Karnataka Civil Judge (Mains) 2021

Law Paper II · compulsory paper

Framing of Issues and writing Judgment in Civil Cases · Date: 01.10.2021 · Time: 10.00 AM to 1.00 PM · Max. Marks: 100

1. Frame proper issues on the basis of following pleadings. 10 Marks

O.S.No.23/2013

Plaintiff: Ramakrishna

vs

Defendants: State of Karnataka and 2 others

GIST OF PLAINT

The plaintiff is the owner of 4 acre 30 guntas of land in Survey No.25/1 of Bilikere Village of Hunsur Taluk, which is described as the suit 'A' schedule property. The suit 'B' schedule property is 1 acre 10 guntas of land in Sy.No.26/1 of Bilikere village, which is a government land, adjacent to the suit 'A' schedule property on its northern side. The plaintiff has encroached the suit 'B' schedule property and in settled possession and enjoyment of the same. The plaintiff has put up the barbed wire fence to the suit 'A' and 'B' schedule property and raised the areca nut garden and enjoying the same as its absolute owner. The defendants are trying to remove the barbed wire fence and to illegally dispossess the plaintiff from the suit 'B' schedule property, which made the plaintiff to file the present suit.

On all these grounds, plaintiff claimed a decree for permanent injunction restraining the defendants from illegally dispossessing the plaintiff from the suit 'B' schedule property, without following the due process of law.

GIST OF WRITTEN STATEMENT

The defendants, in their written statement, admitted the plaintiff's title and possession over suit 'A' schedule property and denied other plaint averments regarding plaintiff encroaching the suit 'B' schedule property and his settled possession and enjoyment of the same. The defendants also denied the allegation of they trying to illegally dispossess the plaintiff from the suit 'B' schedule property. According to the defendants, suit for bare injunction, without seeking the relief of declaration, is not maintainable. The defendants further contended that the suit is also not maintainable for non compliance of Section 80 of the Code of Civil Procedure, as the plaintiff has not issued statutory notice to the defendants before filing this suit. On all these grounds, defendants prayed for dismissal of the suit with costs.

2. Frame proper issues on the basis of following pleadings. 20 Marks

O.S.No.157/2016

Plaintiff: Sathyanarayana

vs

Defendants: Smt. Kaveri and another.

GIST OF PLAINT

The plaintiff is the son of Sri Venkataramaiah. The defendant No.1 and 2 are the daughters of Sri Venkataramaiah and younger sisters of the plaintiff. The suit schedule property is the self acquired property of father of the plaintiff and defendants, Sri Venkataramaiah, as he purchased the same from

his own earnings, vide sale deed dated 27.01.2001. The plaintiff looked after his father during his last days. Out of his love and affection towards the plaintiff, Sri Venkataramaiah executed a registered Will dated 09.09.2009, bequeathing the suit property in favour of the plaintiff. The plaintiff's father Sri Venkataramaiah died on 17.02.2010. After the death of his father, plaintiff became of the owner of the suit property on the basis of the Will and katha of the suit property changed in the name of the plaintiff and plaintiff has been in possession and enjoyment of the suit property as its absolute owner. The defendants, without any right, title and possession over the suit property, are denying the plaintiff's ownership over the suit property and trying to interfere with the plaintiff's possession and enjoyment of the suit property, which made the plaintiff to file the preset suit.

On all these grounds, plaintiff claimed a decree to declare him as the absolute owner of the suit property and for permanent injunction restraining the defendants from interfering with the plaintiff's possession and enjoyment of the suit property.

GIST OF THE WRITTEN STATEMENT

The defendants, in their written statement, admitted the relationship between them and denied other plaint averments regarding suit property as the self acquired property of their father, he executing a Will in favour of the plaintiff and plaintiff becoming absolute owner and in exclusive possession and enjoyment of the suit property and alleged interference. According to the defendants, the suit property is the joint family property of their family, as their father purchased the same from the income of their ancestral and joint family properties. The defendants further contended that their father has no absolute title over the suit property to execute the Will in favour of the plaintiff. The Will relied upon by the plaintiff is forged and bogus one. The suit is bad for non inclusion of other properties of the joint family. The suit is bad for non joinder of necessary parties, as the elder sister of the plaintiff and defendants by name Smt. Sushelamma is the necessary party to this suit. The suit is not properly valued and requisite court fee is not paid on the plaint. On these grounds, defendants 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, PUTTUR

O.S.No.22/2012

Raghava Poojary, Aged about 34 years, S/o Jaganath Poojary, R/ of Vittla, Puttur Taluk. ---- Plaintiff

Vs

Ganesha Shetty, Aged about 55 years, S/o Narasimha Shetty, R/of Vivek Nagar, Puttur, Puttur Taluk, ---- Defendant

DATE OF FILING THE SUIT: 30-01-2012

PLAINT

The suit property described in the plaint schedule is a site measuring 60x40 feet, bearing Site No.42 in Vivekananda Layout, Viveknagara, Puttur. The defendant is the owner of the suit property. For his family necessities and to repay the loan, defendant want to sell the suit property and entered into an agrement with the plaintiff on 22.12.2007 by agreeing to sell the suit property for Rs.4,00,000/-. On the date of agreement, defendant received a sum of Rs.2,00,000/- as sale advance from the plaintiff and agreed to execute the sale deed within two years from the date of sale agreement. The plaintiff

is/was always ready and willing to perform his part of the contract. The defendant has postponed the execution and registration of the sale deed on one or the other reasons. The plaintiff issued a notice on 10.10.2010, calling upon the defendant to execute the sale deed. In spite of the service of legal notice, defendant has not come forward to execute the sale deed, which made the plaintiff to file the present suit.

