

(2006) 08 KAR CK 0038

In the Karnataka High Court

Case No : Regular Second Appeal No. 258 of 1999

B.R. Sharathchandra since deceased by LR'S (Smt. Vasanthi Devi, Kum. Supreethi, Kum. Varsha and Hariprasad all minors are represented by their mother and natural guardian Smt. Vasanthi Devi) **APPELLANT**

Vs

K.D. Peevish, Vice-President of Kuppanda Family, Kuppanda Uthappa, Kuppanda Bheemaiah and Kuppanda Subbaiah since deceased by LR's (K.S. Peevish, K.S. Nanjappa and K.S. Kariyappa) **RESPONDENT**

Date of Decision : 19-08-2006

Acts Referred:

Coorg Land and Revenue Regulations, 1899 — Regulation 145, 79 (2)

Citation : (2006) 4 KCCR 2072

Hon'ble Judges : Mohan Shaftanagoudar, J

Bench : Single Bench

Advocate : S.G. Bhagawan, for the Appellant; N. Raveendranath Kamath, for the Respondent

Final Decision : Dismissed

Judgement

Mohan Shaftanagoudar, J.—This is a plaintiff's second appeal. Plaintiff filed suit for declaration of title and possession and also for a direction to change the mutation entries in his favour. The Trial Court decreed the suit and the First Appellate Court reversed the judgment and consequently dismissed the suit.

2. It is the case of the plaintiff that one Appachu, the propositus of defendants No. 2 to 6 sold the suit property in favour of the plaintiff on 10.3.1974 for Rs. 9,000/- by executing the sale deed marked at Ex.P1. In pursuance of the said sale deed the plaintiff is in possession of the property. As the defendants refused to handover the possession of the property, the suit for declaration and possession is filed.

3. Per contra, it is the case of the defendant No. 1 that the property in question

could not have been sold by the propitius of defendant Nos. 2 to 6, as the same is Bane land in as much as the suit property continuous in the Kuppanda family; the property in question is not partitioned and consequently same has not fallen to the share of defendant Nos. 2 to 6; the property cannot be partitioned without recourse to the provisions of Coorg land and Revenue Regulations 1899 and that therefore the plaintiff will not get any right over the property in question.

4. Having regard to the material on record and the submissions made by the learned Advocates, the following substantial questions of law arises for consideration:

Whether the propositus of defendants No. 2 to 6 could have cold the suit property in favour of the third party in the absence of the partition as provided under the Coorg Land and Revenue Regulations 1899?

5. Section 79(2) of the Coorg Land and Revenue Regulations 1899 states that "privileges in respect of Kumki lands, Bane lands etc., shall continue". According to the plaintiff, the partition took place about 75 years prior to the suit. The suit is filed in the year 1979. Therefore, according to the petitioner, the partition must have taken place during the year 1904. Undisputedly, during the said period the provisions of Coorg Land and Revenue Regulations were in force. Therefore, any partition without recourse to the provisions of the Coorg Land and Revenue Regulations, 1899, is bad in the eye of law. It is not in dispute that no partition has taken place in accordance with the provisions of Coorg land and Revenue Regulations. According to the said Regulations the partition has to take place with the intervention of the Revenue authorities as the lands in question are basically granted lands by the State Government. This Court in the case of Kuravanda Nanjappa v. Kuruvandappa Thimmaiah reported in 1969 (2) Mys.L.J. 486 observed thus;

Section 145 of the Coorg Land and Revenue Regulations prohibits division of the joint family properties amongst the members of the Coorg family whether it be partition or other allotment amongst the members of the family. According to the said section a suit for allotment of the joint family properties even for purpose of maintenance is excluded from the jurisdiction of a Civil Court.

Regulation 145 of Coorg Land and Revenue Regulations not only prohibited civil suit for partition but also prohibited a division of the joint family properties amongst the members of the Coorg family without recourse to said 1899 regulation. The defendant's family is undisputedly a Coorg family. Thus, it is clear that there could not have been valid partition without recourse to the provisions of the Coorg Land and Revenue Regulations.

6. The aforesaid finding of mine supported by full bench decision of this Court in the case of Cheekere Kariyappa Poovaiah Vs. State of Karnataka, , wherein it is held that there was no propriety interest in the lands transferred to the Coorg family members. However, limited propriety rights of cultivating lands on payment of full assessment and cutting and removing the crops grown are given.

7. In view of the aforesaid discussion, the First Appellate Court is justified in holding that there could not have been partition amongst the Kuppanda family and consequently the defendants No. 2 to 6 would not get proprietary rights exclusively over the suit property. Even otherwise, the First Appellate Court was justified in holding that no partition has occurred amongst the Kuppanda family members about 75 years prior to filing of the suit. Consequently, neither the defendants No. 2 to 6 nor their ancestor have no exclusive right over the property in question. In this view of the matter, he could not have sold the property in favour of the plaintiff. In view of the same, the question of law raised in this appeal is answered as under:

Neither the defendants-2 to 6 nor their ancestors could have sold the suit property in favour of third party, in the absence of partition as provided under the Coorg Land and Revenue Regulations 1899.

In view of the above, appeal fails and the same is dismissed accordingly.