Karnataka Civil Judge (Mains) 2019 (September notification cycle, CJR 13/2019)

Law Paper II · compulsory paper

Framing of Issues and writing Judgment in Civil Case · Date: 10.11.2019 · Time: 10.00 AM to 1.00 PM · Max Marks: 100

1. Frame proper issues on the basis of following pleadings. 15 Marks

O.S. No.201/2018

Plaintiff: Ranganatha

Vs

Defendant: Anantharamaiah

PLAINT

The plaintiff is the absolute owner of the suit 'A' schedule property, which measures 5 acres. The plaintiff purchased the suit 'A' schedule property vide registered sale deed dated 10.12.2010 from one Sri Suresha. From the date of the sale deed, the plaintiff has been in actual possession and enjoyment of the suit schedule property by raising paddy crops. The defendant is the adjacent land owner on the eastern side of the suit 'A' schedule property. About 2 months back, plaintiff got measured the suit 'A' schedule property through a surveyor and came to know that defendant has encroached about 30 guntas of suit 'A' schedule property on its eastern side and put up a temporary shed on it and same is described as 'B' schedule property. The plaintiff requested the defendant to vacate the encroached area and handover the suit 'B' schedule property. But the defendant has refused and has also denied about he encroaching the suit 'B' schedule property, which compelled the plaintiff to file the suit.

With these averments, the plaintiff claimed the relief of declaration to declare him as the absolute owner of the suit 'A' schedule property and for possession of the suit 'B' schedule property and for mandatory injunction directing the defendant to remove the temporary shed constructed in the suit 'B' schedule property.

WRITTEN STATEMENT

The defendant, in his written statement, has categorically denied the plaintiff's title and ownership over the suit 'A' schedule property and also denied the allegation of he encroaching the suit 'B' schedule property and constructing a temporary shed. According to the defendant, he has been in possession of 2 acres of land since the year 2000, having purchased the same from the plaintiff's vendor Sri Suresha, vide registered sale deed dated 12.02.2000. The defendant has been raising paddy crops in his land and put up the barbed wire fence and also put up a shed and enjoying the said 2 acres of land as its absolute owner. The defendant, in the alternate contended that, he has been in possession of suit 'B' schedule property since the year 2000 openly, uninterruptedly, to the knowledge of the plaintiff and thereby acquired title to it by Adverse Possession. The defendant further contended that the suit is barred by time and it is also bad for non joinder of necessary party, as the vendor of the plaintiff and defendant by name Sri Suresha is a necessary party to this suit. The suit is not properly valued and requisite court fee is not paid on the plaint. On all these grounds, the defendant prayed for dismissal of the suit with costs.

2. Frame proper issues on the basis of following pleadings. 15 Marks

O.S. No.101/2017

Plaintiff: Ayesha

Vs

Defendant: Babu

PLAINT

The plaintiff is the absolute owner of the suit schedule premises. The suit schedule premises is a shop and plaintiff has let out the same to the defendant on a monthly rent of Rs.2,500/-, vide registered lease deed dated 01.07.2012. The defendant is running a grocery shop in the suit schedule premises. The tenancy of the defendant is a monthly tenancy commencing from the 1st day of the English calendar month and ends on the last day of the said month. The defendant has failed to pay the rent from 01.01.2015. The suit premises and other adjacent premises are required by the plaintiff for her own use and occupation. The plaintiff requested the defendant to vacate the suit schedule premises and to pay the arrears of rent. The defendant has failed to vacate the suit schedule premises or to pay the arrears of rent. The plaintiff has terminated the tenancy of the defendant and called upon him to pay the arrears of rent vide legal notice dated 20.12.2016. The said legal notice was served upon the defendant personally. The defendant neither paid the arrears of rent nor vacated the suit schedule premises. There is a legally valid termination of tenancy of the defendant. After termination of tenancy the occupation of the suit schedule premises by the defendant is illegal and unauthorized, for which the defendant is liable to pay damages.

On all these grounds the plaintiff claimed a decree for ejectment of the defendant from the suit schedule premises and to direct the defendant to pay the arrears of rent to the tune of Rs.60,000/- being the arrears from 01.01.2015 to 31.12.2016 and also for damages.

