

(2010) 11 KAR CK 0119

In the Karnataka High Court

Case No : Regular Second Appeal 1855 of 2005

Smt. Imambi and Others

APPELLANT

Vs

Smt. Khatumbi

RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Citation : (2010) 11 KAR CK 0119

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : Mallikarjun C. Basareddy, for the Appellant; K.N. Mohan, for the Respondent

Final Decision : Dismissed

Judgement

Huluvadi G. Ramesh, J.—Delay of four years in seeking for recalling the order of dismissal for non-prosecution is recalled. Matter is taken on Board.

2. Appeal is against the order for the Addl. District Judge, Chikmagalur in RA 4/2001 on 30.6.2005. Appellants herein are the Defendants and the Respondent is the Plaintiff before the trial court in a suit filed for declaration and partition. The property in Sy. Nos. 30 and 31/2 totally measuring about 4.22 acres situate at Ramapura Village, Tarikere Taluk, is said to have been purchased during November 1977 and it is a joint purchase. According to the Plaintiff, agricultural operation was jointly carried out and they used to share the crops. Thereafter, according to the Plaintiff, after the death of Dastgir Sab, after 4 or 5 years, the Defendants have changed their attitude and also there used to be frequent quarrel between the Plaintiff and the Defendants. Further, the Defendants taking advantage of the fact that the Plaintiff and her husband were residing at Bhadravathi, refused even to part with the crops which were grown. After issuance of notice, suit was filed for partition and declaration of the share. The suit was contested contending that there is an oral gift made by the Plaintiff and thereafter, all the records are entered in the name of the Defendants. The trial court, based on the contention of the parties, has raised as many as six issues

regarding entitlement and mesne profits and also on the aspect whether there is a gift deed and a declaration made during May 1980 in favour of the Defendants by the Plaintiff and also whether the Plaintiff is entitled for half share in the property. Initially the trial court decreed the suit. Thereafter, the matter was remanded back in the appeal preferred by the Defendants. However, on dismissal of the suit, the Plaintiff approached the District Court in RA 4/2001. The District Judge has partly decreed the suit in favour of the Plaintiff stating that Plaintiff is entitled for half share in the suit schedule agricultural lands against which, Defendants are before this Court.

3. Heard the counsel representing the parties, however, condoning the lapses by the Appellant in not being diligent in prosecuting the matter due to the fault of the advocate.

4. As is noticed, the contention of the Plaintiff is that it is a joint purchase and being enjoyed by the joint family, both the parties being relatives i.e., sister in law and brother in law. Thereafter, the Defendants being the children of Dastgir Sab who is the brother in law of the Plaintiff, have taken a different stand and started disputing the right and agitated the matter and also the Defendants have set up a claim that there was an oral gift in their favour as such, title is conferred on them and Plaintiff is not entitled for any share and also tried to produce certain documents and evidence was let in. The lower appellate court has noted that the property was jointly purchased by the Plaintiff and the deceased Dastgir Sab, is not in dispute. Noting the contention of the Defendants that there was an oral gift in favour of the Defendants on 9.5.1980 by the Plaintiff, referring to the RTC extract, the appellate court has come to the conclusion that the names of Dastgir Sab and Plaintiff Khatumbi were mentioned as owners as well as possessors. Taking into consideration Ex.P3 - Rasidhi Patta and Ex.P8 and P9 - index of land, and also the revenue receipts since 1986-87 produced depicts the joint names, thus, taking into consideration the abundant evidence produced, the lower appellate court has held that that it is not a case of gift rather, it is a case of joint purchase and possession being continued based on revenue records as well as other documents. The contention upon which the Defendants tried to rely upon that there is a oral gift and also the evidence let in was dislodged by the lower appellate court.

5. The specific ground on which the lower appellate court has rejected the contention of the Defendants is that, if at all as contended by the Defendants the gift was made in the year 1980, how the records stood in the name of the Plaintiff as well as in the name of Defendant even after 1986-87 and also, no effort made by the Defendants to get their names mutated itself shows that there was no document and the oral gift is not at all proved. The lower appellate court has also noted the several admissions on the part of the Defendant to the effect that he does not know the date on which he was gifted and also the suggestion that the advocate himself has concocted the story of gift and there is no such gift and denial of the said suggestion. Further, the appellate court taking

into consideration various other attending circumstances and dilating on the ingredients of Gift, held that the ingredients of a Gift are not proved and on the contrary, all the documents which are available disprove the theory of the Defendants and accordingly, held that it is a joint purchase jointly held by the Plaintiff and Defendants, allowed the appeal and set aside the order of the trial court dismissing the suit.

6. Having heard the counsel for the respective parties and also on going through the material evidence on record and the reasoning given by the appellate court, I do not find any ground much less substantial question of law would arise for consideration to set aside the well considered order passed by the lower appellate court.

Accordingly, appeal is dismissed.