

Karnataka High Court

N Sarojamma vs M/S Govardhan Theatre on 31 March, 2008

Author: H.Billappa

%

' IN THE HIGH WURTOF KARNATAKA,

mm nus 'ms 31" may or mncn %

BEFORE

ma HON'BL.E MR. & '

: 7 I

BETVEN:

1. N.Sai*oja_jm;n"a,'*w--. .

A9ed3t>¶Lrt%s%4% '

aw/0 IY'Y3s'r3pa _' --

23. Svumifiifig 5?' %

Indain,

Bangafom-22_. "

2.

._ " 60 yérs,

% 3%/_'cs= I;vS§d»3shiva Ready.

3. A p.A.a¶pan»;a may,

Agedamm: 41 years,

".-Nib Prabhakara Rfidy,

52"'S3;

%% Govardhan,

Aged about 39 vars,

S/o Lsadmhiva Raddy.

2 am 4 are r/at No.895, 4"' cm,

16"' Main, MICO Layout,

B'm II Sage,

Bangazore --- S60 0276. 1 % T 1

(Common in

(By sn Yoganarasimha, "

AND: A.

1. M/s. Govardhan Theatre, ...
 A Firm of Partners, VV. jV. ...
 45/2, Indu Suburb. A.
 Yeshwanthapur, Tumkur Road,
 33° 13' N, 76° 31' E

2. M/s; unsted0xvW!..%:a. Pvt. Ltx!.,
 , -- by its Managing Director,
 46/2, Yesmeanthapur, Tumkur Row,
 Bangalore - 550 022.

Toots (Pvt) m,

. ' by Em? Dirwtor,
 4.6/2, (esmvnflapw, Tumkur Road,
 - 566 022. RESPONDENTS

35. M/s. Govardhan Theatre. A Firm of Partners, 46/2, Indu Suburb, Yeshwanthapur, Tumkur
 Road, Bangalore - 550 022 by its Managing Director.

kl/..

L. Narayana Raddy, Aged about 63 years, 23/1, V Cross, I Main Road, Yeshwanthapur, Bangalore - 550 022.

C.M. Krishna Raddy,
 Aged about 58 years,

S/o Reddy - ...

C. M. Varadaraja "

Aged about 65 years, -1

Both are 1' H .

Tami!

' . Sn 7

" 50 years,

A ' % {W/6 C.M. Monan Raddy,

. R. fa Et. \$' » : em " arwja Ii, No. 55/A, % 13 " " C \$ m 3s, IV Main, Msaliw w wam, " 3-

" Since mi by his U25.

Meera, Aged abwt 52 years, wlo Lm R.Samnal:h Kumar.

A»

(b) Dhanaiaakshrt□ Aged about 30 years, D1o Late R.Sampath Kumar.

Boa': are residing at Mo2911, 1" 'A' Main, Shixmahailép Bangalore --- 10. V

7. R.Kuppamma, Aged about 32 years, W/oLateG.Raja Raddy, % No.49, III crom,c,~a;apu:~am, Bangalore---21. * -

8. M/s.

r:e:tresé»1tésd1--lhy_it~31'?«*.a_na" g\$:1g,_l3irecbor, 546/2,'Yae;€!fnn{a:1tha;)u;, Tumiaxr Road, Bangaiare '- '

9. M/s. Eariao□by 1?:ois.{Pvt.) Ltd., 5 by its Managing Ezirectm, yj apur, Tumkur Road, " --- 560 022. RESPONDENTS 'V Sr. Contact for ' _ 5.LJ%h, Adv.,, for R-1) ':3-aeiae, gum R.s=.A.'gp_aga 1.3/5. 95 Riw. onder 41 Rule 1 of cm against the judgment and cmee dazed 31.3.1999 passed in * 1108189 by me V Add. City Civil Judge, Bangalore,

-- c□smiming the suit for dactara□an and . me E□appeaicomingonforhearingtzhisclay□hecourt delivered the fo□wing:-

V, V-3'\ J These two appeas □ed by the plaintiffs am against me judgment am decrees dated 31.03.1%999kk by the v Addi. City ma Judge, Bangalore, in 1109of89.