WRITTEN STATEMENT

The defendant in his written statement admitted the plaintiff's ownership over the suit schedule premises and his occupation as a tenant under the plaintiff on a monthly rent of Rs.2,500/-. However, the defendant denied the other plaint averments. According to the defendant the measurement of the suit schedule premises is less than fourteen square meters and it is used for non residential purpose. Therefore, the Karnataka Rent Act, 1999 is applicable to the suit schedule premises. Hence the suit filed by the plaintiff by terminating the tenancy of the defendant is not maintainable. The defendant also denied the validity of termination of tenancy and plaintiff's requirement of the suit schedule premises for her own use and occupation. The defendant denied the allegation of he not paying the rent from January 2015. According to the defendant he has been paying the rent regularly to the plaintiff and there is no such arrears of rent. The defendant further contended that the grocery shop run by him in the suit schedule premises is the only source of livelihood to him and he has no other alternative accommodation to run his shop and if he is vacated from the suit schedule premises, he will be put to irreparable loss and hardship. On all these grounds defendant prayed for dismissal of the suit with costs.

3. Write a considered Judgment on the basis of following pleadings, oral and documentary evidence by giving valid and cogent reasons 70 Marks

IN THE COURT OF CIVIL JUDGE, NELAMANGALA
O.S.No. 298 / 2009

Sundaresh,
Aged 30 years
S/o Chikkahanumaiah
Resident of Gandhinagara
Nelamangala ---- Plaintiff

Vs

1) Ramaiah
Aged 65 years
S/o Somaiah
Resident of Madanayakanahalli
Nelamangala
Represented by his General Power of Attorney holder
Muniraju S/o Chikkanahumaiah
Aged about 26 years
Resident of Gandhinagara
Nelamangala

2) Ramesh
Aged 41 years
S/o Sadanahdaiah
Resident of Chickpet
Nelamangala ---- Defendants

PLAINT

The suit property described in the plaint schedule is 5 guntas of land out of 36 guntas in Sy.No.3 of Madanayakanahalli village. The defendant No.1 was the absolute owner in actual and exclusive possession and enjoyment of the suit property. The defendant No.1 through his power of attorney holder has sold the suit property in favour of the plaintiff vide registered agreement to sell dated 19.12.2008. The plaintiff acquired absolute title and exclusive possession over the suit property through the registered instrument. Except the suit property the plaintiff has got no other alternative property for his shelter. On 8.1.2009 the defendant No.2 came to the suit property and disturbed the plaintiff's possession and enjoyment of the suit property. The plaintiff, having left with no other alternative remedy, was constrained to file the suit.

On all these grounds, plaintiff claimed a decree for permanent injunction against the defendant No.2 restraining him from interfering with the plaintiff's possession and enjoyment of the suit property and from dispossessing the plaintiff from the suit property.

WRITTEN STATEMENT

The defendant No.2 filed the written statement and categorically denied all the plaint averments, including the title and possession of the defendant No.1 over the suit property and plaintiff acquiring ownership and possession over the suit property from the defendant No.1. According to the defendant No.2, the suit property is a government land. The Special Deputy Commissioner, Bangalore Rural District has allotted 36 guntas of land in Sy.No.3 of Madanayakanahalli village in favour of defendant

No.2 vide Allotment Order dated 22.02.2006. The defendant No.2 has paid a sum of Rs.15,20,000/- to the government as conveyance charges. The said land was handed over to the defendant No.2 on 13.07.2006 and possession certificate was also given. After handing over the possession, the land records of the said land were changed in the name of defendant No.2. The defendant No.2 has constructed a compound wall and put up a shed on the allotted land. The defendant No.2 has right, title and interest over the said land. The GPA holder of defendant No.1 is none other than the own brother of the plaintiff. The plaintiff, by colluding with his brother, has fabricated the documents and filed this false suit to grab the suit property.

On these grounds, defendant No.2 prayed for dismissal of the suit with costs.

The defendant No.1, though appeared before the Court through his counsel, has not filed any written statement.

ISSUES

1. Whether the plaintiff proves his actual possession and enjoyment of the suit schedule property as on the date of filing the suit?
2. Whether the plaintiff proves the alleged interference and obstruction caused by the defendant No.2 of his possession and enjoyment of suit property?
3. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?
4. What order or decree?

