to immediately vacate the suit property.On enquiry, the plaintiff came to know that defendant Nos. 1 to 6 had executed a General Power of Attorney in favour of one Thaniga Malai, who in turn executed the General Power of Attorney in favour of Krishnamurthy i.e., defendant No.7 on 14.03.2008 in respect of 06 acres 29 guntas of land in the said survey numbere. The plaintiff stated that since he had purchased the suit SUZ property from defendant Nos.1 to 6, defendant No.7 would not get any title and therefore the sale deed dated 14.03.2008 should be deciated as not binding on him.

5. During the pendency of the suit, an application under Order 7 Rule 11 (a) and (d) was filed by defendant No.8, contending that the plaint would not disclose cause of action, that the suit was hit under Section 41 (h)

of the Specific Relief Act, 1963 and that the suit was time barred. The trial Court allowed this application and rejected the plaint.

6. Learned counsel for the appellant argues that limitation is mixed question of law and facts. In the plaint, it is clearly stated that the cause of action arose in the first week of August, 2011 when the plaintiff learnt about the attempt made by defendant No.7 to get the mutation to his name and on specific Peli other dates. He argues that so far as declaratory relief is concerned, the date of knowledge is important. Though the sale deed was executed on 14.03.2008, it was in the first week of August, 2011 that the plaintiff came to know about the sale deed executed in favour of defendant No.7 and therefore, from the date of knowledge, the suit was within time. Defendant can always rebut the evidence that the plaintiff adduces with regard to date of knowledge and demonstrate that the plaintiff has wrongly pleaded about cause of action. This exercise should be made only after recording of evidence and not at the threshold. He further argues that the plaintiff was put in possession pursuant to agreement, and to protect his possession, he could seek relief of permanent injunction. In the plaint, it is clearly averred about the interference made by the defendants and therefore, with regard to relief of permanent injunction, the plaint survives. Trial Court has committed an error in rejecting the plaint. In support of his arguments, he has placed reliance on the judgment of the Hon'ble Supreme Court in the case of Kuldeep Singh Pathania Vs. Bikram Singh Jaryal reported in (2017) 5 SCC345.

7. Learned counsel for respondent No.8 submits that prior to filing of the suit, the plaintiff had filed a suit for bare injunction and it was dismissed. Subsequent suit is time barred. He also argues that the plaintiff claims right only on the basis of agreement of sale. When he has not become the absolute owner of the property, he cannot seek declaratory relief to the effect that sale deed dated 14.03.2008 is not binding on him. According to him, the plaint does not disclose cause of action and suit is time barred; and therefore, there is no infirmity in the impugned order.

8. I have considered the points of arguments. The Hon'ble Supreme Court in the case of Kuldeep Singh Pathania (supra) has reiterated the principles to be followed while deciding an application under Order 7 Rule 11 of the CPC. The averments made in the plaint shall alone be considered for deciding an application under Order 7 Rule 11 CPC and this has been a well established principle. I find it useful to refer to another judgment of the Hon'ble Supreme Court in the case of T. Arivandandam VS T.V. Satyapal & Another reported in [AIR 1977 SC 2421]. It is held as below:

" 5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now, pending before the First Munsiff's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints.

The learned Munsiff must remember that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Or. VII R 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchinal under Order y X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial court should insist imperatively on examining the party at anme the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi " It is dangerous to be too good. "

9. In the light of these principles, if the plaint in O.S.No.27217/2011 is read, what becomes clear is that the plaintiff has not yet become the owner of the property. He claims to be in possession of the suit property only on the basis of the agreement of sale dated 08.12.1993 and a registered Power of Attorney. Defendant No.7 purchased the the property through registered sale deed dated 14.03.2008. Undoubtedly, the agreement in favour of the plaintiff is earlier in point of time. Therefore, the remedy available to the plaintiff was to file a suit for specific performance. The declaratory relief that the plaintiff has sought, firstly, cannot be granted for, the plaintiff has no right to claim such a declaration as he has not yet acquired title over schedule property.

10. The plaintiff cannot also claim decree of permanent injunction to restrain defendant NO. 7 from alienating or encumbering the suit property. Defendant No.7 has acquired ownership over property; he is the absolute owner. Right to own property includes right to sell or create encumbrance. When a property is transferred absolutely, it must be transferred with all its legal incidents which include right to dispose of Section 10 of the Transfer of Property Act prohibits restraint on transfer. Therefore if decree of permanent injunction in the nature of prohibiting or restraining alienation is granted, it is against rigor of Section 10 of Transfer of Property Act. But granting an order of temporary injunction prohibiting alienation pending disposal of inn suit can be said to be an exception as such an order is required some times to avoid multiplicity of proceedings.

11. Therefore given a meaningful reading to the plaint, the plaintiff gets no right to claim the reliefs that he has scught for in the plaint. Holding of trial is a ***** futile exercise. Looked from this angle it can very well be said that the plaint does not disclose cause of action; suit is not maintainable even if limitation point is ignored.

12. Hence, I come to the conclusion that the impugned order does not suffer from infirmity. Appeal is dismissed However this order will not come., in the way of plaintiff seeking appropriate relief, which is available under law.