

(2016) 09 KAR CK 0011

In the Karnataka High Court

Case No : Regular Second Appeal No. 7127 of 2013.

Arjun S/o Basappa Kumatagi - Appellant @HASH Smt. Gangawwa

Date of Decision : 02-09-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Succession Act, 1925 — Section 63

Citation : (2016) AIR(Karnataka) 177 : (2017) 1 AirKarR 327 : (2017) 1 CivCC 861 : (2017) 2 ICC 259 : (2017) 2 ICC 152

Hon'ble Judges : Budihal R.B., J.

Bench : Single Bench

Advocate : Sri. G.G. Chagashetti, Advocate, for the Petitioner; Sri. S.S. Mamadapur and Ashok R. Kalyanshetty, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Budihal R.B., J. - Heard the learned counsel appearing for the appellant and also the learned counsel appearing for the respondent on admission.

The judgment and decree dated 28.01.2011 passed by the Civil Judge (Sr. Dn.), Bijapur in O.S. No. 72/2008, so also, the judgment and decree passed by the Prl. District Judge, Bijapur dated 21.01.2013 in R.A. No. 52/2011 are called in question in this regular second appeal.

2. The brief facts of the case of the plaintiff before the Trial Court he is the owner of the landed property bearing Sy. No. 38/1 of Kengalgutti village, taluka Bijapur claiming the suit property as his absolute ownership by virtue of Will deed dated 24.08.2007 executed by deceased Danappa in favour of the plaintiff. He has furnished genealogical tree of the plaintiff and the defendant. It is his contention that original propositus Siddappa had got three sons and two daughters, namely, Bhimappa, Danappa, Basappa, Bhourawwa and Danawwa. Among them Bhimappa and Danawwa were dead. Basappa who is the father of the plaintiff had got three sons i.e. plaintiff - Arjun, Sidraya and Mallappa. Danappa died on 19.06.2008 leaving behind his wife Gangawwa the defendant and they have no issues. During the lifetime of deceased Danappa, who is husband of defendant,

he has advised the plaintiff to marry one Annapurna daughter of Danawwa own sister of Danappa. The plaintiff as per the advise of Danappa got married the said Annapurna in the year 1996 and after the marriage deceased Danappa and the present defendant started living with the plaintiff and plaintiff's brother under one and the same roof till the death of said Danappa. The plaintiff had looked after Danappa and his wife defendant herein in a day-to-day life and used to provide daily necessity to lead their livelihood. Danappa was having love and affection towards plaintiff. As such he bequeathed the Will in favour of the plaintiff. It is further pleaded that the deceased Danappa during his life time also sold two properties bearing Sy. No. 36/2D/3 measuring 3 acres 13 guntas and another land bearing Sy. No. 36/2C/ 4 measuring 1 acre 20 guntas and out of the sale consideration amount of Rs. 4.5 lakhs kept in FD in joint account in his name and his wife Gangawwa at old Kacheri Post Office, near D.C. Office, Bijapur. Danappa decided the said amount in FD utilised for maintenance of himself and his wife defendant. He was drawing Rs. 3,000/- as an interest from the said FD amount he used to maintain himself and his wife. During the course of his lifetime, he has executed Will deed dated 24.08.2007 in favour of plaintiff in the presence of the attesting witnesses. Hence, the plaintiff has sought declaration and also the consequential relief of injunction as against the defendant.

3. The defendant appeared and filed her written statement in the said case denying the case of the plaintiff. She has also denied that her husband advised the plaintiff that he has to marry Annapurna and accordingly he married Annapurna. She denied the further contention that her husband executed the Will in favour of the plaintiff bequeathing the property. Even she has denied the averments with regard to the FD as the plaintiff has averred in the plaint. She has also contended that deceased Danappa could not have executed the said Will without giving any share to his wife-defendant. The further contention that father of the plaintiff prior to the institution of the present suit, filed the suit in O.S.No.37/2001 on the file of Prl. Civil Judge (Sr.Dn.), Bijapur seeking partition and separate possession of 1/3rd share in the suit property bearing Sy. No. 38/1 measuring 8 acres 5 guntas and VPC No. 125 and 202 against the deceased Danappa and subsequently the father of the plaintiff files memo on 03.12.2004 stating that the matter is settled and suit may be dismissed. Hence, on these grounds she denied the case of the plaintiff.

4. Both sides led their evidence and produced voluminous documents also and after evaluation of the materials placed before the Trial Court both oral and documentary the Trial Court ultimately comes to the conclusion that the plaintiff failed to prove the execution of the Will by deceased Danappa in his favour and it is held by the Trial Court that the suspicious circumstances in the execution of the said Will are not at all explained by the plaintiff to the satisfaction of the Court. The Trial Court ultimately disbelieved the story of the plaintiff that Danappa executed Will in his favour. Hence, dismissed the suit.

5. Being aggrieved by the judgment and decree for dismissing the suit the

appellant herein preferred the appeal before the First Appellate Court in R.A. No. 52/2011. The First Appellate Court after re-appreciating the materials placed before it, also comes to the conclusion that, there is no merit in the appeal, no illegality has been committed by the Trial Court and dismissed the appeal by confirming the judgment and decree of the Trial Court.

6. Being aggrieved by the judgment and decrees of the Courts below, the appellant is before this court in this regular second appeal.

7. I have heard the arguments of the learned counsel appearing for the appellant-plaintiff and learned counsel appearing for the respondent-defendant.

