

(1998) 02 KAR CK 0053

In the Karnataka High Court

Case No : Regular Second Appeal No. 735 of 1993

A.S. Vigneshwara Udupa

APPELLANT

Vs

Teekappa and Another

RESPONDENT

Date of Decision : 06-02-1998

Acts Referred:

Citation : (1999) 1 KarLJ 460

Hon'ble Judges : T.N. Vallinayagam, J

Bench : Single Bench

Advocate : Sri K.N. Mahabaleshwara Rao, for the Appellant;

Judgement

1. It is an unfortunate appeal by the plaintiff who is kept out of the relief he has prayed for, for a period of seven years as on date. Despite the fact that the defendants submitted to the decree, I am really not able to understand how the Courts can act in such a fashion when defendant himself openly says that he has no defence at all. The allegations complained are as follows:

2. Originally, Raniakrishna Udupa was the owner of the suit land bearing S, No. 74 measuring 98-A-04 gs. of Togare village. The said Ramakrishna Udupa is the maternal grand father of the plaintiff. The plaintiff and Shivaram, Anantapadmanabha, Manjunath and Nagesha are the sons of daughter of said Ramakrishna Udupa by name Laxmidevamma. The said Ramakrishna Udupa bequeathed the suit schedule property in favour of the plaintiff and his brothers under the registered Will dated 6-9-1965. After the death of said Ramakrishna Udupa the plaintiff and his brothers became the full owners of the suit schedule property and they are in possession and enjoyment of the same. Plaintiff is looking after the joint family of himself and his brothers and he is the General Power of Attorney holder of his brothers and the suit is filed representing the joint family as a Manager. The defendants have no manner of right, title or interest over the suit schedule property and they are denying the right of the plaintiff over the suit schedule property and obstructed the plaintiff from fencing the suit schedule property contending that it is a Soppina Betta and plaintiff is

not the owner of the same. On these allegations the plaintiff has sought for declaration that himself and his brothers are the owners of suit schedule property and permanent injunction against the defendants.

3. After service of suit summons, the defendants appeared through Counsel. The defendants filed a consent memo stating that they have no objection to decree the suit as prayed for in the plaint.

4. This is purely a bundle of facts within the knowledge of the parties themselves and when the defendants submitted the decree by filing a consent memo the Court embarks upon the enquiry surpasses anybody's apprehension.

5. This is not the first case I am dealing with. In number of cases wherein either the defendant appears and does not file the written statement or contest, even then the Courts below embark upon an enquiry and conduct trial. Consequently, came to the conclusion granting the decree for dismissal. It is certainly not proper. When the party comes to the Court for a relief and when the other party does not raise any defence no issue can be raised or framed to render a decision. The Courts cannot create defence for themselves and step into the shoes of the defendants for the purpose of defending the case which the defendant himself does not want to defend.

6. This certainly results in miscarriage of justice and by not knowing the law on the point, the judicial system thoroughly and miserably fail.

7. In this view, accepting the consent memo filed by the defendants before the Court, I am setting aside the judgment and decree of the Courts below. The second appeal is allowed and the suit is decreed with costs.

8. A copy of this judgment may be submitted to my Lord, the Chief Justice for taking administrative action against the concerned judicial officers for their impropriety of action.