2. By the impugned court has dismm-zed' we sure: ésgj*o.s.\$to.11ea[m9Tand granzea ;;d9;19-39 for 1/8'" share with symbolic .?.f that, me appeIlanm--p|am'□\$ have % 4., mead the fad: in o.s.no. um/39 are as % x erimnas plan□ff, 1.5% may, med suit in ' VA .~.oi.S.No.11G8/89 for mandatory injunction and p<%ion Vctaiming□zatheismeerduaveawnerofthesdtsdwedtse L/ preperty. According tn him, sat sdzedule is a portion of see No.1A, which has been aimed up hia1j;bjI,:t:fse erstwhile C.I.T.B. and poesssion certificate . on 31.08.1970 and Lease-cum-safe' "--7ai:=}a 'V executed in his favour and he enjoyment of sine No.1/A. It is , s;seeaeme kk property being a port:i\$Jaa.'1of_Asi£:e'V "of super structures and me and 5;. ex: the piaintiff, i.e., six emers purch□ the p . 1% j'iar}d«e\$_e eueepe and it memes in at same Sq.H:. partnership firm by name M/s.Go\ardhan _ 1" defendant and it mme into existence from _ i9e.9a..19?i and dzerea□aez it took on lame the wjacmt sine regmrea lame deed dated 25.05.1973. 2%..

5. 111eo:igindpiaI?n□ffw\$orreof|iveparju{&s.of the 1* defendant □rm. Later on, the mm others re□red from the 1% partnership was reconstituted on defendant built the plaintiff permitted the □st of ms site and thus, the 1* "if: possession of the sat ecnee.-ee was built, some up in the sat sctmule property,' go er things of the 1* defendant. net out a poruen of the mining to me they are in occupation of me suit & 'me 1" defendant is in permissive possession of ' scmule property and has

put up etmcres in an % of time. me plainff is not a party in the connect or any understanding betwmen the defendants intense. The plaintiff is the absolute owner of the suit schedule property. The 1st defendant has improved property,

8. Vacant space is part of site No.1A has made by "turd.

shoring bricks, on materials. The plaintiff's works by name Govardhan No.1 suddenly turned injunction

9. ' has filed its written statement from: defendant is a named ' from -u:ed' 1c};9.197:L22.%% As per the registered sale deed dam & & iannag irv{Sy.Nos. 4511A and 4512A of mhwampur, Bangalore Taluk, bearing Muniipa No.46. He made the property, a favour of eight persons, namely I.Sadmitha Raddy, '1 I.Narayana Ready, N.Radhakrishna Ready, N.Nagaraj, C.M.Krishna Reddy, cmvamamju Raddy, R.San\$9a : 'a'nd Smt. Kuppamma, through registered sale 2.5.1959 and 5.3.1971.

10. The said 8 to Site No. 1A measuring East to South 0+170'/2 and the work on the plaintiff and contribution;ed."eq\$;aE'Ev..."j'i99'f34ainff became in \$_.e., Site No.1A. merem, the plaintiff made dated 9.3.1971 agreement joiny. The agreement dated 9'S..'19.7:"1.:vis., 'a: :\$gistered document and site map has been hesg;95oe:\$u9y %aha possession by an. The plaintiff is not in "-..xc!t1siv\$1~ possession of the site No.1A, much the suit property. Since 25.5.1973 the 2nd defendant is in and enjoyment of the site No.1A as two and super-supermarkets, fencing, and stone pillars have been put up by the 1st defendant.

11. As per the documents dated-1 2.5.1959, ..s.3f;19?_1, 27.7.1970 9 9.3.1971, eight persons including in possession of three parts of land bearing " 'V 9 46/2A. Out of eight N.Radhakrishna Reddy and gm" deed in favour of their ' _an{A3A holding 2/&e'=5ha1'e. .

12. seven others 'U79 It came into existence on 10.9.1972k97a.m1 on 13.9.1972. The ___of that he and six others had of land and it was (rakes: on lease by the been denied and it is mmaena, the map and the suit: schedule property is also a part of the ' deed and the lease is for a period of % years map an option for renewal.