On all these grounds, plaintiff claimed a decree for specific performance, by directing the defendant to execute the sale deed in pursuance to the sale agreement dated 22.12.2007.

WRITTEN STATEMENT

The defendant, in his written statement, admitted his ownership over the suit property and denied other plaint averments, including the sale transaction between him and the plaintiff, execution of the sale agreement and receipt of Rs.2,00,000/- as sale advance from the plaintiff. According to the defendant, to perform the marriage of his daughter, he was in need of money and he borrowed a loan of Rs.2,00,000/- from the plaintiff. As a security for the said loan, plaintiff has obtained signatures of the defendant on a blank stamp paper and by misusing the same, sale agreement has been created. The defendant further contended that he has not agreed to sell the suit property to the plaintiff and plaintiff never been ready and willing to perform his part of the contract. The suit is barred by limitation. On all these grounds, defendant prayed for dismissal of the suit with costs.

ISSUES

1. Whether the plaintiff proves that the defendant has agreed to sell the suit property to him for Rs.4,00,000/- and executed a sale agreement dated 22.12.2007 by receiving a sum of Rs.2,00,000/- as sale advance from him?
2. Whether the defendant proves that the transaction between them is a loan transaction and as a security for Rs.2,00,000/- barrowed by him from the plaintiff, his signatures were obtained for a blank stamp paper and by misusing the same, sale agreement dated 22.12.2007 was created?
3. Whether the plaintiff proves that he was/is ready and willing to perform his part of the sale agreement?
4. Whether the suit is barred by limitation?
5. Whether the plaintiff is entitle for decree for specific performance?
6. What order or decree?

ORAL EVIDENCE OF THE PLAINTIFF

The plaintiff, who was examined before the court as PW1, reiterated the plaint averments in his examination-in-chief and deposed that defendant is the owner of the suit property and for his family necessities, he agreed to sell the suit property to him for Rs.4,00,000/- and executed a sale agreement dated 22.12.2007. PW1 further deposed that on the date of sale agreement, defendant has received a sum of Rs.2,00,000/- as a sale advance from him. PW1 further deposed that defendant agreed to execute the sale deed within two years from the date of sale agreement. PW1 further deposed that even after two years, defendant failed to execute the sale deed and he has issued a notice, for which defendant has not responded, which made him to file the present suit.

PW1, during the course of his cross examination, admitted that when the alleged sale transaction took place, defendant's daughter's marriage was scheduled. PW1 admitted that apart from the suit property,

defendant owns no other property. PW1 denied the suggestion that defendant has barrowed hand loan of Rs.2,00,000/- from him and as a security for the said loan transaction, signatures of the defendant were obtained for a blank stamp paper and by misusing the same, sale agreement was created. PW1 admitted that after receiving the notice sent by him, defendant has approached him and told him that he will repay the amount with interest. PW.1 admitted that there was no such legal hurdle to postpone the execution of the sale deed for two years. PW1 denied the suggestion that he was not ready and willing to perform his part of the contract.

The plaintiff examined one Ramesh Babu as PW2 and he deposed that defendant, being the owner of suit property, has executed a sale agreement dated 22.12.2007, by agreeing to sell the suit property to the plaintiff for Rs.4,00,000/- and received sale advance of Rs.2,00,000/- from the plaintiff. PW2 further deposed that he was present at the time of execution of the sale agreement and put his signature for the same as witness. PW2 identified the Ex.P1 sale agreement, signatures of the plaintiff and defendant and also his signature on Ex.P1 sale agreement.

During the course of his cross examination by the counsel for the defendant, PW2 admitted that at the time of alleged sale transaction, marriage of the defendant's daughter was fixed. PW2 admitted that he and plaintiff are close relatives. PW2 denied the suggestion that defendant has barrowed the loan of Rs.2,00,000/- from the plaintiff to perform the marriage of his daughter and as a security for the said loan transaction, signature of the defendant's was obtained on a blank stamp paper. PW2 denied the suggestion that subsequently, he and plaintiff, by colluding together, have created Ex.P1 sale agreement by misusing the signatures of the defendant obtained on the blank stamp paper.

The plaintiff marked following documents on his behalf:

Ex.P1: Sale agreement dated 22.12.2007

This sale agreement shows that it was executed by the defendant by agreeing to sell the suit property to the plaintiff for Rs.4,00,000/- and defendant has received Rs.2,00,000/- as a sale advance from the plaintiff.

The recitals of the sale agreement shows that both the parties agreed to execute the sale deed within 2 years from 22.12.2007.

