

(1983) 01 KAR CK 0016
In the Karnataka High Court
Case No : RSA 709 & 769/75

Appanna and Others

APPELLANT

Vs

Lakkappa Devappa

RESPONDENT

Date of Decision : 27-01-1983

Acts Referred:

Karnataka Village Offices Abolition Act, 1961 — Section 5

Citation : (1983) 1 KarLJ 482

Hon'ble Judges : G. N. Sabhahit, J

Judgement

1. These two appeals arise out the judgment and decree dt. 4-2-1975 passed by the Addl. District Judge, Bijapur, dismissing the appeals filed before him by the plaintiff (R.A. No. 9 of 1973) and defendants 3 to 7 (R.A. No. 12 of 1973) on confirming the judgment and decree dt. 17-3-1973 passed by the Addl. Civil Judge, Bijapur, in Special Suit No. 25 of 1969, on his file, dismissing the suit of the plaintiff.

2. RSA. No. 709 of 1975 is by defendants 3 to 6 whereas RSA. No. 769/1975 is by the plaintiff.

3. The genealogy of the parties, as held proved by the Courts below is as follows:

* * * *

4. It is the case of the plaintiff that "Walikarki Watan" was granted to his family in favour of one Shiddappa, the propositus of the family, though the records were first prepared in the name of Dewappa, the eldest member in the senior branch and he was shown as the "Khathedar." The suit lands are "Watan lands. Dewappa left behind him Huchappa, his son, and Huchappa performed the "Walikarki" services and enjoyed the "Watan" lands. Thereafter, the widow of Huchappa continued to enjoy the lands for some time and then the Deputy Commissioner held Heirship Enquiry and found that Bhimappa succeeded to the "Watan" and "Walikarki" services and, accordingly, Bhimappa's name was entered as "khatedar" and "walikarki" services were performed by him. After his death, his

sons-Ramappa (defendant-1) and Laxmappa (father of defendant-2) applied for re-grant of the "Watan" lands under the Karnataka Village Offices Abolition Act, 1963, and defendants 1 and 2 came to be re-granted the "watan" lands under "Ryothwari" system. The plaintiff instituted the suit for his half share in the suit properties on the averment that the re-grant was made for and on behalf of the family and on behalf of all the erst-while holders of the office of "watan" and, as such, he was entitled for partition and separate possession of his half share in the suit properties. Defendants 3 to 6, who are none else than the sons of Appanna, brother of Bhimappa, claimed that they were also entitled to 1/6th share to their branch and claimed that the said share must be separated and possession should be awarded to them. Similarly, defendant-7 claimed 1/6th share as falling to the branch of Balappa, the brother of Bhimappa. The suit was resisted by contending defendants 1 and 2 on various grounds.

5. The trial Court raised the following issues as arising for consideration from the pleadings:

* * *

6. The trial Court, appreciating the evidence on record, answered Issues Nos. 1, 3, 4, 5 and 12 in favour of the plaintiff. It held that Issues Nos. 6 to 10 were proved by the defendants. It answered Issues Nos. 2 and 11 in the negative. It held Issues Nos. 13, 14-A and 14-B against the plaintiff. In that view, the trial Court held that the plaintiff and defendants 3 to 7 were not entitled to any share in the suit lands and, accordingly, dismissed the suit of the plaintiff. Aggrieved by the said judgment and decree, the plaintiff preferred R.A. No. 9 of 1973 and defendants 3 to 7 preferred R.A. No. 12 of 1973 before the District Judge, Bijapur, and the Addl. District Judge, who heard the appeals together, raised the following points as arising for his consideration in the appeals:

(1) Whether the genealogy produced by the plaintiff is proved and whether Shiddappa was the propositus of the family?

(2) Whether the plaintiff proves that propositus Shiddappa was the "Watandar-Walikar" of Rampur and Hosur?

(3) Whether the plaintiff has half share in the suit properties? If not, what is his share?

(4) Whether defendants 1 and 2 prove that the "Watan" of "Walikarki" and "Talwarki" was granted in the name of Bhimappa, as contended by them?

(5) Whether the claim of the plaintiff and defendants 3 to 7 is in time?

