
(2016) 12 KAR CK 0006

In the Karnataka High Court

Case No : Regular Second Appeal No. 100541 of 2015 (PAR & POS)

Parasoli

APPELLANT

Vs

Calarin John Bashtista Gonsal

RESPONDENT

Date of Decision : 01-12-2016

Acts Referred:

Succession Act, 1925 — Section 37

Citation : (2017) 2 KantLJ 120

Hon'ble Judges : Mrs. S. Sujatha, J.

Bench : Single Bench

Advocate : Sri. Chandarashekhar R Hiremath, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Mrs. S. Sujatha, J.—This appeal is directed against the judgment and decree passed by the Senior Civil Judge, Khanapur, in RA No. 16 of 2014 whereby the judgment and decree passed by the Principal Civil Judge and Judicial Magistrate First Class, Khanapur in O.S. No. 231 of 2011 is confirmed. The appeal is filed with an application (I.A. No. 2 of 2016) seeking condonation of delay of 46 days in filing the appeal. Delay aspect particularly, short delay would have been considered liberally provided the appellant had a good case on merits. On merits, it is found thus:

2. For the sake of convenience, the parties are referred to as per their rankings before the Trial Court.

3. Briefly stated the facts are, the plaintiffs filed a suit for partition and separate possession in respect of landed properties claiming their half share in respect of suit properties bearing RS No. 56/1 measuring 5 acres 17 guntas, all situated at Surapur Village of Khanapur Taluk. The parties to the suit are Christians, governed by Indian Succession Act, 1925 (for short, "the Act"). It is the case of the plaintiffs that the suit schedule properties were originally acquired by the propositus Intru who had two wives. First wife Savarin predeceased intru and he

had a son by name Farasi alias Frances through first wife who died on 4-5-2009. The petitioners 2 to 8 are children and plaintiff 1 is the wife of the deceased Farasi. After the death of 1st wife, Intru got married to one Carmelin and begotten defendants Nos. 3 to 8 and another son by name John Bosthista. John Bosthista died leaving behind his wife and son, who are defendants Nos.1 and 2. It was contended by the plaintiffs that during the lifetime of Intru, he had given half share in the suit properties to his son by name Farasi, the husband of plaintiff 1. The defendants denying the same contended that on 30-1-2004, there was Apsat Watni Patra between the plaintiffs and defendants, as per which partition was effected between the parties to the suit and they are in possession of respective shares allotted to them. The Trial Court framed the following issues:

(1) Whether the plaintiffs prove that they are entitled for share in the suit schedule properties?

(2) Whether the defendants prove that the suit of the plaintiffs is bad for non-inclusion of the family properties in common hotch-pot?

(3) Whether the defendants prove that already partition was effected in between the plaintiffs and defendants on 30-1-2010?

(4) What order or decree?

4. On appreciation of the evidence on record, the Trial Court decreed the suit holding that the deceased Farasi and defendants are entitled for equal share in the suit properties i.e. 1/9th. On application filed under Section 152 of Code of Civil Procedure, 1908, the judgment and decree was modified allotting 7th share to the plaintiffs in terms of the Act, against which the appeal preferred by the plaintiffs, came to be dismissed. Being aggrieved, the plaintiffs are in second appeal.

5. Heard the learned Counsel for appellants and perused the material on record.

6. The learned Counsel for the appellants would contend that the suit properties are tenancy lands granted by the Land Tribunal. The husband of the 1st plaintiff was an agriculturist and cultivating the suit land, the defendants are step-brothers of her husband residing at Dandeli and they never cultivated the lands, as such Intru transferred half share in the suit properties to the husband of the 1st plaintiff. The Courts below without appreciating this aspect allotted 7th share in the suit properties instead of half share to the plaintiffs, which deserves to be set aside.

7. It is an admitted fact that Intru, the propositus had seven children through 2nd wife Carmelin and one child from the 1st wife, Savarin. The claim of the plaintiffs in much as the said Intru has given half share in the suit properties to Farasi, husband of plaintiff 1 during his lifetime is not supported by material evidence. It is the allegation of the plaintiffs, defendants Nos.1 to 4 created bogus records and documents behind their back and entered their names in the revenue records, however, they are entitled to half share in the suit properties.

The defendants placing reliance on Ex. D. 2-Apsat Watni Patra contends that partition was effected in the year 2010, as such the suit filed by the plaintiffs for partition and separate possession is not maintainable. It is indisputable that the parties to the suit are governed by the Act. The children of original propositus, Intru are entitled to equal share in terms of Section 37 of the Act, as he died intestate. No documentary evidence was produced by the plaintiffs to establish the factum that late Intru had transferred the rights of half share in the suit properties to the late Farasi. The plaintiffs are claiming their right as the legal heirs of Farasi. In the absence of any material placed on record to establish the factum of half share in the suit properties being transferred in favour of Farasi, the claim of the plaintiffs is not acceptable. Similarly, the stand of the defendants based on Apsat Watni Patra is also not worthy of acceptance, the same does not prove the previous partition being effected between the parties, since female members of the family were not included in the said document, moreover said document-Ex. D. 2 was not proved in accordance with law. The material evidence was properly appreciated by the Trial Court and on reappraisal of the evidence, the Lower Appellate Court confirmed the judgment and decree of the Trial Court holding that the plaintiffs are entitled to their share in the suit properties. Neither irregularity or infirmity is found in the appreciation of the evidence nor the finding given by the Courts below is perverse. No substantial question of law arises for consideration in this appeal.

8. For the reasons aforesaid, this Court is of the opinion that there is no merit in the case, no purpose would be served in issuing notice to the respondents, hence, the application I.A. No. 2 of 2016 filed for condonation of delay of 46 days in filing the appeal is dismissed. Consequently, the appeal stands dismissed.