
(2013) 12 KAR CK 0509

In the Karnataka High Court

Case No : Regular First Appeal No. 1950 of 2006

Manmatayya

APPELLANT

Vs

Shivakumar Manmatayya

RESPONDENT

Date of Decision : 19-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0509

Hon'ble Judges : K.N. Keshavanarayana, J

Bench : Single Bench

Advocate : Ameet Kumar Deshpande, for the Appellant; Ravi B. Patil, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Keshavanarayana, J.—This appeal is by the defendant in O.S. No. 67/97 on the file of Additional Civil Judge (Sr. Dn.), Bidar questioning the legality and correctness of the judgment and decree dated 30.09.2005 passed therein decreeing the suit filed by the respondent-plaintiff and holding that the plaintiff is entitled for 1/2 share in the suit schedule properties and further declaring that the partition deed executed by the defendant dated 13.7.1987 is null and void and not binding on the plaintiff. There is no dispute that the respondent-plaintiff is the son of the appellant-defendant through his first wife. It is also not in dispute that during the lifetime of the first wife, the mother of the plaintiff, the appellant-defendant took the second wife Smt. Vimala Bai and through her he has three sons and a daughter. Respondent-plaintiff filed the suit seeking partition and separate possession of his half share in the suit schedule properties contending that all the suit schedule properties are properties of joint family comprised of himself and his father, the defendant, that the defendant in order to deprive the plaintiff of his legitimate share created a partition deed bearing No. 1542/84-85 during the minority of the plaintiff and the stepmother representing him as his guardian and later in place of the said partition, another partition deed dated 13.7.1987 was brought into existence even when the plaintiff was minor;

that the said document is a forged and fabricated document and the distribution of the properties therein is unequal and therefore, he sought for declaration of the said document is null and void and therefore, the plaintiff sought declaration of the partition deed dated 13.7.1987 is null and void and does not bind on him.

2. The defendant upon entering appearance filed written statement admitting the relationship. However, he contended that there was no existence of joint family as on the date of the suit since there was severance of status between the parties, in the light of the partition deed dated 25.1.1985 and subsequent deed dated 13.7.1987. He further contended that except the land bearing Sy. No. 117/A & 56/2, all other lands are his separate properties. Therefore, he sought for dismissal of the suit.

3. In the light of the pleadings of the parties, the trial Court framed the following issues:

(i) Whether, the plaintiff proves that the suit properties are joint family and ancestral properties liable for partition?

(ii) Whether plaintiff further proves that he is entitled for half share and separate possession over the suit properties?

(iii) Whether plaintiff further proves that the alleged partition deed dated 13.7.1987 is null and void and not binding on him?

(iv) Whether plaintiff is entitled for compensation amount to the extent of half share in respect of land bearing Sy. No. 56/2 measuring 10 acres 03 guntas of Maskal, Tq. Aurad?

(v) Whether defendant proves that the suit of the plaintiff is bad for non-joinder of necessary party?

(vi) Whether defendant is entitled for compensatory costs of Rs. 5,000/- from the plaintiff:

(vii) What order or decree?

4. The plaintiff examined himself as PW1 and marked Exs. P1 to P7. On the other hand, the defendant examined himself as DW1 and produced documentary evidence as per Exs. D1 to D3.

5. After hearing both the sides and on appreciation of oral and documentary evidence, the trial Court answered issues 1 to 4 in the affirmative, issues 5 and 6 in the negative holding that the plaintiff has proved that all the suit schedule properties are joint family and ancestral properties liable for partition; that the plaintiff has proved that the alleged partition deed dated 13.7.1987 is null and void and is not binding on him, consequently the plaintiff is entitled for half share in all the suit schedule properties and separate possession of his share. The Trial Court also held that the plaintiff is entitled for compensation in respect of half share in the land bearing Sy. No. 56/2 measuring 10 acres 3 guntas of Maskal

Village, Aurad Taluk. The Trial Court further held that the defendant has failed to prove that suit of the suit is bad or non-joinder of necessary party. In that view of the matter, the trial Court decreed the suit as noticed supra. Aggrieved by the said judgment and decree, the defendant is in appeal before this Court.

