
(2013) 12 KAR CK 0541

In the Karnataka High Court

Case No : Regular First Appeal No. 128 of 2009 (PAR-DB)

R. Sandhya and R. Swetha

APPELLANT

Vs

S.R. Raju

RESPONDENT

Date of Decision : 11-12-2013

Acts Referred:

Citation : (2014) 2 AKR 201 : (2014) ILR (Kar) 631 : (2014) 1 KCCR 865

Hon'ble Judges : K.L. Manjunath, J;A.V. Chandrashekara, J

Bench : Division Bench

Advocate : L. Govindaraj, for the Appellant; P. Prasanna Kumar, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—The present appeal is filed by the unsuccessful plaintiffs. The appellants filed O.S. No. 15082/2005 before the City Civil Judge, Bangalore claiming partition and separate possession of their 1/3 share each in schedule B property and also to direct the defendant to furnish accounts and to further restrain the defendant from alienating or otherwise leasing, mortgaging the schedule B property. The suit filed by the appellants has been dismissed by the Trial Court by its considered Judgment and decree dt. 22.10.2008. Challenging the legality and correctness of the same, the present appeal is filed. We have heard the learned counsel appearing for both the parties.

2. The facts leading to this appeal are as hereunder:

When the suit filed by the plaintiffs, plaintiff-1 - Sandhya was major, 2nd plaintiff - Swetha was minor and she was represented by her natural guardian mother Meena. On attaining the majority the mother is discharged from her Guardianship. According to the plaint averments, the plaintiffs are the daughters of defendant Raju and Meena. The marriage of the defendant with their mother Meena was solemnized in the year 1985. However, the parents of the plaintiffs are residing separately from 2001 and since then the plaintiffs are living with

their mother Meena. It is the further case of the plaintiffs that the defendant being a member of the Hindu joint family was living with his father Ramachandra Reddy and his brother Gopalkrishna and sister Neelamma. The said Neelamma died unmarried in the year 1998. The joint family had possessed 12 acres of land together with a brick factory and there was a partition between the defendant's father, brother of the defendant and the defendant on 9.12.1985. In the partition 7 acres 20 guntas of land had fallen to the share of the defendant.

3. Since the defendant and his wife Meena could not live together, they entered into an agreement and accordingly towards the maintenance of the plaintiffs mother, property mentioned as schedule A to the plaint was given under registered settlement deed dt. 18.1.2001 retaining plaint B schedule property to the share of the defendant. It is also the specific case of the plaintiffs that since plant A schedule property has been given to the share of their mother towards her maintenance, the plaintiffs and the defendant are entitled to 1/3 share each in plaint B schedule property. Contending that the demand made by them to give their 1/3 share was not considered by the defendant, suit came to be filed for the following reliefs:

A partition be effected and the plaintiffs be put in separate possession of their 1/3 share in the B schedule property and for accounts and to restrain defendant from alienating or creating any charge over the plaint B schedule property.

4. Schedule A to the plaint are the properties said to have been given to the plaintiffs mother towards her share. They are 3 items of the property situated in Balagere Village in Bangalore South Taluk. Item No. 1 is situated in Sy. No. 55 measuring 1 acre 28 guntas. Item No. 2 is 1 acre of land in the same village situated in Sy. No. 44/2. Item No. 3 is 1 acre 12 guntas situated in Sy. No. 297. Thus the total extent was 4 acres of land. Schedule B properties are only two items. Item No. 1, 12 guntas of land together with 4 squares building in Sy. No. 68 and Item No. 2 is 2 acres 31 guntas of land in Sy. No. 44/2. In all 3 acres 3 guntas.

5. The defendant contested the suit. The defendant filed a detailed written statement. According to him, the plaintiffs have not approached the court with clean hands and there are no bona fides in the suit. According to him, 4 acres of land mentioned in schedule A to the plaint were given to the share of the plaintiffs and their mother Meena and their mother Meena had represented the plaintiffs as their natural guardian. When there was already a partition between the defendant and his wife Meena on 18.1.2001, the present suit has been filed at the instigation of their mother Meena. It is also the case of the defendant that his mother Sanjeevamma is a necessary and proper party to the suit and in the absence of her, the suit filed by the plaintiffs is not maintainable. It is also the case of the defendant that his mother Sanjeevamma was a chronic kidney patient and she was also suffering from Diabetes, High blood pressure and other ailments and she required constant care and attendance. Earlier the plaintiffs and their mother Meena, defendant and his mother Sanjeevamma were all living

