
(2015) 07 KAR CK 0226

In the Karnataka High Court

Case No : Regular First Appeal No. 731 of 2013

Narasamma

APPELLANT

Vs

Narasimhaiah and Others

RESPONDENT

Date of Decision : 15-07-2015

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 132

Citation : (2015) 07 KAR CK 0226

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Reuben Jacob, for the Appellant; Shaker Shetty S., Advocate for G. Chandrashekharaiyah, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J—This is an appeal by the plaintiff. The plaintiff was seeking partition and separate possession of a half share in the properties described in the Schedule to the plaint.

2. The genealogical tree of the plaintiffs family was shown as under:

It was claimed that Narasimhaiah, the son of the Byramma, the first wife of Hanumanthappa, had separated himself from the family in the year 1942. This found reference in a sale deed dated 20.12.1945. It is for this reason that Narasimhaiah and his legal representatives have not been arrayed as parties to the suit.

Hanumanthappa is said to have died in the year 1959. Defendant No. 1 alone was the legal representative of Hanumanthappa, as his wives had pre-deceased him. It was claimed that Hanumanthappa had purchased the land measuring 2 acres and 3 guntas in land bearing Survey No. 3/3 of Lottegollahalli under a sale deed dated 11.6.1942. After the death of Hanumanthappa, the defendant Narasimaiah, son of his second wife, had acted as the kartha of the family. Out of the income from the aforesaid property, he is said to have purchased an extent

of 1 acre 1 gunta of land in Survey No. 3/3 of Lottegollahalli, under a registered sale deed dated 3.7.1945.

It is stated that there was yet another purchase made of an extent of 21 guntas of land in land bearing survey No. 8/3A of Nagasettyhalli, under a sale deed dated 30.12.1965. And yet another extent of 21 guntas in land bearing survey No. 8/3A of Nagasettyhalli, under a sale deed dated 21.3.1970. It was claimed that Narasimhaiah had formed an unauthorized layout in the said extent of 1 acre and 2 guntas of land.

The propositus Hanumanthappa was said to be a tenant of Lingamma in respect of 2 acres 22 guntas of land in Survey No. 9/1 and 2 acres 37 guntas in Survey No. 6 of Lottegollahalli from 1950. After the death of Lingamma, the lands were inherited by her son-in-law Siddappa and after his death, by his son B.S. Rajashekharappa. Those lands, it was claimed, had been jointly cultivated by Hanumanthappa and Narasimhaiah, the second son of the second wife. After the death of Hanumanthappa, Narasimhaiah had continued to cultivate the land as a tenant. Thus, upon coming into force of the Karnataka Land Reforms (Amendment) Act, 1974, Narasimhaiah is said to have filed an application in Form 7 claiming occupancy rights in respect of above two lands, citing B.S. Rajashekharappa and Siddappa as the landlords. In the Form No. 7, it was stated by the defendant that he along with his father were cultivating the lands for more than 25 years, as tenants. However, before filing of the declaration on 31.12.1974 in Form No. 7, the defendant Narasimhaiah is said to have filed a collusive suit in O.S. No. 483/1973 against B.S. Rajasekharappa claiming that he had entered into an agreement of sale on 11.1.1967 agreeing to sell 2 acres 27 guntas of land in Survey No. 9/1 for a consideration of Rs. 8,000/- and that since Rajasekharappa had not executed the sale deed, he had sought for specific performance of the agreement dated 11.1.1967. Narasimhaiah, it was alleged had managed to obtain a collusive decree on 27.11.1976 and Narasimhaiah had obtained a sale deed from the Court. It is contended that the suit being a collusive suit, the decree did not bind the plaintiff and as such, the sale deed obtained by Narasimhaiah through Court, was null and void.

