
(2014) 11 KAR CK 0108
In the Karnataka High Court
Case No : R.S.A. No. 2546 of 2007

Lakshmamma

APPELLANT

Vs

Mahadevamma

RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 31(a), 100, 96

Citation : (2014) 11 KAR CK 0108

Hon'ble Judges : A.V. Chandrashekara, J

Bench : Single Bench

Advocate : T.S. Amarkumar, Advocate for Lawyers Inc, Advocate for the Appellant; P. Nataraju, Advocate for the Respondent

Judgement

A.V. Chandrashekara, J.—Defendant of an original suit bearing O.S. No. 381/1993 on the file of the Court of Civil Judge (Jr.Dn.) & JMFC, T. Narasipura, Mysore District, is before this Court challenging the divergent judgment passed in R.A. No. 2/2006 by the learned Civil Judge (Sr.Dn.), T. Narasipura, on 20.07.2007.

2. Suit filed for the reliefs of partition and separate possession by the respondents as plaintiffs in the trial Court came to be partly decreed. Against the said judgment and decree, plaintiffs preferred an appeal under Section 96 of CPC insofar as it relates to the rejection of relief pertaining to item No. 1. The said appeal came to be allowed and as such, suit has been decreed in its entirety by the First Appellate Court. It is this judgment of the First Appellate Court which is called in question on various grounds as set out in the appeal memo.

3. Facts leading to the filing of the suit in O.S. No.381/1993 are as follows:

"One Kenchaiah was a tenant of an agricultural land bearing Sy.Nos.290 and 291 of Somanathapura Village, Sosale Hobli, T. Narasipura Taluk, measuring 25 guntas and 15 guntas respectively situated in one block and he was in possession of item No. 2, a house which was his ancestral property. This

Kenchaiyah had two wives viz., Marinnanamma and Puttamadamma. Plaintiffs are the daughters of his first wife Marinnanamma and defendant is the only daughter of his second wife Puttamadamma. The said Kenchaiyah was a tenant in item No. 1 agricultural land. He died prior to coming into force of Karnataka Land Reforms Act (Amended) Act, 1974, i.e., he died in the year 1971."

4. Case put forth before the trial Court by the defendant Puttamadamma's daughter-Lakshmamma, was after the death of Kenchaiyah, she i.e., Puttamadamma, took the property on lease from the owner and filed an application in Form No. 7 seeking Occupancy Right and that the Land Tribunal chose to grant occupancy right in favour of her mother. Therefore, it was averred that the property so granted in favour of her mother Puttamadamma was her absolute property and after her death, she is stated to have inherited the property absolutely.

5. On the basis of the above pleadings, following issues came to be framed:

"1. Whether the defendant has proved that the suit properties exclusively belong to her mother-Puttamadamma?

2. Whether the suit is barred by Limitation?

3. Whether the plaintiffs are entitled for partition and separate possession as prayed for?

4. What Order and what decree?"

Additional Issues:

"1. Whether the plaintiff proves that their father was the tenant of the suit land and on the basis of his tenancy occupancy right was granted in favour of Smt. Puttamadamma?

2. Whether the plaintiff proves that they are the co-owners along with defendants and have been in joint possession of the suit land?"

6. Issue No. 1 came to be answered in the affirmative and issue No. 2 and additional issues 1 and 2 came to be answered in the negative. Relief was granted in respect of item No. 2 i.e., house only by decreeing the suit in part.

7. Being aggrieved by the said partial decree, plaintiffs chose to file an appeal under Section 96 of CPC before the First Appellate Court, T. Narasipura, and that has been allowed on 20.07.2007 granting the relief in respect of item No. 1 agricultural land also. It is this divergent judgment which is called in question on various grounds as set out in the appeal memo by the lone defendant.

8. Heard the learned Counsel for the appellant in regard to admission and perused the judgments of both the Courts.

9. Admittedly, the property i.e., item No. 1 was a tenanted land and it was in the possession of Kenchaiyah who was a tenant. It is true that he died prior to coming

into force of the amended Land Reforms Act with effect from 01.03.1974. It is also true that he died during the year 1971.

10. What is argued before this Court by the learned Counsel for the appellant is that after the death of Kenchaiah, Puttamadamma, took possession of the property on lease and that has been admitted by the owner while giving evidence before the Land Tribunal.

11. What is forthcoming in the order of the Land Tribunal is that, the owner has admitted about the land being possessed by Puttamadamma, two years prior to the case she filed before the Tribunal. Admittedly, the tenancy did not terminate with the death of Kenchaiah. The tenancy devolved upon his surviving wife Puttamadamma, who chose to file an application under Section 48A of Land Reforms Act in Form No. 7. The application so filed by Puttamadamma, will have to be construed as one for and on behalf of the surviving members of the family of Kenchaiah and not in favour of Puttamadamma only. This aspect of the matter has been properly taken into consideration by the First Appellate Court by framing proper points for consideration.

12. In paragraph-12, the First Appellate Court has framed four points inclusive of the delay in filing the appeal. Following are the six points framed for consideration by the First Appellate Court:

"1. Whether the delay caused in filing the appeal is to be condoned?

2. Whether appellants-plaintiffs prove that their father Kenchaiah was the tenant of suit schedule land and on that basis occupancy right was granted in favour of Puttamadamma?

3. Whether the appellants- plaintiffs prove that item No. 1 of suit schedule property was granted by Land Tribunal on behalf of joint family?

4. Whether respondent- defendant proves that occupancy right in respect of Item No. 1 of suit schedule property was granted in the name of the Puttamadamma in her individual capacity?

5. Whether the appellants plaintiffs prove that the Judgment and decree of the Trial Court and perverse and sustainable and interference of this court is required?

6. What Order or Decree?"

13. The First Appellate Court, being the final Court of facts, has properly formulated the relevant points for consideration as per the mandate of Order 41 Rule 31(a) of CPC and it has focused its attention towards the exact dispute that erupted between the parties relating to item No. 1.

14. Puttamadamma, was 35 years old when Form No. 7 was filed on 29.12.1975. She has admitted that the lands were taken about 15-16 years back by her husband on lease basis and the certified copy of the statement given by

Puttamadamma, before the Land Tribunal is marked as Ex.P8. In her evidence, she has specifically deposed that item No. 1 was taken on lease from Rangadorai by Kenchaiah in the year 1961-62 and he was paying the gutha to the owner. Since Kenchaiah expired in the year 1971, she chose to file an application in Form No. 7 relating to item No. 1. At an undisputed point of time, property in question had been taken on lease by Kenchaiah and on his death the tenancy rights devolved upon all his legal representatives inclusive of the plaintiffs who represented his first wife.

15. As rightly pointed out by the First Appellate Court, the defendant has not produced any rent note or lease deeds said to have been executed by Puttamadamma, in favour of landlord for having taken land afresh on lease from Rangadorai, so as to claim her exclusive title to the property on the basis of the order of the Land Tribunal. These aspects have been well considered at length by the first Appellate Court.

16. The First Appellate Court, being the final Court of facts, has reassessed the entire evidence on the touchstone of intrinsic probabilities. The First Appellate Court has adopted right approach to the real state of affairs. No perversity or illegality is found in the approach adopted by the First Appellate Court and the reasons given in the judgment to reverse the finding of the Trial Court in respect of item No. 1, are cogent and convincing.

17. Questions of law proposed in the appeal memo are not substantial questions of law in essence under Section 100 CPC. Suffice to state that there are no grounds to admit the appeal. Accordingly, the appeal is liable to be dismissed.

ORDER

Appeal is dismissed. Parties to bear their own costs.