ORAL AND DOCUMENTARY EVIDENCE OF THE PLAINTIFF

The plaintiff, who was examined before the Court as PW1, has reiterated the plaint averments in his examination-in-chief and deposed about the ownership of the defendant No.1 over the suit property and his actual possession and enjoyment of the same. PW1 further deposed about the GPA holder of the defendant No.1 agreeing to sell the suit property in his favour vide registered agreement to sell dated 19.12.2008 and on the basis of the said document, he became the absolute owner of the suit schedule property and has been in possession and enjoyment of the same. PW1 further deposed that the defendant No.1 through his GPA holder has sold the suit property to him vide registered sale deed dated 10.01.2011. PW1 further deposed about the defendant No.2 coming near the suit property and trying to interfere with his possession and enjoyment of the suit property and also trying to oust him from the suit property.

During the course of his cross examination by the counsel for defendant No.2, PW1 admitted that the GPA holder of the defendant No.1 is his own brother and his brother has executed the agreement to sell in his favour. PW1 showed ignorance as to how the defendant No.1 acquired the title and possession over the suit property. PW1 admitted that katha of the suit property was not changed in his name. PW1 also admitted that he has not put up any construction in the suit property. PW1 showed ignorance about the boundaries of the suit property and name of the persons, who own the land adjacent to the suit property. PW1 admitted that the sale deed dated 10.01.2011 was executed by his own brother in his favour during the pendency of this suit. PW1 denied the suggestion that he, by colluding with his brother, has created the agreement to sell and sale deed to grab the suit land.

The plaintiff examined one Venkatesha as PW2, who deposed in his examination-in-chief that plaintiff has purchased the suit property from the defendant No.1 vide agreement to sell executed by his GPA

holder and has been in possession and enjoyment of the same. PW2 further deposed that defendant No.2 tried to interfere with the plaintiff's possession and enjoyment of suit property.

PW2, during the course of his cross examination by the counsel for defendant No.2, admitted that agreement to sell in favour of plaintiff was executed by his brother as the GPA holder of defendant No.1. PW2 showed ignorance about the boundaries of the suit property and date on which the defendant No.2 tried to interfere with the plaintiff's possession and enjoyment of the suit property. PW2 denied that the plaintiff is not in possession of the suit property and the suit is filed to grab the suit property.

The plaintiff has marked following documents on his behalf:

Ex.P1: Registered Agreement to sell dated 19.12.2008.
This agreement to sell was executed by the GPA holder of the defendant No.1 in favour of the plaintiff. There is specific reference in the said agreement to sell that the seller has handed over the possession of the property to the plaintiff.

Ex.P2: General Power of Attorney
This Power of Attorney was executed on 07.07.2008 by the defendant No.1 in favour of his GPA holder Muniraju S/o Chikkahanumaiah. It was attested before a notary public. In the said Power of Attorney it is stated that defendant No.1 has got title and possession over the suit property and he has authorized said Muniraju to manage the suit property and also to sell the same and to execute the registered sale deeds.

Ex.P3 to 6: Revenue Tax Paid Receipts
Through these four documents the plaintiff has paid the revenue tax in respect of the suit property for the year 2009-10, 2010-11, 2011-12 and 2012-13.

Ex.P7: Registered sale deed dated 10.01.2011
This is a registered sale deed dated 10.01.2011 executed by the GPA holder of the defendant No.1 by name Muniraju in favour of the plaintiff for selling the suit property. This sale deed was executed during the pendency of the suit. There is no pleading in the plaint about this sale deed.

Ex.P8 to 12: Photographs with CD
These photos show the vacant land with barbed wire fence.

ORAL AND DOCUMENTARY EVIDENCE OF THE DEFENDANT NO.2

The Defendant No.2, who was examined before the Court as DW1, deposed in his examination-in-chief that suit property is a government land and was allotted to him by the Special Deputy Commissioner, Bangalore Rural District and he has paid a sum of Rs.15,20,000 in respect of the grant of said land and taken the possession of the same. DW1 further deposed that, after the grant, he has put up the barbed wire fence and a temporary shed in the granted land. DW1 further deposed that neither the plaintiff nor the defendant No.1 have got any right, title or possession over the suit property. DW1 further deposed that the so called GPA holder of the defendant No.1 is none other than the own brother of the plaintiff and they, by colluding with each other, have created the agreement to sell and a registered sale deed during the pendency of the suit, to grab the suit property.

