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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
       erffee
      Sml Chowdamma W/O iate Baémppa V
      R/O Beeradevara Tempie Stretzt'
      Birur Plobli, Kadur, Chikmagalur .
      Neeiakanthappa S/0 Bée1;}§p})a
      R/O Beezfadevara Tempie Sircter
      Birur Hobli, Kaduz', Chikmva.gaeluV:'---- A
      Sml VD e\firarnnfae'i
      BetI'adah aIIiA Vi1}:.1g€';A"i":1ri'k<-;re Tq
      Chik1n:1ga'!ur'v V
      .S1'}at R_¢.n:1v]_<z11nm'a 'D/s}Bcer;1pp21
      " ,Rx'.<w Mtjdi.gc«:.'§:. Anthz-1raga11a}-I0bii
       T alji1<e.1'c~Tq,AV Chikmztgaltlr
      Appellants
         (By Sn' V'Vigl1csh§Jj;.;:7e:S Sluzsfri, Adv.)
      VA { _ '_ 4/i:1_d:
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ΙQ

'SIG Heggzllilm

S/0 Hcggannzt

3}} D<>ddzmlallappa. 69 yrs

'[B H Dc\-'anna CC? DCVEIIIILE, 56 yrs

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Both are r/0 old Ajjampurzt Road
Birttr Hohli, KadtirTaltlk C.
Chik.rnagzlltlr District Respontielt_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(Sl'.Dvri.); Kadur'h-ireversirgg Vthe";
judgment and decree dated 7. l2.20()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 ~ '

:JUl: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..19C;9 was filed by the plaintifts/respondents
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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).

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» -1:». "
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At the time oi".ed_ni.iss.iez1,l'the following points were 'framed for consideration: 'l 1 Wl"§Cll3f1_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.ii1ti.l'l's is barred by limitation'? 31 .. Whether the lower ztppellate 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

tliat-What.has--i_4beeni'retf'ecterjj.in7.. the sale deed is Sy.No.6/3 which has been plaintiffs are seeking for a declaration Both 4dVifterent properties. Without looking intoythe t'ac't't1al:_:position and't'iAtE.e"Vava_i1able to the p1aint.ift's, accepting the sale -bv"e;1nd.2tries, when the defendant is in possess:ion=oi' the 1att1é;i'o1f i':"rtor.e than twenty years after the sale dectthas b_eerti':_=:>giste1-ed,v despite ndrnission by the pEaint.i.'ff in his cross exa1n.in2ttio_n ttsrV._hia~nding---.oycf possession of the land that has been gt-aiitedv to they t'atAhietf'ioi" the plaintilt' and the same {and has been iczoniveyedi; that the arithmetical error crept in in the sale deed» was of.Ve1; *sight, proceeded to decree the suit which is t3; t't'()t}t:t)t1':'.s'~.._i', i giPer.fcontra. counsel for the respondents submitted, Sy.N'o.6 is a Ty'_;tst..vexteiit of landt What has been conveyed by the father of the 32: ,--~ K (:5 plaintiffs to the deiendant as per the sale deed, is only Sy.N_o.6/3. Sy.No.6/1. and 6/3 are two d.i'fferent lands. There is no error committed by the lower nppellate court. Further. it is SUbt'1:I'iiE'(':.d;'i\$'é1\$~\$€;1"'-, ' on the cause of action. since there was 9. threat' of dispossession__and'_ encroachment on the Ennd in Sy.No.6/1 which wits gianteiiviitci ethe of the plaintiff under the Scheme 01' ._gfo"=tiei'11i11.et1t_, the ii'tjwiettiaprpeiiiate court has rightly decreed the suit .whiehV.does_notiCall for in'te.rferenee. In the case on hand, whatis7n_otieec5.j_ i:::, 'dé':C€'fding to the admission of th6 Plaintiff in his.VerossȢxami3§'tttio--f1.~'*,S3'.ii"iot6},I"alone has been granted in 'I';w()u_r _of"th*e .fathei"oAi""'th_e plaintiits and not any other block. It appears, the seine e(>t1tda}i;t_Ve«--._been conveyed by the father of the plaintiff it;1't"a\»fou1* ot"'>the'dei'eiidant. Might be there is a mistake/error in 'crept in the m_ef'o_t' drafting of the sale deed unnoticed by either of the p2trtii'e.s."-i'__The* was executed in September, 1976 September whereas the gm-: is said to have been made in July 1976. The suit for it "':_iieeIai=attie(___)n isV'i'i1ed during 1999 nearly after it iapse of twenty two years. I__n~_tEi;-1t"view of the matter, having noted the relief sought for by the

--«;3:liai'Iat'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_ourt_._ however, without visualising the situation whether no other -'!ivi,i..l"l.-dii'-<V'\-';i""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..addiiorrtoe--Sj,r.No_i(i/l;._y Sy.No.6/3 was also granted or not, pr'ocie.ededi A' to ttecreey tliei technically presuming that what has been_i':o_nveyed._is'dii'i'erei'it"atiitl What has been retained by the plztiiitlifs i'athe1"is--.ti:ifferent. It is needless to say that the eannoytt eoi1:t'er better title than what he has. It is also_:no_t ma-tie lo'ut.l¥t7y 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. deelaratgioii. Further, what is noticed is, apparently the tower court at it --.

without. entering into :1 di.~;eussie11 as to the tttztintaiatztbility of the sui-.t:___, on the point of limitation. proceeded to decree the suit which is er:'(b':iee.=.is, Aeeordingiy answering the second stzbstatttiztl 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'E¢:>.".'Ver

et>u1*t.&.t'(> dispose of the same in £1CC()1'dEtl'1CC with 1it'tié\$tettt<>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