

(2004) 02 KAR CK 0031

In the Karnataka High Court

Case No : Second Appeal No"s. 213, 214, 215 and 216 of 1999

Anneppa Channappa Shetkar and Another, etc.

APPELLANT

Vs

Bandevva (deceased by L. Rs.) and Others

RESPONDENT

Date of Decision : 23-02-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 5, Order 6 Rule 17

Citation : AIR 2004 Kar 276

Hon'ble Judges : K.L. Manjunath, J

Bench : Single Bench

Advocate : M.H. Datar, for the Appellant; U. Panduranga Nayak, Huleppa Heroor and Rodda Verashetty, for the Respondent

Final Decision : Allowed

Judgement

K.L. Manjunath, J.—Appellants in these appeals were the plaintiffs before the trial Court. Appellants in R. S. A. 216/1999 were the plaintiffs in O. S. No. 74/78 on the file of the Prl. Civil Judge (Sr. Dn), Bidar and they were also the appellants before the Addl. Dist. Judge, Bidar in R. A. 24/87. Appellant in RSA 215/99 was the plaintiff in O. S. No. 73/78 on the file of the Prl. Civil Judge (Sr. Dn.), Bidar and appellant in R. A. 23/87. Appellants in RSA 214/99 were the plaintiffs in O. S. No. 72/78 on the file of the Prl. Civil Judge (Sr. Dn.), Bidar and appellants before the Addl. District Judge, Bidar in R.A. 22/87. Appellants in RSA 213/99 were the plaintiffs in O. S. No. 69/78 on the file of the Prl. Civil Judge (Sr. Dn.), Bidar and appellants in R. A. 21/87 on the file of the Addl. District Judge, Bidar. O. S. Nos. 69, 72, 73 & 74/1978 were filed by the plaintiffs against the common defendants to declare them as owners in respect of Sy. No. 59 and 68 of Ballur village, Aurad Taluk and to further declare that the decree passed in O. S. No. 11/1967 on the file of the Civil Judge, Bidar does not bind them and for cancellation of the said decree. According to plaint averments, one Sangappa had 4 sons by name Veershetty, Channappa, Gundappa and Shamrao. Veershetty had two wives viz., Ratnamma and Bandawwa. Through Ratnamma Veershetty had

two sons by name Malshetty and Shankarappa and two daughters by name Tarabai and Kamlai through his second wife Bandewwa. Sons and daughters of Veershetty are defendants 2 to 4 in the suits, Bandewwa, 2nd wife of Veershetty was the 1st defendant in the suits. Second son of Sangappa viz., Channappa has three sons by name Shivbasappa, Anneppa and Vishwanath. They are the plaintiffs in O. S. No. 74/78. Third son of Sangappa viz., Gundappa is the plaintiff in O. S. No. 72/78. Ramshetty's sons viz., Subhash and Mahadeva were the plaintiffs in O. S. No.69/78 and Ramshetty is the 4th son of Sangappa, 5th son of Sangappa i.e. Shamrao is the plaintiff in O. S. No. 73/78. According to the plaint averments, Sangappa died long back and he had no ancestral property and after his death certain properties were acquired jointly by his sons viz., Veershetty, Channappa, Gundappa, Ramshetty and Shamrao with their joint efforts and they considered the properties as joint family properties and all the properties were enjoyed by the plaintiffs and defendants during the life time of Veershetty, Channappa and Ramshetty. In addition to the lands mentioned therein, a house property situated in Chamkuri Galli, Bidar was also acquired jointly and that the family had an ancestral house at Chitakhane, Bidar and also a house at Bellur which house was acquired jointly by all the members of the family.

