

(2014) 10 KAR CK 0041

In the Karnataka High Court

Case No : Writ Petition No. 81150/2013 (GM-CPC)

Hanumanthappa

APPELLANT

Vs

B.K. Mukkanna

RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Hindu Succession Act, 1956 — Section 15

Citation : (2014) 10 KAR CK 0041

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

Bench : Single Bench

Advocate : T.M. Nadaf and R.M. Nadaf, Advocate for the Appellant; S.M. Kalwad, Advocate for the Respondent

Judgement

S.N. Satyanarayana, J.—Defendants in O.S. No. 398/2011 pending on the file of the First Additional Civil Judge and JMFC, Bellary have come up in this writ petition impugning the order dated 18.07.2013 passed in M.A. No. 20/2012 in confirming the order on I.A. No. 2 passed in O.S. No. 398/2011. Admittedly, O.S. No. 398/2011 is filed by the respondent herein who is the plaintiff in the said suit which is filed for the relief of permanent injunction in respect of property bearing Sy.No. 34/B measuring to an extent of 5 acres 15 cents situated in Dammur Kaggal village of Bellary Taluk and District.

2. The undisputed facts are that, the suit property was the property of Marur Karibasappa who is said to be having two sons namely, M. Hanumanthappa and M. Basanna. The plaintiff B.K. Mukkanna in O.S. No. 398/2011 is the grand son of one B.K. Hanumanthappa who is the son-in-law of M. Basanna i.e., M. Basanna's daughter B. Hanumakka is given in marriage to B.K. Hanumanthappa as his first wife. The said B.K. Hanumakka died intestate on 28.10.2003. It is stated that her husband predeceased her i.e., he died on 20.10.2001. Admittedly, as on the date when B.K. Hanumakka died she was a widow.

3. The suit in O.S. No. 398/2011 is filed by her husband's grand son B.K.

Mukkanna against the children of Smt. Laxmi who is none other than M. Basanna's younger brother M. Hanumanthappa's daughter. Prior to the filing of the suit in O.S. No. 398/2011, it is seen that another suit in O.S. No. 368/2011 filed by the children of Smt. Laxmi the daughter of M. Hanumanthappa claiming that the aforesaid property namely Sy.No. 34/B of D. Kaggal village belonged to their family inasmuch as B. Hanumakka having died intestate, the property which was exclusively belonging to her would enure to the benefit of her uncle M. Hanumanthappa's legal heirs. In that behalf they would contend that though B. Hanumakka was married to B.K. Hanumanthappa, she never went to her matrimonial house and she lived in her paternal house along with her paternal uncle M. Hanumanthappa and the property remained with her paternal family and as such the plaintiffs in O.S. No. 368/2011 succeeded to the said property and they are in possession and enjoyment of the same.

4. It is seen that prior to the filing of O.S. No. 368/2011 by defendants in O.S. No. 368/2011, certain transactions have taken place and suits being filed and settlement being arrived at between the parties and each one of them staking claim to the said properties. However, when the suit in O.S. No. 398/2011 was filed for the relief of injunction by Mukkanna, the Court below on appreciation of the material available on record, proceeded to allow the application filed by him under Order 39 Rule 1 and 2 of CPC seeking an order of temporary injunction restraining the defendants namely the grand children of M. Hanumanthappa interfering with his peaceful possession and enjoyment of the suit schedule property, which was allowed and the same was the subject matter of M.A. No. 20/2012 on the file of the Senior Civil Judge, Bellary, wherein, the lower appellate Court on re-appreciation of the facts has confirmed the order of temporary injunction that was granted in the original suit. As against the concurrent findings of both the Courts below, this writ petition is filed impugning the order passed in M.A. No. 20/2012 in confirming the order of temporary injunction granted on I.A. No. 2 in O.S. No. 398/2011.

5. Heard the learned counsel appearing for the petitioners and as well as the respondent-plaintiff in the original suit. In the present writ petition, the undisputed fact is that the petitioner B.K. Mukkanna is the grand son of B.K. Hanumakka's husband B.K. Hanumanthappa through his second wife. It is seen that a registered Will is said to have executed by M. Basanna on 23.03.1946 bequeathing the suit property in favour of his only daughter B. Hanumakka. In the said Will, a copy of which is produced herein, at page No. 3, it is seen that in the event of Hanumakka is married and if she dies subsequent to the marriage, the suit property should enure to the benefit of her husband.

6. In the instant case, Hanumakka is said to have married to B.K. Hanumanthappa, the grand father of the plaintiff, which is not disputed. It is also not in dispute that Hanumakka's husband predeceased her. In that view of the matter, whether the property which was absolute property of B. Hanumakka by virtue of a Will executed in her favour was available for succession to her

husband's legal heirs or the grand children of B. Hanumakka's parental uncle by way of inheritance, will have to be decided in the original suit pending in O.S. No. 398/2011 filed by B.K. Mukkanna for the relief of injunction and as well as in the suit filed by the petitioners herein in O.S. No. 368/2011.

7. In the meanwhile, since both the Courts below have taken the consistent view that the possession of the property is with the respondent herein, this Court would not like to disturb the same. However, this Court would make it clear that any of the observation made in the order passed on I.A. No. 2 in O.S. No. 398/2011 and the order passed in M.A. No. 20/2012 would not come in the way of the plaintiffs in O.S. No. 368/2011 staking their claim seeking inheritance on the ground that, as on the date of B. Hanumakka's death, her husband B.K. Hanumanthappa not being alive, succession would enure to their benefit and similarly, the plaintiff in O.S. No. 398/2011 in staking his claim under Section 15 of the Hindu Succession Act, which has to be decided by the Court below by framing appropriate issues.

8. While disposing of this writ petition with the aforesaid observation, this Court would further observe that the suit in O.S. No. 368/2011 filed by the petitioners herein and O.S. No. 398/2011 filed by the respondent herein for the relief of injunction shall be clubbed together and common issues should be framed and both the suits should be disposed of by a common judgment to avoid any future confusion that may arise due to conflicting views they may be taken in both the suits at a later stage.

With these observations, petition is disposed of.