

(2014) 10 KAR CK 0184
In the Karnataka High Court
Case No : R.S.A. No. 528/2007

Chandramma

APPELLANT

Vs

Athigaiah

RESPONDENT

Date of Decision : 20-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2014) 10 KAR CK 0184

Hon'ble Judges : A.V. Chandrashekara, J

Bench : Single Bench

Advocate : G.S. Balagangadhar, Advocate for the Appellant; Girish Kodgi, Advocate for the Respondent

Judgement

A.V. Chandrashekara, J.—Notice to respondent no. 4 has been dispensed with since he had sailed along with the other defendants in the trial court. It is also submitted by the learned counsel that respondent no. 4 as 5th defendant had adopted the written statement filed by the 1st defendant.

2. Heard learned counsel for the appellant in regard to admission.

3. The present appeal is filed under Section 100, C.P.C. challenging the divergent judgment passed by the learned Principal Civil Judge (Senior Divn.), Shimoga, in R.A. 91/05. Appellant herein was the lone plaintiff in O.S. 558/01 which was pending on the file of I Additional Civil Judge, (Junior Divn.), Shimoga. Respondents herein were defendants in the said suit. The said suit had been filed for the reliefs of declaration of title and permanent injunction seeking 1/7th share in the schedule property, a Mangalore tiled house measuring 11 1/4" x 90" situate in II Cross, Garden Area, Shimoga. The said suit came to be decreed after contest on 7.4.2005.

4. The facts leading to the filing of the said suit are:

a) Plaintiff-Chandramma was the daughter of Sakamma; 1st defendant-Athigaiah was the husband of Sakamma. Defendants 2 to 5 are sons and defendant no. 6

is the wife of Kempaswamy, another son of 1st defendant and Sakamma. Defendants 7 to 9 are children of Kempaswamy. According to the plaintiff, her mother had purchased the schedule property and put up the house. Her mother is said to have died intestate. During her lifetime, her mother is said to have effected partition in respect of the schedule property and is said to have allotted this property to her two sons by taking her share in a sum of Rs. 50,000/-. The said partition deed is registered and is dated 15.12.1982 which is marked as Ex. D1 In the trial court. Since her mother died intestate, plaintiff chose to claim 1/7th share on the ground that there could not have been any partition ignoring her legitimate share.

b) Defendants had opposed the suit mainly on the ground that the property was the self-acquired property of Sakamma and she was entitled to deal with it in any manner she liked, and therefore allotment of the property in favour of her two sons only cannot be found fault with. With these pleadings, they had prayed for dismissal of the suit.

c) On the basis of pleadings, the following issues were framed:

- 1) Whether the plaintiff proves that suit property is joint family property of herself and defendant nos. 1 to 9?
- 2) Whether defendant no. 1 proves that suit property is his self-acquired property?
- 3) Whether the plaintiff proves that partition took place among defendant nos. 1 to 9 is behind her back and does not bind her?
- 4) Whether the plaintiff further proves that defendant no. 6 is attempting to alienate suit property in favour of defendant no. 10?
- 5) Whether plaintiff is entitled for a share in the suit property?
- 6) Whether the plaintiff is entitled for suit reliefs?
- 7) What order or decree?

Plaintiff examined herself as PW1 and got marked 6 documents. The defendants in all adduced 3 witnesses and 2 documents were marked. Ultimately learned judge has answered issue nos. (1) and (2) in the negative and the remaining issues in the affirmative. Consequently the suit came to be decreed.

d) Against it, defendants preferred R.A. 91/05. The said appeal has been allowed in its entirety by setting aside the judgment of the trial court. The following four points were formulated as found in page 5 of the judgment of the first appellate court:

- 1) Whether the plaintiff proves that suit schedule property is joint family property of herself and defendant no. 1 to 9?
- 2) Whether the defendant no. 1 proves that suit schedule property is his self-

acquired property?

3) Whether the plaintiff proves that partition took place among defendants 1 to 9 is behind her back and does not bind her?

4) Whether the plaintiff further proves that defendant no. 6y is attempting to alienate suit property in favour of defendant no. 10?

5) Whether the plaintiff is entitled for a share in the suit property?

Point nos. (1) and (2) have been answered in the negative and point no. (3) in the affirmative.

e) This divergent judgment is called in question on various grounds.

5. Heard learned counsel for the appellant in full.

6. Admittedly the property in question belonged to Sakamma. This aspect is not seriously disputed by the parties to the litigation. If the property in question absolutely belonged to Sakamma, she was entitled to deal with it in any manner she liked, but just because she gave this property to her two sons on the strength of a registered document styled as partition deed does not clothe the plaintiff with a right to seek a share in the schedule property. If the property in question had been the ancestral property or it was acquired out of joint family funds, it would have been something different. Being the absolute owner of the property, Sakamma had the absolute right of alienating it and it cannot be questioned. This aspect of the matter has been taken into consideration by the first appellate court. Since the trial court has failed to assess the true state of affairs, the first appellate court has reassessed the entire evidence, more particularly keeping in mind the position of law in regard to the right of a female Hindu dealing with her self-acquired property. The first appellate court has come to a specific conclusion that the property in question had not come to her being husband's share. It has further held it was the self-acquired property of Sakamma.

7. The first appellate court being the final court on facts, has re-assessed the evidence on the touchstone of intrinsic probabilities keeping in mind the law laid down by the apex court in the case of Santosh Hazari Vs. Purushottam Tiwai (Dead) by Lrs., . It has assigned reasons as to how the trial court has gone wrong and what should have been the proper approach. No material illegality of perversity is found in the judgment of the appellate court. No substantial question of law is involved in the present case.

8. Hence, the appeal is dismissed as unfit for admission by upholding the judgment of the first appellate court.