Ex.P2: Property Katha Extract

This property extract is relating to the suit property and name of the defendant is shown as the owner of the suit property and it measures 60x40 feet.

Ex.P3: Copy of the Notice dated 10.10.2010

As per this notice, plaintiff requested the defendant to execute the sale deed in his favour in pursuance to the sale agreement dated 22.12.2007 by receiving the balance sale consideration of Rs.2,00,000/-.

Ex.P4: Postal Receipt

This Postal Receipt shows that Ex.P3 notice was sent to the defendant by way of registered post on 10.10.2010.

Ex.P5: Postal Acknowledgement

This postal acknowledgement shows that the notice issued to the defendant by registered post was served upon the defendant personally.

ORAL EVIDENCE OF THE DEFENDANT

The defendant, who was examined before the court as DW1 deposed that he is the owner of the suit property and was in need of money to perform the marriage of his daughter. DW1 further deposed that he approached the plaintiff to advance the hand loan of Rs.2,00,000/- and plaintiff, while advancing the loan, has obtained his signature on the blank stamp paper. DW1 further deposed that he never intended to sell the suit property and plaintiff has created the sale agreement by misusing his signatures on the blank stamp paper. DW1 further deposed that after receiving the notice from the plaintiff, he approached him and offered him to repay the loan amount with interest and requested the defendant to return the signed blank stamp paper. DW1 further deposed that plaintiff was never ready to perform his part of the contract and if the suit is decreed for specific performance, he will be put to irreparable loss and hardship, as suit property is the only property owned by him.

During the course of his cross examination by the learned counsel for the plaintiff, DW1 admitted his signatures on Ex.P1 sale agreement. DW1 denied the suggestion that he put the signature for Ex.P1 sale agreement by agreeing to sell the suit property for Rs.4,00,000/-. When it was suggested to DW1 that while executing Ex.P1 sale agreement, he has received Rs.2,00,000/- from the plaintiff as a sale advance, DW1 said that he received Rs.2,00,000/- as hand loan from the plaintiff and not as sale advance.

The defendant has marked following document on his behalf:

Ex.D1: Marriage Invitation Card

As per the said marriage invitation card, marriage of the defendant's daughter was scheduled on 12.01.2008.

ARGUMENTS FOR THE PLAINTIFF

Learned counsel for the plaintiff argued that, by examining plaintiff as PW1, one witness as PW2 and by producing Ex.P1 sale agreement, plaintiff has discharged the initial burden of proving sale transaction between the plaintiff and defendant and execution of Ex.P1 sale agreement. It was further argued by the counsel for the plaintiff that, when the defendant admits his signature on Ex.P1 and deny the same as sale transaction, burden is upon the defendant to prove that his signatures were obtained on a blank stamp paper as a security for the loan transaction. But, the defendant has failed to prove the same. It was further argued for the plaintiff that even when the notice issued by the plaintiff was served, defendant has not given any reply for the same, denying the sale transaction between them, which indicate that contention of the defendant is an after thought. It was further argued for the plaintiff that immediately after the expiry of two years period the plaintiff has issued notice and thereafter filed the suit, which demonstrate the plaintiff's readiness and willingness to perform his part of the contract. On these grounds, learned counsel for the plaintiff prayed to decree the suit for the relief of specific performance. In the alternative, it was argued for the plaintiff that the suit can be decreed for refund of sale advance, if the court come to the conclusion that plaintiff is not entitle for decree for specific performance, as the decree for refund of sale advance is the lesser relief than the decree for specific performance.

ARGUMENTS FOR THE DEFENDANT

The learned counsel for the defendant argued that the transaction between the plaintiff and the defendant is not a sale transaction and there are many circumstances, which show that it is a loan transaction and document was executed as a security for the loan transaction. It was further argued by

the learned counsel for the defendant that even though there was no legal hurdle for execution of the sale deed, still without any reason, two years time was fixed for execution of the sale deed, which itself indicate that Ex.P1 is a document executed as a security for the loan transaction and it is not a genuine sale agreement. It was further argued by the learned counsel for the defendant that, even after expiry of two years period from the date of sale agreement, plaintiff has taken 10 months time to issue the notice and after issuing the notice, he has waited another one year three months to file the suit, which also indicate that it is not a pure sale transaction. It was further argued by the learned counsel for the defendant that the time taken for registration of the sale deed, issuance of the notice and filing of suit, are also indicate that plaintiff is not ready and willing to perform his part of the contract. It was further argued by the learned Counsel for the defendant that the suit is barred by limitation, as it was not filed within three years from the date of sale agreement. It was further argued by the learned counsel for the defendant that the plaintiff is not entitle for decree for specific performance. It was further argued by the learned counsel for the defendant that the plaintiff is also not entitle for the relief for refund of sale advance, as the said relief has not been claimed by the plaintiff and in view of Section 22 of the Specific Relief Act, 1963, when the relief for refund of sale advance has not been claimed in the plaint, such relief cannot be granted by the Court. On all these grounds, learned counsel for the defendant prayed for dismissal of the suit with costs.