

(2015) 01 KAR CK 0042

In the Karnataka High Court

Case No : RSA Nos. 5072/2010 (PAR) and 5071/2010

Mahantesh Shivappa Abbai and Others

APPELLANT

Vs

Dundawwa and Others

RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:

Citation : (2015) 01 KAR CK 0042

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

Bench : Single Bench

Advocate : Laxman T. Mantagani, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

S.N. Satyanarayana, J.—These two appeals arise out of the common judgment dated 15.09.2009 passed in R.A. Nos. 74 and 75 of 2004 on the file of the Presiding Officer, Fast Track Court, Bailhongal, wherein, the common judgment and decree passed in O.S. No. 107/2000 connected with O.S. No. 37/2001 disposed of by common judgment dated 01.10.2004 is confirmed.

2. The brief facts leading to these second appeals areas under:

"These two appeals revolves around the finding given by the trial Court in respect of two suits in O.S. No. 107/2000 and O.S. No. 37/2001. The suit in O.S. No. 107/2000 is filed by one Mahantesh Shivappa Abbai against Dundavva w/o Mugappa Abbai for the relief of declaration and possession of G.P. No. 63 of Mugabasav village of Bailhongal Taluk, Belgaum District measuring to an extent of 20 feet x 45 feet and another suit in O.S. No. 37/2001 is filed by Dundavva w/o Mugappa seeking reopening of the partition entered into between her husband Mugappa and the father of Mahantesh namely Shivappa Abbai in the year 1985 with reference to the landed properties in six survey numbers of very same village and also G.P. No. 63 of Mugabasav village."

3. The genealogy of the parties to the proceedings are as under. The original

propositus of both the families is one Mugappa, who is not alive. The date of death of propositus Mugappa is not available on record. The undisputed facts are that, he died leaving him surviving his two sons, namely, Dundappa and Shivalingappa, who are respectively first and second son of deceased Mugappa. Admittedly, the said two brothers are also no more. These two litigations revolve around the legal representatives of Dundappa who is the first son of propositus Mugappa. The deceased Dundappa had in all three children. The first one is Mugappa, second one is Shivappa and the third one is a girl child by name Doddavva. Now coming down to these children of Dundappa, the litigation is again confined to the members of the Mugappa and Shivappa's family, who are also no more. Mugappa died leaving him surviving his wife Dundavva, who is plaintiff in O.S. No. 37/2001. Whereas Mugappa's brother Shivappa died leaving him surviving his wife Gouravva, son Mahantesh, daughters Andala and Neelawwa. These four persons are defendants in O.S. No. 37/2001. Whereas, O.S. No. 107/2000 is filed by the son of Shivappa namely, Mahantesh in his individual capacity. In both the suits, after service of notice, defendants in the respective suits entered appearance, filed written statement denying the right of the plaintiff in the said suits for the relief sought in the said suits.

4. Based on pleadings in both the suits, issues were framed and thereafter, both suits were taken up for evidence. After recording common evidence, common judgment was rendered in the said suits on 01.10.2004, wherein, the suit filed by Mahantesh in O.S. No. 107/2000 for the relief of declaration and possession of house property, namely G.P. No. 63 of Mugabasav village is concerned, it was dismissed. Whereas, the suit in O.S. No. 37/2001 which was filed by Dundavva w/o Mugappa seeking reopening of partition of the year 1985 was decreed in part i.e., her prayer for reopening of partition in respect of agricultural lands was rejected, so far as the share sought in G.P. No. 63 of Mugabasav village measuring 20 feet x 45 feet is concerned, it was allowed. The judgment passed in O.S. No. 37/2001 granting partial decree in favour of Dundavva was accepted by her and she did not challenge the said judgment and decree so far as rejection of her prayer for reopening of partition with reference to the agricultural lands are concerned.

5. However, the plaintiff in O.S. No. 107/2000 namely, Mahantesh being aggrieved by the common judgment in rejecting his prayer in O.S. No. 107/2001 and partially decreeing the suit of Dundavva in O.S. No. 37/2001, challenged the same by filing two regular appeals in R.A. Nos. 74 and 75 of 2004 on the file of the Presiding Officer, Fast Track Court, Bailhongal, wherein, the lower appellate Court on re-appreciation of the pleadings, oral and documentary evidence available on record proceeded to dismiss both the appeals by common judgment dated 15.09.2009, which is challenged by the very same Mahantesh along with other family members in these two appeals.

