

(1982) 06 KAPT CK 0001

In the Karnataka Appellate Tribunal

Case No : Appeal No. 138/81 & 189/81 (Rev.-I)

Devamma

APPELLANT

Vs

Mallamma

RESPONDENT

Date of Decision : 28-06-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 54
Karnataka Prevention of Fragmentation and Consolidation of Holdings Act, 1966 —
Section 8

Citation : (1982) 1 KarLJ 87

Hon'ble Judges : K. V. Narayana Raju, Member; R. Shankarappa, J

Judgement

Per K.V. Narayana Raju, M.-These two appeals are from the same order dated 20-4-1981 passed by the learned Deputy Commissioner, Hassan in CLWCR 9/79-80 under S. 54 of the Code of Civil Procedure directing the Assistant Superintendent of Land Records, Hassan to effect partition of certain lands in accordance with the decree passed by the District Court, Hassan in R.A. 9/72 filed by the Plaintiffs in O.S. 91/71 on the file of the Civil Judge, Hassan. Apl. 189/81. is filed by the two plaintiffs Mallamma and Neelamma while Apl. No. 138/81 is filed by the defendants Devamma and others.

2.The District Court has decreed that the plaintiffs should get 1/11 share each in agricultural lands situated at Aggunda, Bommanehalli and Chandalapura village in Arasikere Taluk.

3. The learned Deputy Commissioner has said that partition of Sy. No. 14/1 dry 2 acres 30 guntas, Sy. No. 124 3 acres 15 guntas of Aggunda village and Sy. No. 1-3 wet 3 acres 30 guntas, of Bommenahalli would result in the creation of fragments, and instead of following the procedure laid down under S. 8 of the Karnataka Prevention of Fragmentation and Consolidation of Holdings Act by determining the compensation, he has just directed the exclusion of those lands from the partition. Naturally the plaintiffs aggrieved by this order have preferred appeal.

4. The learned Deputy Commissioner has said that the other lands were already fragments and that as laid down by our High Court 1980 (2) K.L.J. 25, S. 6 of the Karnataka Prevention of Fragmentation and Consolidation of Holdings Act was not a bar to partition of those lands. Consequently he has directed the Assistant Superintendent of Land Records to effect partition of those lands and allot 1/11 share to each of the plaintiffs. The defendants have complained in their Apl. 138/81 that partition directed is opposed to S. 5(3) of the Karnataka Prevention of Fragmentation and Consolidation of Holdings Act, that he erred in holding the Sy. No. 125, 2 acres 20 guntas and Sy. No. 14/114 garden 1 acre 18 guntas of Chandalapura village were fragments; that partition of these lands create tiny bits which would be incapable of effective and economic cultivation and that the learned Deputy Commissioner ought to have followed the procedure under S. 8 of the Karnataka Prevention of Fragmentation and Consolidation of Holdings Act etc.

5. The learned Counsel for the parties were heard. We must say that the learned Deputy Commissioner committed a patent error in excluding Sy. Nos. 14/1 124 and Sy. No. 143 from partition. He was bound by law to effect partition of those lands also. He should now proceed to effect partition of those lands in accordance with S. 8 of the Karnataka Prevention of Fragmentation and Consolidation of Holdings Act if the plaintiffs cannot be allotted whole Sy. Nos. to meet their claim.

6. The defendants in Apl. 138/81 have contended that certain lands have been wrongly assumed as fragments. We are unable to say whether Sy. No. 1/19 2 guntas described as Kana Hittalu and and Sy. No. 190 2 guntas described as Menasina Madi are really agricultural lands. It is now necessary for the Deputy Commissioner to apply his mind objectively giving an opportunity to both the parties and then decide whether those lands are really fragments.

7. No doubt that S. 5(3) of the Karnataka Prevention of Fragmentation and Consolidation of Holdings Act prohibits sub division or partition of a fragment in respect of which a notice has been given under sub-sec. (2) of S. 4. We are unable to say if any of these lands was a fragment in respect of which notice is issued under S. 4(2) of the said Act. This matter should be enquired into by the learned Deputy Commissioner.

8. We are of the opinion that in such cases where fragments are to be partitioned the learned Deputy Commissioner may be justified in following the procedure prescribed by S. 8 of the Karnataka Prevention of Fragmentation and Consolidation of Holdings Act in the interest of justice and convenience, so that there is no fragmentation resulting in unviable and uneconomic holdings. Such a procedure might not offend any other provision of the Karnataka Prevention of Fragmentation and Consolidation of Holdings Act.

9. For the foregoing reasons we allow both the appeals and set aside the order passed by the Deputy Commissioner. He shall now dispose of the matter

according to law and in the light of the observations made above.

Appeals allowed and matter remanded

1982 (1) Kar.L.J.88

Karnataka Sales Tax Act, 1957, S. 28-A - Sale through Bank - Delivery note - Requirements.

When documents are sent through Bank for delivery on payment of the Bill, there can be a sale only when the money is paid. Thus, when documents are sent through bank, the consignor will be justified in showing the consignee as "Self", and it is not obligatory to mention the name of the ultimate buyer. By showing the consignee as "Self", there is no contravention of S. 28-A of the Act.