13. The 1st defendant is in possession of me \$13; bearing Municipal Isgs.46{2 K V' the suit schedule property.

14. In terms of 1?' took up I |. of in the} leasehold jg .by an end of October 1924%% At present, the averments in para 4 of the map it is amended, the lease Mad Cinema Theatre and the map are"iit""e:~cclm'ive Map on and enjoyment of the 1:; is also the plaintiff has lost his he is not the absolute owner of the suit '..=ct1edt.-A:':c=1.f: .property,' and the-efone, has prayed for dismissal of

15. 'medefendana2and3ha\~eMap'rwMap's3 1st*atements contending that they are private firms companies L/.

agreement has 'of plaintiff. Further, he submitted produced any title deed, i.e. P.1 pawn certificate agreement. He also %exists from 10.9.1972 and it and the same was aimed prior to that, as per Ex.D.3, the % an agreement dated 9.3.1971 declaring and own the site jointly. He also invited 'on to the evidence of PW.1 and submitted' .4 in his evidence has admitted that site No.1A was jointly. Further, he submitted that he withdraws are T of benami. He also submitted that, by virtue of B.D.3, all persons have become joint tenants of site No.1A. He also submitted that, one Radhakrishna N.Nagaraj have executed a gift deed, in favour of M.Geetha as per memorandum of understanding #NTF-1 in the said gift deed. ;'s. plaintiff 5 moved from date of my attendance to the fact that, in view of the cannot claim to also submitted that, "it is my, all the facts Imsa, S*A_a & sine No.1A and moreover, the plaintiff the exclusive manner of the suit % k% he submitted that Section 60 of the Transfer of Property Act in the way of the plaintiff claim. He also submitted that the :w % snagaahave filed the suit for the same % 1' plaintiff is moved from date of my attendance and the impugned judgment and decree does not stand: further term. Heals placed in the case of L/.

1"?

the Hon'ble Supreme Court in AIR 573, no amendment to the plaintiff "

exclusive ownership to the suit e

submitted that equity and law, the law that the allotment of the property made in because we plaintiff the that there can be no

0:

60 of the Transfer of Property Act. He also submitted that the tenant cannot deny the title and the owner can maintain the suit. He also submitted that the lease cum sale agreement provides that the tenant shall not alienate the property and therefore, agreement contrary to this, cannot be of any consequence. He, therefore, submitted that the impugned judgment and decree cannot be sustained in law. L/ee

22. I have carefully considered the submission made by the learned counsel for the parties.

23. The point that arises for my consideration is whether the impugned judgment is 2 inter-fa-m? "

24. It is relevant suit injunction and possession. The property. According to him, the witness " is a portion of site No.1/A, which is as per the title deed, by the defendant. He has % produced Exhibits P1 to P7. In his evidence, the defendant has stated that see No.1A was allotted to him, >.f erstwhile CITB and possession on the date was 21.3.1972. no more and he is the exclusive owner of the suit

maty, which is pat cf site No.1A. Ex.P.1 is the R/A have ceased ta be the partners from 23-2-1977. xerox cepy of the lease deed dated 1255- K Lsodashivareddy, I.Narayanz\$keHdy; 3 -I 'A C.M.Krishnareddy, C.M.Vamdarejareedy « Rsampath, in faveur of the «st1Eieife:1dantVenc'{'it:\$

25. The «st derekseant suit schedule property is adjecejtti-tc "Municipai No.46 and Lsodashivareddy, I.Naray;gr}gv C.M.Krishna Raddy, N.Radhei<rie«hé Raddy, Kupppamma and '«bug« 5: eézeering site Ne.1/A and therefore, the to the paasnurf and contributed the in pursuance of that, the plain««has _ accA;1:éredv."vt!':e.LA i.e., site No.2/A and thereafter, he has "an agreement dated 9-8-1937: in favoer of 'I';!V\Vi'a ra\$ranarecidy, Nagaraj, C .M.Kn'shnareddy, VT :9' 'Nkladhakzishnareddy, C.M.Varadaraja Reddy, Kupppamma and V U Sampath deciarng his intention to enjoy and own the V

