

(2013) 11 KAR CK 0104

In the Karnataka High Court

Case No : Regular Second Appeal No. 1263 of 2011 (PART)

Puttananjamma and Ramesha

APPELLANT

Vs

Smt. Ningamma and Sri. Manje Gowda

RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Evidence Act, 1872 — Section 50, 58

Citation : (2013) 11 KAR CK 0104

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

Bench : Single Bench

Advocate : N.S. Sanjay Gowda, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Phaneendra, J.—Heard the learned counsel for the appellants on admission. Perused the records. The present appeal is preferred against the concurrent findings recorded by the trial court in O.S. No. 28/2006 as well in R.A. No. 11/2008, on the file of the Civil Judge Junior Division and Senior Division respectively in decreeing the suit of the plaintiff and allocating 1/4th share in 1/3rd share in all the suit schedule properties.

2. The brief facts that emanate from the record are that:

The first respondent herein Smt. Ningamma filed a suit claiming that she is the legally wedded wife of late Sri. Chikkegowda and the said Chikkegowda has also married the first defendant as his second wife and second and third defendants in the suit. are the sons of Late. Chikkegowda. It is contented that the plaintiff and defendants 1 to 3, are the members of the joint family consisting of the suit schedule properties as joint family properties. The defendants made their appearance before the trial court, denied the relationship between Chikkegowda and the plaintiff and also contended that the plaintiff is not at all entitled for any relief much less any share in the suit schedule properties. On these contentions,

the parties went on to the trial and in fact, on the side of the plaintiff, Ningamma, the plaintiff herself examined as PW1, one witness Annegowda as PW-2 and got marked 10 documents as Exhibits P.1 to P.10. On the side of the defendants, the defendant No. 1 Puttananjamma was examined as DW-1 and two documents were marked as Exhibits D1 and D2. The Trial court in fact after analyzing the pleadings, formulated as many as five issues which are as follows:

1. Whether the plaintiff proves that she is the wife of Chikkegowda?
2. Whether the plaintiff proves that suit schedule properties are joint family properties of herself and defendants and herself and defendants are joint family members?
3. Whether the plaintiff proves that she is entitled for the partition and separate possession of suit properties?
4. Whether the plaintiff proves that she is entitled for accounts as prayed for?
5. What order or decree?

3. According to the learned counsel who argued before this court, the main issue which cut the entire case of the plaintiff is issue No. 1 i.e., Whether the plaintiff proves that she is the wife of deceased Chikkegowda or not? The trial court answered the said issue in the Affirmative and also other issues in the Affirmative and finally granted the relief to the plaintiff as prayed for.

4. Being aggrieved by the said judgment and decree, the defendants preferred the appeal in RA No. 11/2008 mainly urging that the trial court has committed serious error in holding that the plaintiff was the legally wedded wife of deceased Chikkegowda. The appellate court also on analyzing the materials on record and also considering the observations and the findings given by the trial court on the issues, framed the following points for consideration:

(1) Whether the judgment and decree of the trial court call for any modification at the hands of this court?

(2) What order?

The Appellate Court by answering Point No. 1 in the Negative came to the conclusion that the plaintiff has proved that she is the legally wedded wife of the deceased Chikkegowda. Hence the appellate court has recorded its findings confirming the judgment and decree of the trial court which are called in question before this court in this Regular Second Appeal.

5. The fundamental principle to entertain the Regular Second Appeal is that there must be a serious substantial question of law involved in the case to be discussed by the court in order to come to a different conclusion that both the courts have not properly appreciated the legal point involved in this particular case. In order to ascertain this, this court has to look into the findings given by the trial court and as well as the appellate court.

6. The learned counsel seriously contended that both the courts below have grossly erred in appreciating the documentary and oral evidence on record and giving a finding that the plaintiff is the legally wedded wife of the deceased Chikkegowda. The learned counsel in fact took me through the observations made by the trial court at paragraph 17 of its judgment, wherein the trial court has appreciated the documentary evidence which is marked at Ex. P.10. Ex. P.10 is the identity card issued by the Election Commission of India wherein the photograph of the plaintiff is affixed, wherein the name of the husband of the plaintiff is mentioned as Chikkegowda. The main contention of the learned counsel is that both the trial court and the appellate court have relied upon Ex. P.8 extensively, is the document according to the trial court admitted by the defendants. Ex. P.8 is the document styled as Uttarakriyadi Ahwana Pathrike i.e., 11th day ceremony card. This document discloses the name of the two wives that is plaintiff's name and the first defendant's name as wives of deceased Chikkegowda. As could be seen from the judgments, the trial court has not only based on this particular document but also based on the other documents i.e., particularly Ex. P.10 which is the identity card issued by the Election Commission of India which contains the name of the plaintiff and disclosing her husband's name as Chikkegowda.

