

(2003) 09 KAR CK 0019

In the Karnataka High Court

Case No : Regular Second Appeal No. 50 of 1999

Mrs. Vijayalaxmi

APPELLANT

Vs

Smt. Shashikala @ Radha and Others

RESPONDENT

Date of Decision : 09-09-2003

Acts Referred:

Hindu Succession Act, 1956 — Section 6
Karnataka Land Reforms Act, 1961 — Section 21, 24, 61, 77

Citation : (2003) 4 KCCR 3237

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : A. Keshava Bhat, for the Appellant; K.M. Nataraj, for Respondent 1 and P. Ganapathy Bhat, for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedhar Rao, J.—The appeal filed against the Judgment and decree in RA No. 4 of 1993 on the file of Additional District Judge, Mangalore arising out of the Judgment and decree in O.S. No. 96 of 1989 on the file of Civil Judge, Puttur, Dakshina Kannada District.

2. The Appellant is the Plaintiff had filed a suit for partition and possession of share in the suit schedule properties consisting of A and B schedule. The A schedule properties are the land granted by the Land Tribunal to one Narayana Bhat, the father of the Plaintiff. The B schedule properties are the Malki land of Narayana Bhat granted by Darkast. The propositus Narayana Bhat executed a Will in respect of A and B schedule properties and bequeathed them in favour of the 5th Defendant. The trial Court held that bequest of the agricultural lands granted by the Land Tribunal under Will is bad in law and Plaintiff was given 1/6th share. A Will in respect of B schedule properties is held to be valid. Thus the suit of the Plaintiff is partly decreed. In appeal, the first appellate Court allowed the appeal, has set aside the Judgment and decree and dismissed the suit of the Plaintiff upholding the validity of the Will in respect of both A and B

schedule properties. Hence this appeal by the Plaintiff.

3. The admission Judge has framed the following questions of law:

1. Whether the lower appellate Court was right in holding that the deceased father late Narayannayya had right to bequeath the suit schedule properties through a Will.?

2. Whether in the facts and circumstances of the case, the findings of the Courts below about the validity of the Will is just and correct ?

4. The Counsel for the Appellant relied on the ruling of the Supreme Court in Sangappa Kalyanappa Bangi v. Land Tribunal Jamkhandi and Ors. ILR 1999 Kar. 863 wherein it is held that a Will is also a devise of transfer and with reference to Sections 21 and 24 of the Land Reforms Act it is held that any Will executed by the tenant only in favour of the members of the joint family and the heirs as contemplated u/s 24 would be valid and any bequest of tenancy rights under a Will to a stranger is invalid and cannot create or transfer any right. It is the contention of the Counsel for the Appellant that under the provisions of Section 61 of the Karnataka Land Reforms Act the restriction is more rigorous and does not permit a bequest under a Will to any others except to the members of a joint family of the grantee. When there is no joint family and when the person is not a member of a joint family bequest under a Will to the non-members of the family is bad in law. In the present case, the bequest under a Will is made to a married daughter who is not a member of a joint family. Therefore the bequest under a Will to 5th Defendant is contrary to provisions of Section 61 of Act. In that view argued that the land has to be inherited by him by normal rules of succession.

5. The point raised by the Counsel for the Appellant is no more res-integra. The decision in Karagappa Gowda v. Jinnappa Gowda and Ors. ILR 1998 Kar. 403 and in C.C. Devasia Vs. The Karnataka Appellate Tribunal, Bangalore and Others, and in Lazarus Fernandes v. S. Gerald Fernandes, in MFA 2378 of 1996, it is held that Section 61 of the Karnataka Land Reforms Act does not prohibit bequest by way of a Will. In Lazarus Fernandes's case, the ratio laid down in Thimmakka's case (Timmakka Kom Venkanna Naik Vs. Land Tribunal, is distinguished and it is also held that ratio laid down in Sangappa's case ILR 1999 Kar. 863 has no application to the provisions of Section 61 of the Karnataka Land Reforms Act. In RSA 708 of 1988, the ratio laid down in Lazarus Fernandes's case is followed by this Court. The relevant provisions of Sub-sections (1) and (3) of the Act are extracted here under:

61. Restriction on transfer of land of which tenant has become occupant.-(1) Notwithstanding anything contained in any law, no land of which the occupancy has been granted to any person under this Chapter shall within fifteen years from the date the certificate u/s is issued be transferred by sale, gift, exchange, mortgage, lease or assignment but the land may be partitioned among members of the holder's joint family.

(3) Any transfer or partition of land in contravention of Sub-section (1) shall be invalid and such land shall vest in the State Government free from all encumbrances and shall be disposed in accordance with the provisions of Section 77.

6. One more precise reason to reject the contention of the Appellant is that the ratio of the Supreme Court acknowledges the rights of tenant before granting of occupancy rights to bequeath the land under a Will in favour of members of the joint family and to the heirs as contemplated u/s 24 of the Act. If the right of bequest of a tenant in favour of the heirs u/s 24 of the Act prior to granting of occupancy rights is recognised there would be no wisdom in making valid discrimination to deny the right of the tenant subsequent to occupancy rights to bequeath the land under a Will to his heirs. A daughter is one of the heirs u/s 6 of the Hindu Succession Act. However, if the testator is not entitled to exclusive rights of tenancy only to the extent of his share he can bequeath under the Will. In that view of the matter, the contention of the Appellant that the testator could not have executed a Will in respect of the A schedule property in favour of 5th Defendant is untenable. The points of law are answered in affirmative. Appeal is dismissed.