

(2009) 08 KAR CK 0057
In the Karnataka High Court
Case No : Regular First Appeal No. 74 of 1998

Shivarudrappa Maharudrappa Kari and Others	APPELLANT
Vs	
Smt. Basavva and Others	RESPONDENT

Date of Decision : 19-08-2009

Acts Referred:

Citation : (2009) 6 KarLJ 37 : (2009) 5 KCCR 3964 : (2011) 6 RCR(Criminal) 690

Hon'ble Judges : N. Kumar, J;B. Sreenivase Gowda, J

Bench : Division Bench

Advocate : M.G. Naganuri, for the Appellant; I.G. Gachchinamath, for Respondent-1, for the Respondent

Judgement

N. Kumar, J.—This is defendants' appeal against the judgment and decree of the Trial Court decreeing the suit of the plaintiffs for partition and separate possession granting 1/6th share to the first plaintiff in Sy. No. 74/1 and 1/4 share to the plaintiffs in Sy. No. 74/2 and half share to the plaintiffs in house premises bearing No. MP 102 and dismissing the suit of the plaintiffs in respect of other items. For the purpose of convenience the parties are referred to as they are referred to in the original suit.

2. The subject-matter of the suit is three landed properties which are set out in "A" Schedule, two house properties which are set out in the "B" Schedule and three movable properties which are set out in "C" Schedule which are annexed to the plaint.

3. The case of the plaintiffs is one Maharudrappa was the propositor who had two sons viz., Basavantappa and Shivarudrappa. First plaintiff is the widow of Basavanthappa and all other plaintiffs are children of Basavanthappa and Basawa. The suit schedule properties are all joint Hindu family properties. There was no partition in the family. Therefore, the plaintiffs are entitled to half share in all the suit schedule properties. They came to know that the deceased Basavanthappa had executed a registered sale deed conveying his share in items

1 and 2 of "A" Schedule property in favour of the 1st defendant-Shivarudrappa on 9-4-1976. The said sale is without any legal necessity. The said sale is not binding on the plaintiffs and therefore, they sought for cancellation of the said sale deed. It is also contended that the deceased Basavanthappa was working at Kuwait. He was earning well and he used to send money to the 1st defendant, his younger brother and with the said money two trucks and a scooter which was purchased are clearly set out in the "C" Schedule. Therefore, they sought for partition and separate possession of their legitimate share viz., half shares in all the suit schedule properties. After service of summons, the defendants entered appearance. They filed a detailed written statement. They did not dispute the relationship between the parties. They denied having received any money from late Basavanthappa for purchase of "C" Schedule properties. It is their specific case that late Basavanthappa in the year 1976 sold his share in items 1 and 2 of the "A" Schedule property for a sum of Rs. 2,500/- under registered sale deed dated 9-4-1976 to meet the legal necessity. Thus he lost his right to the property and the defendant has acquired absolute title over the same. Mutation entries were made on the basis of the aforesaid sale deed and they are in peaceful possession and enjoyment of the suit schedule property. Insofar as the third item of the property is concerned, it was their specific case that it was purchased by his wife Channabasavva the 2nd defendant out of the money provided to her from her father. In other words, it was her streedhan property. Similarly item 2 of "B" Schedule property was also the streedhan of the 2nd defendant in which the plaintiffs have no right. They conceded that item 1 of the "B" Schedule property is joint family property in which the plaintiffs have half share. On the aforesaid pleading the Trial Court framed seven issues. In order to prove their case the 1st plaintiff was examined as P.W. 1. They examined a witness Basavantappa Shivalingappa Ullegaddi as P.W. 2, produced 13 documents which are marked as Exhibits P. 1 to P. 13. On behalf of the defendants no evidence was adduced. The Trial Court on appreciation of the oral and documentary evidence on record held that the plaintiffs have established that items 1 and 2 of the "A" Schedule and item 1 of "B" Schedule are joint family properties. It held item 3 of "A" Schedule and item 2 of "B" Schedule are the exclusive property of the 2nd defendant being her streedhan. It also held that the evidence on record is not sufficient to hold that the "C" Schedule property was purchased out of the funds provided by deceased Basavanthappa and thus the plaintiffs have no right over the property which is not a joint family property. It further held the sale deed executed by deceased Basavanthappa in favour of the 1st defendant on 9-4-1976 is not for legal necessity is not binding on the plaintiffs and therefore excluding the right of Basavanthappa in the said property, the property is available for the plaintiffs. Thus it proceeded to decree the suit of the plaintiffs only in respect of items 1 and 2 of the "A" Schedule and item 1 of the "B" Schedule. Insofar as the plaintiffs' suit against item 3 of "A" Schedule, item 2 of "B" Schedule and "C" Schedule was dismissed.