With regard to the other land, the Land Tribunal had confirmed the occupancy rights on behalf of the joint family in the name of defendant. The Bangalore Development Authority (BDA) is said to have acquired an extent of 4 acres 16 guntas of land in Survey No. 6 and 3 acres 17 guntas in Survey No. 9/1 of Lottegollahalli Village for the formation of RMV Extension II Stage, as on 2.8.1978. The said acquisition was challenged by the defendants herein by filing two suits in O.S. No. 4136/1994 and O.S. No. 8127/1996 before the City Civil Court. During the pendency of the suits, the BDA had passed Resolution No. 135 on 03.08.1993 agreeing to sell 2 acres 36 guntas of acquired land, comprised in survey Nos. 6 and 9 to the defendant at the acquisition rate. Accordingly, the BDA is said to have addressed a letter to defendant No. 1(a) on 16.9.1998 communicating the decision. In view of the same, the defendants withdrew the

said suits, who were plaintiffs in those two suits. Thereafter, no further steps were taken by BDA to convey the extent of 2 acres 36 guntas of land to the defendants. All of a sudden, on 26.8.2008, nearly 10 years after the original resolution, the BDA passed Resolution No. 340/2008 stating that the claim of Lakshmamma, defendant No. 1(a) herein, for outright sale of 2 acres 36 guntas of land was rejected. The same was challenged by filing a writ petition in WP 6078/2008 before this court to quash Resolution No. 340/2008. The said writ petition was allowed and the Resolution No. 340/2008 was quashed and ordered that the defendants herein were entitled to the benefit of Resolution passed on 3.8.1998. Aggrieved by the Order of the learned Single Judge, the BDA had filed a writ appeal in WA 2921/2009 before a Division Bench, which came to be dismissed on 27.8.2009. Thereafter, the BDA filed a Special Leave Petition in SLP 30551/2009 before the Apex Court and the same came to be dismissed on 30.11.2009. A Review Petition filed by the BDA is seeking review of the Order dated 30.11.2009 came to be dismissed on 6.4.2010. As a consequence, the total extent of land available in Survey No. 9/1 is 1 acre 22 guntas and the land available in Survey No. 6 is 1 acre 8 guntas, which are now shown as item Nos. 5 and 6 in the amended plaint, are also available for partition as they have assumed the character of joint family properties. Though the plaintiffs and the defendants are residing separately, they are in joint possession of the suit schedule properties. When a demand was made by the plaintiffs for partition by metes and bounds, the same was denied by the defendants. It is claimed that the cause of action arose on the death of Hanumanthappa, the common propositus.

Hence, the plaintiff claimed that the above properties being acquired out of income from the original lands, the same were available for partition and since her demand for partition was not acceded to by the defendant, the suit was filed.

The first defendant had entered appearance and had filed written statement to contend that item No. 1, bearing Survey No. 3/3, measuring 2 acres 3 guntas, having been purchased by Hanumanthappa, under a Sale Deed dated 11.6.1942 and a portion of which, measuring 0-11 guntas in extent, was alienated by Hanumanthappa, son of Narasimhaiahnavara Nanjundappa and his two sons by his second wife namely, Puttanna and Narasimhaiah (defendant No. 1 herein), who had jointly alienated 0-11 guntas of land in favour of one another Narasimhaiah, who is the son of Hanumanthappa, by his first wife under a Sale Deed dated 12.5.1955. On a perusal of the recitals of the said Sale Deed dated 12.5.1955, it is clear that there has been a partition among the members of the joint family which existed then long prior to 1955 and likewise, under the registered Sale Deed dated 1.9.1955, an extent of 31 guntas, in Survey No. 3/3, and also 37 guntas with a house thereon in Survey No. 3/2 of Lottegollahally Village, was sold by Hanumanthappa, and his two sons, Puttappa and Narasimhaiah (being his sons by his second wife) in favour of one Lingamma. It was contended that consequent upon execution of the registered General Power of Attorney dated 25.7.1962, by Lingamma, in favour of one Shambulingappa, in

respect of lands in various survey numbers, including an extent of 31 guntas in land bearing Survey No. 3/3, and 37 guntas in land bearing Survey No. 3/2, with a house thereon and the first defendant herein purchased land in Survey No. 3/2, measuring 0-37 guntas and land in Survey No. 3/3, measuring 31 guntas from Lingamma, represented by her General Power of Attorney holder P.V. Shambulingappa, under a registered Sale Deed dated 7.4.1965. Consequently, the lands so purchased by the first defendant was after the partition effected in the family, and as such, the property so purchased by the first defendant and owned in land bearing Survey No. 3/3, which are suit schedule item Nos. 1 and 2 are the self acquired properties of the first defendant.

