

(2015) 12 KAR CK 0010

In the Karnataka High Court

Case No : Regular Second Appeal No. 390 of 1996 (PAR)

Ghudusab @ Gousemohiddin Aminsab Burdi

APPELLANT

Vs

Ghudusab Imamsab Burdi (since Deceased by LRs)

RESPONDENT

Date of Decision : 14-12-2015

Acts Referred:

Citation : (2016) 3 KCCR 2325

Hon'ble Judges : S.N. Satyanarayana, J.

Bench : Single Bench

Advocate : Sri Rajashekhar R. Gunjalli, Advocate, for the Appellants; Sri Suresh N. Kini, Advocate, for the Respondents

Final Decision : Allowed

Judgement

S.N. Satyanarayana, J. - This second appeal is taken up for consideration for the third time, in the light of the remand order dated 20.08.2015 in Civil Appeal No. 298/2007 on the file of the Apex Court.

2. This second appeal is by the unsuccessful plaintiffs in O.S. No. 111/ 1985 on the file of the Munsiff Court, Navalgund. The said suit for partition and separate possession came to be dismissed by judgment dated 09.11.1988. The regular appeal filed in R.A. No.61/88 on the file of the Principal Civil Judge, Dharwad was also dismissed by judgment dated 09.01.1996. As against the concurrent finding of dismissal, this regular second appeal was filed in the year 1996. Initially this appeal was decided by co-ordinate Bench of this Court by its judgment dated 13.08.1998, wherein this appeal was allowed without framing substantial question of law for consideration. Hence, Civil Appeal No. 495/1999 was filed by respondents in RSA No. 390/1996. The Apex Court set aside the judgment and decree dated 13.08.1998 passed in this appeal and remanded the matter for fresh consideration by order dated 31.08.2004. In the remanded matter, the substantial question of law was framed and the appeal was dismissed by judgment dated 19.01.2005. As against that, respondents preferred an appeal in SLP (C) No. 16297/2005, in which special leave was granted and the appeal was

registered in Civil Appeal No. 298/2007 and was heard and disposed off the same by order dated on 20.08.2015.

3. In the said appeal, the Apex Court felt that the Coordinate Bench of this Court while deciding this matter by its judgment and decree dated 15.04.2005 did not take into consideration the judgment rendered in the matter of Abubakar Abdul Inamdar (dead) by LRs and Others v. Harun Abdul Inamdar and Others reported in (1995) 5 Supreme Court Cases 612, which has a direct bearing on the point for consideration in this appeal. Accordingly, remanded the matter back to this Court on the ground that Coordinate Bench of this Court was not justified in dismissing the appeal in the light of the aforesaid judgment. Hence, in this remanded appeal the substantial question of law to be framed is as under:

"Whether the appellants in this appeal who are plaintiffs in O.S. No. 111/1985 are entitled to seek share in the suit property in the light of the judgment rendered by the Apex Court in Abubkar's case?"

4. Heard the learned Counsel for the appellants and as well as contesting respondents. Admittedly, this second appeal is by the plaintiffs in O.S. No. 111/1985 on the file of Munsiff, Navalgund seeking partition of suit schedule "A" and "B" properties and also for a share to each of them in the said lands. Admittedly, plaintiffs and defendants in O.S. No. 111/1985 are the grand sons of Khadar Sab s/o Imam Sab Burdi, who was a "Walikar" in erstwhile Princely State, later which was merged in the State of Mysore on its formation subsequent to independence. The grand father of plaintiffs and defendants namely, Khadar Sab being a "Walikar", suit "A" schedule property was granted in his favour as setsanadi land is not in dispute. It is also not in dispute that, at the time when he was discharging the duties of "Walikar", by application of primogeniture rule, the eldest son would be entitled to continue the service, to which his father was appointed. In the instant case, Khadar Sab who had attained the age of 70 as on 1938 requested the then Ruler to accept his resignation and appoint his eldest son Imamsab Burdi as "Walikar" in his -place. Accordingly, it was considered and accepted as per Ex.D1, which is not in dispute.

5. By virtue of the first son of Khadar Sab being appointed as "Walikar", the said setsanadi land which is Service Inam Lands attached to the office of "Walikar" continued to be under the enjoyment of Imamsab Burdi, according to the defendants. According to them, their father became absolute owner of the property in which the plaintiffs who are sons of Aminsab Burdi who is the third son of Khadar Sab sought share on the ground that subsequent to independence, the rule of primogeniture is no longer in vogue and being the youngest member of the family, they are entitled to seek partition in setsanadi lands, which is attached to the office of "Walikar" and succeeded to by the eldest son.