4. Aggrieved by the said judgment and decree of the Trial Court, the defendants

are in appeal. The learned Counsel for the appellants assailing the judgment and decree of the Trial Court contends that the first item of the "A" Schedule property was purchased in the year 1941 in the name of deceased Basavanthappa represented by his natural mother guardian Mallawa. Therefore, it is the joint family property in which both Basavanthappa and the 1st defendant had half share each. Similarly even in respect of item 2 of the "A" Schedule both deceased Basavanthappa and the 1st defendant had half share each. Basavanthappa when he was in need of funds sold his share in both these properties in favour of the 2nd defendant for a sum of Rs. 2,500/- under a registered sale deed dated 9-4-1976. Basavanthappa did not challenge the sale deed though he lived for 15 years after the execution of the sale deed. On the date of his death he had no right in the property. Therefore, none of the plaintiffs have inherited any right in the property. As such they had no right to challenge the aforesaid alienation. The Trial Court was not justified in holding that the sale is bad for want of legal necessity and that it is not binding on the plaintiffs. Therefore, he submits that the judgment and decree insofar as the said two items requires to be quashed.

5. Per contra learned Counsel for the respondents contended, admittedly items 1 and 2 are joint family properties. The deceased Basavanthappa was illiterate. He is said to have sold the property for a legal necessity when there existed no legal necessity. It was sold for a paltry consideration of Rs. 2,500/- when the value of each acre was Rs. 10,000/-. Therefore, at any rate the said sale does not bind the other members of the family. The Trial Court on proper appreciation of the entire evidence on record has rightly held that the said sale is not binding on the plaintiffs and they are entitled to their legitimate share in the suit schedule property and therefore submits no case for interference is made out.

6. Therefore, the point that arises for our consideration in this appeal is as under:

Whether the Trial Court was justified in holding that the sale deed dated 9-4-1976 executed by the deceased Basavanthappa in favour of the 2nd defendant is without legal necessity and is not binding on the plaintiffs?

7. The facts are not in dispute. The relationship between the parties is not in dispute. The first item of the property was purchased under registered sale deed in the year 1941 when the deceased Basavanthappa was a minor by his mother Mallawa in the name of Basavanthappa. Even the 2nd item of the property was purchased in the year 1960 in the name of Basavanthappa regarding half share and in the remaining half share in the name of Basavanthappa and the 1st defendant. It is not their case that there was a partition in the family. Therefore, both Basavanthappa and the 1st defendant had half share each in all the properties as it was a joint family property. Their mother had no right during the lifetime of these two sons. Basavanthappa during his lifetime executed a registered sale deed in favour of 2nd defendant on 9-4-1976 conveying his half share to her. By virtue of the aforesaid sale deed 2nd defendant became the absolute owner of half share, remaining half share being that of the 1st

defendant. Acting on the aforesaid sale deed mutation entries were made. Admittedly from the date of sale the property is in the possession of the defendants. The evidence on record discloses that Basavanthappa married the 1st plaintiff in the year 1975. Immediately after marriage he sold this property. No children were born to him on the date of sale as such the other plaintiffs acquired no right by birth. Thereafter he left India for Kuwait in search of employment. Basavanthappa lived for 15 years after the execution of the sale deed and he did not choose to challenge the same. In fact it is the case of the plaintiffs that Basavanthappa used to send money to the 1st defendant out of which the 1st defendant purchased "C" Schedule properties. However, to substantiate the said contention no evidence was adduced and the Trial Court rightly held the evidence on record does not establish the case of Basavanthappa sending money to the 1st defendant and the 1st defendant purchasing "C" Schedule properties out of the aforesaid money. Basavanthappa died in the year 1981. He had no subsisting interest in these two properties. Therefore on his death neither his widow the 1st plaintiff nor his children the other plaintiffs inherited any right. None of them had any right by birth and therefore, they have no right to challenge the alienation made by Basavanthappa during his lifetime. Even otherwise, the sale is for consideration of Rs. 2,500/-. It is recited in the sale deed that it was sold for legal necessity. It is also on record after the sale because of financial difficulties Basavanthappa went to Kuwait in search of employment. Therefore, these material clearly establishes that the sale is for a legal necessity and for valid consideration. In fact the averment made in the plaint makes it clear that plaintiffs were not aware of the sale deed at all. If they were not aware of the sale deed prior to filing of the suit, the case now sought to be made out that Basavanthappa was a simpleton who had no knowledge and there was no legal necessity is without any substance. In that view of the matter, the Trial Court committed serious error in holding that the sale deed is executed without a legal necessity, as if they have subsisting right over the property on the date of sale or on the date of death of Basavanthappa. The finding recorded by the Court below that both these properties are the joint family property is though correct, but its finding that the sale deed executed is invalid is erroneous and requires to be set aside.

8. Insofar as item 3 of the "A" Schedule and item 2 of "B" Schedule, the Trial Court has rightly held that it is the streedhan belonging exclusively to the 2nd defendant in which the plaintiffs have no right. As far as item 1 is concerned, it is joint family property in which the plaintiffs have half share. Insofar as "C" Schedule is concerned, evidence on record clearly establishes it is not a joint family property as rightly held by the Trial Court. In that view of the matter, to that extent the judgment and decree of the Trial Court requires modification. Hence, we pass the following order:

(a) Appeal is allowed in part.

(b) The judgment and decree of the Trial Court granting shares to plaintiffs in

items 1 and 2 of "A" Schedule property is hereby set aside.

(c) The suit of the plaintiffs is decreed insofar as item 1 of the "B" Schedule property is concerned is affirmed.

(d) In respect of other items, the plaintiffs' suit stands dismissed.

(e) Parties to bear their own costs.