
(2015) 10 KAR CK 0085
In the Karnataka High Court
Case No : R.S.A. No. 6017/2010

Lalita and Others

APPELLANT

Vs

Yebu Mukund Gunagi and Others

RESPONDENT

Date of Decision : 28-10-2015

Acts Referred:

Citation : (2015) 10 KAR CK 0085

Hon'ble Judges : S.N. Satyanarayana, J.

Bench : Single Bench

Advocate : V.P. Kulkarni, Advocate, for the Appellant

Final Decision : Partly Allowed

Judgement

S.N. Satyanarayana, J.—This second appeal is by the defendants in O.S. No. 114/2001, on the file of Civil Judge (Jr. Dn.), Karwar.

2. The admitted facts leading to this second appeal are that the suit in O.S. No. 114/2001 was filed by the wife and two daughters of deceased Mukund Gunagi, who died on 10.10.1995. The suit was filed on the premise that the said person during his life time was living in the company of defendants 1 to 4 and at that time he has executed a Will on 11.9.1984 bequeathing the suit properties in favour of defendant No. 1 and it was also contended that consequently an unregistered gift deed is also created by the deceased Mukund Gunagi in favour of 1st defendant, whom he claimed as his second wife. The original suit was filed seeking declaration that the said Will and gift deed are not binding on the plaintiffs, who are the legally wedded wife and daughters of deceased Mukund Gunagi.

3. In the proceedings before the trial Court, the defendants entered appearance on service of summons and filed the written statement contending that the 1st defendant is the legally wedded wife of deceased Mukund Gunagi and that in the wedlock between herself and Mukund Gunagi, she has sired two daughters by name Deepa and Chandrakala who are defendants 3 and 4. It was also

contended that during the life time of Mukund Gunagi, he along with 1st defendant Lalita adopted the 2nd defendant Ganga as their daughter and it was also stated that the said Ganga is none other than the niece of Mukund Gunagi i.e., his biological brother's daughter. In the defence it was also raised that the first marriage of Mukund Gunagi is with 1st defendant and the plaintiff Yebu is married with him subsequently and therefore she cannot get the status of legally wedded wife and as such she and her two daughters are not entitled either to the relief of declaration or in the event of partition, any share in the properties left behind by Mukund Gunagi, which are more fully described in the suit schedule. With these pleadings the Courts below proceeded to frame the following issues.

ISSUES

"(i) Whether plaintiffs prove that plaintiff No. 1 is the legally wedded wife and plaintiff No. 2 and 3 are children of late Mukund Gunagi as contended in the plaint?

(ii) Whether plaintiff further proves that defendant No. 1 is not the wife of late Mukund Gunagi as contended in the plaint?

(iii) Whether plaintiff further proves that they were illegally dispossessed of the suit lands as contended in the plaint?

(iv) Whether plaintiffs further prove in the alternative they are entitled for partition of suit lands as contended in the plaint?

(v) Whether plaintiffs further prove that late Mukund Gunagi has not executed any will or gift deed as contended in the plaint?

(vi) Whether suit is bad for non joinder of necessary parties?

(vii) Whether plaintiffs are entitled for the relief sought?

(viii) What order or decree?"

4. Thereafter the parties were called upon to adduce evidence. On behalf of plaintiffs, the 1st plaintiff Yebu adduced evidence as P.W. 1 and in support of their case, she examined three persons from the family of her husband, who had died by the time the suit was filed, wherein all four of them substantiated the pleading in the plaint to the effect that Yebu is the legally wedded wife of deceased Mukund Gunagi and they have attended the marriage of Yebu with Mukund Gunagi and that plaintiffs 2 and 3 are the children born to them in their wedlock and as such the plaintiffs 1 to 3 are the legal heirs and are entitled to the decree for declaration and possession of suit schedule property in their favour.

5. Per contra, the 1st defendant adduced evidence as D.W. 1 and she also adduced evidence of another four persons as D.W. 2 to D.W. 5, out of which D.W. 2 and D.W. 3 are the members of the family of Mukund Gunagi and others are well wishers of the family, who in turn supported the case of the defendant No. 1 to the effect that she is the legally wedded wife of Mukund Gunagi. On behalf of

the plaintiffs, in all 37 documents were marked and on behalf of defendants, in all 13 documents were marked.

6. The Courts below on appreciation of pleadings, oral and documentary evidence available on record answered issues No. 1, 2, 4, 5 and 7 in the affirmative, which were with reference to the plea to the effect that it is only the 1st plaintiff who is the legally wedded wife of Mukund Gunagi and not the 1st defendant Lalita and it was also held that plaintiffs 2 and 3 are the children of Mukund Gunagi in his wedlock with the plaintiff No. 1, and insofar as issue No. 4 is concerned with reference to right of plaintiffs to seek partition of the suit properties and that issue No. 5 with reference to non execution of gift deed and Will by deceased Mukund Gunagi in favour of 1st defendant with reference to the suit properties and issue No. 7 with reference to plaintiffs entitlement for the relief sought were held in the affirmative. Similarly, the relief of declaration, which the plaintiffs have sought was also allowed, based on the discussion with reference to issues 1, 2, 4 and 5. So far as issue No. 3 is concerned, which is with reference to illegal dispossession is held in the negative and 6th issue regarding the plea of non joinder of parties was also answered in the negative. Consequently the suit of the plaintiffs was decreed to the extent in declaring that the deceased Mukund Gunagi has not executed any Will or gift deed, therefore declaring the same as not binding does not arise and consequently passed an order regarding partition awarding 1/3rd share to each of the plaintiffs and while doing so, awarded 1/4th share jointly to the defendants 3 and 4 accepting them as the children of deceased Mukund Gunagi through the 1st defendant with whom he was admittedly living.

