

(2017) 01 KAR CK 0221
In the Karnataka High Court
Case No : 7066 of 2013

Gundamma W/o Shiromani Halginoor APPELLANT
Vs
Yoshodha W/o Dasarath, & Anr. RESPONDENT

Date of Decision : 10-01-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 100](#)
a> - Second appeal

Citation : (2017) 01 KAR CK 0221

Hon'ble Judges : A.S. Bopanna

Bench : SINGLE BENCH

Advocate : R.J. Bhusare, Sanjeev Kumar C. Patil

Final Decision : Disposed

Judgement

1. The appellant is before this Court in this second appeal under Section 100 of the Civil Procedure Code assailing the concurrent judgments of the Courts below. The respondent No.1 is the plaintiff while the appellant and the second respondent herein were the defendants in O.S.No.103/2003. For the purpose of convenience and clarity the parties are referred to in the same rank as assigned to them before the trial Court.

2. The plaintiff being the daughter of the first defendant and sister of the second defendant was before the trial Court seeking partition and separate possession of the suit schedule property. In the suit it was contended that the property belonged to the father late Tuljappa and as such the plaintiff as well as the defendants are entitled to a share each. The second defendant filed the written statement and disputed the claim of the plaintiff. It was contended that at the time of the marriage of the plaintiff a sum of Rs.1,00,000/- and 5 tolas of gold was given to the plaintiff by the defendants 1 and 2 to perform the marriage and in that regard it was contended that the said amount and the gold was given as a share to the plaintiff and as such the plaintiff is not entitled to claim for partition. It was also the contention of the second defendant that her husband is the

illatom son-in-law of defendant No.1 having married the second defendant. In that view, it was contended that the suit is liable to be dismissed.

3. The trial Court, based on the rival contentions, had framed as many as six issues. The plaintiff examined herself as PW-1 and examined a witness as PW-2. She relied on the documents at Exs.P1 to P16. The second defendant examined herself as DW-1 and the witnesses were examined as DW-2 and DW-3. The documents at Exs.D1 to D20 were relied upon. The trial Court while taking note of the evidence tendered before it has assessed the oral as well as the documentary evidence. In the said process the trial Court has noticed that initially the second defendant contended that her husband is illatom son-in-law of the first defendant. In order to appreciate such contention, the trial Court has taken note of the specific portion of the suggestions that were put forth to the plaintiff as PW-1, on behalf of the second defendant. In that light, the evidence of DW-2 and DW-3 was referred to, wherein it is stated with regard to the contention that was taken on behalf of the defendants relating to the marriage of the second defendant and the status of Shiromani, the husband of the second defendant as having been adopted. The document dated 05.06.1991 which was claimed to be an adoption deed was referred and in that regard it was noticed that the said document had not been relied upon as evidence. Hence, it was taken note in that context and the contradicting contentions were referred to.

4. In addition, insofar as the contention that the amount and gold had been paid to the plaintiff as her share at the time of her marriage was also adverted to and was not accepted as a share that was granted to the plaintiff. Therefore, the trial Court, on assessing the evidence available before it, had arrived at the conclusion that when admittedly the plaintiff and the defendants 1 and 2 are the legal heirs of late Tuljappa who had left behind the properties, they are entitled to 1/3rd share each in the said property.

5. The second defendant claiming to be aggrieved by the judgment dated 14.07.2011 passed by the trial Court, had preferred the appeal in R.A.No.33/2011. The Lower Appellate Court on re-appreciating the evidence, through the judgment dated 29.09.2012 has arrived at the conclusion that the trial Court has not committed any error in arriving at its conclusion to assign shares to the parties.

6. In that light, having heard the learned counsel for the parties and having perused the judgments and also having noticed the manner in which the Courts below have appreciated the evidence and have arrived at their conclusion, it is clear that the finding with regard to the entitlement of a share in the property when there was no dispute with regard to the relationship between the parties, is a finding of fact and there is no substantial question of law for consideration in this appeal.

Accordingly, the appeal being devoid of merit, stands disposed of. No costs.