2. Due to the differences arose among the women-folk of the family, sons of Channappa demanded partition of the joint family properties from his elder brother Veershetty and that a partition was also effected in the first week of June, 1958. Accordingly certain extents of lands were allotted to the shares of the brothers and that they are enjoying the properties as per the shares allotted to them. It is the further case of the plaintiffs that defendants 1 to 3 filed O. S. No. 11/1967 against defendants 4 and 5 claiming partition and separate possession of their share without impleading the plaintiffs in these suits. The suit filed by defendants 4 and 5 came to be decreed on 29-9-1972 and defendants 1 to 3 were the plaintiffs in the suit in O. S. 11/67 and were declared to be entitled for 3/5th share in all the properties. Against the judgment and decree passed in O. S. 11/67 an appeal was also preferred by defendants 4 and 5 appeal preferred by them was also dismissed by High Court in 1976 and thereafter a final decree proceedings were initiated by defendants 1 to 3. After obtaining the final decree proceedings an execution petition was also filed in Exc. 72/77 for recovery of possession and costs. When the defendants 1 to 3 made an attempt to interfere with the plaintiffs possession and enjoyment of the property, plaintiffs came to know of the decree passed in O. S. No. 11/67, therefore, they filed a suit for declaration. Defendants contested the case. Though the defendants admitted the relationship between the parties, they denied the rights of the plaintiffs in all the suit properties. According to them, suit properties were the self acquired properties of Veershetty and that there was no partition during the life time of Veershetty as contended by the plaintiffs. Therefore, they requested the Court to dismiss the suit.

3. Based on the pleadings, following issues were framed by the trial Court in different cases :

In O. S. No. 69/78 :

1. do the defendants prove that Shiv Basappa been adopted by Veerantappa Madki and has no concern with the Suit property?
2. Do the plaintiffs prove that the suit property and other non-suit properties were purchased in the name of Veershetty being the Karta of Hindu joint family?
3. Do the plaintiffs prove that the oral partition of the property was effected in June, 1958 amongst Veershetty and his brothers except the houses?
4. Do the plaintiffs prove that the suit land bearing Sy. No. 59 to the extent of 6 acres 26 guntas numbered as Sy. No. 59/3 fell to the share of the father of the plaintiffs and the plaintiffs are in possession as owners?
5. Do the plaintiffs prove that the decree dated 29-9-1972 in O. S. No. 11/67 is not binding upon them and the same is fit to be cancelled?
6. Do the plaintiffs prove that the defendants interfered on 21-9-1978 with possession of the plaintiffs over the suit lands?
7. Do the defendants prove that the suit lands bearing Sy. No. 59 to the extent of 11 acres 39 guntas and Sy. No. 68 to the extent of 4 acres 34 guntas of Ballur village have been partitioned and given to the possession of the defendants No. 1 to 3 and their names stand in the ROR?
8. Whether the Court fee paid is not sufficient?
9. Whether the suit is time barred?
10. To what order or decree?

In O. S. No. 72/78:

1. Do the defendants prove that Shiv Basappa had been adopted by Veerantappa Madki and has no concern with the suit property?
2. Do the plaintiff proves that the suit property and other non-suit properties were purchased in the name of Veershetty being the karta of the Hindu joint family?
3. Do the plaintiff proves that the oral partition of the property was effected in June, 1958 amongst Veershetty and his brothers except the houses?
4. Do the plaintiff proves that the suit land bearing Sy. No. 59 to the extent of 6 acres 26 guntas numbers as Sy. No. 59/1 fell to the share of the father of the plaintiff, and the plaintiff is in possession as owner ?
5. Do the plaintiff proves that the decree dated 29-9-1972 in O. S. No. 11/67 is not binding upon them and the same is fit to be cancelled?
6. Do the plaintiff proves that the defendants interfered on 21-9-1978 with the possession of plaintiff over the suit lands?

7. Do the defendants prove that the suit lands bearing Sy. No. 59 to the extent of 11 acres 39 guntas and Sy. No. 68 to the extent of 4 acres 34 guntas of Ballur village have been partitioned and given to the possession of the defendants No. 1 to 3 and their names stand in the R. O. R.?

8. Whether the Court fee paid is not sufficient?

9. Whether the suit is time barred?

10. To what order or decree?

In O. S. No. 73/78 :

1. Do the defendants prove that Shivbasappa has been adopted by Veerantappa Madki and has no concern with the suit property?

2. Do the plaintiff proves that the suit property and other non-suit properties were purchased in the name of Veershetty being the Karta of the Hindu Joint family?

3. Do the plaintiff proves that the oral partition of the property was effected in June. 1958 amongst Veershetty and his brothers except the houses?

4. Do the plaintiff proves that the suit land bearing Sy. No. 59 to the extent of 6 acres 26 guntas, numbered as 59/2 fell to the share of the plaintiff and the plaintiff is in possession as owner ?

5. Do the plaintiff proves that the decree dated 29-9-1967 in O. S. 11/67 is not binding upon them and the same is fit to be cancelled?