7. The defendants being aggrieved by the said finding of the trial Court have filed an appeal in R.A. No. 8/2008 on the file of Civil Judge (Sr. Dn.), Karwar, wherein the lower appellate Court on appreciation of the grounds of appeal and also the finding of the trial Court in the judgment impugned dated 29.11.2007 proceeded to frame the following points for consideration.

POINTS

"(i) Whether the appellants prove that the judgment and decree of the lower Court is illegal and interference of this Court is necessary?

(ii) What order?"

8. After hearing the parties, the lower appellate Court proceeded to answer the 1st point for consideration in the affirmative holding that the judgment and decree dated 29.11.2007 passed in O.S. No. 114/2001 calls for interference holding that the finding of the trial Court in awarding 1/3rd share to each of the plaintiffs is erroneous and consequently granting 1/4th share to defendants 3 and 4 collectively is incorrect for the reason, if 1/3rd share is already given to plaintiffs 1 to 3, nothing remains towards the share of defendants 3 and 4. Consequently altered the judgment in such a way that the plaintiffs 1 to 3 were allotted 1/4th share each and the share of 1/4th collectively awarded to the

defendants 3 and 4 was confirmed.

9. The defendants 1 to 4 in the original suit who are appellants in the regular appeal being aggrieved by the said finding have come up in this second appeal on the ground that the finding of the trial Court and as well as the lower appellate Court in accepting the 1st plaintiff Yebu as legally wedded wife of Mukund Gunagi is incorrect and that awarding of just 1/4th share only to defendants 3 and 4 collectively is incorrect and it is contended that in the light of the Courts below accepting that the deceased Mukund Gunagi was living along with 1st defendant Lalita, a share should have been given to her and as well as one share each to her two children who are defendants 3 and 4 in the original suit and appellants 3 and 4 in this proceedings.

10. When this matter was heard for admission, on going through the judgment of both the Courts below and also the grounds of appeal, this Court felt that the matter requires reconsideration so far as allotment of share to the defendants 3 and 4 is concerned. Accordingly this appeal was admitted by framing the following substantial questions of law.

SUBSTANTIAL QUESTIONS OF LAW.

"(i) Whether the trial Court was justified in granting 1/4th share to defendants 3 and 4 collectively who are admittedly the daughters of late Mukund Gunagi through 1st defendant Lalita Yashawant Devali?

(ii) Whether the lower appellate Court which disturbed the finding of the trial Court so far as it relates to awarding share to 3rd and 4th defendants in the original suit was justified in restricting the same to an extent of 1/4th to both of them?"

11. Heard the learned counsel for the appellant and the contesting respondent. On the basis of the copies of pleadings, oral and documentary evidence being made available to this Court by the learned counsel appearing for both the parties, instead of calling for records, looking into the same, the matter was heard for final disposal and thereafter this Court find that substantial questions of law framed as above are required to be allowed partially to alter the share allotted to the plaintiffs and defendants 3 and 4 for the following reasons.

12. The fact that Mukund Gunagi was married to Yebu earlier to his relationship with Lalita is not in dispute with reference to the material available on record for the reason that the date of birth of 2nd plaintiff is earlier to the alleged date of marriage of Lalita with Mukund Gunagi. Therefore the finding of both the Courts below in accepting that Yebu is the legally wedded wife of Mukund Gunagi cannot be assailed by this Court. However the fact remains that though Mukund Gunagi married Yebu and sired two daughters through her, he had independently maintained a separate relationship with 1st respondent Smt. Lalita as his wife and in his relationship with her, he has sired two children who are defendants 3 and 4 in the original suit namely Miss. Deepa and Miss. Chandrakala. Therefore

his parentage to the said children cannot be rejected though his relationship with Lalita cannot be accepted in the eye of law during subsistence of his marriage with Yebu. In the aforesaid circumstances the finding of both the Courts below in denying share to the first defendant Smt. Lalita holding that she is not the legally wedded wife of Mukund Gunagi is just and proper. In any event when both the Courts below have accepted that defendants 3 and 4 are born to Mukund Gunagi through Lalita, then they have rightly accepted the claim of defendants 3 and 4 for a share in the suit schedule property. Therefore while considering the share that is required to be allotted to defendants 3 and 4, they should be taken on par with plaintiffs so far as their share in the properties belonging to Mukund Gunagi is concerned. In that view of the matter a serious error is committed by both the Courts below i.e., by the trial Court in awarding $\frac{1}{3}$ rd share to each of the plaintiffs and thereafter to say that defendants 3 and 4 are collectively entitled to $\frac{1}{4}$ th share which is factually and mathematically erroneous. However the lower appellate Court though corrected the said mistake has committed an error in not considering a share to each of the defendants 3 and 4 separately, instead, repeated the mistake of awarding one share collectively to both of them which is required to be set aside in this appeal.

13. Accordingly, the appeal filed by defendants 1 to 4 is allowed in part by answering the aforesaid substantial questions of law in their favour to the effect that the plaintiffs 2 and 3 and defendants 3 and 4 who are biological children of deceased Mukund Gunagi are together entitled to $\frac{1}{5}$ th share each in the suit schedule property left by Mukund Gunagi. Accordingly this second appeal which is filed by defendants 1 to 4 in O.S. No. 114/2001 is allowed in part in the aforesaid terms. Registry is directed to draw decree accordingly.