
(2015) 09 KAR CK 0128
In the Karnataka High Court
Case No : R.S.A. No. 1946 of 2013

Anera Kunjamma and Others

APPELLANT

Vs

Kallumutlu Chennabasappa and Others

RESPONDENT

Date of Decision : 03-09-2015

Acts Referred:

Citation : (2015) 09 KAR CK 0128

Hon'ble Judges : Aravind Kumar, J.

Bench : Single Bench

Advocate : B.A. Machaiah, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Aravind Kumar, J.—This is plaintiffs second appeal assailing the correctness and legality of the judgment and decree passed by the District Judge, Madikeri dated 17.9.2013 in R.A. No. 63/2010, whereunder the appeal filed by the unsuccessful appellant-plaintiff came to be dismissed and judgment and decree passed by the Senior Civil Judge, Madikeri dated 14.9.2010 in O.S. No. 63/2001 dismissing the suit of the plaintiff for partition and separate possession and for consequential relief of cancellation of the sale deed dated 6.7.1981 and receipt dated 24.12.1981 came to be affirmed.

2. Plaintiff instituted a suit for the relief of partition and separate possession and also consequential relief contending inter alia that plaintiff and defendants originally belong to Kallumutlu family and plaintiff forms the sole descendent of one branch of said family, while the defendants together form the other branch and when she has been in possession and enjoyment of the suit schedule property and as such, she is entitled for her share. She contended that she is residing away from the suit schedule properties and defendants have been cultivating the suit schedule properties without there being any severance of status and when demanded for grant of 1/2 share, defendants dodged the same and as such she got issued legal notice on 27.3.2011 which was replied on

4.4.2001 denying her claim and also contending that she has alienated all her right in and over the properties in question to first defendant and his father late Kallumutlu Machaiah, hence, she filed a suit for partition. During the pendency of the suit, she got amended the plaint and prayed for cancellation of the sale deed dated 06.7.1981. Defendant No. 1 had filed the written statement denying the averments made in the plaint and contended that plaintiff under a valid registered sale deed dated 06.7.1981 had sold all her right, title and interest in the suit schedule properties to the first defendant and his father, after receiving valuable consideration and as such they have been in possession and enjoyment of the suit schedule properties and plaintiff having alienated the same has lost right, title and interest over the same. It was also contended that since it was a privileged tenure granted in respect of suit schedule properties by the State, consent of other members of Kallumutlu family were taken and they have also affixed the signature to the sale deed as attestors in token of their consent for such sale in favour of first defendant and his father and as such, the suit filed by the plaintiff at the instance of sixth defendant is barred by law of limitation. Trial Court on the basis of the pleadings, formulated the following issues for its determination-

- "1. Whether the plaintiff proves that, the suit schedule properties are the undivided joint family properties and it is in joint possession and enjoyment of plaintiff and the defendants?
2. Whether the plaintiff proves that she is having half share in the suit schedule properties?
3. Whether the plaintiff is entitled for the mesne profits?
4. Whether the defendants prove that the plaintiff had sold her right, title and interest over the suit schedule properties on 6.7.1981 in favour of the D-1 and his father?
5. Whether the suit is barred by Law of limitation?
6. Whether the plaintiff is entitled for the reliefs as prayed for?
7. What order or decree?

Addl. Issues:

1. Whether the plaintiff proves that, sale deed dated 6.7.81 and receipt dated 24.12.81 said to have been executed by her is sham document and obtained by misrepresentation and fraud?
2. Whether the plaintiff is entitled for relief of cancellation of sale deed dated 6.7.81 and receipt dated 24.12.1981?"

As Power of Attorney holder of plaintiff, her son was examined as PW-1 and one witness by name Keshava was examined as PW-2. In all 22 documents were marked. Defendant got himself examined as DW-1 and two documents were got

marked through him as Exs-D1 and D2. On appreciation of entire evidence, trial court answered issue Nos. 1, 2, 3, 6 and Additional issue Nos. 1 and 2 in the negative and issue No. 4 in the affirmative and issue No. 5 partly in affirmative and consequently dismissed the suit. Being aggrieved by the same, plaintiff pursued her grievance before the Appellate Court and 1st Appellate Court after considering the arguments addressed by the respective Advocates and after securing the records formulated the following points for its determination:--

"1. Whether the plaintiff has established that the sale deed dated 06.07.1981 and the receipt dated 24.12.1981 are sham documents and are obtained by practicing fraud and misrepresentation?

2. Is the suit barred by time in so far as the relief of cancellation is concerned?

3. Is the plaintiff entitled to a decree for partition and cancellation?

4. Whether interference is called for in the judgment and decree of the trial court?"

On re-appreciation of evidence 1st appellate Court answered points No. 1, 3 and 4 in the negative and point No. 2 in the affirmative and consequently dismissed the appeal.

3. It has been noticed by both the Courts that plaintiff did not enter the witness box and on the other hand, it is her son, who was examined as PW-1 and though plaintiff has pleaded misrepresentation and fraud in the plaint, it was the plaintiff alone who was capable of speaking the truth and as such hearsay evidence spoken by her for PW-1 would not assist the plaintiff. It came to be noticed by Court below that plaintiff had contended that by misrepresentation, sale deed was got obtained by the first defendant and his father and no amount by way of sale consideration was received, was not acceptable, inasmuch as recital in the sale deed prevailed over any other plea and said plea was not proved by rebuttal evidence. In the instant case, except the self-serving testimony of PW-1, he was also personally aware of what transpired when the sale transaction took place no other evidence as placed. Hence, it has not been rightly accepted by the courts below. On the other hand, it has been noticed that the sale deed Ex-D1 contains the signature of his mother what was admitted. He has also admitted there was no ill-will between his mother on one hand and 1st defendant. That apart Sriyuths. Bopanna, Chettiappa and Poovaiah, who are all other members of the family have also given their consent for sale of suit properties. It is also admitted by PW-1 that there was no ill-will between the plaintiff and defendant Nos. 1 and 2. He also admits that defendant Nos. 1 and 2 may be in possession of suit properties from date of purchase. Infact, he has not denied the suggestion that defendant Nos. 1 and 2 are the absolute owners of the suit schedule properties. He also admits, he did not give any instructions to his counsel for drafting the plaint and was not aware as to what instructions his mother gave to the learned counsel appearing on her behalf. He further admits that the signature of his mother to the sale deed were taken by persons, who had got trees on the suit

land sold but they were not examined to prove this fact.

4. As against this evidence, it was noticed by both the courts that contents of Ex-D1 would indicate that sale deed came to be executed by plaintiff on 6.7.1981 and it was registered on the same day and the suit in question has been filed after a period of 20 years, which is hopelessly barred by limitation and there being no sufficient evidence tendered to substantiate the claim of fraud and misrepresentation, the courts below rightly held that plaintiff has utterly failed to prove and substantiate said plea. The findings recorded by the courts below are findings of fact and there is no error committed by the courts below calling for interference at the hands of this Court and there are no grounds whatsoever made out for formulating the substantial questions of law and answering the same.

5. Hence, appeal in question being devoid of merits stands dismissed. In view of appeal having been dismissed, I.A. No. 1/2013 does not survive for consideration and it stands dismissed.