

(2015) 06 KAR CK 0067
In the Karnataka High Court
Case No : R.S.A. No. 514/2007

K. Chandrasekhara Reddy and Others	APPELLANT
Vs	
K. Yerriswamy and Others	RESPONDENT

Date of Decision : 25-06-2015

Acts Referred:

Citation : (2015) 06 KAR CK 0067

Hon'ble Judges : S. Sujatha, J.

Bench : Single Bench

Advocate : B. Chidananda, Advocate, for the Appellant; Gode Nagaraja, C.M. Desai and Aravind Desai, Advocates, for the Respondent

Final Decision : Allowed

Judgement

S. Sujatha, J.—This second appeal is directed against the judgment and decree dated 5.9.2006, passed by Addl. Civil Judge (Sr. Dn.), Bellary, in R.A. No. 93/2002.

2. The facts leading to this appeal are:-- That the properties in question belong to one Ganganagouda the propositus. After his death Smt. Hanumakka, Smt. Laxmamma and Smt. Shivanamma @ Shivamma, the legal heirs succeeded to the suit properties. Smt. Hanumakka and branch of Smt. Shivanamma filed a suit in O.S. No. 399/1981 against Smt. Laxmamma and other legal representatives of Smt. Shivanamma for a partition inter alia contending that certain sales made by defendant No. 1 i.e., Smt. Laxmamma are not binding on them. The said suit was contested and defendant No. 1 also put up a contention that the sales made by the plaintiff No. 1 are also not binding on her. Certain purchasers of the suit properties were also made parties to the said suit.

3. The trial Court decreed the suit allotting certain shares to the plaintiffs and defendants. However, the suit in respect of suit schedule items 3 and 4 was dismissed. It was also observed that the sale of suit properties made by 1st defendant do not bind the shares of the plaintiffs. The defendant No. 1 Smt.

Laxmamma along with 10 others filed an appeal in R.A. No. 21/1984 against the plaintiffs 1 to 3 and others. The said appeal was partly allowed declaring that the plaintiff No. 1 is entitled to 1/3rd share and plaintiffs 4 to 8 and defendants 3 to 6 together are entitled to 1/3rd share and defendant No. 1 is entitled to 1/3rd share in the suit properties. It was also observed that the sales of suit properties effected by the parties are not binding on the shares of the parties who have not joined in effecting the sales. However, the dismissal of suit in respect of items 3 and 4 of plaint "C" schedule is confirmed observing that equities in favour of alienees namely defendants 2, 7 and plaintiff No. 9 be worked out in the final decree proceedings.

4. Subsequent to passing of the judgment and decree by the lower appellate Court, FDP No. 54/1998 was instituted by legal representatives of one Sri Basanna, respondent No. 6 in R.A. No. 21/1984. FDP Court disposed of the matter allotting 14/27th share equal to 7.10 acres in items 1 and 2 of petition schedule properties to the legal representatives of Basanna. This order passed in FDP No. 54/1998 dated 7.9.2002 was challenged in R.A. No. 93/2002 by the legal representatives of Smt. Laxmamma, the defendant No. 1. The lower appellate Court after considering the material on record dismissed the appeal filed by the legal representatives of deceased Smt. Laxmamma. Though a common judgment was passed by the lower appellate Court in R.A. Nos. 92/2002 and 93/2002, this appeal is filed by the legal representatives of deceased Smt. Laxmamma in R.A. No. 93/2002 and no appeal is preferred in R.A. No. 92/2002. Thus this appeal is confined only to R.A. No. 93/2002.

5. Heard the learned counsel for the appellants as well as the respondents.

6. The learned counsel appearing for the appellants contended that neither trial Court nor the lower appellate Court has directed to work out any equities in favour of the purchaser Basanna and the FDP Court ordered allotting 14/27th share equal to 7.10 acres in item Nos. 1 and 2 of suit schedule property to Sri Basanna's legal heirs, alienees of item No. 2 of suit property to the extent of 9 acres 4 cents which is wholly unreasonable. Moreover the FDP proceedings filed by a stranger to the joint family was not maintainable. The lower appellate Court though accepted the contentions raised by the appellants in R.A. No. 93/2002 and has opined that Sri Basanna being a purchaser pendente lite is not entitled to claim a specific suit property to be allotted to his share, at the most he is entitled only to the share which his vendor is entitled in law. The lower appellate Court accepting the said contentions finally dismissed the appeal filed by the appellants i.e., defendant No. 1 Smt. Laxmamma and her legal representatives.

