
(2013) 09 KAR CK 0213

In the Karnataka High Court

Case No : Regular First Appeal No. 1997 of 2012

C. Somashekar, C. Ravishekar and C. Praveenshekar

APPELLANT

Vs

Smt. G.L. Nagarathnamma and Others

RESPONDENT

Date of Decision : 13-09-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2013) 09 KAR CK 0213

Hon'ble Judges : Mohan M. Shantanagoudar, J;B. Sreenivase Gowda, J

Bench : Division Bench

Advocate : B. Ashok Kumar, for the Appellant; R. Vijaya Kumar for C/R. 1, 5, 7, for the Respondent

Final Decision : Dismissed

Judgement

Mohan M. Shantanagoudar, J.—This appeal is directed against the order passed on IA No. 5 filed in O.S. No. 6317/2010 by the VII Addl. City Civil Judge (CCH-19), Bangalore in allowing IA No. 5 filed under Order 7 Rule 11 of CPC by defendants 1, 5 and 7 and consequently rejecting the plaint. Respondents 1, 5 and 7 are the only contesting respondents, they are represented by Sri R. Vijay Kumar, Advocate who entered caveat on their behalf All other respondents are not the contesting parties. Counsel for the appellants submits the appellants do not have any claim against other respondents.

2. Heard the learned Counsel appearing on both sides and by consent, the matter is taken up for final disposal.

3. The appellants herein who were plaintiffs in O.S. No. 6317/2010 have filed the suit seeking possession of the suit schedule properties from the respondents herein on the premise that the suit properties belong to the family of the parents of respondent No. 2 namely Smt. Sudharani (who is none other than the mother of the appellants herein). The suit was resisted by the respondents herein by filing written statements. The respondents 1, 5 and 7 filed IA No. 5 under Order

7 Rule 11 of CPC praying the Trial Court to reject the plaint on the ground that the earlier suit filed by the mother of the appellants namely Smt. Sudharani in O.S. No. 3997/2004 for partition of the very suit property is came to be dismissed, the said order of dismissal of O.S. No. 3997/2004 came to be questioned by Smt. Sudharani, mother of the appellants, before this Court in RFA 1280/2008 which also came to be dismissed on 27.07.2010. It is also relevant to note that Smt. Sudharani (mother of the appellants herein) has filed one more suit earlier i.e. O.S. 8909/2003 against her parents and others for declaration that she is the adopted daughter of G. Rangaswamy and Lakshmiddevamma. The said suit is still pending consideration. It is further relevant to note that the suit properties in O.S. No. 3997/2004 are the subject matter of the present suit.

4. We have also noticed from the records that Smt. Sudharani had also filed series of other litigations against her parents and the respondents herein in which she has failed.

5. Sri B. Ashok Kumar, learned Counsel for the appellants submits that the Court below is not justified in rejecting the plaint merely on the ground of subsistence of earlier suit in O.S. No. 8909/2003 and on the ground of dismissal of O.S. No. 3997/2004. According to him, the appellants herein were not parties to the earlier suits in O.S. No. 8909/2003 and O.S. 3997/2004 and therefore they should not be penalized because of the fault of their mother Smt. Sudharani

6. The appeal is opposed by Sri R. Vijay Kumar, learned Counsel appearing on behalf of the contesting respondents. He justified the judgment and decree of the Court below in rejecting the plaint.

7. Having heard the learned Counsel appearing for the parties, only point arises for our consideration is:

Whether the trial Court is justified in rejecting the plaint?

8. Undoubtedly, the suit properties were belonging to the family of the genitive parents of Smt. Sudharani (Smt. Sudharani is the mother of appellants herein/ plaintiffs before the trial Court). It is also not in dispute that Smt. Sudharani has filed O.S. No. 8909/2003 for declaration that she is the adopted daughter of Sri G. Rangaswamy and Lakshmiddevamma. Thus, by filing O.S. No. 8909/2003 Smt. Sudharani claims that she is the adopted daughter of Sri G. Rangaswamy and Lakshmiddevamma. The said suit is still pending consideration which clearly goes to show that she claims to be the adopted daughter of G. Rangaswamy and Lakshmiddevamma and consequently she would be able to get her share in the property of G. Rangaswamy and Lakshmiddevamma, if any, if she succeeds to show that she is the adopted daughter. During the subsistence of O.S. No. 8909/2003, strangely Smt. Sudharani filed one more suit in O.S. No. 3997/2004 for partition and separate possession against the very respondents herein (defendants in the suit). In that suit, Smt. Sudharani claims partition in the properties belonging to her genitive parents. The said suit came to be dismissed by the trial Court. The order of dismissal was confirmed by this Court in RFA

1280/2008 on 27.07.2010. Thus, it is clear the prayer of Smt. Sudharani for share in the properties of her genitive parents is dismissed by the trial Court as well as by this Court. Consequently, Smt. Sudharani is not entitled to share in the family properties of her genetic parents. As aforementioned the suit properties in O.S. No. 3997/2004 are the subject matter of the present suit i.e. O.S. No. 6317/2010 out of which present appeal arises. Thus, it is clear that Smt. Sudharani (mother of the plaintiffs/appellants herein) is held to be not entitled to any share in the suit properties. If that is so, plaintiffs being sons of Smt. Sudharani are also not entitled to any share in the suit properties in as much as the plaintiffs have to get share through their mother Smt. Sudharani and not independently. In our view, the appellants cannot have independent right to claim partition in the suit properties which are belonging to the family of their maternal grand parents. In this view of the matter, the trial Court is justified in rejecting the plaint. Hence, the appeal fails and the same stands dismissed.