together. Since the plaintiffs mother was not willing to look after the aged mother of the defendant, she demanded a share and on account of the quarrel, the entire properties were divided into two pieces. Plaintiff A property measuring 4 acres of land was allotted to the share of the plaintiffs and their mother Meena and that the plaintiff B schedule property 3 acre 3 guntas was given to the share of the defendant subject to condition that he shall look after his aged mother who was suffering from kidney and other ailments and that he was required to discharge the loan raised by his father. According to him, the said partition is an out and out right partition drawn between the plaintiffs adequately represented by their mother Smt. Meena and the defendant and having obtained the partition, the suit filed by the plaintiffs at the instance of their mother claiming only share in plaintiff B schedule property allotted to him is not maintainable. He also raised several other contentions in the written statement.

6. Based on the above pleadings the following issues were framed by the Trial Court:

- 1) Whether plaintiff's prove that the four acres of land allotted to their mother was towards her maintenance alone?
- 2) Whether plaintiffs prove that they are in joint possession of property measuring 3 acres 20 guntas of land with defendant?
- 3) Whether defendant proves that under partition deed dt. 18.01.2001 the plaintiffs and their mother have been allotted schedule B properties?
- 4) Whether the suit is bad for non-joinder of Smt. Sanjeevamma who is the mother of defendant as a party to the suit?
- 5) Whether the plaintiffs are entitled for a share in the suit schedule properties? If so, what is their extent of share?
- 6) Whether the plaintiffs are entitled for mesne profits?
- 7) What order or decree?

7. To prove their respective contentions the 1st plaintiff got herself examined as PW 1. She relied upon Ex. P1 to 3. The defendant was examined as DW 1. He relied upon Ex. D1 and D2. The Trial Court, after considering the entire evidence, has held issues-1, 2, 4 to 6 in negative, issue-3 in affirmative. Ultimately, the Trial Court came to the conclusion that there was a partition on 18.1.2001 between the plaintiffs represented by their mother and the defendant and in view of the said partition, suit is not maintainable. Accordingly, the suit came to be dismissed.

8. Aggrieved by the Judgment and decree of the Trial Court, the present appeal is filed.

9. We have heard Mr. Govindaraj, learned counsel appearing for the appellants and Mr. P. Prasanna Kumar, learned counsel appearing for the respondent.

10. Though several grounds are urged in the Appeal Memo, at the time of argument Mr. Govindaraj has canvassed the following points only:

According to him, the Trial Court has committed an error in holding that the partition deed dt. 18.1.2001 entered into between the plaintiffs' mother and the defendant as a partition between the plaintiffs along with their mother and the defendant. It is only a document evidencing the maintenance given to the plaintiffs' mother by allotting A schedule property to her and he further contends that when once B schedule properties are retained by the defendant, the plaintiffs being his daughters are entitled to 1/3 share in plaintiff B schedule property since they are coparceners by birth and that the Trial Court without considering the same has dismissed the suit erroneously. Therefore, he requests the court to reconsider the entire matter by re-appreciating the evidence let in by the parties. He has vehemently argued that the nomenclature of the document is not decisive but the contents of documents.

11. Per contra, Mr. Prasanna Kumar, learned counsel for the respondent submits that on perusal of Ex. P1 dt. 18.1.2001, the Trial Court is justified in holding that it is a partition between the plaintiffs and their mother on one side and defendant and his mother on the other side. Though the family had only 7 acres of land, 4 acres of land has been given to the plaintiffs and their mother and only 3 acres of land has been retained by the defendant along with his mother who was suffering from kidney and other ailments and in addition to that the defendant had taken the burden of discharging the loan raised by the family, According to him, Ex. P1 cannot be construed as a maintenance deed because the plaintiffs' mother, being the wife of the defendant, cannot claim a separate share. If the case of the appellants is accepted, entire 7 acres of land has to be divided into 3 portions and out of that the plaintiffs' share has to be earmarked. On the contrary even though the plaintiffs mother had no share in the property and since plaintiffs were minors being represented by their mother, more share has been given to the plaintiffs than the defendant and his mother Sanjeevamma, even though Sanjeevamma was a chronic patient. According to him if the entire sum and substance of Ex. P1 is considered, it clearly reveals that it is an out and out partition and not in lieu of maintenance. It is strongly contended that when the suit is filed by the second plaintiff being represented by their mother as natural guardian seeking 1/3 share each, in the natural course they should have included schedule A property i.e., 4 acres of land given under Ex. P. 1 alleging that mother had colluded with the defendant to deny their legitimate claim.

