

(2014) 09 KAR CK 0227
In the Karnataka High Court
Case No : R.F.A. Nos. 2419 and 1250/2006

K.V. Thammanna

APPELLANT

Vs

K.V. Channaiah
 Kamala Vs K.V. Thammanna

RESPONDENT

Date of Decision : 09-09-2014

Acts Referred:

Citation : (2014) 4 AKR 736

Hon'ble Judges : K.L. Manjunath, J;A.V. Chandrashekara, J

Bench : Division Bench

Advocate : P.M. Siddamallappa, Advocate for Mylaraiah Associates, Advocate for the Appellant; Nirmala Jayaram and G.K. Gurumath, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

K.L. Manjunath, J.—These two appeals arise out of the judgment and decree passed by the Civil Judge (Sr. Dn.), Kunigal in O.S. No. 2/2001. Originally, the suit was instituted before the Civil Judge, Tumkur in O.S. No. 89/84 and after establishment of Civil Judge, (Sr. Dn.), Kunigal, case was transferred to the Civil Judge, (Sr. Dn.), Kunigal and renumbered it as 2/2001.

2. The appellant in R.F.A. No. 2419/2006 Smt. Kamala is the wife of the first plaintiff, who was not a party before the trial court. The plaintiff has filed an appeal R.F.A. No. 1250/2006 aggrieved by granting of decree in respect of suit item No. 38 and granting share to all the defendants and plaintiffs equally. He has also filed the appeal challenging non granting of mesne profits by the court below while granting share in respect of suit item Nos. 1 to 39.

3. Smt. Kamala, who is the appellant in R.F.A. No. 2419/2006 has filed this appeal challenging the judgment and decree granting share to the plaintiffs and all the defendants in suit item Nos. 36, 37 and 38 contending that they are her self acquired property and that she was not made as a party and without making her party, her property has been allotted to plaintiffs and defendants without any rights of whatsoever nature. Therefore, these two appeals are heard together.

4. The facts leading to these appeals are as hereunder:

Plaintiff and defendants 1 to 3 viz., K.V. Channaiah, Narasimhaiah and Gundaiah are the children of one late Ugregowda. Contending that "A" and "B" schedule properties are the joint family properties, the plaintiffs filed civil suit for partition and separate possession of their share and also to award mesne profits. The defendants contested the suit admitting the relationship of the plaintiffs with them. According to them, suit item Nos. 35 to 37 and 39 are also the joint family properties acquired in the name of the family members of the parties and are liable for partition. Similarly, the plaintiffs also included the suit item No. 38 which stands in the name of second defendant contending that it is also acquired out of the joint family income and parties are entitled for share in the property.

5. Based on the above pleadings, the following issues are framed:

(i) Whether the plaintiffs prove that the parties to the suit constituted a joint undivided Hindu Family?

(ii) Whether the plaintiffs prove that the suit schedule properties are the joint family properties of the undivided Hindu joint family of the parties to the suit?

(iii) Whether the plaintiffs prove that they are entitled for mesne profits?

(iv) Whether the plaintiffs prove that the suit item No. 38 of the plaint "A" schedule is self acquired property of the plaintiff No. 1?

(v) Whether the defendants prove that the suit item No. 28, 29 and 35 are the self-acquired properties of one Jayamma, wife of 1st defendant as her "Sridhana"?

(vi) Whether the defendants prove that the suit items 37 and 39 are the self acquired properties of the 1st defendant?

(vii) Whether the defendants prove that the site measuring 60"x50" with a tiled roofed house situated at Karithimmanapalya is their ancestral property?

(viii) Whether the defendants prove that the land bearing Sy. No. 19 measuring 9 guntas wet land was purchased out of the joint family funds in their mother's name Sakamma as she was managing the family properties?

(ix) Whether the defendants prove that the land bearing Sy. No. 87/2 of Srinivasapura, Kasaba Hobli, Nelamangala Taluk measuring 2 acres 35 guntas and Sy. No. 21/1 of Bhavikere Village of Nelamangala Taluk measuring 1 acre 25 guntas were purchased out of the joint family funds in the name of plaintiff No. 1?

(x) Whether the defendants prove that the site bearing K. No. 179 measuring E-W "62" and N-S "44" situated at K.T. Pa, Kunigal Taluk and the land bearing Sy. No. 6 of Torehalli, Kunigal Taluk measuring about 1 acre was purchased in the name of Jayalakshmamma @ Jayamma out of the joint family funds?

(xi) Whether the defendants prove that the land bearing Sy. No. 67/3 of Torehalli

Village measuring 2 acres 32 was purchased in the name of Jayalakshmamma w/o Kashaiah-plaintiff No. 3 out of the joint family funds?

(xii) Whether the defendants prove that the house property bearing Municipal No. 83/1 situated at division No. 13, Maruthi Extension, 3rd Main, Bangalore, measuring E-W:-40 feet and N-S:-30 feet and house property bearing Katha No. M.R48/1248 of Kamakshipalya, Saneguruvanhalli Dakle, Yeshwanthpura Hobli, Bangalore North Taluk measuring E-W:-30 feet and N-S:-40 feet was purchased in the name of Kamala, wife of Thammanna out the joint family nucleolus ?

