

(1978) 12 KAR CK 0006
In the Karnataka High Court

Nandinaravanda Medappa

APPELLANT

Vs

Nandinaravanda Ganapathy and Others

RESPONDENT

Date of Decision : 05-12-1978

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 79

Citation : (1979) 2 KarLJ 22

Hon'ble Judges : Sabhahit, J

Judgement

1. This appeal by the plaintiff is directed against the Judgment and decree dated 27-11-1974, passed by the Civil Judge, Coorg, Mercara, in Regular Appeal No. 53 of 1972 on his. file, dismissing the appeal, on confirming the judgment and decree dated 20-9-1972, passed by the Principal Munsiff, Mercara, in O.S. No. 76 of 1967 on his file, dismissing the suit of the plaintiff for partition of Bane lands.

2. The plaintiff averred that plaint "A" and "B" Schedule properties belonged to them they being bane lands (Privileged tenures of Coorg). The plaintiff claimed partition and separate possession of his share as also costs of the suit and other ancillary reliefs.

3. The defendants inter alia contended that the suit for partition of bane lands was not maintainable.

4. A preliminary issue was raised in the suit whether the, suit fox partition of bane, lands which were part of privileged tenure of Coorg was maintainable. The learned Munsiff, on hearing the arguments of the learned Counsel appearing for both the parties, answered the issue in the negative and dismissed the suit of the plaintiff.

5. Aggrieved by the said judgment and decree, the plaintiff went up in appeal before the learned Civil Judge, who, on hearing the appeal dismissed the same, confirming the judgment and decree of the trial Court as stated above.

6. Aggrieved by the judgment and decree, passed by the learned Civil Judge, dismissing the appeal, on confirming the judgment and decree of the trial Court,

the plaintiff has come up in Second Appeal before this Court.

7. The sole question that arises for my consideration in this appeal is, whether the Courts below were justified in holding that a suit for partition of bane lands could not be entertained and decreed in a Civil Court.

8. The learned Counsel appearing for the appellant vehemently contended that in view of the Karnataka Land Revenue Act, 1964 the Coorg Regulations regarding bane lands were no longer available, they being repealed under S. 202 of the Karnataka Land Revenue Act 1964 Hence he submitted that partition of bane lands in a Civil Court "in a regularly instituted suit, is legal and valid.

9. As against this, the learned Counsel appearing for the respondents argued supporting the reasoning of the Courts below.

10. The term "bane" land" is defined in Appendix III of the Coorg Revenue Manual, 1954, It states: "Bane-Forest land granted for the service of the holding of wet land to which it is allotted, to be held free of revenue by the cultivator for grazing, and to supply leaf manure, firewood, and timber required for the agricultural and domestic purpose of the cultivator, so long as he continues in possession of the wet land."

This makes it abundantly clear that the bane tenure constitutes only certain privileges to be enjoyed by agriculturists holding wet lands. They are, in fact, forest lands. The other regulations in the Coorg Revenue Manual make it clear that they could be divided among the members of the family through arbitration with the permission of the Assistant Commissioner, obviously, in case, where the wet lands of the family were divided. No suit with regard to the partition of bane lands was maintainable in a Civil Court. The reason is obvious. There is no ownership of these bane lands vested in the cultivators of the wet lands as they enjoy only certain privileges over the bane lands as is made clear in the definition in Appendix III of the Coorg Revenue Manual quoted above. Adverting to these privileges, S. 79(2) of the Karnataka Land Revenue Act makes it clear that these privileges and regulations relating to them are saved. S. 79(2) of the Karnataka Land Revenue Act, reads.

"Notwithstanding anything contained in sub-sec. (1), but subject to such general or special orders that may be issued by the State Government from time to time, the privileges that are being enjoyed either by custom or under any order such as privileges in respect of Kumki lands, Bane lands and Kane lands in South Kanara District Betta lands and Hadi lands in North Kanara District, Kan and Soppina Betta lands in Mysore Area, Jemma and Bane in Coorg District and motasthar wet lands in Hyderabad Area shall continue."

Therefore, it becomes clear that bane constitutes privileges allotted in favour of the agriculturists cultivating the wet land. They are not the lands vested in the owner of the wet land. They are in fact, forest lands. The privileges continue by virtue of S. 79(2) of the Karnataka Land Revenue Act. So also the mode of

separate enjoyment of these lands continue, as contemplated in the Coorg Revenue Manual. That being so, it is obvious that these lands could not be amenable for partition as if they are the lands belonging to the family. As pointed above, they are really forest lands and only certain privileges are granted in these lands and these privileges would go with the cultivation of the wet lands and there is a Specific mode provided in the Coorg Revenue Manual to the mode of separate enjoyment of these bane lands, in case wet lands are divided among the members of the family. That being so, the mode provided for the separate enjoyment by the members of the family of those bane lands shall be followed and they prevail and the Karnataka Land Revenue Act has not, in any way, repealed it. That being so it becomes clear that the Courts below were justified in coming to the conclusion that the plaintiff could not institute a suit for separate possession and partition of the bane lands on the footing that they were the lands vested in the family. The appeal, therefore has no merit and is liable to be dismissed and I dismiss the same.

No costs.