6. I have heard the learned counsel appearing on both the sides.

7. At the outset, it is necessary to note that the present suit was instituted on 02.04.1987 and was disposed of on 30.09.2005. Thereafter, the children through second wife of the appellant-defendant instituted a suit in O.S. No. 42/2009 on the file of Additional Senior Civil Judge, Bidar against the appellant herein, respondent-plaintiff and Kamalabai, first wife of the appellant seeking relief of partition and separate possession of their share in the suit schedule properties, which are also the suit schedule properties in the present suit. The Trial Court by judgment and decree dated 11.03.2013 dismissed the said suit as not maintainable. Aggrieved by the said judgment and decree, the unsuccessful plaintiffs preferred an appeal before this Court in RFA No. 6022/13 and the said appeal came to be dismissed by this Court on 29.10.2013. It is further necessary to note that the present appeal had been dismissed for non-prosecution on 08.04.2011 and after the dismissal of RFA No. 6022/13 on 29.10.2013, applications were filed in the present appeal to recall the order of dismissal and to condone the delay. However, those applications came to be allowed by this Court on 06.12.2013 subject to payment of costs.

8. Points that arise for consideration are:

(i) Whether the trial Court is justified in holding that all the suit schedule properties are joint family ancestral properties?

(ii) Whether the trial Court is justified in holding that the partition deed dated 13.7.1987 is null and void and is not binding on the plaintiff?

9. As noticed supra, there is no dispute as to the relationship inter se between the parties. The appellant-defendant has also not disputed the fact that the plaintiff is the only son born to first wife. There is no dispute that the appellant has four children through his second wife. However, his second marriage during the lifetime of his first wife was a void marriage. It is in that view of the matter, the suit filed by second wife and children born to her for partition came to be dismissed, so also the appeal filed thereon. Though the appellant-defendant contended that only two properties are the joint family properties, the Trial Court having regard to the oral and documentary evidence has recorded a specific finding that all the suit schedule properties are joint family ancestral properties. The said finding is in consonance with the evidence on record. The appellant has not placed any acceptable evidence to establish that the properties are not joint family properties and that they are his separate properties. No perversity or illegality is pointed out as to the said finding. Therefore, the finding on issue No. 1 is proper and does not warrant any interference.

10. There is no dispute that as on the date of the alleged partition deed dated 13.7.1987 the plaintiff was still a minor. The said-partition deed dated 13.7.1987 has been marked as Ex. D3. The Trial Court while considering the question as to whether this partition deed is binding on the plaintiff has noticed that the defendant has not explained in Ex. D3 regarding the earlier partition deed Ex. 9D2 and unless Ex. D2 is cancelled, the defendant is not entitled to execute the subsequent partition deed Ex. D3. The Trial Court has further observed that DW1 has admitted in the cross-examination that his first wife was listening to his words. Therefore, the trial Court observes that the said fact discloses that the defendant might have taken the signature of the plaintiff's mother on Ex. D3 by misrepresenting the facts and due to the imbalance in the extent of allotment of share, the guardian of the plaintiff has not fairly acted in safeguarding the interest of the plaintiff when he was minor. Therefore, the trial Court held that Ex. D3 has no legal sanctity in the eye of law and the same; in not binding on the plaintiff, consequently, the Trial Court has declared Ex. D3 as null and void. As noticed supra, the plaintiff was minor as on the date of the Ex. D3. As observed by the Trial Court in Ex. D3 there is no reference to Ex. D2. In Ex. D2 the plaintiff shown as minor is stated to have been represented by his stepmother, as guardian though his biological mother was still alive. The Trial Court has recorded a definite finding that the distribution of the properties under Ex. D3 is unequal and there is no proper sharing of the properties between the sharers and the minor's interest has not been taken care of properly by the guardian. The suit came to be filed after the minor attaining majority.

11. Therefore, having regard to the facts and circumstances of the case, I am of the considered opinion that the Trial Court is justified in holding on issue No. 3 that the partition deed dated 13.7.1987 is null and void and is not binding on the plaintiff. Consequently, the trial Court is justified in holding that the plaintiff is entitled for half share in the suit schedule properties, since, the plaintiff and defendant are the only two coparceners in the joint family. The children born through void marriage cannot acquire the status of a coparcener though u/s 16(3) of the Hindu Marriage Act, they are deemed to be legitimate children and such children are entitled for a share in the property of the parent. Of course, the question as to whether the property of the parent would include the share of the father in the joint family is pending before a larger bench of the Apex Court. Nevertheless, the children born through a void marriage cannot claim a share on par with the coparcener. At best, right of such children would be to get a share out of the share of their father in the joint family. Therefore, the plaintiff, as rightly held by the trial court, is entitled for half share in all the suit schedule properties. In this view of the matter, the judgment and decree passed by the trial Court does not suffer from any perversity or illegality warranting interference by this Court. In this view of the matter, appeal lacks merit and is accordingly dismissed.