The first defendant has once again effected an oral partition between himself, his wife and his children on 10.6.1991, after making the layout of sites, and each one of them having taken possession of the portions in the said Survey No. 3/3, and one another in Survey No. 3/2 of Lottegollahally Village, they have been exercising their rights over the sites so allotted in their favour as per the Layout Plan of sites and each one of them have also put up constructions over such sites and some sites have been sold by the first defendant and the other members of his family and the first defendant and his wife and children who have effected partition on 10.6.1991 have also entered into a memorandum of partition dated 15.12.1991. These facts are well within the knowledge of the plaintiff and she is also aware as to the partition having taken place long prior to 1955 among the descendants of said Hanumanthappa.

It was contended that in so far as item No. 2 of the suit schedule is concerned, it was purchased by the first defendant under a registered Sale Deed dated 3.7.1945, from one Siddappa, son of Basappa, and the said property being his self acquired property, he had alienated the same, under a registered Sale Deed dated 28.5.1951, in favour of Byrappa, son of Kalappa, and said Byrappa, was in possession and enjoyment of the said property being the suit schedule item No. 2 and thereafter, under the registered Sale Deed dated 11.12.1956, the first defendant purchased the said item of the property from Byrappa, son of Kalappa and as such, the said item No. 2 was the self acquired property of the first defendant, and these facts are well within the knowledge of the plaintiff and she had never questioned the same at any point of time, as to the exercise of rights over the said property by the first defendant in the manner aforesaid.

In so far as suit schedule item No. 3, is concerned, the same was purchased by the first defendant, under a registered Sale Deed dated 30.12.1955, from Dasappa uruf Chikka Munidasappa and his wife, Yellamma and others, and likewise, the first defendant had also purchased the suit schedule item No. 4, under a Sale Deed dated 21.3.1971, from said Dasappa uruf Chikka Mumdasappa and the said items 3 and 4 measuring each 21 guntas i.e., 1 acre 2 guntas in all, is the self acquired property of the first defendant and the same cannot be questioned by the plaintiff.

It is further contended that the plaintiff herself has purchased the house property

under a registered Sale Deed dated 22.11.1988, from one Munishamappa son of Narayanappa, and said Munishamappa son of Narayanappa had purchased the site measuring 30" x 35", culled out of land in Survey No. 3/2, under a Sale Deed dated 10.4.1957, from Venkoba Rao and the said Venkoba Rao, had purchased the said site from Narasimhaiah, son of Hanumanthappa, under a sale deed dated 11.10.1954, and these facts are clear from the said Sale Deed dated 22.11.1958 and hence, it is clear as to the partition having taken place long prior to 1955, among the descendants of Hanumanthappa, and such a partition effected prior to 1955 has not been challenged by the plaintiff and as such, the plaintiff has suppressed the material facts before this court and she has brought the present suit for partition and separate possession and such a suit is not maintainable in law.

The contention that the averments made in 7(a) of the plaint that, the propositus Hanumanthappa was a tenant of Lingamma in respect of land measuring 2 acres 22 guntas in Survey No. 9/1 and 2 acres 37 guntas in Survey No. 6 of Lottegollahalli from the year 1950, were denied. It is contended that the husband of the defendant Narasimhaiah entered into a sale agreement with one Rajasekharappa for the purchase of item No. 5 of the suit schedule property bearing Survey No. 9/1 measuring 2 acres and 22 guntas. That agreement was dated 11.1.1967. The consideration for the purchase of the said item was also paid from out of his self-earnings. When Rajasekharappa did not execute the sale deed even after receipt of the entire sale consideration, the husband of the defendant Narasimhaiah filed a suit in O.S. No. 483/1973 on the file of the Principal II Munsiff, Bangalore Rural District and there was a decree for specific performance passed in that suit in his favour. The said decree was put into execution in Execution Case No. 1458/1980. During the pendency of that execution case, the husband of the defendant died on 10.4.1995. Thereafter his legal representatives, namely, the present defendants 1 to 7 herein, were brought on record in the said execution case. The executing court executed a sale deed in their favour with respect to the suit schedule item 5. The original sale deed was not returned by the Sub-Registrar since the matter was pending adjudication before the Special Deputy Commissioner for Under-Valuation of Stamps. The said item therefore was claimed as the self-acquired property of the husband of the defendant.

