

(2015) 03 KAR CK 0121
In the Karnataka High Court
Case No : R.S.A. No. 190/2012 [DEC/INJ]

Kullegowda and Others

APPELLANT

Vs

Chandrashekaraswamy and Others

RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2015) 03 KAR CK 0121

Hon'ble Judges : A.S. Bopanna, J.

Bench : Single Bench

Advocate : K. Vijaykumar, for the Appellant

Final Decision : Disposed off

Judgement

A.S. Bopanna, J.—The appellants are before this Court assailing the concurrent judgments rendered by the Courts below.

2. In a suit filed by the appellants herein as the plaintiffs in O.S. No. 108/2003 seeking for declaration and permanent injunction, the trial Court after detailed consideration has dismissed the suit. The plaintiffs were before the Lower Appellate Court in R.A. No. 6/2010. The Lower Appellate Court after re-appreciating the evidence available on record has concurred with the findings of the trial Court and dismissed the appeal by its judgment dated 29.09.2011. The plaintiffs are accordingly before this Court in this second appeal.

3. The learned counsel for the appellants while assailing the judgments passed by the Courts below would contend that both the Courts have concurrently erred in assessing the evidence available on record. It is their contention that the conclusion as reached by the Courts below in any event would lead to the fact that there was a joint family status between the plaintiffs and the fourth defendant who is their father. It is their case that in that light, when the property which was sold under the sale deed dated 22.10.1993 belong to the joint family and the family had also partitioned the same under a palu patti dated

02.12.1977, the plaintiffs were entitled to their share in the property which were in their possession and therefore, the property belonging to the plaintiffs could not have been sold by the fourth defendant to defendants No. 1 to 3 under the said sale deed. In that regard, the learned counsel has referred to the document relied on by the Courts below to contend that the same has not been properly appreciated by the Courts below.

4. In the light of the contention put forth, a perusal of the papers would indicate that the plaintiffs, who are the sons of the fourth defendant were before the Court below contending that their grand father namely, Sannegowda had two sons namely, Thimmegowda and Rangegowda i.e., the fourth defendant. In the division effected amongst the family members, property bearing Sy. No. 110 measuring 2 acres, 38 guntas i.e. the suit land had fallen to the share of Thimmegowda and 2 acres in Sy. No. 102 had fallen to the share of Rangegowda i.e., the fourth defendant. The fourth defendant had out of the income from the family funds purchased the property bearing Sy. No. 102 measuring 3 acres, 30 guntas from his elder brother Thimmegowda under the sale deed dated 14.12.1969. It is in that view, contended that the property which was therefore available to the joint family had been partitioned under a panchayat palu patti on 02.12.1977. The plaintiffs have also referred to the mutation entries in M.R. No. 15/93-94 whereunder, the mutation was obtained pursuant to the palu patti. In that view, it is contended that the fourth defendant in such circumstance could not have executed the sale deed dated 22.09.1993 in favour of the first defendant.

5. The defendants had entered appearance. Defendants No. 1 to 3 had contended that the purchase as made by them under the sale deed is in accordance with law since the property belonged to the fourth defendant and as such had claimed right in respect of the property. The fourth defendant, who is none other than the father of the plaintiffs had contended that he was unaware of such sale deed being executed in respect of the property.

6. In the light of the rival contentions, the trial Court has framed as many as ten issues for its consideration. The plaintiff No. 1 had examined himself as PW-1 and two witnesses were examined as PW-2 and PW-3 and the documents at Exs-P1 to P19 were relied upon. The second defendant examined himself as D.W.-1 and relied upon the documents at Exs-D1 to D8. The trial Court on referring to the oral as well as the documentary evidence available on record has rendered a detailed finding based on the same. The contention that the plaintiffs and the fourth defendant had partitioned the property under the palu patti of the year 1977 was referred to in detail and the Court below has taken note of the fact that though it is contended that the partition was dated 02.12.1977, the reliance placed on M.R. No. 15/93-94 itself would indicate that the same has been made only subsequent to the sale deed being executed by the fourth defendant in favour of defendants No. 1 to 3 and as such has arrived at the conclusion that even if it was so, it had not been acted upon.

7. In that light, taking note of the said contention, the trial Court based on the evidence available on record has arrived at the conclusion that there is nothing to indicate that the sale deed under which the property was sold to defendants No. 1 to 3 by defendant No. 4 was a joint family property to which the plaintiffs can claim right, more particularly, in a circumstance where the palu patti though claimed by them had not been acted upon.

8. In a circumstance where the trial Court has referred to the entire evidence available on record and has arrived at the finding of fact and the Lower Appellate Court with reference to the same evidence has re-appreciated and affirmed the conclusion reached by the trial Court, in my opinion, there is no substantial question of law for consideration in an appeal arising under Section 100 of Civil Procedure Code.

In that view, I am of the opinion, the appeal is devoid of merit and the same is accordingly disposed of. No costs.