The trial court also relied upon the ruling of the Supreme Court reported in Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others, , wherein the trial court has observed that the admission of the parties should be taken into consideration which are admissible u/s 58 of the Evidence Act. The trial court in fact, relied upon the evidence of DW1 in order to apply the principles of the above ruling; who during the course of cross-examination has admitted that Ex. P.8 being got printed by her son after the death of Chikkegowda. It is also admitted that the information contained in the said document was furnished by her son only. The trial court has drawn the inference that the plaintiff has proved that she is the wedded wife of deceased Chikkegowda. So these documentary and oral evidence have been appreciated by the trial court to come to the conclusion that the plaintiff is the wife of deceased Chikkegowda.

7. The appellate court also, as could be seen from the judgment, in fact appreciated the cross-examination of DW1 as well as Ex. P.8 and other documents produced before the court and recorded the factual finding that the plaintiff is the wedded wife of deceased Chikkegowda. These are all the findings given by the appellate court as well/as the trial court based on both documentary and oral evidence of the parties. I do not find any illegality or irregularity or perversity in the judgments of the trial court and as well as the appellate court in recording the said findings.

8. The learned counsel for the appellants seriously contends that both the appellate court and trial court have ignored Section 50 of the Evidence Act which says that "when the court has to form an opinion as to the relationship of one person to another the opinion expressed by conduct as in the existence of such/

said relationship or any person who as a member of the family or otherwise, a special means of knowledge on the subject is a relevant fact". Basing this provision, the learned counsel seriously contended that no person who is having special knowledge with regard to the relationship between the plaintiff and the deceased Chikkegowda has been examined. Therefore the court cannot draw any inference if such evidence is conspicuously absent before the trial court and as well before the appellate court. The said contention of the learned counsel in my opinion is not proper because of the simple reason that Section 50 deals with one of the relevant facts and it cannot be a sole, relevant fact for the purpose of considering the issue before the trial court as well as the appellate court. The other relevant facts which are considered by the trial court and the appellate court are Exs. P.8 and P.10 and as well as the evidence of the plaintiff and defendant No. 1. According to both the courts on culmination of the oral and documentary evidence placed before the court, the courts found that those facts are sufficient to draw an inference that the plaintiff is the wedded wife of Chikkegowda. Therefore, the trial court and the appellate court have recorded their findings on the basis of the factual aspects. Therefore, in my opinion, this court exercising the powers u/s 100 of CPC, cannot interfere with such a finding of fact given by the trial court and first Appellate Court when it is concurrent.

9. In a similar question arose before the Hon''ble apex court in the case of Bharatha Matha and Another Vs. R. Vijaya Renganathan and Others, , the apex court held that "the question whether plaintiff's case of subsisting marriage of defendant was established by law framed by High Court, the High Court and first Appellate Court on appreciation of the entire evidence on record including plaintiffs witnesses, statement of step mother of plaintiffs brother "M" as well as other DWs. and relevant documents, came to the conclusion that defendant was legally wedded wife of one "A", who on the date of institution of the suit was alive and therefore, her alleged live-in relationship with "M" as claimed by defendant would not be presumed. But High Court in Second appeal without making any reference to the evidence of plaintiffs witnesses, on which the court below has placed heavy reliance and only relying on the statement of the step mother of "M", it was disbelieved by court below for cogent reason and re-appreciating documentary evidence, reversed the findings of the court below, the High Court in re-appreciating the evidence in second appeal as no substantial question of law was involved therein held that the High Court did not even take note of the depositions of plaintiffs witnesses, findings recorded by the High Court itself became perverse and thus liable to be set-aside.

10. Added to the above said findings of the trial court even if the trial court and the appellate court's finding of facts are erroneous and if this court comes to the conclusion that the another view is also possible even then while exercising powers u/s 100, the second Appellate Court cannot substitute its finding to the findings of the trial court as well as the appellate court.

11. Looking to the above said facts and circumstances of the case, when there is

a concurrent finding of the trial court as well as the appellate court based on the factual aspects, they can't be interfered. u/s 100 of CPC. Hence I am of the considered opinion that it is not a fit case for admission. Hence at the stage of admission itself, this Regular Second Appeal is liable to be dismissed. At the fag end of dictating this judgment, the learned counsel for the appellant drawn my attention that the allocation of the shares among two widows is wrongly allocated by the trial court and the appellate court. In stead of allocating 1/6th share, in 1/3rd share of Chikkegowda, 1/4th share has been allotted to the plaintiff instead of 1/6th share. In my opinion the trial court can take this into consideration at the time of drawing of the final decree proceedings, if necessary after hearing the parties court can modify the decree.

Accordingly, Regular Second Appeal is dismissed.