2.! property jointly and each of them have got a ;eha.re. Thereafizer, two of them, nameiy N.Nagaraj have executed a gift: deed, in M.Gee'd1a, as per Ex.D.4 (originai signed the gift deed as a Lsodashiva Raddy, I.Narayana Reddy, C.M.Varadaraja and Sampath have executed a leasedeed, i:ri" 'Fa\$'.euffefijtiieih «eeiétiafendant and its partners, ieasing out the proper\$es...beann\$¥.;::E:A:N\$_' and also the suit scheduie_ the piaintiff cannot ciaim that he is exeiiusive of the suit schedule property v _ancF.':Lij*ie 'frem' doing 50. V if of the defendants two witnesses have M V' . and eight documents have been produced. his eiuidence, D.W.1 has stated that site No.1/A was 1' in fawur of Sadashiva Reddy and he has executed an we original og Ls?i1.{(J'1 Li €>< «36 ' » " 'agreement dated 9~8-1971, a per Ex.D-3/iaand as per Ex.D.3, D.

i./ 5L3 has aise stated that property bearing No.46/2 and 11A beiong to the to-cnwners and aii the ccmwners have contrib_uted.._:the amount and the propertia have been leased in defendant No.1 and defendant o' 'V construction.

2?. Em)-1 is the ext'ta c---t...of ttregiister shows that piaintiff i.e., others nameiy I.Narayana and I.Raghava Raddy have f.rom;;tHe: 23-2-1977. Ex.D-2 is the constitution ef the firm. H330 Lsodashiva Raddy, I.Naraya'na .Reddy and I.Raghava Raddy have vretiret:l""frc_:'m V1%:ii--1e 'E'_isrm\$»LV Ex.D-3 (original Ex.D.6) is the dated """"\$'--8-19?: executed by the plaintiff i.e., in faveur of I.Naray-ana Raddy, V Raddy, N.Nagaraja, C.M.Krishnareddy, 4"=. 'C.,M,Vata£}araja Raddy, Kupppamma and Sampa« dedaring his a._é'z'ntes:tAi'e~n ea awn and enjoy the property i.e._. site No.1/A L/at deed as a consen«hg witness. Thereafter, I.Sadashiv.e Udarayana Raddy, M.Geetha, C.M.Knshne~ C.M.Varadaraja Raddy, Kupppamrna"" and have.&*hh executed a tease deed detect 25-5--41e9:*3_hTas favour of the «st defendant ewey 1' 'are the joint owners. In the '«s: defendant has put up the construction Now the plaintiff 'Vheilis of the suit schedule 'a h ' 2V9,' " contended by the {earned counsel apgtne«-zhntu, defendant No.1 cannot raise the r .pLee._jof henarni, v«wof the speci« bar under section 4 of fact remaire, the piaintiff, by his conduct has Ehnzention to enjoy and own the propety join« thereafter, has signed me gift dead as a consenting A and ewereafter, has executed the lease deed aiong ..w%th the others stating that they are the joint owners. V Therefore, the plain«ff cannot contend, he is the exctusive u./ needs to be moulded. He also submitted that the t31ai 'Co.L:rt has granted 1/8"" share with symboiic 1/7"" share with physica! possession and therefos« teiief' ~ needs to be moulded.

32. As against this, the learned counsel for respondent contended that as there is a renewal clause in the lease deed that the trial Court has rightly granted 1/8th share to the respondent. It does not call for interference. In view of the submissions made by the learned counsel for the parties. It is relevant to note, the trial Court has granted 1/8th share to the respondent with a condition of possession. There are eight sharers. The respondent has gifted their share in favour of their sister M. S. Sreedevi. Therefore, the trial Court has granted 1/8th share. Therefore, it does not call for interference. In view of the submissions made by the learned counsel for the parties, in so far as symbolic possession is concerned, it needs to be modified as the lease period is over and vacant space is also available.

35. Therefore, the appeal is allowed in judgment and decree passed by the trial Court stands modified to grant 1/8th share to the respondent. In accordance to the provisions of the law, the respondent is directed to take steps to regularize the possession of the property.