7. The learned District Judge, reassessing the evidence on record, answered points Nos. 1 and 4 in the affirmative and answered points Nos. 2, 3 and 5 in the negative and, in that view, he dismissed the appeals, confirming the judgment and decree of the learned Civil Judge. Aggrieved by the same, as stated above, the plaintiff has instituted RSA. No. 769 of 1975 and defendants 3 to 6 have

instituted RSA. No. 709 of 1975 before this Court.

8. The learned Counsel appearing for the respective appellants strenuously urged before me that the Courts below were not justified in holding that a fresh grant of "Walikarki" was made in favour of Bhimappa and, as such, the plaintiff and defendants 3 to 7 were not entitled to any share as claimed. They further submitted that the Courts below were not justified in holding that the suit was barred by time. According to them, the "walikarki" was granted in favour of Shiddappa and the members of the family and, as such, when the Karnataka Village Offices Abolition Act came into force, and the re-grant was made in favour of defendants 1 and 2 in the suit, all the members of the family had a right in the lands re-granted, defendants 1 and 2 holding the lands for and on behalf of all the members of the family. Hence, they submitted before me that the Courts below were not justified in dismissing the suit of the plaintiff and the claim made by defendants 3 to 7 with regard to their respective shares in the suit properties.

9. As against that, the learned Counsel appearing for the contesting respondents/defendants 1 and 2 argued supporting the judgment and decree of the First Appellate Court.

10. The points, therefore, that arise for my consideration in these two appeals are:

(1) Whether the Court below was justified in holding that the plaintiff and defendants 3 to 7 were not entitled to any share in the lands re-granted, having held that the grant of "Walikarki" and "Talwarki" was not a fresh grant in favour of Bhimappa? and

(2) Whether the Court below was justified in holding that the suit was barred by time?

11. Before considering the facts of the case, it is necessary to mention that the law as to re-grant in the case of "Walikarki" properties is well settled. Though the regrant is made in the name of one of the members of the family who was performing the "Walikarki" services, the grant enures to the benefit of all the holders of that office in the family and the members of the family have a right to claim partition in the said re-granted lands.

12. In the case, Laxmibai Sadashiv Date v. Ganesh Shanker Date, AIR. 1977 Bom. 350, F.B., a Full Bench of the Bombay High Court has ruled on this aspect thus:

"The non-obstante clause is contained at the inception of S. 4 and the sole object of S. 4 is to abolish alienations and rights and incidents in respect thereof. The right of a member of a Joint Hindu family to ask for partition of a Joint Hindu family property cannot be regarded as a right relating to grant of land as service inam or as an incident in respect thereof. The sole object underlying S. 4 is to abolish all alienations defined in the statute and to extinguish all rights legally subsisting on the appointed date in respect of such alienations and all other

incidents thereof. This provision does not affect the normal rights of a member of a Hindu family under the personal law applicable to Hindus. Hence where the service inam was a grant to the joint Hindu family in the name of the senior member and the same was abolished, it could not be contended that the right of the other members of the family relating to partition of joint family property was extinguished, nor could it be contended that when the regrant was made under S. 7 the other members had no right to ask for a share therein by way of partition".

13. The provisions of the Karnataka Village Offices Abolition Act are the same and this Court has taken a similar view in the matter of partition of lands by the members of the joint family after the regrant, in cases more than one.

14. Thus, if it is established that the "Walikarki Inam" was granted in favour of either Shiddappa or Dewappa the senior member in the senior branch on the facts of the present case, it can safely be concluded that the members of the joint family would be entitled to their respective shares on the re-grant being made in favour of defendants 1 and 2. If it is established, however, that re-grant was made for the first time in favour of Bhimappa, or a fresh grant was made in favour of Bhimappa, then, it becomes obvious that neither the plaintiff nor defendants 3 to 7 would be entitled to any share in the "Walikarki Watan" properties.

15. There is a presumption in Hindu Law that joint family continues to be undivided. It is for the person who alleges that there was a partition in the joint family to allege and prove it. It is the case of the plaintiff and contending defendants 3 to 7 that the "Walikarki Inam" was for the first time recorded in the name of Dewappa, on the introduction of the Records in Jamkhandi State and that the said "Inam" vested in their family even during the life time of Shiddappa, the propositus of the family as shown in the genealogy. There is no evidence adduced on behalf of the contending defendants 1 and 2 to show that there was a division or severance of status of the joint family of Shiddappa and his sons, namely, Dewappa Kenchappa and Ramappa. The normal status of a joint family, as stated above, continues to be joint in food, worship and estate. There is community of interest and unity of possession among the members of a coparcenary.

