

(2013) 11 KAR CK 0176

In the Karnataka High Court

Case No : Regular First Appeal No. 1730 of 2007 (PAR-DB)

S.M. Narasimha Murthy and S.M. Shivaram

APPELLANT

Vs

S.N. Mariyappa and Others

RESPONDENT

Date of Decision : 28-11-2013

Acts Referred:

Citation : (2013) 11 KAR CK 0176

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

Bench : Division Bench

Advocate : Puttige R. Ramesh, for A1 and Sri Ajit Kalyan, for A2, for the Appellant; Pradeep Naik, for R1 and R2 and Sri S.P. Krishna, for R3 and R4, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—The legality and correctness of the Judgment and decree passed by the Principal City Civil Judge, Bangalore on 10.4.2007 in O.S. No. 1072/2001 is called in question in this appeal. The appellants were plaintiffs before the Trial Court. The suit was filed by them claiming partition and separate possession of ? share in the schedule property. The suit schedule property is a residential house bearing No. 675 situated at 5th Cross, 2nd Block, Banashankari I Stage, Bangalore, measuring east to west 40 feet and north to south 70 feet.

2. The admitted facts are:

The plaintiffs 1 and 2 and defendant-2 are sons of defendant-1. Defendants-3 and 4 are the daughters of the 1st defendant. According to the plaint averments, plaintiffs and defendants-1 to 4 are the members of the joint family and they constitute an undivided Hindu joint family. The site in question was purchased by the defendant out of the income from the ancestral property situated at Sanaba village in Chinakurali Holbi, Pandavapura Taluk. According to the plaint averments, the 1st appellant-plaintiff has been working as a Government servant and from out of his earning constructed the house on the site and later he has

also spent lot of money for the improvement and development of the property. It is also the case of the plaintiff that the 1st plaintiff celebrated the marriages of 3rd and 4th defendant. According to him, the 1st defendant is the kartha of the joint family since the site is purchased out of the income from the ancestral property and out of the earnings of the 1st plaintiff, the house is constructed and all of them are entitled to equal share. It is also the case of the plaintiffs that a suit was filed by the 1st defendant for partition and separate possession in O.S. No. 225/1990 before the Civil Judge (Jr. Dn.), Srirangapatna which came to be decreed on 29.6.1996 and that the 1st plaintiff and 2nd defendant have filed an appeal in R.A. No. 58/1996 before the Civil Judge, (Sr. Dn.) Srirangapatna and the said appeal is pending.

3. It is also their case that defendants-1 and 2 initially had agreed to divide the schedule property agreeing to give the share of the plaintiffs. Later they have turned hostile. In the circumstances, suit is filed. The defendants-1 to 3 filed a joint written statement. They have admitted the relationship. But they have denied all the allegations made in the plaint. According to them, the 1st defendant was working as Dalayat in the Revenue Department of the State of Karnataka and was allotted a site by then City Improvement Trust, Bangalore on 11.4.1968. Out of savings of his salary, he paid the entire amount. Thereafter he put up a construction by raising loan from the Government and it was contended by them that plaint schedule property is the self-acquired property of the 1st defendant and that the plaintiffs have no right over the same.

4. The defendants also admitted the filing of a suit for partition and separate possession in C.S. No. 225/1990 and that the appeal filed pending in R.A. No. 58/96. It is also contended by them that 1st defendant is not in possession of agricultural lands and he was not getting income and he did not acquire the property out of income from the ancestral property and even for construction of the building, he raised the loan from the Government. It was also contended by the defendants that the plaintiff being in unauthorized occupation of the building trying to dispossess the defendant-1 from the premises and that on the complaint lodged by the 1st defendant, a charge sheet is also filed against plaintiff-1 before the Addl. Chief Metropolitan Court, Bangalore and the same is pending.

5. Defendant-4 filed a separate written statement. She tried to support the case of the plaintiffs. She also claims a separate share. It was contended by her that she has been working as a Typist since 1989 and since then she is handing over all her salary earnings to the 1st defendant.

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

- 1) Do plaintiffs 1 and 2 prove that the suit schedule property is the joint family property as alleged?
- 2) Do defendant Nos. 1 to 3 prove that the suit schedule property is the self

acquired property defendant No. 1?

3) Does defendant No. 4 prove that the suit is bad for non-joinder of plaintiffs mother Smt. Lingamma?