12. According to him, plaintiffs having shown plaintiff A schedule, as the share of their mother and in view of the specific condition in the document that it is the duty of the plaintiffs' mother to take care of the welfare and maintenance of the plaintiffs and considering the recital in the document that even after the death of defendant Raju, the plaintiffs or their mother - Meena have no right to claim any share on B schedule properties. Similarly, it is recited in Ex. P1 that in the event of death of Meena, the plaintiffs' mother, the defendant has no right to claim any

share over the property mentioned in A schedule to the plaint. Therefore, he contends that the Learned Judge is justified in dismissing the suit holding that property allotted to the plaintiffs' mother, plaint A schedule property was given to them in full and final settlement of her claim and share of the plaintiffs. Having accepted the same and without challenging Ex. P1, suit filed by the plaintiffs is not maintainable. In the circumstances, he requests the Court to dismiss the appeal.

13. Having heard the counsel for the parties, the following points arise for our consideration:-

1) Whether the deed of settlement dt. 18.01.2001 entered into between Smt. Meena and the defendant is an out and out deed of partition?

2) If the finding is on point No. 1 in the affirmative, whether the plaintiffs are entitled for any share?

Reasons:-

Point Nos. 1 & 2:-

14. Both the points are inter related and hence they are taken up together for common discussion. Admittedly, the relationship between the parties is not in dispute. The only dispute is in regard to the interpretation of Ex. P1 deed dt. 18.1.2001. The nomenclature of a document will not be decisive in ascertaining the true nature of the document and its effect. In order to ascertain the exact nature of the document, one will have to take into consideration the circumstances under which a document is executed. Apart from this the entire contents of the document will have to be read as a whole and then only the nature of the document could be ascertained. In this regard it is relevant to know the contents of Ex. P1.

15. It is not in dispute that when the deed was executed on 18.1.2001 both the plaintiffs were minors. When the suit came to be filed, 1st plaintiff had attained majority and 2nd plaintiff was still a minor and she is represented by none other than their mother - Meena. The recital in Ex. P1 reads that there was a dispute between the defendant and his wife- Meena as they could not live together in a joint family. As they cannot continue in the joint family, in the presence of the panchas, the family properties were divided. It is further recited that all of them are entitled to enjoy the property on their own. The defendant's mother Smt. Sanjeevamma was suffering from blood pressure, diabetes and other serious ailments and hence he had borrowed loan. His father had also raised loan. Since his father had not repaid the debts borrowed by him, the defendant was expected to discharge the loan raised by his father. On account of the same, a dispute arose between him and his wife - Meena and her minor daughters.

16. It is also recited that the defendant's mother Sanjeevamma was suffering from kidney ailments and there was no body to look after her and that the defendant had taken the responsibility to look after his aged ailing mother. Since

the defendant agreed to keep his mother with him as the plaintiffs mother was not willing for such arrangement, she demanded partition. Accordingly, plaint A schedule properties were allotted to Meena and plaint B schedule properties were allotted to the defendant and the document further reads that it was the complete responsibility of the plaintiffs" mother to take care of the plaintiffs and that the defendant has no responsibility to maintain the plaintiffs. It is further recited that either the plaintiffs or their mother-Meena have no right, title or interest over plaint B schedule properties. Similarly, it is further recited that defendant Raju, has no right, title or interest over plaint A schedule property. It is further recited that even if the defendant dies, plaintiffs or their mother - Meena have no right to claim plaint B schedule properties. Similarly, in the event of death of the plaintiffs" mother, the defendant has no right to claim any share over plaint A schedule properties.

17. On perusal of the entire document, it is clear to us that Ex. P1 partition deed dt. 18.1.2001 is an out and out partition allotting plaint A schedule properties not only to the plaintiffs" mother towards maintenance but also towards the share of the plaintiffs and plaint B schedule has been allotted to the defendant not only to look after his aged mother but also to discharge the debts of his late father.