It is contended that item 6 of the suit schedule belonged to one Lingammanni. The husband of the defendant was cultivating the same under Lingammanni on vara basis and had taken the said land on lease from Lingammanni in his individual capacity. It was his individual tenancy holding, which had nothing to do with the family. Rajasekharappa claimed that he had become the owner of the said property under the Will of Lingammanni. He had also sought for resumption of the said property from the husband of the defendant, by filing an application for resumption before the Court of the Munsiff under the provisions of the Land Reforms Act, 1961. Though there was a resumption order passed in those proceedings, the same could not be executed for a certain technical difficulty, as

a result, the husband of the defendant - Narasimhaiah continued to be a tenant in respect of item No. 6 of the suit schedule until the same came to be vested in the State Government under the provisions of the amended Karnataka Land Reforms Act, which came into force from 1.3.1974. Since the said item was in the holding of the husband of the defendant, on the date of vesting, he had filed Form No. 7, claiming occupancy rights in respect of item No. 6 before the Land Tribunal, Bangalore Taluk and the same had been numbered as L.RF. 906/74-75. Lingammanni had died by that time and since Rajasekharappa claimed ownership over the said property under a will of Lingammanni and since it was Rajasekharappa who had initiated resumption proceedings earlier, Rajasekharappa was impleaded as landlord and respondent in the proceedings before the Land Tribunal. The plaintiff herein is said to have attempted to come on record in the said proceeding stating that she has also cultivated the said land along with the husband of the defendant and that therefore she should also be granted occupancy right in the said item. After a detailed enquiry, the application filed by Narasamma, the plaintiff, came to be dismissed by the Land Tribunal by its Order dated 27.7.2002. By the same order, the claim of these defendants for grant of occupancy rights was upheld and defendants 1 to 7 were jointly granted occupancy rights in respect of item No. 6 of the suit schedule property by the Land Tribunal. It is contended that the tenancy holding in respect of item No. 6 was individual to the husband of the defendant, since he has taken on the same in his individual capacity. The said tenancy right was self-acquired right and therefore the occupancy right granted by the Land Tribunal is exclusively in favour of the husband of the defendant. Therefore, this was his self-acquired property.

On the basis of the above pleadings, the court below had framed the following issues:

- "1. Whether the plaintiff proves that she and the defendants form a joint Hindu family and are in joint possession and enjoyment of the suit schedule property as contended?
2. Whether the plaintiff proves that she is entitled for share in the suit properties?
3. Whether the defendants prove that the suit is bad for non-joinder of necessary parties?
4. Whether the plaintiff proves that her father died in 1959 as contended?
5. Whether the suit as brought is maintainable in view of the Section 132 of Land Revenue Act?
6. Whether the plaintiff proves the identity, extent and description of the property as stated?
7. Whether the plaintiff proves cause of action for the suit?
8. Whether the suit is properly valued and proper Court fee is paid?

9. Whether the plaintiff is entitled for the relief sought for?"

The trial court had answered Issue Nos. 1, 2, 3 and 9 in the negative; Additional Issue No. 1 by holding that items 5 and 6 were the self acquired properties of deceased defendant; Issue No. 4 as not surviving for consideration and Issues No. 5 to 8 in the affirmative and had dismissed the suit. It is that which is under challenge in the present appeal.

3. Having heard the learned counsel for the parties and after perusing the record, it is seen that the plaintiff Narasamma and defendant Narasimhaiah were the children of Hanumanthappa and Tayammawas his second wife.

It is relevant to point out at this stage that Narasamma has not made the children of Byamma as parties to the suit. However, she has filed the suit only against Narasimhaiah, son of Tayamma, the second wife of Hanumanthappa.

The claim of the plaintiff was that Hanumanthappa was the owner of property bearing Survey No. 3/3, of Lottegollahalli village, Kasaba Hobli, Bangalore South Taluk, having acquired the said property by virtue of a registered sale deed dated 11.6.1942.

