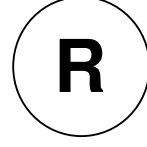




**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**



DATED THIS THE 17TH DAY OF NOVEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR

REGULAR SECOND APPEAL NO.3206 OF 2007

BETWEEN:

1. LAXMAN S/O SATTEPPA WARAD,
SINCE DECEASED BY HIS LR'S.
- 1A. SULOCHANA W/O BASAPPA BAGEWADI,
AGE. 56 YEARS, OCC. HOUSE WIFE,
R/O. MUDHOL, TQ. MUDHOL,
DIST. BAGALKOT.
- 1B. SHAILAJA W/O SADASHIV AMBARSHETTY,
AGE. 54 YEARS, OCC. HOUSE WIFE,
R/O. MUDHOL, TQ. MUDHOL,
DIST. BAGALKOT.
- 1C. SADASIV S/O LAXMAN VARAD,
AGE. 52 YEARS, OCC. BUSINESS,
R/O. MUDHOL, TQ. MUDHOL,
DIST. BAGALKOT.
- 1D. MAHADEV S/O LAXMAN VARAD,
AGE. 52 YEARS, OCC. BUSINESS,
R/O. MUDHOL, TQ. MUDHOL,
DIST. BAGALKOT.
- 1E. SHAKUNATALA W/O SADASHIV TIMMAPUR,
AGE. 48 YEARS, OCC. BUSINESS,
R/O. MUDHOL, DIST. BAGALKOT.
- 1F. SUMANGALA W/O MALLAPPA ANGADI,
AGE. 48 YEARS, OCC. HOUSE WIFE,
R/O. MUDHOL, DIST. BAGALKOT.

... APPELLANTS

(BY SRI. SHIVANAND MALASHETTI, ADVOCATE FOR
SRI. SHIVARAJ P. MUDHOL, ADVOCATE)





AND:

TOWN MUNICIPAL COUNCIL,
R/BY ITS CHIEF OFFICER,
MUDHOL, DIST. BAGALKOT,
PIN-587313.

... RESPONDENT

(BY SRI. R.K. KULKARNI, ADVOCATE)

RSA FILED U/S 100 OF CPC AGAINST THE JUDGEMENT AND DECREE DATED 27.09.2007 PASSED IN RA.NO.51/2005 ON THE FILE OF THE ADDL.CIVIL JUDGE (SR.DN.) JAMKHANDI, SITTING AT MUDHOL, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGEMENT AND DECREE DATED 28.02.2005 PASSED IN OS.NO.197/2003 ON THE FILE OF THE PRL.CIVIL JUDGE (JR.DN.) MUDHOL.

THIS APPEAL, COMING ON FOR FURTHER ARGUMENTS, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This second appeal is filled praying to set aside the judgment and decree dated 27.09.2007 passed in RA No.51/2005 by the Additional Civil Judge, (Senior Division), Jamakhandi sitting at Mudhol and confirm judgment and decree dated 28.02.2005 passed in O.S No.197/2003 by the Principal Civil Judge, (Junior Division), Mudhol.

2. The appellant was the plaintiff and respondent was the defendant in the trial Court in O.S.No.197/2003.



Parties herein are referred as per their ranks in the Trial Court.

3. The appellant-plaintiff died during pendency of this appeal, his LRs were brought on record.

4. The appellant-plaintiff has filed a suit in O.S No.197/2003 seeking the relief of declaration and injunction in respect of suit property bearing C.T.S.No.4195 measuring 342 Sq.Mtr situated at ward No.V, Mudhol having the boundaries towards East: Mudhol-Lokapur Road, towards West: Municipal Gattar, towards North: Plaintiff property bearing CTS No. 3817 and 3393 and towards South: CTS No. 3818 APMC. Along with plaint hand sketch has been enclosed which showing the topography of the suit property.

5. The case of the plaintiff is that he is the actual owner and possessor of the suit property and same has been granted to him by the Special Deputy Commissioner, Bijapur on 18.12.1986 on a privilege of consideration of his military service. The Deputy Commissioner, Bijapur



handed over the possession of the property to the plaintiff on 18.12.1986. The plaintiff in his suit property is running a oil mill after obtaining necessary permission from the concerned authority. It is further case of the plaintiff that he wanted to construct room on the eastern side of the property which has been shown by letters 'EAGH' for his family use and when the said construction was in progress, the defendant surveyed the suit property through Survey Department wherein it is shown that he has encroached property marked in the sketch 'EABF'. It is stated in the plaint that the defendant on second Saturday during evening hours with his labours trespassed the suit property and demolished the portion constructed in 'EAGH' portion. The plaintiff contended that the defendant has no right and interest over the suit property. With this, plaintiff prayed to decree the suit.

