
(2011) 07 KAR CK 0094

In the Karnataka High Court

Case No : Regular First Appeal No. 168 of 2011

M. Harish So. Late Made Gowsa

APPELLANT

Vs

Kum Sindhu and Chi. Sagar

RESPONDENT

Date of Decision : 20-07-2011

Acts Referred:

Hindu Succession Act, 1956 — Section 12, 6, 8

Citation : AIR 2012 Kar 1 : (2011) 4 KCCR 3235

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : Chetan Nag S, for the Appellant; R.B. Anneppanavar and Assts., for the Respondent

Final Decision : Allowed

Judgement

Huluvadi G. Ramesh, J.—This appeal is by the 2nd Defendant against the order of the Additional Senior Civil judge and JMFC, Hunsur, sitting at Perlyapatna, In O.S. No. 250/09 dated 6.12.2010.

2. For the sake of convenience, the parties are referred to in terms of their status before this trial Court.

3. The Plaintiffs, represented through their guardian maternal grandmother, filed the suit seeking for partition and separate possession, declaration and manse profits against the Defendants. The 1ST Defendant who is none other than the father of the Plaintiffs, had sold the suit Schedule property Item No. 1 in favour the 2nd Defendant under a registered safe deed dated 5.9.2009 for legal necessities. The matter was contested by the 2nd Defendant-purchaser. However, the 1ST Defendant- father of the Plaintiffs did not contest the matter. The trial Court referring to Amended Act 2005 of the Hindu Succession Act 1956, has allowed the suit filed by the Plaintiffs declaring that the Plaintiffs are entitled for 2/3rd share each and the 1st Defendant is entitled for 1/3rd share. As against which, the 2nd Defendant who is the purchaser of one of the Items of the Joint

family properly, is before this Court on various grounds.

4. At the out set Learned Counsel for the Appellant submits that the Appellant is reported to have died on 12.22010 i.e., subsequent to the judgment rendered by the trial Court on 6.12.2010.

5. On perusal of the judgment it Is very much clear that the property in question is a joint family property. Section 6 and 12 of the Hindu Minority and Guardianship Act 1956 (for short "the Act"), reads as under:

6. Natural guardians of a Hindu minor - The natural guardians of a Hindu minor, in respect of the minor's person as well as In respect of the minor's property (excluding his or her undivided interest in Joint family property) are -

(a) In the case of a boy or an unmarried girl the Father, and after him, the mother:

Provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b) In the case of an illegitimate boy or an illegitimate unmarried girl - the mother, and after her. the father;

(c) In the case of a married girl - the husband;

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this Section

(a) If he has ceased to be Hindu, or

(b) If he has completely and finally renounced the world by becoming a hermit (vanapmstha) or an ascetic (yati or sanyasl),

12. Guardian not he appointed for minors undivided interest in joint family property - Where a minor has an undivided interest In Joint family property and the property Is under the management of an adult member of the family, no guardian shall be appointed for the minor In respect of such undivided interest Provided that nothing in this section shall be deemed to affect His jurisdiction of a High Court to appoint a guardian in respect of such interest

5. Heard both sides.

6. The argument of the Learned Counsel for the Appellant is, the concept of seeking permission in case of disposal of the properly of the minors as per Section 8 of the Act Is only applicable to the properties to be disposed of by the guardian, If the property Is available to the minors in the usual course and not in the Joint family property. To substantiate his contention, he referred to Sections 6 and 12 of the Act and also relied upon the Learned Counsel of the Apex Court In the case of Sri. Narayan Bal and Ors. v. Sridhar Sutar and Ors. reported in AIR 2996 SC 2371, wherein it is clearly held that the Joint Hindu family property in which minor had an undivided share is sold/disposed of by Karta, as per Section

8, previous permission of Court before disposing of Immovable property Is not required. Further, it is held that the joint Hindu family by itself is a legal entity capable of acting through Its Karta and other adult members of the family in management of the joint Hindu family property. Thus, Sections 6 and 12 excludes the applicability of Section 8 in so far as joint Hindu family property is concerned.

7. Of course, the counsel appearing for the Respondents has submitted that the suit property has been sold by the 1st Defendant in favour of 2nd Defendant, without obtaining the permission from the Court, for legal necessities.

8. It transpires that there are as many as five Items of property and the same was divided amongst the brothers. The suit property, which came to the share of the 1st Defendant, was sold by him In favour of the 2nd Defendant it is specifically mentioned in the recitals of the sale deed that the sale is made in order to repay the loan borrowed from the Tobacco Board and the State Bank of Mysore, Abburu Branch,

9. in the case on hand, of course, clearance of the debt is also an obligation on the part of the joint family when it is incurred towards legal necessities i.e., for the development of the joint family. In such a situation, the 1st Defendant has disposed of the property.

10. In view of the ratio laid down by the Apex Court (supra) and when it is very much clear that the property in question is a joint Hindu family property, it may not be necessary for the 1st Defendant to seek prior permission of the Court before alienating the suit property. In that view of the matter, the reasoning assigned by the trial Court In para-35 of the Learned Counsel that the 1st Defendant has not obtained any permission from the competent authority to execute the sale deed and sold the properties of the minor Plaintiffs, appears to be without reference to Sections 6 and 12 of the Act Moreover, In the case on hand, the suit property item No. 1 is not exclusively available to the Plaintiffs since they are minor children. For the welfare of the minor children, the 1st Defendant has sold the suit property in favour of the 2nd Defendant,

In the circumstances, the appeal is allowed. The impugned Learned Counsel and decree passed by the trial Court is set aside. it is made clear that it Is for the Plaintiffs to claim their share in the remaining properties as per law.

Parties to bear their own costs.