

(2014) 02 KAR CK 0135

In the Karnataka High Court

Case No : Regular First Appeal No. 201 of 2012 (PAR-DB)

Radha

APPELLANT

Vs

Venkatappa

RESPONDENT

Date of Decision : 28-02-2014

Acts Referred:

Citation : (2015) 1 KarLJ 65 : (2015) 4 KCCR 3115

Hon'ble Judges : Ravi V. Malimath, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : M.D. Basavanna, Advocate for the Respondent

Judgement

K.L. Manjunath, J.—The unsuccessful plaintiff has filed this appeal being aggrieved by the dismissal of the suit filed by her claiming partition and separate possession in the plaint schedule property. The suit was instituted by her in O.S. No. 7768 of 2005 on the file of 1st Additional City Civil Judge, Bangalore, which suit came to be dismissed on 11-8-2011. The facts leading to this appeal are as hereunder:

"The plaintiff is the daughter of the 1st defendant. 2nd defendant and she are born to the first wife of the 1st defendant-Nanjamma. Defendants 3 and 4 are the children of 1st defendant born to his second wife Gowramma. According to her under registered partition deed dated 15-2-1973, the plaint schedule property had fallen to the share of the 1st defendant-Venkatappa and therefore the plaintiff and defendants are entitled to equal share. Accordingly, the suit came to be filed for partition and separate possession challenging the gift deed executed by the 1st defendant in favour of defendants 2 and 3."

2. The suit was contested by the 1st defendant. According to him, the plaint schedule property is not inherited by him as a coparcener and it is not ancestral property. The suit property was the self-acquired property of his late father Narasimahaiah. After the death of Narasimahaiah, all the children divided the property under registered deed dated 15-2-1973. Since the suit property and

other properties which were allotted to the other brothers were not the ancestral or joint family property of his father as his father was enjoying the same as an absolute owner and died intestate, the 1st defendant is entitled to part with the property in any manner he likes. According to him, the suit property has been gifted to the defendants 2 and 3 who are the children born to the 1st and 2nd wife of him respectively. In the circumstances, he requested the Court to dismiss the suit.

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

"(1) Whether the plaintiff proves that the suit schedule property is the ancestor property of the plaintiff and defendants?

(2) Whether the defendant 1 proves that the plaintiff is the lessee under the defendant 1 in respect of the "B" Schedule property rent at the rate of Rs. 1,500/2009 p.m.?

(3) Whether the defendant 1 proves that he executed a gift deed on 5-11-2001 in favour of his sons as contended in para 13 of the written statement?

(4) Whether he further proves that the marriage of the plaintiff was celebrated and solemnized on 1-7-1994 as such she is not entitled to the relief sought for?

(5) Whether the defendant 1 further proves that the suit is not valued properly and proper Court fee not paid?

(6) Whether the plaintiff entitled to the partition and separate possession of 1/5th share of the suit schedule properties?

(7) Whether the plaintiff is entitled for injunction sought for?

(8) What decree or order?"

4. To prove the respective contentions on behalf of the plaintiff, the plaintiff was examined as P.W. 1 and she relied upon Exs. P. 1 to P. 10. On behalf of the defendants, 3rd defendant-Narasimhaiah was examined as D.W. 1 and in addition to that his mother Gowramma was examined as D.W. 3. One Akkayamma was examined as D.W. 2. They relied upon Exs. D. 1 to D. 21. The Trial Court after considering the entire evidence held issues 1, 5 and 6 in negative, issues 2 to 4 in affirmative. Ultimately the suit came to be dismissed holding that the plaintiff has failed to prove that the suit property as the ancestral property of the plaintiff and defendants. Therefore, the present appeal is filed.

5. The learned Counsel for the appellant submits that since the suit property has fallen to the share of the 1st defendant under registered partition deed dated 15-2-1973 as her grandfather Narasimhaiah was the absolute owner of the suit property, the property in the hands of the 1st defendant has to be treated as joint family property and that the plaintiff is also having equal share along with the defendants and that the defendant 1 had no power to execute the gift deed in favour of defendants 2 and 3 excluding the plaintiff and 4th defendant. In the

circumstances, he requests the Court to allow the appeal and set aside the judgment and decree of the Trial Court.

6. After perusal of the entire judgment and considering the arguments advanced by the appellant's Counsel, we do not see any reasons to admit this appeal for the following reasons:

"Ex. D. 7 is the partition deed under which the property of the 1st defendant's father was divided after his death. In the recital of the partition deed it is made it very clear that the schedule property along with other properties were acquired by the grandfather of the appellant herein under registered document and it was the self-acquired property. It has also come in the evidence that Narasimhaiah, the grandfather of the appellant died intestate. When a person died intestate, his self-acquired property has to be divided equally among all his children as class I legal heirs under the Hindu Succession Act, 1956. Accordingly, the same has been divided equally under the registered partition deed dated 15-2-1973."

7. Therefore, the short question is if the 1st defendant has succeed to the self-acquired property of his father, whether the property in the hands of the 1st defendant has to be considered as an ancestral property or a coparcenary property to allot a share to the plaintiff.

8. Admittedly, the property in the hands of the 1st defendant has to be treated as the self-acquired property because he has succeeded to the property after the death of his father which was the self-acquired property of late Narasimhaiah. In the circumstances, we do not see any merits in this appeal. Accordingly, the appeal is dismissed.