6. The defendant has appeared through counsel and filed written statement. The contents of written statement are total denial of plaintiff's case. The defendant



contended that issuance of prior notice as required under Section 284 of The Karnataka Municipalities Act (hereinafter referred as 'the Act' for brevity) is mandatory and for non issuance of the same, he prayed for return of the plaint.

7. On the basis of the above pleadings, the Trial Court has framed the following issues;

"1. Whether the plaintiff proves that he is the actual owner of the suit property?

2. Whether the plaintiff further proves that he was and is in peaceful possession and enjoyment of the suit property as on the date of institution of the suit ?

3. Whether the plaintiff further proves that, the defendant has interfered with his peaceful possession and enjoyment of the suit property ?

4. Whether the plaintiff is entitle for the relief of declaration as sought for in the plaint ?

5. Whether the plaintiff is further entitle for the relief of permanent injunction as sought for in the plaint ?

6. To what order or decree ?"



8. The plaintiff has been examined himself as PW.1 and got examined two witnesses as PWs.2 and 3 and got marked Exs.P1 to P15. The defendant has not led any oral evidence and not produced any documents, even learned counsel for the defendant has not cross-examined the plaintiff's witnesses namely PWs.1 to 3. The Trial Court after hearing the arguments of both sides and appreciating the evidence on record has answered issue Nos.1 to 5 in the affirmative and decreed the suit. The Trial Court in view of filing I.A.No.VI by the defendant under Order VII Rule 11 of CPC, seeking rejection of the plaint on the ground that notice as required under Section 284(1) of the Act has not been issued by the plaintiff, has framed the additional issue which reads as under;

"Additional Issue No.1. Whether the defendants prove that, the suit of the plaintiff is not maintainable for want of notice U/sec.284 of Karnataka Municipalities Act ?"

The Trial Court has answered the said Additional issue in the Negative.



9. Aggrieved by the said judgment and decree passed by the Trial Court, defendant has filed the appeal in R.A.No.51/2005 on the file of Additional Civil Judge (Sr.Dn) Jamkhandi Sitting at Mudhol (hereinafter referred as 'First Appellate Court' for brevity). The First Appellate Court after hearing the arguments of both sides has formulated the following points for consideration.

"1. Whether the impugned judgment and Decree passed by the Trial Court in O.S.No.197/2003 is capricious, erroneous, against the Law and merits of the case and same is liable to be set-aside and further the interference of the appellate Court is needed ?

2. What order ?"

The First Appellate Court answered issue No.1 in the affirmative and allowed the appeal and set-aside the judgment and decree passed by the Trial Court in O.S.No.197/2003.

10. Aggrieved by the judgment and decree passed by the First Appellate Court, the plaintiff has filed this



Second Appeal. This Court has admitted the appeal to consider the following substantial questions of law.

"i) Whether the lower Appellate Court has committed an error while considering the nature and scope of Section 284 of the Karnataka Municipality Act in the fact of findings rendered by the Trial Court with regard to the said provisions relating to nature and relief sought in the suit ?

ii) Whether in that context, the lower Appellate Court was justified in reversing the findings of the Trial Court and allowing the appeal only on the point that suit itself was not maintainable for non-compliance of provisions contained in Section 284 of the Act ?"

11. Heard learned counsel for the appellant and learned counsel for the respondent.

12. Learned counsel for the appellant would contend that the appellant/plaintiff has filed the suit for the relief of declaration and injunction to declare that he is the owner of suit property and to restrain defendant from interfering with his possession over the suit property. On considering the nature of relief sought for, there is no requirement for issuance of notice as required under



Section 284 of the Act. He further contended that the appellant/plaintiff had filed an application seeking leave of the Court to file the suit dispensing with the issuance of notice and at the first hearing, the Trial Court has accorded permission to file the suit and thereafter, issued notice of I.A and summons to the defendant. He contended that the First Appellate Court was not justified in reversing the findings of the Trial Court and allowing the appeal on the point that the suit itself was not maintainable for non issuance of notice as required under Section 284 of the Act. He contended that no action is initiated against the plaintiff under the provision of The Karnataka Municipalities Act by the respondent/defendant and therefore, no notice is necessary to be issued as required U/Sec.284 of the Act. With these, he prayed to allow the appeal and set-aside the judgment and decree passed by the First Appellate Court.

13. Learned counsel for the respondent/defendant would contend that as per the provision contained in



Sub-Section (1) of Section 284 of the Act, a prior notice is mandatory in the absence thereof suit of the plaintiff is not maintainable. The plaintiff has not got issued any notice as required under Section 284(1) of the Act. Therefore, the First Appellate Court has rightly considered the said aspect and allowed the appeal and set-aside the judgment and decree passed by the Trial Court. With this, he prayed to dismiss the appeal.