16. When the Record of Rights were first introduced in Jamkhandi State in 1885, the name of Dewappa was shown as "Khathedar" of these Inam lands. Ex. P-33 is "Avak Barnishiche Register, State Karbari Office, Jamkhandi, 1336 Fasli". That shows that 25 "Bhige" land was entered in the name of Dewappa from out of the "pada Jamin". There was survey in 1302 Fasli and the land was given Sy. Nos, 135, 136, 144 and 145, occupying an area of 114 acres and 20 guntas. In 1396 Fasli, these lands were entered in Column No. 5 as "Taiwan Watan" lands and in 1319 Fasli, one Rao Saheb Bapat Karbari directed that these lands should be continued as "Inam" lands in favour of "Tulwars" so long as they continue to perform the services of "Talwarki" or "Walikarki". But while intimating that

direction, it was wrongly directed that these lands should be shown as "Inam lands for "Talwarki" and Walikarki", so long as the Government was pleased to do so. Thereafter, the order was corrected and it was shown that the "Inam" lands should continue as long as the services were rendered. In the meanwhile, however, the "Walikarki" was discontinued as per the wrong direction given by the office of the karbari and the lands were purported to be confiscated. After the correction of the order, the "Sanadi" was continued and the lands were shown as "Watan" lands in the name of Bhimappa. Bhimappa was recognised as "Walikar" after holding Heirship Enquiry as he was the nearest heir of Lakkavva, widow of Huchappa, son of Dewappa. It is in these circumstances that the learned District Judge has rightly held, differing from the finding of the learned Civil Judge, that Bhimappa was not granted "Walikarki" for the first time nor was he granted the "Watan" lands for the first time, but that the "Walikarki"; which was in the family and enjoyed by Dewappa and his son Huchappa, came to be enjoyed by Bhimappa and he rendered the services of "Walikarki" and, after him, his sons, viz., defendant-1 and the father of defendant-2, at the time when the Karnataka Village Offices Abolition Act came into force in 1963.

17. The learned Counsel appearing for the contending respondents/defendants 1 and 2, however, submitted that it is in the evidence of defendant-1 that there was a partition of the family properties among his father and his father's brothers. Relying on that, he submitted that there should have been a partition between Bhimappa's father Ramappa and his brothers. That may be so. But, there is no evidence placed on record to show that at the time when the name of Dewappa was shown as the "Walikar", there was division in the family of Dewappa and his brothers. In fact, it is the case of the plaintiff and defendants 3 to 7 that "Walikarki" vested in their family right from the date of the propositus Shiddappa.

18. As stated above, there is a presumption in Hindu Law that joint family continues to be undivided in food, worship and estate unless it is alleged by the contending party that there was severance of status and it is proved that there was such severance of status, at a particular time. There is absolutely no evidence on record, as stated above, to show that there was severance of status among Dewappa, Kenchappa and Ramappa at the time when Dewappa was made the "Walikar" and his name came to be entered in the records for the first time when the Record of Rights were introduced in Jamkhandi State. Hence, it is, I agree with the learned District Judge and hold that Dewappa enjoyed the "Walikarki Watan" as the senior member in the senior branch of the joint family of Dewappa, Kenchappa and Ramappa, on the principle of succession by primogeniture, applicable to Watan lands. This inference gets further corroboration by the fact that after the death of Huchappa, son of Dewappa, Heirship Enquiry was held by the Collector and Bhimappa was made the "Walikar", being the nearest heir. This was done for the obvious reason that "Walikarki" vested in the family of Shiddappa the propositus.

19. That being so, since the "Walikarki Watan" was granted in favour of the family of Dewappa and his brothers and since Bhimappa was appointed as "Walikar" under S. 36 of the Watan Act, being the nearest heir, after Heirship Enquiry, it becomes obvious that the entire family has a right to enjoy the "Watan" properties after re-grant and there is no dispute that the re-grant was made in favour of defendant-1 and the father of defendant-2, being the sons of Bhimappa, who were then acting as "Walikars".