6. In the original suit, the relationship of plaintiffs as grand sons of Khadar Sab was accepted and also the relationship of defendant Nos. 1 and 2 as the sons of Imamsab and grand sons of Khadar Sab. As the parties to the proceedings being

governed by Mohammaden law, they were all considered as the persons who are tenants in common in cultivation of both setsanadi lands which are suit schedule "A" properties and tenancy lands which are suit schedule "B" properties. While coming to Item No. 1 of schedule "B" property is concerned, it is stated that, an application in Form No. 7 was filed by the father of defendant Nos. 1 and 2, Imamsab seeking tenancy rights in respect of both items of schedule "B" properties. However, his prayer for tenancy right over R.S. No.6 which is Item No. 1 was considered, so far as item No. 2 which is R.S. No.7 is concerned, his prayer was rejected. The same was considered as the land in cultivation of their uncle. Subsequently, when an application in Form No. 7A was filed, the same was considered in favour of the plaintiffs who are the children of Aminsab. However, in the suit the plaintiffs sought partition of not only Sy. No. 6 but also Sy.No.7, the tenancy right, which was granted in their exclusive name. In the trial Court, the prayer of the plaintiffs for partition was opposed on the ground that the suit schedule "A" properties being setsanadi lands are attached to the office of the "Walikar" held by Imamsab Burdi and as such, the same is not the property of their grand father Khadar Sab and the same is not available for partition among the children and grand children of Khadar Sab as provided under the personal law governing the Mohammadens. The trial Court by accepting the same dismissed the suit of the plaintiffs for partition, which came to be confirmed by the lower appellate Court. As against which, this second appeal is filed.

7. During the pendency of the appeal before the lower appellate Court, a similar point that arose for consideration before the Apex Court in the matter of Abubakar Abdul Inamdar (dead) by LRs and Others v. Harun Abdul Inamdar and Others reported in (1995) 5 Supreme Court Cases 612, wherein it was decided by the Apex Court holding as under:

"Muslim Law - Succession - Impartible estate - Inam-Abolition of - Re-grant - Right of succession as co-heirs - properties granted by Ruler as inam devolving on eldest son after death, of grantee by rule of primogeniture - Alienations Abolition Act, 1955, the eldest son regarded as watandar on re-grant of the properties - His brothers and sisters as co-heirs claiming shares in the properties on the basis of inheritance - Held, claim sustainable - Claimants could be regarded as a group of people, though not members of a joint family as in Hindu law, and the eldest of them could be regarded as their representative after abolition of Inams and re-grant - Such group would be entitled to claim their respective shares in accordance with Shariat law - No distinction can be made in the position from Hindu law."

8. It is seen that, as on the day when the second appeal was filed by the plaintiffs challenging the concurrent finding of both the Courts below in rejecting their prayer for partition in setsanadi lands in suit schedule "A" properties, the aforesaid judgment which was already in force was not looked into by previous two Coordinate Benches, while disposing of this second appeal. The first time while disposing of this second appeal, no substantial question of law was framed.

Hence, the judgment was set aside and the matter was remanded for fresh consideration. For the second time, when this matter was taken up for consideration by a Coordinate Bench of this Court, which passed the judgment and decree dated 15.04.2005 did not take into consideration the judgment rendered by the Apex Court in Abubakar's case, wherein at paragraph No. 3, it is held as under:

"On the abolition of the "Inams" under the provisions of the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955, Abubakar was regarded as a Watandar on re-grant of the properties. His brothers and sisters, on the one side, laid claims to those lands as co-heirs of Abubakar, taking the plea that by virtue of inheritance, they had a share in that property; the bar of impartibility and the rule of primogeniture having gone. Regarding the house property, they laid claims to partition it as heirs. Abubakar resisted the suit by laying claim that the landed properties which were erstwhile "Inams" became on re-grant "personal" in his hands and therefore the other heirs of Syed Abdulla had no share in those. Regarding the house he put up the plea of adverse possession, even though, avowedly, he had a Will in his favour from his father. The trial Court partly decreed the suit against him insofar as the Inam lands were concerned but dismissed the suit insofar as the house was concerned; and the lower appellate Court affirmed that decision. Before the High Court the appeal of Abubakar is also the cross-objections of his opponents were taken up together. The appeal of Abubakar was dismissed and the cross-objections on the contrary were allowed with the result that the entire suit stood decreed, rejecting the claim of Abubakar of the Inam lands being personal to him and the house being in his adverse possession, maturing in his ownerships."

9. In the light of aforesaid discussion, it is clear that the said setsanadi land which was in the hands of Khadar Sab's eldest son Imamsab was regranted in his name in the year 1969 vide Ex.D2 dated 28.06.1969. Therefore, it has to be treated as the land, which is available for partition as held by the Apex Court in the aforesaid judgment. Therefore, in the light of aforesaid finding, plaintiff Nos. 1 to 3 and defendant Nos. 1 and 2 also had share in the said property as per the personal law of Mohammadens governing division of property as on that day. In this proceedings, one another ground is urged by the plaintiffs in stating that they are also entitled to the share of plaintiff No,4-Ghuduma daughter of Rajesab. In that view of the matter, this Court feel, by following the judgment rendered by the Apex Court in Abubakar's case, plaintiff Nos. 1 to 3 and defendant Nos. 1 and 2 are the only sharers to the suit schedule "A" and "B" lands, which are available for partition among them. So far as suit schedule "A" lands are concerned, they are setsanadi lands and so far as suit schedule "B" lands which are granted under the Land Revenue in favour of the plaintiff and defendants on different dates and though they are granted in favour of father of the defendants and another in favour of father of plaintiffs, both are being under cultivation of all the members of the family of the Khadar Sab as co-tenants, they are entitled to seek partition of all the lands. With such observation, this

appeal filed by the plaintiffs in O.S. No. 111/1985 is allowed. While doing so, the prayer of the plaintiffs that they are exclusive owners to the share of plaintiff No. 4-Ghuduma being the beneficiary of the said lands by way of Bakshish granted in their name is hereby rejected.