6. Do the plaintiff proves that the defendants interfered on 21-9-1978 with possession of the plaintiff over the suit lands

7. Do the defendants prove that the suit lands bearing Sy. No. 59 to the extent of 11 acres 29 guntas and Sy. No. 68 to the extent of 4 acres 34 guntas of Ballur village have been partitioned and given to the possession of the defendants No. 1 to 3 and their names stand in the R. O. R.?

8. Whether the court fee paid is not sufficient?

9. Whether the suit is time barred?

10. To what order or decree?

In O. S. No. 74/78:

1. Do the defendants prove that Shivbasappa has been adopted by Veerantappa Madki and has no concern with the suit property?

2. Do the plaintiffs prove that the suit property and other non-suit properties were purchased in the name of Veershetty being the karta of the Hindu joint family?

3. Do the plaintiffs prove that the oral partition of the property was effected in June, 1958, amongst Veershetty and his brothers except the house?
4. Do the plaintiffs prove that the suit land bearing Sy. No. 68 to the extent of 8 acres 3 guntas fell to the share of the father of the plaintiffs and the plaintiffs, are in possession as owners?
5. Do the plaintiffs prove that the decree dated 29-9-1972 in O. S. 11/67 is not binding upon them and the same is fit to be cancelled?
6. Do the plaintiffs prove that the defendants Interfered on 21-9-1978 with possession of the plaintiffs over the suit lands?
7. Do the defendants prove that the suit lands bearing Sy. No. 59 to the extent of 11 acres 39 guntas and Sy. No. 68 to the extent of 4 acres 34 guntas of Ballur village have been partitioned and given to the possession of the defendants No. 1 to 3 and their names stand in the R. O. R. ?
8. Whether the Court fee paid is not sufficient?
9. Whether the suit is time barred?
10. To what order or decree?

4. In all 8 witnesses were examined on behalf of the plaintiffs as P. Ws-1 to 8. Plaintiffs also relied upon documents Exs. P-1 86. In all 6 witnesses were examined on behalf of the defendants and relied upon Exs. D-1 to 29. Since common evidence was recorded, common findings were also given on all the issues by the trial Court. Trial Court, after appreciating the evidence adduced by the parties, held issues 1 to 6 in the negative, issue No. 7 in the affirmative sue No. 8 as Court fee paid is sufficient, issue No. 9- Suit filed in O. S. 72/78 and 73/78 as barred by time and O. S. 69/78 and 74/78 as in time and ultimately suit filed by the plaintiffs came to be dismissed by the judgment and decree of the trial Court dated 29-6-1987. Being aggrieved by the judgment and decree of the trial Court, plaintiffs and defendants filed in all 4 appeals in R. A, Nos. 21, 22, 23 arid 24/87 before the Addl. District Judge Bidar. All the appeals were clubbed together and were heard by the District Judge, Bidar by formulating the following points for his consideration:

1. Whether the appellants in R. A. 24/87 have made out sufficient grounds for producing additional evidence before this Court as prayed for in I. A. 3 in R. A. 24/87?
2. Whether the plaintiffs appellants have made out sufficient grounds for framing of additional issue as prayed for in their applications filed under Order-14 Rule-5 CPC in these appeals?
3. Whether the plaintiffs have made out sufficient grounds for amending the plaint at this stage as prayed for in the applications filed under Order-6 Rule-17 CPC in these appeals?

4. Whether the plaintiffs have proved that the suit lands were the joint family properties of Veershetty and his 4 brothers acquired by joint efforts and by the joint contribution?
5. Whether the plaintiffs have proved that there was partition in their family in June, 1958 and that the suit lands were allotted to the respective shares of the plaintiffs in the said partition?
6. Whether the plaintiffs have proved that they have become owners and in exclusive possession of the suit properties and that they are entitled to the relief of declaration and injunction as claimed?
7. Whether the plaintiffs are entitled to the relief of cancellation of the decree made in O. S. No. 11/67?
8. Whether the impugned judgment and decree call for interference in these appeals?

And after hearing the learned counsel for the parties, appellate Court held all the points in the negative and ultimately all the appeals were dismissed by the appellate Court on 18-12-1998. Being aggrieved by the concurrent findings of both the Courts, present four appeals are filed.