7. On the contrary, learned counsel for the respondents supported the judgment and decree passed by the lower appellate Court and contended that by virtue of the judgment and decree passed by the lower appellate Court in R.A. No. 21/1994, wherein it was categorically observed that the equities in favour of the alienees has to be worked out in FDP proceedings, FDP proceedings were instituted by the legal representatives of Sri. Basanna. The said judgment and

decree in R.A. No. 21/1994 not being challenged by the appellants herein, is binding on them and the FDP Court being an executing Court is bound by the directions issued by the lower appellate Court, accordingly, passed an order allotting 14/27th share equal to 7.10 acres in items 1 and 2 of petition schedule properties to the legal representatives of Sri Basanna who were the purchasers of item No. 2 of suit property from the legal heirs of Smt. Shivanamma and Smt. Hanumakka. The lower appellate Court in R.A. No. 93/2002 has considered the judgment and decree passed in the earlier appeal in R.A. No. 21/1984 and has observed that "at the outset the appeal filed by the appellants against the FDP order was required to be rejected" and accordingly dismissed the appeal which cannot be found to be contrary to law and the same requires to be confirmed by this Court.

8. After hearing the parties and perusing the records, the only substantial question of law that arises for consideration in this second appeal is as under:

"Whether the lower appellate Court is justified in dismissing the appeal filed by the appellants without giving any cogent reasons and thus, the judgment of the lower appellate Court has become perverse and illegal?"

9. It is noticed that the appellants namely, Smt. Laxmamma the defendant in the original suit and other legal heirs have filed R.A. No. 21/1984 challenging the judgment and decree passed in O.S. No. 399/1981 and the lower appellate Court partly allowed the appeal, allotting certain shares to the legal heirs of original propositus Ganganagouda, the parties in the suit proceedings and it was also observed that the alienees of the suit properties are entitled to work out their remedies in the FDP proceedings for equities. The legal representatives of respondent No. 6 Basanna initiated FDP proceedings and the FDP Court allowed the petition filed by the legal representatives of Basanna, respondent No. 6 in R.A. No. 21/1984 and allotted 14/27th share equal to 7.10 acres in item No. 1 and 2 of suit properties in favour of legal heirs of Basanna. This was challenged by the legal heirs of Smt. Laxmamma and others in R.A. No. 93/2002.

10. The lower appellate Court has observed that firstly, certain parties to the proceedings have not filed appeal against the said judgment and decree of the trial Court and secondly, the working out of equities does not mean that the purchaser pendente lite has to be given advantage over the original sharers. It is observed that the legal representatives of Basanna, though may be an alienee of item No. 2 of suit property, were not entitled to workout their shares excluding the rights of the other legal heirs, the purchaser may be entitled for the allotment of the share which could be allotted to his vendor; but has no right to claim specific property to be allotted in his favour. Having given these findings the lower appellate Court finally dismissed the appeal. The operative portion of the order is contradictory to the reasons assigned in the earlier paragraphs. The reasons must support the final order and it cannot go contrary to the order. Moreover, no other cogent reasons are forthcoming in the order of the lower appellate Court to support the dismissal of the appeal. Accordingly, this judgment

and decree passed in R.A. No. 93/2002 is not sustainable. In my view, this order requires to be set aside and has to be remitted back to the lower appellate Court to consider the matter afresh and to pass appropriate judgment and decree in accordance with law giving cogent reasons supporting the final order.

11. Accordingly this appeal is allowed remanding the matter back to the lower appellate Court to consider the case of the parties with respect to order passed in FDP No. 54/1998 and to pass appropriate judgment and decree in accordance with law, after hearing the parties, as expeditiously as possible. Thus, the substantial question of law raised in the appeal is answered in favour of the appellant.

12. It is made clear that the judgment and decree passed by the lower appellate Court in R.A. No. 21/1984 has reached finality as the appellants herein have not challenged the same. It is only for the limited purpose of assigning proper reasons and to pass the judgment and decree, the matter is remanded to the lower appellate Court. All the contentions of the parties are left open.