

Karnataka High Court

Beerappa vs B H Doddamallappa on 22 September, 2010

Author: Huluvadi G.Ramesh

Between:

IN THE HIGH comm OF KA_RNA'I"Al<A AT BANGALORE
Dated this the 22"" day of September, 2016

Bcforc:

THE HON'BLE MR JUSTICE HULUVADI G A.

Regular Second Appeal 844 / 2005

Beerappa S/0 Kodappa -- since dead by

A

erffee

Sml Chowdamma W/0 iate Baémpa V
R/0 Beeradevara Tempie Stretzt'
Birur Plobli, Kadur, Chikmagalur .

Neeiakanthappa S/0 Béel;}}\$p}}a

R/0 Beezfadevara Tempie Sircter --
Birur Hobli, Kaduz', Chikmva.gaeluV:'----- A

Sml VD_e\firarnnfae'i
BetI'adah_aIIiA Vil}:.lg€';A"i":1ri'k<-;re Tq
Chikln:1ga'!ur'v V

.S1'}at R_ç.n:1v]_<z11nm'a 'D/s}Bcer;1pp21

" ,Rx'.<w Mtjdi.gc<:.'§:. Anthz-1ragalla}-I0bii
T aljil<e.1'c~Tq,AV Chikmztgaltlr

Appellants

(By Sn' V'Vig11csh\$Jj;.:7e:S Sluzsfri, Adv.)
VA { _ ' _ 4/i:1_d:

_ 3}} D<>ddzmlallappa. 69 yrs
'SIG Heggzllilm

'[B H Dc\-'anna CC? DCVEIIIIILE, 56 yrs
S/0 Hcgannzt

IQ

Both are r/o old Ajjampurzt Road
Birttr Hohli, KadtirTaltlk C.
Chik.rnagzllt1r District Respontie1t_ts_

(By Sri Ram Bhat for S R Kulkarni, Adv.)

The Second Appeal is filed undc.i:_ S.l:(.l.l)C
Procedure praying to set aside the judgmeri':. and decree dated _l9..2.2005

in RA 40/2003 by the Civil Judgeh(S1'.Dvri.); Kadur'h-ireversirgg Vthe";
judgment and decree dated 7. 12.20()2.t_Vii'i~.VQS 295./21999 by "t--he'"P1't'. Civil"

Judge (Jr.Dn.), Kadur.

The Appeal coming <)n"'for .l%ie.ari?:jg tliiiyidéiyi Court delivered the
following: C 1 ~ '

:JU1:3-C:-}:ilJE.3\lTT'--:_i"' ..
'is assailing the order of the

Civil Judge'"(sr'.13v'n.).:;1%;;\$';;.t;g'itt_ i2A «+0/2003 on 19.2.2005.

iA;'s'tzit'. in OS..l9C;9 was filed by the plaintiffs/respondents

the udge (_'Jr.Dvn.), Kadur seeking for a declaration and in'}'t';rie'ti.on "z':rtd~.,_als:o*l;or
cancellation of the sale deed in respect" of CV propeity in Block No} of Birur Kaval to an extent of
5.00 C V' '.4':"t';re:-: av_hiehVV'i's said to have been granted to the father of the plziititiffs by
__tle7'gove'rninent under the Grow More Food Scheme. g f).

» -1:»." "

=.-...;»:r' {\J approached the lower appellate court. The lower appellate court_.while decreeing the
suit of the pizintills. reversed the finding of the tri--\$1'eo'u.rt'.' According to the lower appellate
court, what has s_tj:E.;l_"i>z3___ favour of the appe.llant herein is a different Mhloe.k
i.e;;;"Sy:..l\lol\$'6l3'--andl deelziration sought for by the plztiritiffs is in
S4y.l\3_'().6}"l.i'Aee-ordingl:w_hi"leA allowing the appeal, the suit was decreed'against-whizth,
idefe_nVda_.i1t is before this court in second appeal, on vaifious_gropunds. ass_ai1.i:..1g?the order
of the lower appellate court.

At the time oi".ed_ni.iss.iez1,l'the following points were 'framed for consideration: ' l 1 Wl"§Cl13fi_1'
thelowerzilppellate court was justified in holding that the V' sa1.e:'deed 'dated 22;."9'."E976 in
favour of the appellant is only a ' ;.sham ;1ndibo.gu:;--.trztnsaetion and is not an out and out sale?
W4hethe;*.tlie.V.s'uit or the plt1.iiti.l'l's is barred by limitation'? 31 .. Whether the lower ztpellate
court erred in grzmtirig it decree of 'deel'zti'2iti<)1i and injunction although there is identity of the
fproperty involved as contended by the defendant'? Heard the counsel representing the parties.

It is the submission of the appeilanfs counsel. the lower A' court without looking into the prayer
sought for by the pia-}.4tit'ifi's,ysitnpiyi1 " proceeded on merits only on the ground

--<3:liai'lat'iiE'f's, since it is a suit for declaration holding that it should be filed a""=.»€ "W J '3 within three. years. the trial court dismissed the suit. The appellate _c_court_. however, without visualising the situation whether no other -'livi,i.l'l.-dii'-<V'\-';""i.\$ granted to the father of the piaintiffs so as to convey ths;j1':::a11'iell'tii'--t * defeiidant and also without verifying whether"i'n..addiiiorrtoe--Sj,r.No_i(i/l;_y Sy.No.6/3 was also granted or not, pr'ocie.ededi A' to ttecreey thiei technically presuming that what has been _i':o_nveyed._is'dii'i'erei'it'atiitl What has been retained by the plztiiitilifs i'athe1""is--.ti:fferent. It is needless to say that the eannoytt eo1:t'er better title than what he has. It is also _:no_t ma-tie lo'ut.IYt7y ithei..;)laii1tiffi;iithat there are two lands granted in i':-txi/oar .ofi"the-ir_fatyheri. _'lf any material is available on record to show that there pieces of land available to the p1aintiE'fs';'father 1 and 6/3, then necessarily, the finding Vayrriyedy ll "titer appellate court could have been accepted. I ll _Soli'atr:'a..\$ conveying of the land whether it was against the Land Grant Rates C?vi~(,)ll}.'CAL'WISC it is nobotly's case. More over, plaintiffs have i' If""n_ot~;)leade.d v:"i_o'i* protiucecf any material in this regard basically to seek for ":1. deelaratioiii. Further, what is noticed is, apparently the tower court at it -- .

without. entering into :1 di.~;eussie11 as to the tttztintaiatzbtily of the sui-.t:__, on the point of limitation. proceeded to decree the suit which is er:'(b':iee.=is, Aeeordingiy answering the second stzbstattiztl qtteéit-i..(m' l:'1w', '--« white setting aside the judgment and deeree _p4zis.~-:sed_j ..t:11'e.VV«lVV(_>"vvje_ar_ appelkate court. the matter is remitted: te thed'Eç:>.".Ver

et>u1*t.&.t'(> dispose of the same in £1CC()1'dEtI'1CC with 1it'tié§tett<>a1 also on merit's, if need be, after to parties.

The parties are permitted to if need be.

Appeal attowed. H Sd/1 Eedge An