6. RSA No. 5071/2010 is filed by him challenging the concurrent finding rendered by both the Courts below in dismissing his suit in O.S. No. 107/2000 for the relief

of declaration and possession, which is confirmed by the lower appellate Court in R.A. No. 74/2004. So far as RSA No. 5072/2010 is concerned, it is filed by him challenging the concurrent finding rendered by both the Courts below in partially decreeing the suit of Dundavva in O.S. No. 37/2001 granting relief to her, so far as G.P. No. 63 of Mugabasav village in awarding 50% share in the said property, which is confirmed by the lower appellate Court in R.A. No. 75/2004.

7. These two appeals have come up before this Court for admission in the presence of learned counsel Sri. Laxman T. Mantagani appearing for the appellants in both the appeals and learned counsel Sri. K. Anandkumar and Sri. S.V. Yaji appearing for the respondents in both the appeals. Heard the learned counsel appearing for both the parties, perused the judgments of both the Courts below. On going through the same, the plea of the plaintiff-Mahantesh who is appellant herein is that, in the partition which has taken place between his father Shivappa and Shivappa's elder brother Mugappa who is the husband of Dundavva, only the agricultural lands were divided between the family of the Shivappa and Mugappa. So far as G.P. No. 63 of Mugabasav is concerned, it is given to the share of Shivappa's family for the reason that, due to submergence in the area, alternative lands were given to both the families. Accordingly, G.P. No. 63 was taken by Shivappa's family and another property bearing G.P. No. 4, which was allotted to the family of Mugappa was taken by his wife Dundavva, which she has sold and thereafter, she moved away to another village. Subsequently, when she came back to Mugabasav village, she was not having any place to reside. Hence, by taking sympathy towards her, Mahantesh permitted her to use a portion of G.P. No. 63 of Mugabasav village, which she is now claiming as her property as if she has right to seek share in the said property. According to the appellants, the same cannot be considered for the reason that, a separate plot bearing G.P. No. 4 was also given to her husband, which she has sold.

8. Though such a defence is taken, it is seen that, he has failed to adduce any evidence that G.P. No. 4 being allotted to the share of Dundavva, i.e., the family of Mugappa. On the contrary, Dundavva who is plaintiff in O.S. No. 37/2001 is able to demonstrate that, in a partition which has taken place between her husband Mugappa and his brother Shivappa who is father of Mahantesh, all the suit agricultural lands were divided between two families, but the house property in G.P. No. 63 of Mugabasav village continue to be with Shivappa, in which no share is given to her. In the said suit she also tried to establish that unequal share is given to the family of Mugappa in agricultural lands. So far as the trial Court is concerned, after recording the evidence and on hearing the parties, felt that, no grounds are made out to demonstrate that there is unequal distribution of share in agricultural property between the members of the Mugappa's family and Shivappa's family in a partition, which has taken place between the brothers in the year 1985 and accordingly, refused to interfere with the partition of 1985, so far as agricultural lands are concerned. So far as house property bearing G.P. No. 63 of Mugabasav village is concerned, the Court below after taking into

consideration the discrepancy in not granting any share to Mugappa in the house property in a partition which has taken place in the year 1985, felt that, partition is required to be re-opened only for the purpose of providing a share in G.P. No. 63 of Mugabasav village. Accordingly, partially decreed the suit in O.S. No. 37/2001.

9. When these two appeals were taken up for consideration before the lower appellate Court in R.A. Nos. 74 and 75 of 2004, on re-appreciation of pleadings and evidence, the lower appellate Court felt that the finding rendered by the trial Court in the said suits are just and proper and accordingly, confirmed the same. As against the concurrent findings of both the Courts below, these two appeals are filed. After hearing the learned counsel appearing for the parties and on going through the judgments of both the Courts below and also the grounds urged in these appeals, this Court is of the opinion that, no grounds are made out to interfere with the concurrent findings of both the Courts below in O.S. No. 107/2000 and O.S. No. 37/2001, which are confirmed in R.A. Nos. 74 and 75 of 2004 by the lower appellate Court. Hence, no grounds are made out to admit these two appeals, inasmuch as no substantial question of law arises for consideration in these two second appeals. Accordingly, these two second appeals are dismissed.

In view of dismissal of the appeals, Misc. Cvl. 102409/2010 filed for stay in RSA No. 5072/2010 does not survive for consideration.