20. The next point, therefore, that arises for my consideration is whether the plaintiff and defendants 3 to 6, representing Appanna's branch and defendant-7 Balappa's branch, have also a right to claim a share in the lands re-granted and, in view of the proposition of law stated above, it is obvious that they have such a right.

21. It is not in dispute that the plaintiff represents the branch of Kenchappa, the brother of Dewappa. When the "Walikarki" granted were enjoyed, Dewappa had two other brothers, viz., Kenchappa and Ramappa. Kenchappa's branch is represented by the plaintiff and Ramappa's branch is represented by defendants 1 to 7. Each branch, therefore, of Dewappa, Kenchappa and Ramappa, should have 1/3 share in the sort properties. But, the genealogy shows that Dewappa's branch came to an end. Hence, the other two branches which have continued, viz., the branches of Kenchappa and Ramappa, share half each in the suit properties, which are regranted, they being the original "Watan" lands for "Walikarki" services granted to the family of Dewappa, Kenchappa and Ramappa. It is also obvious that the branch of Ramappa is entitled to half the suit properties. Ramappa has four sons, viz., Marappa, Appanna, Bhimappa and Balappa. Marappa died issueless. Appanna left behind him Yellappa and Yellappa's sons viz., defendants 3 to 6. Bhimappa's sons are defendant-1 and the father of defendant-2 and Balappa's son is defendant-7. It is obvious that the three surviving branches of Ramappa, viz, Appanna, Bhimappa and Balappa, get 1/3 share of half share, i. e., 1/6th share. Therefore, defendants 3 to 6 get 1/6th share defendants 1 and 2 get 1/6th share and defendant-7 gets 1/6th share. They are entitled to such shares on partition. 22. The learned District Judge has no doubt stated that the suit was barred by time. According to him, since Bhimappa's name was shown as the nearest hew., the plaintiff should have obtained a certificate and produced it before the Collector and got his name inserted within three years of attaining the majority under S. 36 of the Bombay Hereditary Offices Act, (generally described as the Watan Act, Bombay Act III of 1874).

23. S. 36 of the Watan Act nodoubt speaks of heirship. But, as rightly pointed out by the learned District Judge, Bhimappa was the nearest heir nearer even to the plaintiff. Therefore, there was no need for the plaintiff to get his name registered as "Walikar" under S. 36 of the said Act. The limitation, in the circumstances, would not start after the plaintiff attained the age of majority and within 3 years thereof. Hence, the approach of the learned District Judge, is

entirely wrong and illegal to the facts of the present case.

24. The right of partition arises only after the re-grant. After the Karnataka Village Offices Abolition Act came into force, the "Watan" lands were resumed under S. 4 (3) of the said Act. Thereafter, under S. 5 of the said Act, re-grant of lands resumed under S. 4 of the said Act could be made to the erstwhile holders of the Village Office.

25. When these lands were re-granted to the last holder of the Village Office, he held it in trust for all the erstwhile holders in the family and it was only then that a member of the family could get right for claiming partition.

26. Under the Karnataka Village Offices Abolition Act, 1961, the appointed date was 1-2-1963. It is on that date that the "Watan" lands were resumed by the State. It is thereafter that the lands were regranted in favour of defendants 1 and 2 as they were the last holders of the Village Office. They received them for and on behalf of the erstwhile holders of the Village Office, being the members of the family and the cause of action to sue for partition arose only then in 1963 and the suit was instituted in the year 1969. Therefore, it is obvious that the suit was never barred by time and the finding to the contrary given by the learned District Judge is erroneous and illegal and the same is set aside.

27. In the result, therefore, the appeals are allowed. It is hereby declared that the plaintiff is entitled to half share in the suit properties and defendants 3 to 6 are entitled to 1/6th share and defendant-7 is entitled to 1/6th share. The defendants shall pay the Court-fees within three months from today. Thereafter, the trial Court shall draw up a preliminary decree for partition. The plaintiff and the defendants 3 to 7 are at liberty to move the Court for determination of the future profits under Order XX Rule 18 of the Code of Civil Procedure. The Court shall direct partition of the suit lands by the Deputy Commissioner or any of his Gazetted Assistants under S. 54 of the Code of Civil Procedure.

In the peculiar facts of the case, direct parties to bear their respective costs throughout.