(xiii) Whether the suit is bad for non-inclusion of the joint family properties as contended in para-5 of the written statement?

(xiv) Whether the plaintiffs prove that they are entitled for partition and separate possession of half share in the suit schedule properties by metes and bounds?

(xv) To what reliefs are the parties entitled to?

(xvi) To what order or decree?

6. In order to prove their respective contentions, the first plaintiff K.V. Thammanna was examined as PW-1, his wife Kamala, who is the appellant in the connected appeal was examined as PW-2 and one Narasiyappa was examined as PW-3 and they relied on Exs. P-1 to P-48. On behalf of the defendants, two witnesses were examined as DW-1 and DW-2 and they relied upon Exs. D-1 to D-43. The trial court held the issues 1, 2, 7 to 12, 14 and 15 in affirmative, issues 4 to 6 and 13 in the negative and ultimately granted decree declaring that the plaintiffs and defendants are entitled to claim 1/7th share in suit item Nos. 1 to 39 excluding suit item No. 38. Therefore, the present appeals are filed.

7. Sri P.M. Siddamallappa, learned counsel for the appellant contends that the trial court has committed an error in not considering the suit item No. 38 as the self acquired property of first plaintiff K.V. Thammanna and the same could not have been considered as property acquired within the joint family income. Similarly, he contends that suit item Nos. 36, 37 and 39 are standing in the name of his wife Kamala, who is the appellant in the connected appeal and those properties were acquired independently by her and without making her as a party and without considering her evidence, the trial court has committed serious error in granting a decree in the aforesaid properties. He further contends that in a suit for partition, the trial court is not justified in granting decree for mesne profit. Therefore, both the appellants request the Court to allow the appeal and set aside the judgment and decree of the court below.

8. We have perused the judgment of the trial court. Normally, the trial court is expected to give reasonings, taking into consideration each of the issues separately unless those issues are interlinked with each other.

9. In the instant case, the trial court has committed an error in clubbing all the issues and answering them together. We have also seen the judgment. When the

plaintiff has contended that suit item No. 38 is the absolute property of him, a specific finding has to be given by looking into the evidence let in by the parties. Similarly, when suit item Nos. 36, 37 and 39 are included, which are standing in the name of the appellant in the connected appeal, Kamala who is not a party to the suit, in all fairness the trial court was required to direct the plaintiffs or defendants to include her as one of the defendants to provide opportunity for her to defend her case. Even, if it is not so, the trial court was expected to give findings on each of the items standing in the name of Kamala in not holding how those properties were acquired and how those properties are to be considered as joint family properties. Nowhere, the court below has assessed the evidence let in by both the parties. The evidence of PW-2 has not been considered by the court below to hold that she had no independent income to purchase the property or it was acquired by her with the financial assistance given to her by some other persons other than the joint family members. Admittedly, Kamala cannot be considered as coparcener. She is the wife of first plaintiff. In such circumstances, even if the defendants are of the view that the property is standing in the name of Kamala, it is to be treated as joint family properties; they have to prove that she is a trustee holding the property in trust for the benefit of joint family as per Section 4(3)(b) of Bynami Transaction (Prohibition) Act, 1988. Such a pleading is also not available. Even if such a plea is raised by the defendants, in all fairness, the defendants were required to make Kamala as one of the defendants. Without making her as a party, her property could not have been included for partition. In addition to that, as stated supra, the evidence of Kamala has not been discussed properly.

10. In view of the inclusion of property standing in the name of Kamala, in all fairness, the trial court was required to direct plaintiffs and defendants to implead her as party since in a suit for partition, both plaintiffs and defendants are to be treated as plaintiffs only and no specific issues are also framed by the court below to treat these properties as joint family properties.

11. In the circumstances, we are of the view that the findings of the court below of suit item Nos. 35, 36, 37 and 39 are to be set aside and the matter has to be re-examined by the court below afresh in so far as these properties are concerned. It is no doubt true that plaintiffs have demanded for mesne profits. Normally, in a suit for partition, the party who is enjoying the joint family property is required to render accounts and even to deny accounts to the plaintiffs, the court below is required to give reasonings. Since, such a procedure is not followed, the matter has to be reconsidered afresh by the trial court, on the question of rendition of accounts. In the circumstances, the appeals are allowed in part. The judgment and decree passed by the Civil Judge, (Sr. Dn.), Kunigal in O.S. No. 2/2001 dated 14.3.2006 are hereby set aside, in so far as it relates to granting of decree in respect of suit item Nos. 35, 36, 37 and 39 and to reconsider the case of the plaintiffs for rendition of accounts. Since, the suit is of the year 1984, we direct the court below to dispose of the matter within six months from the date of issuance of notice. Since, the appellant Kamala is not

made a party, the trial court is directed to implead her as one of the appellants and direct her to file written statement and to lead her evidence afresh by framing necessary issues. Parties are to bear their costs.