18. Be that as it may, when the plaintiffs contend that their mother has no right to claim any share and if the plaintiffs still have right to claim share, they should have pleaded before the court that deed dt. 18.1.2001 does not bind their share and they should have demanded share in the plaint A schedule properties which has been in possession of their mother. Absolutely, there is no inter-se dispute between plaintiffs and their mother as stated supra. The 2nd plaintiff is represented by their mother-Meena, when she was a minor. Even after she was discharged from guardianship, there is no inter-se dispute between the plaintiffs and their mother Meena. In addition to that, for the reasons best known to the plaintiffs, have not chosen to examine Meena as their witness to fortify that Ex. P1 is only a Maintenance Deed and not a Partition Deed.

19. Apart from that in the cross-examination 1st plaintiff PW 1 Sandhya has admitted that at the time of filing the suit instructions were given to their Advocate by her and her mother- Meena and she has further deposed that the contents of Ex. P1 Partition Deed is known to her. When the 1st plaintiff is an educated lady and when she was present, while giving instructions to their Advocate along with her mother, and having understood the contents of Ex. P1 and if plaintiffs intended to challenge the contents of Ex. P1, they would have sought for a relief to declare that deed dt. 18.1.2001 entered into between their mother and their father does not bind their share. Without seeking partition of the properties which had fallen to the share of the mother, they have cleverly filed a suit claiming share in plaint B schedule property only which is allotted to the defendant.

20. As rightly pointed out by Mr. Prasanna Kumar, out of 7 acres, 4 acres of land has been given to the plaintiffs and their mother and the remaining 3 acres of

plaint B schedule property has been given to the defendant in order to look after his aged mother - Sanjeevamma, who was suffering from serious ailments, like kidney problem, blood pressure, diabetes and in addition he was expected to discharge the loan borrowed by his late father Ramachandra Reddy. With so much of responsibility, no prudent man would accept 3 acres out of 7 acres.

21. Apart from this it is to be seen all the suit schedule properties are adjacent to each other and earlier they were all in the outskirts of Bangalore City. In view of the development of Bangalore city, these lands have also come in the vicinity of developed area and hence plaintiffs are lured to seek share contending that Ex. P1 cannot take away their share. If it is accepted for arguments sake that no share is allotted to plaintiffs under Ex. P1 and that their right to claim their share stands intact, we will have to see as to what would remain to the defendant after giving 2/3 share to the plaintiffs out of 3 acres he will get only one acre. We cannot forget that defendant was not only expected to take care of his mother who had serious ailments including kidney problem but also he was expected to discharge the debts raised by his late father. Smt. Meena is a best witness and she has been withheld from the purview of the court. She was the best witness, apart from the defendant, to speak about the circumstances under which Ex. P1 was executed. Hence non-examination of Smt. Meena will give rise to draw an adverse inference against the plaintiffs, u/s. 114(g) of Evidence Act. Apart from what has been allotted under Ex. P1 to plaintiffs and their mother is just and equitable.

22. After the perusal of Ex. P1 and appreciating the evidence of PW 1 and DW 1 and in the background of the pleadings of the parties and the circumstances under which Ex. P1 has come into existence, we are of the opinion, the Trial Court is justified in holding that Ex. P1 is an out and out partition though the plaintiffs name does figure in the Ex. P1 as sharers. By looking into the sum and substance of the entire document and the background of this case, we are of the view that they are adequately represented by their mother and the share is given to their mother on behalf of the plaintiffs also. In view of non-challenging Ex. P1, we are of the view the Trial Court is justified in holding that plaintiffs cannot maintain a suit for partition. Moreover, we are also of the opinion, when 4 acres of land has been given to the plaintiffs - daughters and 3 acres of land has been retained by the defendant - father not only to maintain aged mother who is also having a share in the property and also taking responsibilities of discharging debt borrowed by his late father Ramachandra Reddy, the allotment of share under Ex. P1 cannot be held to be unfair or un-equitable. On the contrary, lion share has been given to the plaintiffs and their mother. We are of the opinion that the learned judge has considered the oral and documentary evidence in right perspective.

23. In the circumstances, the points formulated by us are answered against the appellants holding that Ex. P1 is an out and out partition deed under which equitable share has been allotted to the plaintiffs and also securing the aspect of

maintenance of plaintiffs" mother. In the result, Appeal is dismissed. Parties to bear their costs. Impugned judgment and decree passed in O.S. No. 15082 of 2005 are affirmed.