

(1998) 03 KAR CK 0058

In the Karnataka High Court

Case No : Regular Second Appeal No. 98 of 1994

Balagouda Alagouda Patil and Others

APPELLANT

Vs

Babasaheb Ramagouda Patil

RESPONDENT

Date of Decision : 23-03-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10 (2), Order 1 Rule 9
Karnataka Land Revenue Act, 1964 — Section 133

Citation : (1999) 1 CivCC 489 : (1999) ILR (Kar) 831 : (1998) 6 KarLJ 13

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

Bench : Single Bench

Advocate : Sri G. Balakrishna Shastry, for the Appellant; Sri Jayakumar S. Patil, for the Respondent

Judgement

1. The defendants are the appellants, the suit for partition and separate possession was dismissed by the Trial Court, but came to be decreed by the First Appellate Court. Hence the defendants are before this Court in the second appeal.

2. Facts of the case leading to the present appeal, in brief are as under:-

The propositus Alagouda had 2 sons by name Malagouda and Ramagouda; Malagouda and Ramagouda constituted joint family and they were in joint possession of suit land R.S. No. 62/1 measuring 5 Acres 18 guntas and R.S. No. 62/2 measuring 5 Acres 19 guntas as tenants from the time of the father. Both Malagouda and Ramagouda died in jointness; Plaintiffs case is that he represents branch of Ramagouda and defendants 1 to 4 represent the branch of Malagouda; that occupancy rights are granted jointly in their favour; that without actual partition by metes and bounds, they are cultivating their respective share separately; that since about 4 years his relations with defendants are strained and defendants are intending to defeat his 1/2 share in the suit lands, and therefore he is constrained to file the suit for partition and separate possession of his 1/2 share in the suit lands.

3. The specific defence is that only suit land R.S. No. 62/2 is tenanted land of the joint family of Malagouda and Ramagouda; that R.S. No. 62/1 is the self acquired tenanted land of Malagouda and Ramagouda had no right to the said lands; that ever since 1961, R.S. No. 62/1 is enjoyed exclusively by defendants; that plaintiffs father submitted declaration in Form No. 7 for grant of occupancy rights to equal 1/2 extent in R.S. No. 62/2 only and did not apply to R.S. No. 62/1 and that plaintiff is not entitled to any share in R.S. No. 62/1. Defendants further contend that Ramagouda has left behind his widow, two daughters, besides the plaintiff; that widow and two daughters of deceased Ramagouda are also necessary parties and that suit is bad for non-joinder of necessary parties.

4. On the above pleadings, the parties went to trial. Appreciating the oral and documentary evidence on record, the Trial Court accepted the plaintiffs contention that both the lands are joint family properties and the branch of Malagouda and Ramagouda are entitled to equal 1/2 share in both the lands. But accepting the defendant's contention that in a suit for partition, all the members of joint family having interest in joint family properties are necessary parties, and on this ground alone, the suit came to be dismissed. As the suit was dismissed only on the ground of non impeding all necessary parties, the Appellate Court held that the Trial Court was not justified in dismissing the suit for not impleading the widow and two daughters of deceased Ramagouda. In this view the Appellate Court had allowed the suit for partition and suit for partition was decreed.

5. It is contended before me that the land in Sy. No. 62/1 is self acquired tenanted land and the Civil Court cannot decide as to whether it is self acquired property or joint family property. The widow and daughters are the necessary parties and non joinder of them is fatal to the suit. In the records of rights, so far as Sy. No. 62/2 is concerned only the name of the plaintiff and defendants are shown, while in Sy. No. 62/1, the name of the defendant alone is shown. Therefore, presumption arising u/s 133 of the Karnataka Land Revenue Act must be drawn.

6. The plaint allegation itself is that the plaintiff is concerned with only to the half share of plaintiff branch, and the defendant's concern is for his half share in the branch; the defendant is entitled further half share. This approach has not been denied by the defendant. Therefore nothing is wrong in one of the members of the family asking partition of his branch. The reference mentioned in 12th Edition of Mayne's Treatise on Hindu Law and Usage (12th Edition, Chapter XV, Item No. 486, pages 719 and 720), reads as follows.-

"Where partition is claimed as between the branches of the family only, the heads of all the branches alone need be made parties, of course, in such a case it is open to the others to apply to be made parties. Those members of the family who are entitled to maintenance would be proper parties to suit for partition....".

7. Even the dictum in Subbanna v Kamaiah, is to the following effect.-

"Rule 9 of Order 1 of the CPC specifically provides that no suit shall be defeated by reason of the mis-joinder or non-joinder of parties and the Court may in every suit deal with the matter in controversy so far as regards the rights and interest of the parties actually before it. A proviso has been added by Central Act 104 of 1976 to the effect that "nothing in this rule shall apply to non-joinder of a necessary party. "But sub-rule (2) of Rule 10 of Order 1 of the CPC empowers the Court to direct the plaintiff to add a person to the suit who ought to have joined whether as plaintiff or defendant whose presence before the Court is necessary in order to enable the Court effectually and completely adjudicate upon and settle all the questions involved in the suit"

8. Therefore a suit should not be dismissed for non impeding of parties. In as much as the plaintiff is having only his branch and that there is no difficulty or impediment for granting a decree and the defendants are not in any way prejudiced at all. However I direct the final decree Court to issue notice to the widow and daughters and if parties appear and apply for their share, allot them their respective share. If they do not appear then the decree for the branch of the plaintiff alone can be separately partitioned and the plaintiff be given such share as granted from the family as such.

9. So far as the tenancy land is concerned, this Court has always held that the tenancy rights if acquired by a member of the family shall be held to be for the benefit of the entire family. The entries in revenue records are not the evidence of title.

In this view, holding that there is no merits in second appeal, the second appeal is dismissed. No costs.