
(2014) 04 KAR CK 0231
In the Karnataka High Court
Case No : R.F.A. No. 1822/2012 (Par)

G.B. Siddesh

APPELLANT

Vs

Gowramma

RESPONDENT

Date of Decision : 07-04-2014

Acts Referred:

Hindu Succession Act, 1956 — Section 8

Citation : (2014) 04 KAR CK 0231

Hon'ble Judges : N. Kumar, J;B.S. Indrakala, J

Bench : Division Bench

Advocate : Chidambara G.S., Advocate for the Appellant; T. Rajaram, Advocate for C/R1 to 4, Advocate for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—This is a defendant's regular first appeal challenging the judgment and decree passed by the Trial Court decreeing the suit of the plaintiffs for partition and separate possession granting 1/5th share to each of the parties to the suit.

2. The first plaintiff, Smt. Gowramma is the wife of Sri. A.G. Basavarajappa. Plaintiffs 2, 3, 4 and defendants are their children. The parties are Hindus governed by Mitakshara School of Law. The case of the plaintiffs is that all the schedule properties are the self-acquired properties of Sri. A.G. Basavarajappa. He died on 04.03.2010 intestate leaving them as his legal heirs. The plaintiffs wanted partition and separate possession of their 1/5th share in the plaintiff schedule properties. When the defendant declined to accede to the said request, the plaintiffs filed a suit.

Defendant has filed the written statement contesting the claim. He did not dispute the relationship between the parties and the death of his father.

3. On the aforesaid pleadings, the Trial Court framed the following issues:

- i) Whether the plaintiffs prove that the suit schedule properties are the self-acquired properties of A.G. Basavarajappa?
- ii) Whether the plaintiffs prove that they are entitled for 1/5th share in the suit schedule properties?
- iii) Whether the plaintiffs prove that the deceased A.G. Basavarajappa borrowed loan of Rs. 12,38,424/- for the development and benefit of his family?
- iv) Whether the suit is bad for non-joinder of necessary parties?
- v) Whether the suit is bad for partial partition?
- vi) Whether the Court fee paid is sufficient?
- vii) Whether the plaintiffs are entitled for the relief sought?
- viii) What order or decree?

4. The first plaintiff was examined as PW-1 and 15 documents were produced which are marked as Exs. P1 to P15. On behalf of the defendant, he examined himself as DW-1 and got marked two documents as Exs. D1 and D2.

The Trial Court on appreciation of the aforesaid oral and documentary evidence on record held that the defendant has admitted in his evidence that the schedule properties are the self-acquired properties of Late Sri. A.G. Basavarajappa. He died intestate and therefore, u/s 8 of the Hindu Succession Act, 1956, plaintiffs and defendant being the Class-I legal heirs, they are entitled to 1/5th share to each in the schedule properties. Therefore, it decreed the suit of the plaintiffs as prayed for.

Aggrieved by the said judgment and decree, the defendant is in appeal.

5. The learned counsel for the appellant/defendant assailing the judgment and decree of the Trial Court contended that the respondents/plaintiffs suit is not maintainable as the land in Sy. No. 23/1B of Asagodu Village was gifted to their mother, the first plaintiff, which she has blended with the other properties. Therefore, according to him, the decree is vitiated and it requires to be set aside.

6. We do not see any merit in the said contention.

7. The defendant in his evidence has categorically admitted that the schedule properties are the self-acquired properties of their father, late Sri. A.G. Basavarajappa. Exs. P1 to P4 are the RTC extracts, which shows Item Nos. 1 to 3 of the schedule properties stand in the name of late Sri. A.G. Basavarajappa. Exs. P5 and P6 are the Assessment Extracts, which also supports the said contention. Exs. P8 and P9 are the RC books pertaining to suit Item Nos. 6 & 7, which also shows the said item stand in the name of late Sri. A.G. Basavarajappa. On the death of Sri. A.G. Basavarajappa, all these properties were transferred in the name of the first plaintiff being the widow and the mother of the children. Therefore, the Trial Court was justified in holding that the

schedule properties are self-acquisition of late Sri. A.G. Basavarajappa. Once, it is held to be self-acquired properties, then devolution of interest takes place u/s 8 of the Hindu Succession Act. All the parties to the suit are the legal heirs of Sri. A.G. Basavarajappa and therefore, Class-I heirs and therefore, each one of them are entitled to equal share, i.e., 1/5th share. Therefore, the said finding is legal and valid and do not suffer from any infirmity. In so far as the contention that under Ex. P15-the gift deed, plaintiffs' father gifted Sy. No. 23/1B to her, and therefore, the suit property is the "sthree dhana" property of the first plaintiff. Therefore, the children of the first plaintiff during her lifetime cannot claim any share in the said property. It was contended that the said property has been blended with the schedule property and therefore, they are entitled to the share.

8. It is nobody's case that the schedule properties are the joint family properties. Blending can take place with the joint family properties and it cannot take place without joint family properties. The concept of blending arises only when a member of a joint family, a coparcener who acquires the property by his own right without the aid of joint family. In the instant case, there is no joint family, there is no coparcener. The property is the "sthree dhana" property of the first plaintiff and the question of blending "sthree dhana" property with the property of the husband would not arise. Therefore, the Trial Court rightly negated all the contentions of the defendant and decreed the suit. There is no merit in this appeal. Accordingly, the appeal is dismissed.