

(2011) 03 KAR CK 0164
In the Karnataka High Court
Case No : Regular Second Appeal 103 of 2005

Arasappa Setty, Dasappa Setty (dead by L.Rs. Thayakka and Others) and Thimmaiah Dasegowda APPELLANT

Vs

Smt. Puttamadamma RESPONDENT

Date of Decision : 30-03-2011

Acts Referred:

Hindu Succession Act, 1956 — Section 14, 14 (1)

Citation : (2011) ILR (Kar) 3073

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : C.B. Srinivasan, for the Appellant; M. Shivaprasad, for R1-2, for the Respondent

Final Decision : Dismissed

Judgement

Huluvadi G. Ramesh, J.—The second appeal is by Defendants challenging the judgment and decree passed in RA 112/2004 on 16.12.2004 by the Fast Track Judge IV, Mandya.

Suit was filed before the Civil Judge (Jr.Dvn.), Mandya by the Plaintiff Puttamadamma W/o late Ameen Thimmasetty against her two step brother-in-laws seeking for a declaration to declare that she is the absolute owner of the suit schedule item I house property and also to declare that sale deed dated 3.8.1987 executed by the 1st Defendant in favour of the 3rd Defendant in respect of item No. 2 of the schedule stands cancelled being null and void and not binding on the Plaintiff and to further declare that suit item No. 2 and 3 are subjected to unrestricted right of Plaintiff's maintenance and thereafter, to declare the Plaintiff is the absolute owner of suit item No. 2 and 3 and also for delivery of possession. The trial court, on the matter being contested, after having raised relevant issues, decreed the suit in favour of the Plaintiff against which in the appeal preferred before the Fast Track Court while dismissing the appeal filed by the Defendants, the Fast Track Judge has confirmed the judgment

and decree passed by the trial court against which, the present appeal is filed by the Defendants.

2. The following substantial question of law has been raised by this Court on 29.8.2006 - Whether the courts below were justified in holding that the Plaintiff would become absolute owner of the suit schedule property pursuant to Section 14 of the Hindu Succession Act?

From a reading of the earlier partition taken place during 1971 at Ex.P2, it appears there is an arrangement being made amongst the Plaintiffs husband and the Defendants along with their surviving mothers. The Plaintiffs husband had retained the right of maintenance by way of getting share of four "pallas" of paddy every year apart from the right over the residential house till his death. The husband of the Plaintiff died during 1983. The suit was filed for declaration in the year 1992.

3. As per the genealogy, the husband of the Plaintiff is born to the first wife and Defendants 1 and 2 are born to the 2nd wife of Thimmaiahsetty. In the partition/ arrangement there was a device, however, the Plaintiffs husband had retained the right of maintenance in the suit schedule properties 2 and 3. However, so far as item 1 - house property is concerned, it is not in dispute. There the Plaintiff is residing and enjoying the property.

4. So far as decreeing the suit by both the courts below, according to the Defendants, when the partition had taken place during 1971, on the death of her husband subsequently, thereafter i.e., during 1983, the Plaintiff cannot claim any right much less the suit ought not to have been decreed u/s 14(1) of the Hindu Succession Act which is not applicable to the case on hand. It is relevant to extract Section 14(1) of the Hindu Succession Act, 1956 which reads:

Section 14: Property of a female hindu to be her absolute property:

(1) Any property possessed by a female hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

5. The contention of the Appellants' counsel is, once already the partition had taken place during the lifetime of the Plaintiffs husband himself, question of insisting for a declaration subsequently thereafter that too by the wife of deceased Thimmasetty does not arise. Further, in support of his contention that Section 14(1) of the Act applies to the case on hand, counsel has relied upon the decision in the case of Chamu Jinnappa Sheri and Others Vs. Savitri Yeshwantrao Chagule and Others, .

6. A reading of the contents of Ex.P2 - partition deed depicts that the Plaintiffs husband had retained the right to maintenance till his life time by way of getting share of four pallas of paddy every year. Section 14(1) of the Hindu Succession Act provides for enlargement of a female hindu over the property. Further, a reading of the above section makes it clear that such right accrued before or

after the commencement of the Act, she becomes full owner and not as a limited owner.

7. In the case on hand, though the property was being enjoyed and possessed by Defendants 2 and 3 by virtue of partition/arrangement, it was not finally concluded to take away all the properties unconditionally. Rather, it was subjected to condition that the Defendants have to part with four pallas of paddy for the maintenance of Plaintiff and her husband till their lifetime. In view of Section 14(1), though limited right was created in the partition/arrangement deed, on the death of her husband when she insisted for her share, as per law she gets absolute right to the extent of 1/3rd share in the property. Tcheughxhe courts below have declared to the extent of 10 guntas in both items 2 and 3 properties as not binding on the Plaintiff, the same cannot be faulted in the sense, right to have maintenance has been enlarged in to an absolute right even after the commencement of the Act by the husband of the Plaintiff. Further, the judgment relied upon by the Appellant's counsel noted supra, does not hold any water as, in the fact situation, the said judgment is distinguishable. However, so far as parting with the property by Defendants 2 and 3 in favour of the Plaintiff is concerned, there may be some arrangement so as not to affect the interest of the 3rd party created by way of sale effected by Defendants 2 and 3 in favour of the 3rd Defendant and that could be taken care of in the final decree proceedings. There is no scope for interference.

8. Appeal is dismissed while answering the substantial question of law accordingly.