5. Above appeals were admitted by this Court on 13-12-2001 on the following substantial questions of law :

(a) Whether the judgment passed by the lower Courts is in accordance with law under Order-41 Rule-31 CPC?

(b) Whether the lower appellate Court was justified in allowing the appeal without considering the documentary evidence on the ground that the documents are in a language which the Court cannot read, without asking the parties to produce the translation?

(c) Whether the Court below is justified in placing the burden on the appellant as regards the property, which it is a joint family property and is in the name of the kartha of the family?

6. Though three questions of law were framed at the time of admission, after hearing the parties, this Court is of the opinion that point No. 2 has to be considered first and if point No. 2 is held in the affirmative, this Court has no alternative than to remit the matter to the appellate Court for fresh consideration as the appellate Court has not considered several documents produced by the parties on the ground that the said documents are not in Court language. So, in this background this Court by consent of both the counsel, has confined its judgment to the above issue.

7. In para-22 of the judgment, appellate Court has observed as hereunder :

"I. A. 3 is filed in R. A. 24/87 under Order 41 Rule 27 CPC seeking permission to produce additional evidence. The appellants of the said appeal have produced

record of rights or pahani patrike said to be of the year 1951 Fasli pertaining to Sy. Nos. 83 and 84 of Honnekeri village with the said application. The said document is Hindi or Marathi language and it cannot be read or understood by the Court. True translation of the said document is not produced by the appellants. Therefore, even if the said document is permitted to be produced, no purpose will be served as it cannot be understood by the Court."

8. This observation of the appellate Court is in regard to application filed by the plaintiffs/appellants under Order-41 Rule-27 of CPC seeking permission to produce additional evidence. If the Court was of the opinion that the documents produced by the plaintiffs/appellants were not in the language known to the Court, court could have called upon the parties to produce the translated copy. But only on the ground that Court is not in a position to understand the contents of these documents, has rejected the application filed by the appellants under Order-41 Rule-27 of CPC. An application under Order-14 Rule-5 of CPC was also filed by the appellants before the appellate Court. Said application has been rejected by the appellate Court on the ground that even though the appeal was pending since 1987, the application was filed only on 29-10-1987 and on the ground of laches application has been rejected. When an application is filed under Order-14 of CPC no Court can reject the application on the ground of delay or laches. If a Court has failed to frame appropriate issues based on the pleadings even if the appellate Court has noticed such a mistake, the appellate Court can direct the trial Court to re-cast the issues or frame proper issues and to dispose of the suit in accordance with law. But in the instant case, appellate Court without considering the application filed by the appellants under Order-14 Rule-5 of CPC on merits has rejected the same on technical grounds, therefore the findings of the appellate Court on the said application also requires to be set aside.

9. In para 63 of the judgment the appellate Court has noticed that Exs. P-25 to 33, 40 to 53, 60, 61 and 68 to 83 are all in Marathi or Modi language and that the said documents cannot be read and understood by the Court. Court has also observed that the translated copy of the said documents are not produced by the parties. The appellate court holds that the Court is not in a position to read the document and to give its opinion, therefore it is clear that the appellate Court without considering the documents produced by the parties has dismissed the appeals and also dismissed the application filed by the parties under Order-41 Rule-27 of CPC and also an application filed under Order-14 Rule-5 of CPC. Therefore, this Court has to hold that the appellate Court has dismissed the appeals without considering the evidence adduced by the parties and documents produced by them. The appellate Court is bound to consider the evidence adduced by the parties properly, since the appellate Court has not followed the procedure, this Court is left with no other alternative to set aside the judgment and decree of the appellate Court and remit the matter to the appellate Court for fresh consideration on merits. Considering the fact that the suits were instituted in the year 1978 and the appeals were filed in the year 1987, this Court is of the

opinion that the appellate Court has to consider all the appeals on merits within 4 months from today.

10. In the result, these appeals are allowed. Judgments and decrees passed by the Addl. District Judge, Bidar in R. A. Nos. 21, 22, 23 and 24/1987 dated 18-12-1998 are hereby set aside and the matter is remitted back to the appellate Court for fresh consideration as observed in the previous paragraph. parties are hereby directed to appear before the appellate Court on 2-4-2004. Appellants are also directed to file translated copies of all the documents relied upon by them both before the trial Court as well as before the lower appellate Court on or before 2-4-2004.