8. The learned counsel appearing for the appellant-plaintiff during the course of argument made the submission that plaintiff has established the execution of the Will with the help of the attesting witnesses and the scribe who wrote the contents of the Will. The learned counsel further made the submission that though there is no provision made in the Will for the defendant, but deceased Danappa kept Rs. 4,50,000/- in FD in the post office and it was the contention of the deceased Danappa that the said amount in FD with accrued interest is to be used for the maintenance of Danappa as well as his wife the defendant herein. The learned counsel submitted that looking to the evidence of the plaintiff as well as the attesting witnesses and the scribe they have consistently deposed that Danappa executed the Will in favour of the plaintiff in their presence and looking to the cross-examination of the said witnesses there is nothing to disbelieve the evidence of those attesting witnesses. Hence, it is the contention of the learned counsel for the appellant herein in spite of such evidence that was placed before the Trial Court for the proof of execution of the Will, the Trial Judge has not at all appreciated the oral as well as documentary evidence properly and wrongly read the evidence and wrongly come to the conclusion in dismissing the suit. The counsel also made the submission that even looking to the judgment and decree of the First Appellate Court, the First Appellate Court simply endorsed its views of the view taken by the Trial Court without re-appreciating the entire materials. The counsel further made the submission that the appellant is ready to provide for the maintenance of the defendant whatever the amount or the landed property this court feels reasonable and proper. Hence, the counsel submitted that the matter requires consideration in this appeal as it involves substantial questions of law to be tried.

9. Per contra, the learned counsel appearing for the respondent-defendant during the course of the his argument made the submission that looking to the pleadings as well as the evidence on the side of the plaintiff the alleged Will is not at all proved to the satisfaction of the Court. He submitted that there is no provision made in the said Will for the defendant who is own wife of the deceased Danappa. Learned counsel also made the submission that even there is no whisper in the said Will that the Danappa is having the wife by name Gangawwa who is defendant in this case. The learned counsel also made the submission referring to the evidence of the attesting witnesses and scribe that

there is no consistencies in their evidence they are contradictory with each other. The Trial Court as well as First Appellate Court have appreciated the oral evidence of the parties as well as the documents properly and rightly comes to the conclusion holding that the Will is not proved and suspicious circumstances are not removed or explained by the plaintiff to the satisfaction of the Court. Hence, the learned counsel submitted so far as the factual aspect is concerned, there are concurrent findings of the Courts below and no illegality has been pointed out by (lie appellant in this appeal, hence, there is no necessity to interfere into the judgment and decree passed by the courts below and submitted to dismiss the appeal.

10. I have perused the grounds urged in the appeal memorandum, the judgment and decrees of the Courts below, so also, considered the submissions made by both the counsels at (he bar. Plaintiffs case seeking the relief of declaration and consequential relief of injunction in respect of said suit landed property bearing Sy.No.38/1 is based on the Will deed said to have been executed by the deceased Danappa in favour of the plaintiff. It is admitted case even according to the plaintiff that Danappa is having the wife who is defendant in (he suit and the couple were not having the issues, when the evidence has been adduced before the Trial Court defendant in her pleadings denied the very case of the plaintiff and (hat her husband executed Will deed in favour of the plaintiff. Even according to the plaintiff's case no provision has been made for the livelihood of the defendant in the said Will and as it is rightly submitted by the learned counsel for the respondent that even there is no whisper that he is having the wife by name Gangawwa. As I have already observed above that the couple were not having issues when that is the case the executant must think livelihood of the defendant if the property is bequeathed to the plaintiff in its entirety. Apart from that what is the reason for the Danappa to exclude the defendant to get the property and to give the entire property in favour of the plaintiff. No reasons are forthcoming in the said Will, it is also not mentioned in the Will that defendant Gangawwa either deserted the husband Danappa during his life time or she was not looking after him properly or there was any enmity between the two. Absolutely no reasons are forthcoming in the said Will. If that is so, what made the Danappa to give entire property Sy.No.38/1 to the plaintiff completely ignoring defendant who is own wife is not forthcoming in the Will and even according to the evidence of the plaintiff. These aspects were not properly taken into consideration by the Courts below and Courts have held that when the own wife without there being any reason has been excluded from getting the property and the entire property ii given to the plaintiff under the alleged Will it self seems unnatural and cannot be believed at all. Observing like this the Trial Court as well as the First Appellate Court disbelieved the Will and its execution and ultimately held that plaintiff failed to establish his case. Accordingly held that case not proved and dismissed the suit.

11. Perusing the judgment of the First Appellate Court, the First Appellate Court also reassessed the evidence and after re-appreciating the materials placed

before the Trial Court it also comes to the conclusion that there is no illegality in the judgment and decree passed by the Trial Court and dismissed the appeal by confirming the judgment and decree of the Trial Court.

12. Considering the evidence and after re-appreciating the materials placed before the Trial Court, it also comes to the conclusion that there is no illegality in the judgment and decree passed by the Trial Court and dismissed the appeal, confirming the judgment and decree of the Trial Court.

13. Perused the entire materials placed on record. I do not find any illegality in the judgment and decree of the Courts below, as it is rightly submitted by the learned counsel appearing for the Respondent that there are concurrent findings with regard to factual aspects of execution of the Will. Hence there is no substantial question involved in this appeal.

14. Accordingly the appeal is dismissed at the admission stage itself.