

(1986) 12 KAR CK 0009
In the Karnataka High Court
Case No : First Appeal No. 744 of 1986

Kashibai and Others

APPELLANT

Vs

Putalabai and Another

RESPONDENT

Date of Decision : 10-12-1986

Acts Referred:

Citation : AIR 1987 Kar 156

Hon'ble Judges : Murlidher Rao, J; M.P. Chandrakantaraj URS, J

Bench : Division Bench

Advocate : W.K. Joshi, for the Appellant;

Judgement

Chandrakantaraj Urs, J.—This is a defendant's appeal, against the judgment and decree dated 29-7-1986 in O.S. No. 109 of 1985 on the file of the Principal Civil Judge Bijapur. The appellants were. the defendants in the Said Suit and the respondents were the plaintiffs.

2. The plaintiffs claimed 13 "75th share in the suit schedule properties which consisted of immovable property of the family, 4 house situate in Ward No. 3 of Bijapur town bearing city Survey No. 1076/AI/B ("A" schedule property). Schedule-B properties are gold ornaments Weighing, twenty tolas. silver articles weighing, forty tolas, costs. brass and copper utensils in all the total value of which is Rs. 45,000M) -. They however pleaded that the plaintiff-I"% husband Ganuadhar was the member of the joint family of which Rudrappa was the "karta" and defendants 2 and 3 were the other coparceners. besides Ganuadhar. That they own suit schedule" A" and "B" properties as well as certain agricultural lands. That there was a plaintiff were respect of the agricultural land subsequent it) the death of Gangadhar and that the plaintiffs were in possession and separate enjoyment of there

share of the property but all account of some differences in i lie family plaintiff- I and her children :would not live - jointly in the ancestral house at Bijapur. Therefore. the Ist plaintiff's father brought them to Bagalkot where his house

was situated and. therefore. it was in that circumstance the asked for partition of the movables in the "B" schedule as well as the house property in "A" schedule. Unfortunately. despite several opportunities given. the defendants did not file written statement. Therefore the Court below was compelled to proceed to judgment in the absence of Joining any issue.

3. On behalf of the plaintiffs, P. W. I was examined. He was none other than the power of attorney holder and father of plaintiff-1. He spoke to the allegation made in the plaint and the Court has come to accept it in the absence of any rebuttal evidence by the defendants and decreed the suit.

4. Therefore the present appeal by the defendants.

5. Mr. W. K. Joshi, learned counsel appearing for the appellants has contended before us that once the plaintiffs themselves admitted a prior partition, the question of maintaining another partition suit would not arise. For that he depended on the ever men of the plaintiff in paragraph-5 of" the plaint which does indicate that the plaintiff pleaded that the agricultural land was divided some time after the death of Gangadhar, the husband of plaintiff-I and that they were in separate possession of the agricultural land. .

6. Such an averment cannot be read in isolation. In paragraph-3. they have specifically asked for their share in the Schedules "A" and "B" properties which apparently are properties other than the agricultural land. Therefore. What was admitted by the plaintiff in the pleading was only a partial partition of the joint family properties restricted to the agricultural land. Such partial partition is not unknown to joint Hindu family governed by "Mitakshara School of Law".

7. Reliance placed on the decision of this Court in *Shirasappa v. Padmarajappa Shirasappa Prathamshetti*. (1962) 40 Mys U 51 by the learned counsel for the appellants is really not of much assistance to support the proposition that no partial partitioned is possible in respect of Mitakshara Hindu Undivided family. What has been stated in the aforementioned decision is that there is presumption that all parties belonging to a Joint family have been partitioned if there has been a general partition and if any one wants to reopen that partition on the ground that some item of property was left out and. therefore, was liable again for partition. Then it is for that person \\\'who so asserts to demonstrate that such omission was due to mistake, fraud etc. That does not support the proposition that there cannot be partial partition.

8. The plaint averment makes it clear that what was pleaded was partial partition on, an earlier occasion and not general partition of all the properties of the family. That partial partition is valid and what remains is joint family property held by the persons who hold such property as tenants in common. That view is supported by another decision of the Division Bench of this Court in *P. Cheradappa Pai v. Agricultural. Income tax Officer* AIR 1970 Mys 168. In the said decision their Lordships have held that a partition is said to be partial as to the property where the members of a joint family make a division and severance of

interest in respect of a part of the joint estate while retaining their status as a joint family and holding the rest of the properties as it joint and undivided family. Where there evidence to show that the parties intended to sever. Then the joint "family Status is put an end to and with regard to any portion of the property which remained undivided the presumption would be that the members of the family would hold it as tenants-in-common unless and until and a special agreement to hold as joint tenants is proved.

9. From the above it is clear that partial partition of the properties is permissible and that the pleading was clear and spoke only of partial partition of agricultural land and no partition in respect of suit Schedules "A" and "B" properties. The family continued to be joint in status and that presumption was never rebutted by the defendant.

10. Therefore this appeal has no merit. Accordingly it is rejected.

11. Appeal dismissed.