DW1 during the course of his cross examination by the counsel for plaintiff denied that suit property belongs to the defendant No.1. DW1 denied that defendant No.1 has executed a Power of Attorney and authorized Sri Muniraju to execute the agreement to sell and sale deed in favour of the plaintiff. DW1

denied that the grant order in favour of defendant No.2 is created by colluding with the government officials. DW1 denied about the plaintiff's possession and enjoyment of the suit property.

The defendant No.2 has marked following documents on his behalf:

Ex.D1: Allotment Order dated 22.02.2006
As per this document the Special Deputy Commissioner, Bangalore Rural District has allotted 36 guntas of land in Sy.No.3 of Madanayakanahalli village to the defendant No.2 vide order dated 22.02.2006.

Ex.D2: Challan dated 01.06.2006
As per this document, defendant No.2 paid a sum of Rs.15,20,000 to the government towards the allotment of 36 guntas of land in his favour.

Ex.D3: Possession Certificate dated 13.07.2006
As per this document, the Special Deputy Commissioner, Bangalore Rural District has handed over the possession of 36 guntas of land to the defendant No.2 on 13.07.2006.

Ex.D4: Mutation Order dated 20.09.2006
As per this document, the name of the defendant No.2 was ordered to be mutated in the revenue records of 36 guntas of land in Sy.No.3 of the Madanayakanahalli village.

Ex.D5: RTC for the year 2008-09
As per this document, 36 guntas of land in Sy.No.3 of Madanayakanahalli village stands in the name of defendant No.2.

Ex.D6: Revenue Sketch dated 22.10.2006
This is the revenue sketch issued by the Deputy Tahsildhar showing the identification of 36 guntas of land allotted to the defendant No.2.

Ex.D7 to 12: Assessment paid receipts
As per these documents defendant No.2 paid the tax and assessment in respect of 36 guntas of land in Sy.No.3 for the year 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13.

ARGUMENTS FOR THE PLAINTIFF

The learned counsel for the plaintiff argued that this is a suit for injunction and title over the property is not relevant for consideration in this suit. It was further argued that, to prima facie show his title over the suit property, plaintiff has produced the registered agreement to sell and the registered sale deed which are sufficient in this suit for injunction to establish the plaintiff's possession and enjoyment of the suit property. It was further argued that the plaintiff has produced the tax paid receipts and photos to prove his possession and enjoyment of the suit property. The plaintiff examined himself and one independent witness to prove his possession and enjoyment of the suit property. It was further argued for the plaintiff that the defendant No.2 denying the plaintiff's title and possession over the suit property itself shows he had the intention to interfere with the plaintiff's possession and enjoyment of the suit property. Therefore, the counsel for the plaintiff prayed to decree the suit.

ARGUMENTS FOR THE DEFENDANT No.2

The learned counsel for the defendant No.2 argued that even though it is a suit for injunction, as the plaintiff claims possession on the basis of the title and ownership, he has to prima facie prove his ownership over the suit property. It was further argued that the plaintiff claims ownership and possession over the suit property from the defendant No.1. The entire land in suit Sy.No. belongs to the

government and plaintiff has not produced any evidence to show that defendant No.1 has got title and possession over the suit property, so as to transfer the same in favour of the plaintiff. It was further argued for the defendant No.2 that the GPA holder of the defendant No.1 is none other than the own brother of the plaintiff and they, by colluding with each other, created the agreement to sell and the sale deed. It was further argued for the defendant No.2 that the sale deed produced by the plaintiff was executed during the pendency of this suit in order to grab the suit property. This sale deed cannot be considered as there is no foundation in the pleadings in respect of that document. It was further argued for the defendant No.2 that to show that the 36 guntas of land in suit Sy.No. was allotted to the defendant No.2 he has produced the allotment order, challan and possession certificate. Those documents were acted upon and there is a mutation order and RTC in the name of defendant No.2 and tax paid receipts and sketch, which all indicate that the defendant No.2 has been in possession of 36 guntas of land allotted to him. On these grounds, counsel for defendant No.2 prayed for the dismissal of the suit with costs.