14. The suit filed by appellant-plaintiff was for the relief of declaration that he is the owner and in possession of the suit property. When the plaintiff was constructing building in his property on eastern side, it is alleged that the labours of the defendant have highhandedly demolished the undergoing construction alleging that the plaintiff has encroached the property of the defendant on eastern side of his property. As the defendant and his servants have interfered with the plaintiff's possession and denied his title, he filed a suit for declaration and injunction. The defence of defendant is of total denial of



plaintiff's case. The plaintiff examined himself as PW.1 and got examined two witnesses as PWs.2 and 3 and got marked Exs.P1 to P15. There is no cross-examination of PWs.1 to 3 by the defendant. The oral evidence of PWs.1 to 3 and documents produced by the plaintiff establish that plaintiff is the owner and in possession of the suit property. The photographs produced at Exs.P8, 9 and 15 show that the labours of the defendant have demolished the undergoing construction made by the defendant over the suit property. In the written statement, the defendant has not pleaded any encroachment by the plaintiff over the property of defendant. Even the defendant has not pleaded of any action taken against the plaintiff under the provisions of the Act for removal of encroachment. That itself establishes that the defendant has not invoked any of the provisions of The Karnataka Municipalities Act for removal of alleged encroachment made by the plaintiff over the property of defendant. If any action is taken by the defendant under the provisions of The Karnataka



Municipalities Act, then the defendant is entitled to prior notice as required under Section 284(1) of the Act.

15. The defendant has only taken defence that the suit is not maintainable in view of non issuance of notice as required under Section 284(1) of the Act. It is beneficial to extract Section 284 of The Karnataka Municipalities Act, which reads thus;

"284. Previous notice for suits, etc.—(1) *No suit shall be instituted against any municipal council, officer, servant or any person acting under the order or direction of such municipal council, officer or servant in respect of any act done or purporting to have been done in pursuance of this Act or any rule or bye-law made thereunder until the expiration of sixty days next after notice in writing, stating the cause of action, the nature of the relief sought, the amount of compensation claimed, the name and place of residence of the intending plaintiff and the relief which he claims, has been in the case of a municipal council delivered or left at its office, and in the case of such officer, servant, or person, delivered to him or left at his office or place of residence and unless the plaint contains a statement that such notice has been so delivered or left.*

(2) Nothing in this section shall be deemed to apply to a suit in which the only relief claimed is an injunction of



which the object would be defeated by the giving of the notice or the postponement of the institution of the suit."

16. The notice as required under Section 284(1) of the Act is necessary "in respect of any act done or purporting to have been done in pursuance of this Act or any rule or bye-law made thereunder". The defendant has not initiated any action against the plaintiff under the provisions of the Act. Therefore, no prior notice as required under Section 284(1) of the Act, is necessary.

17. The Hon'ble Apex Court in the case of ***The City Municipal Council, Bhalki, By Its Chief Officer Vs Gurappa (Dead) by Legal Representatives and Another¹***, while considering issuance of notice under Section 284(1) of the Act has held as under;

"In our opinion, this issue does not arise at all, as a municipal council is not a public officer, and no notice is necessary when a suit is filed against a municipality. Thus, the question of sufficiency of notice under Section 80 of the CPC does not arise at all. Further, the issuance of notice under Section 284(1) of the Karnataka

¹ (2016) 2 Supreme Court Cases 200



Municipalities Act, 1964 also does not arise for the reason that the dispute between the parties in the suit in O.S. No. 39 of 1993 does not attract the above provision of the Act and therefore, we need not advert to and answer the above contention.”

18. The dispute between plaintiff and defendant does not attract the provisions of the Act. Therefore, no question of issuance of notice under Section 284(1) of the Act, arises. The First Appellate Court without considering all these aspects has erred in holding that notice under Section 284(1) of the Act is mandatory and in the absence thereof, suit is not maintainable. In view of the above, the substantial questions of law are answered accordingly. In the result, the following:

ORDER

The Regular Second Appeal is allowed.

The judgment and decree dated 27.09.2007 passed in R.A.No.51/2005 by the Additional Civil Judge (Sr.Dn) Jamkhandi sitting at Mudhol is set-aside.



The judgment and decree dated 28.02.2005 passed in O.S.No.197/2003 by the learned Prl. Civil Judge (Jr.Dn) Mudhol, is confirmed.

Sd/-
JUDGE

DSP & AM
CT:BCK
List No.: 2 SI No.: 2