The plaintiff has claimed that Hanumanthappa, had retained 37 guntas of land in Survey No. 3/3, out of 2 acres 3 guntas of land, selling the remaining land purchased by him on 11.6.1942. Out of the said 37 guntas, defendant No. 1 Narasimhaiah has purchased the remaining properties described in item Nos. 2, 3 and 4. The plaintiffs assertion was that 37 guntas of land in Survey No. 3/3, which was described as item No. 1 in the schedule to the suit was the nucleus for the defendant to acquire other suit schedule properties stated above.

The case of the defendant was that Hanumanthappa had sold the entire extent of 2 acres 3 guntas of land in Survey No. 3/3 during his life time only and that he had not left any property more so 37 guntas of land as described item No. 1. There was no existence of item No. 1 of the suit schedule property as on the date of death of Hanumanthappa during the year 1955 and hence, no joint family property existed and no joint family properties were available for partition as on the date of death of Hanumanthappa.

The defence of the defendant in the trial court to the effect that Hanumanthappa had sold entire 2 acres 3 guntas of land purchased by him on 11.6.1942, during his life time, was admitted by the plaintiff in paras 4c and 4d of the amended plaint, which reads as follows:-

On 12.5.1955, the propositus Hanumanthappa and Narasimhaiah, the son of the second wife of Hanumanthappa, sold an extent of 11 guntas out of 2 acres 3 guntas of land purchased by Hanumanthappa, to Doddanarasimhaiah, son of the first wife of Hanumanthappa on 11.6.1942. The certified copy of the sale deed was marked as Exhibit 41.

Similarly he has stated at para 4d, of plaint - on 12.05.1955. Hanumanthappa

and his sons Puttappa, and his sons Puttappa and Narasimhaiah that is the defendant have jointly sold an extent of 35 guntas in favour of Lingamma, out of the remaining land in Survey No. 3/3, which had been purchased by Hanumanthappa on 11.6.1942. The said document was marked as Exhibit D17. The plaintiff has further contended that Hanumanthappa has also sold the remaining extent of land in Survey No. 3/3, by virtue of a registered sale deed dated 1.9.1955, which was produced and marked as Exhibit D.18. Admittedly, Hanumanthappa has sold the entire extent of land measuring 2 acres 3 guntas purchased by him during his life time itself. Hence there is no joint family nucleus left by Hanumanthappa.

It is found that as per Exhibits D.18 and D.41, two sale deeds dated 1.9.1955 and 12.5.1955, the property at item No. 1 was sold in favour of Lingamma and her son during the life time of Hanumanthappa. Whatever the acquisitions made by deceased defendant No. 1 in respect of item Nos. 3 to 6, is subsequent to the said alienation made in the year 1955. So in the year 1955, the propositus Hanumanthappa, lost all his properties by virtue of alienation and as such, there is no merit in the contention taken by the plaintiff that the joint family still continues.

Subsequent to the death of Hanumanthappa, the defendant Narasimhaiah is seem to have purchased other properties out of his own earnings and accordingly, he has purchased property bearing Survey Nos. 3/2 and 3/3, measuring 37 guntas and 31 guntas, respectively, from Lingamma through her power of attorney holder Shambulingappa, which was produced and marked as Exhibit D.19.

Similarly Narasimhaiah has independently purchased item No. 2 of the suit schedule property bearing Survey No. 3/3, measuring 1 acre 13 guntas by virtue of a registered sale deed dated 7.8.1963, from Ranganayakamma, wife of T.C. Venugopala Naidu as per Exhibit D-20. Thus, item No. 2 is the self acquired property of the defendant. The defendant has given evidence to prove that he has earned sufficient income by vending milk and also by buying and selling milch cattle. The factum of earning capacity of defendant Narasimhaiah was admitted by the plaintiff Narasamma in her evidence. She has voluntarily stated that Narasimhaiah was doing milk vending business rearing milch cows. The very same admission was made by the son of the plaintiff, PW-2.

In so far as item Nos. 3 and 4 are concerned, namely, Survey Nos. 8/A and 8/B, these two properties are purchased by Narasimhaiah, the defendant out of his own earning by virtue of the sale deed dated 30.12.1965, marked as Exhibit D-21, which discloses that Hanumanthappa has purchased 21 guntas of land from Dasappa @ Chikkamumdasappa and another 21 guntas of land from Dasappa @ Chikkamunidasappa and another 21 guntas was purchased from Dasappa @ Chikkamumdasappa by virtue of a sale deed dated 21.3.1970, marked as Exhibit D-22.