4) Does defendant No. 4 prove that she is entitled to 1/6th share as alleged in para-10 of her written statement?

5) As plaintiff Nos. 1 and 2 entitled to relief of permanent injunction?

6) What Order or decree?

7. To prove their respective contentions, 1st plaintiff has got himself examined as PW 1. He has relied upon Exs. P1 to 40. 1st defendant was examined as DW 1, 4th defendant-Jayalakshmi was examined as DW 2. The defendants relied upon Ex. D1 to D26. The Trial Court after examining the entire case held issues-1, 3 to 6 in negative and issue-2 in affirmative. The suit of the plaintiff came to be dismissed holding that the schedule property is the self-acquired property of the 1st defendant.

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

9. The contentions of the appellants counsel, Mr. Puttige R. Ramesh are as hereunder:

According to him, the 1st plaintiff has contributed money for construction of the building since he is a Government employee. According to him, the building was constructed in 1981. To acquire the site, the income from the ancestral property has been utilized by the 1st defendant. To show that the 1st defendant was getting income, he has relied upon Ex. P10 - a Memorandum undertaking entered into between 1st defendant and his sister in regard to the management of the agricultural lands situated at Sanaba village in Pandavapura Taluk. According to him, the appreciation of the evidence by the Trial Court is perverse and liable to be set aside by this court.

10. Pet contra, Mr. Naik, submits that none of the grounds urged by the appellants are tenable because the 1st respondent was a Government employee. The site was allotted to him as he was a Government servant in 1968 for a consideration of Rs. 4000/- and the same was paid out of the savings of the 1st defendant on installment basis. According to him, the defendant-1 was not getting any income from the agricultural lands because the lands were cultivated by the sister of the 1st defendant, who had even filed an application in Form-7 before the Land Tribunal, Pandavapura claiming as a tenant of the land. He further contends that in the year 1981 when the building was constructed, none of the plaintiffs or defendant-4 were employed and nothing was contributed for construction of the building. According to him, by raising loan from the State of Karnataka, the 1st defendant has constructed the building. Therefore, he requests the court to dismiss the appeal.

11. Having heard the counsel for the parties, we have to consider the following two points in this appeal:

1) Whether the plaintiffs-appellants have proved that the site in question was acquired out of the income from the ancestral land in the name of the 1st defendant?

2) Whether the plaintiffs have contributed for construction of the building in the year 1981?

3) Whether the Judgment and decree of the Trial court are required to be set aside or modified or confirmed?

12. So far as the 1st point is concerned, admittedly the site was allotted to the 1st defendant by the CITB considering that he was a Govt. servant for a sum of Rs. 4,000/-. He has paid the sale consideration on installment basis as the same was allotted to him on lease cum-sale basis. There is nothing on record to show that the 1st defendant was getting agricultural income from Sanaba village because Ex. P10 relied upon by the plaintiff shows that all the lands were cultivated by his sister and Ex. D10 is of the year 1981, wherein it is agreed between the defendant and his sister that from 1981 onwards a sum of Rs. 2000/- p.a. has to be paid to the 1st defendant. It is also not in dispute that the sister of the 1st defendant had claimed tenancy in respect of all the lands and that she was cultivating the same. The appellants have not disputed this fact. When they have not disputed the same, the question of 1st defendant purchasing the site out of the income derived from the ancestral property does not arise at all. Accordingly, 1st point is held against the appellants.

13. In regard to the 2nd point, admittedly the suit is filed in 2001. When the suit was filed, the 1st plaintiff was aged about 40 years and 2nd plaintiff was aged about 28 years. The building was completed in the year 1981. If we take the age of the plaintiffs when the building was constructed, 1st appellant was 20 years old boy, the 2nd appellant was 8 years old boy. The appellants have not let in evidence to show at the age of 20 years, the 1st plaintiff was gainfully employed and has contributed money to construct the building. On the contrary evidence discloses that the 1st defendant had borrowed loan from the Government and constructed the building. Therefore, the contention that building was constructed out of their contribution is nothing but a pigment of imagination and no court can accept the same.

14. In view of our finding that the plaintiffs have failed to prove that they have contributed for purchasing the site and construction of the building, the question of claiming the suit property as a joint family does not arise at all.

15. We are of the view that the Trial Court is justified in holding the schedule property as the self-acquired property of the 1st defendant. In the result, the appeal is dismissed. Parties to bear their costs.