
(2014) 09 KAR CK 0130

In the Karnataka High Court

Case No : Regular Second Appeal No. 7249/2012

Hussainsab Rajesab Tasewale

APPELLANT

Vs

Kasimsa Rajesab Tasewale

RESPONDENT

Date of Decision : 04-09-2014

Acts Referred:

Citation : (2014) 09 KAR CK 0130

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : Pramod Kathavi, Advocate for N.B. Diwanji, Advocate for the Appellant; Ameet Kumar Deshpande, Advocate for the Respondent

Final Decision : Allowed

Judgement

N. Ananda, J.—This regular second appeal is filed against the concurrent findings recorded by the courts below.

2. The appellants were arrayed as defendant Nos. 1 to 5 before the court below. The suit for partition was filed by the parties for the properties held and left by Rajesab Tasewale. Plaintiff Nos. 1 and 2 and defendant Nos. 1 to 4 are the sons and daughters of deceased-Rajesab Tasewale. Defendant No. 5 is the wife of deceased-Rajesab Tasewale.

3. Defendant Nos. 1 to 5 contested the suit inter alia contending that deceased-Rajesab Tasewale had executed the partition deed during his life time on 13.09.1988. Therefore, plaintiffs are not entitled to a share. The trial court has disbelieved the execution of partition deed dated 13.09.1988. The defendants have also contended that plaintiff No. 2 has executed relinquishment deed dated 30.07.1973.

4. The learned trial Judge on consideration of document has held that the document has no legal effect on the rights of parties in relation to properties held and left by deceased-Rajesab Tasewale. Therefore, defendants were before the I-appellate court. It appears defendant No. 5 namely, Madarma W/o Rajesab

Tasewale died during the pendency of first appeal. However, the same was not brought to the notice of I-appellate court. The learned Judge of I-appellate court on re appreciation of evidence has confirmed the findings recorded by the trial court.

5. I have heard Sri Pramod Kathavi, learned counsel for appellants/defendant Nos. 1 to 4 and Sri Ameet Kumar Deshpande, learned counsel for respondents/plaintiff Nos. 1 and 2.

6. It is not in dispute that the suit scheduled properties were the properties acquired and held by deceased-Rajesab Tasewale. The relation between the parties as aforesaid is also not in dispute. It is also not in dispute that parties are governed by the Mohammedan Law. In the circumstances, alleged unregistered relinquishment deed dated 30.07.1973 and unregistered settlement deed dated 13.09.1988 have not extinguished the rights of parties. It is not the case of the defendants that deceased-Rajesab Tasewale had transferred or relinquished his interest in the properties held by him by executing registered document either in favour of the defendants or in favour of plaintiffs.

7. Sri Pramod Kathavi, learned counsel for appellants submits that trial court while passing the decree in favour of plaintiffs has not followed the provisions of Mohammedan Law. Defendant No. 5 (wife of deceased-Rajesab Tasewale) was a sharer. The trial court should have allotted 1/8th share to defendant No. 5 and should have distributed remaining 7/8th share among the daughters and sons of deceased Rajesab Tasewale who are the residuaries in the ratio of 1:2 viz., 1 share to daughter and 2 shares to son.

8. It is seen from the records, defendant No. 5 died during the pendency of the first appeal (R.A. No. 126/2006) and it was not brought to the notice of the I-appellate court. In this appeal, it is stated that the mother of parties died on 08.04.2011 and her legal representatives are already on record. In view of this, learned counsel for appellants submits that decree passed by the trial court needs modification.

9. The learned counsel for respondents would submit that death of defendant No. 5 (mother of parties) was not brought to the notice of the I-appellate court.

10. In this appeal, following substantial questions of law have been raised:

I) Whether the courts below were right in framing Issues without considering provisions of Muslim Law?

II) Whether the courts below were right in allotting a share to plaintiff No. 2?

III) Whether the courts below were right in not considering Ex. D-9 in it's correct perspective?

IV) Whether the Lower Courts were right in allotting shares to parties in absence of their mother defendants No. 5?

V) Whether the courts below were right in not considering Ex. D-9 and D-10 together which would have changed the course of Judgments?

VI) Even other-wise the judgments and decrees passed by the courts below were sustainable in law?

11. In my considered opinion, none of the aforesaid questions could be considered as substantial question of law. The courts below have recorded concurrent findings that unregistered relinquishment deed pleaded by the defendants and unregistered settlement deed pleaded by the defendants have not extinguished the rights of parties. Therefore, there is no need to reconsider concurrent findings recorded by the courts below.

12. As regards submission made by the learned counsel for appellants that the trial court should have allotted 1/8th share to the wife of deceased-Rajesab Tasewale (mother of the parties) as she was a sharer and thereafter, the trial court should have decided the rights of the parties who were residuaries has to be considered in the context of pleadings and also taking into consideration whether such finding has any bearing on the rights of parties in view of death of the mother of parties.

13. In a decision reported in Govindaraju Vs. Mariamman, , the Supreme Court has held:

"14. As to which would constitute a substantial question of law, it was observed:-

"A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law "involving in the case" there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is no a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstances of each case whether a question of law is a substantial one and involved in the case, or not, the paramount overall consideration being the need for striking a judicious balance between time indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis."

14. It is true that the trial court should have allotted 1/8th share of the suit scheduled properties to the share of 5th defendant and thereafter divided the remainder amongst sons and daughters of Rajesab Tasewale in the ratio of 1:2. However, during the pendency of first appeal, 5th defendant died. Therefore, decree passed by the trial court by allotting 2/10th share to first plaintiff and

1/10 share to the second plaintiff has not impaired the rights of defendants. Defendant Nos. 1 to 4 who are the sons and daughters of deceased-Rajesab Tasewale would be entitled to share in the same ratio. The substantial question of law to be decided by this Court shall have a material bearing on the rights of the parties before the court.

15. The decree passed by the trial court and confirmed by the I-appellate court allotting 2/10 share to son and 1/10 to share to daughter of deceased-Rajesab Tasewale by implication follows defendant Nos. 1 to 4 who are the sons and daughters of deceased-Rajesab Tasewale would be entitled to shares in the same ratio in the suit scheduled properties.

16 In the circumstances, the answer to the question of law whether the trial court should have allotted 1/8th share to the mother of parties will have no bearing on rights of parties in view of death of the mother of parties during pendency of litigation.

17. In view of this, I do not find any reasons to interfere with the impugned judgments. The appeal is accordingly dismissed.