In so far as the property bearing Survey No. 9/1, item No. 5 of the suit schedule is concerned, the defendant Narasimhaiah had acquired the said property by virtue of a court decree passed in O.S. No. 483/1973, as per Exhibit D-11. Narasimhaiah had obtained the decree dated 27.11.1976, against the defendant Rajashekharappa. However, Rajashekharappa did not execute the sale deed as per the decree. Hence, the legal representatives of Narasimhaiah, the respondents herein had filed Ex. No. 1458/1980, as per Exhibit D-13 and got the said property registered in their favour through court decree under a sale deed dated 26.9.1998 and therefore, item No. 5 is also the self acquired property of the defendants.

In so far as item No. 6, namely, Survey No. 6, measuring 1 acre 18 guntas is concerned, the defendant Narasimhaiah was a tenant in respect of the said land under B.S. Rajashekharappa and has, in his individual capacity, filed form No. 7 on 30.12.1974. After inquiry, the Land Tribunal granted occupancy rights by its order dated 27.7.2002, in LRF No. 906/1974-75, vide Exhibit D-14.

Thus, all the suit schedule properties are the self acquired properties of Narasimaiah, the defendant. Hence, the plaintiff has no right to claim any share under any acts either under the Hindu Women's Right to Property Act, 1937 or under the Hindu Succession Act, 1955.

It is relevant to note that Narasamma, admittedly was married 48 years prior to the suit and was residing in her husband's house in Kolar District and she ceased to be a member of the joint Hindu Undivided family. And she has not contributed to the joint family in any manner.

It is necessary to point out that none of the schedule properties are available for partition as Narasimaiah, during his life time, has formed a layout and sold the sites to number of persons. Some of the purchases have constructed the residential houses and residing therein. It is pertinent to note that V. Raju, son of Narasamma, the plaintiff has also purchased two sites and was residing in the house constructed thereon. Despite the knowledge that the schedule properties are not available for partition in its original form, the plaintiff still has filed the suit.

It is necessary to point out that Narasamma had not questioned any of the sale deeds executed by Narasimaiah forming sites in the suit schedule properties.

Similarly, the respondent had challenged the Notification issued by the Bengaluru Development authority (BDA), proposing to acquire item Nos. 5 and 6 of the suit schedule property, by filing a suit in O.S. No. 4136/1994 and O.S. No. 8127/1996. Thereafter, the BDA has approached the defendant to compromise the case, in furtherance of which the BDA has passed Resolution No. 135 on 3.8.1998 agreeing to sell 2 acre 36 guntas of acquired land in both Survey Nos. 6 and 9/1 to the defendants on the acquisition rate. Accordingly, a letter was issued by the BDA on 16.9.1998. On such agreement, these defendants have withdrawn the suits. Unfortunately, after the withdrawal of the suit, the BDA has

passed one more resolution No. 340/2008 rejecting the proposal of giving 2 acre 36 guntas to the defendants at the acquired rate as agreed by them. Thereafter, these respondents have challenged the Resolution dated 26.8.2008 by way of a writ petition in WP 6078/2009 before this Court, which was allowed quashing the resolution. The BDA has filed an appeal in WA 2912/2009 and the same was dismissed on 27.8.2009. The BDA has filed a special leave petition before the Supreme Court of India in SLP 30551/2009, which was rejected.

Narasamma had not challenged any of the proceedings. This was apparently because she knew that all the properties were the self acquired properties of the defendant, Narasimaiah.

Further, Narasamma is shown to reside independently as she has purchased a site along with a portion of the house, measuring 30"x35" by virtue of a registered sale deed dated 22.11.1968, from Muniswamappa out of Survey No. 3/2, item No. 3 of the suit schedule property. The remaining extent of Survey No. 3/2 was purchased by. Narasimhaiah, the defendant from the very same Muniswamappa, which would, in fact, indicate that Narasamma and Narasimhaiah had independent source of income claiming the said property to be her self-acquired property. A copy of the sale deed is produced and marked as Annexure-D23.

In the above view of the matter, the appeal is without merit and is dismissed.