

(2014) 01 KAR CK 0236

In the Karnataka High Court

Case No : Regular Second Appeal No. 490 of 2009

Smt. Kamma and Sri. Kempaiah

APPELLANT

Vs

Smt. Siddamma and Others

RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:

Hindu Succession Act, 1956 — Section 6 6(1)

Citation : (2014) 01 KAR CK 0236

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : R.B. Sadashivappa, for Sri. J.C. Kumar and M.S. Revanna, for the Appellant; M. Shivaprakash, for R1, Sri. V.T. Kumar, for R6 and Served, Unrepresented for R-2 to 5, for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—Defendants 2 and 3 in O.S. 40/1996 on the file of the I Addl. Civil Judge (Sr. Dn.), Bangalore Rural District, Bangalore aggrieved by the Judgment and Decree dated 4.9.2007 declaring that the 1st respondent is entitled to 1/4th share in the suit schedule properties, preferred R.A. No. 134/2007 before the Prl. District and Sessions Judge, Bangalore Rural District,. Bangalore, which, when dismissed by Judgment and decree dated 20.1.2009 have presented this second appeal. Respondents instituted O.S. 40/1996 for declaration, partition and separate possession of certain immovable properties arraigning the 1st and 2nd appellants as defendants 2 and 3, while respondents 2 to 5 as defendant No. 1, Defendant No. 4 and Defendants No. 4(a) and (b), respectively. Plaintiff asserted that the 1st defendant is her sibling and children of one Doddamuniyappa, while defendants 2, 3 and 4 are the legal representatives of one Chikkamuniyappa, who were brothers and sons of one Byranna.

2. Appellants arraigned as defendants 2 and 3 opposed the suit asserting that there was an oral partition as between Chikkamuniyappa and late

Doddamuniyappa, following which 1st defendant executed a sale deed Ex. D1, while plaintiff and 1st defendant jointly executed a sale deed Ex D2 conveying certain immovable properties.

3. The trial Court declined to accept the plea of oral partition advanced by the defendants and decreed the suit declaring that the plaintiff is entitled to 1/4th share in the suit schedule properties, which the Lower Appellate Court confirmed by dismissing the appeal.

4. It is the submission of Sri. R.B. Sadashivappa, learned counsel for the appellants that although the explanation to Section 6 of the Hindu Succession Act, 1956 consequent upon the Amendment Act 2005, the word "partition" is explained to mean any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 or partition effected by a decree of Court, nevertheless the oral partition having been effected much prior to the coming into force of Amendment Act 2005, parties are bound by the said oral partition and not governed by the Amendment Act.

5. Per contra learned counsel for the contesting plaintiff-1st respondent submits that the provisions of Section 6 as amended by Act 2005 having explicitly set out that the female heir is entitled to a share in the ancestral property, unless there is a "partition" explained under the proviso to Section 6, the plaintiffs right to partition cannot be denied.

6. There being no dispute that the suit schedule properties are ancestral at the hands of the plaintiff and the defendants, regard being had to the fact that there was a common propositus by name Byranna, who had two children by name Doddamuniyappa and Chikkamuniyappa and that the parties represent those two branches, the explanation to word "partition" in the proviso to Section 6(1) applies. Parties having litigated on a specific plea of oral partition as between Doddamuniyappa and Chikkamuniyappa, in other words there was being no Deed of Partition duly registered under the Registration Act prior to 20.12.2004 or a decree of the Court, plaintiff cannot be non suited in the matter of claim of her 1/4th share in the suit schedule properties. The observation of the Apex Court in Ganduri Koteshwaramma and Another Vs. Chakiri Yanadi and Another, in the circumstances is apposite:--

13. The legal position is settled that partition of a joint Hindu family can be effected by various modes, inter alia, two of these modes are (one) by a registered instrument of a partition and (two) by a decree of the court. In the present case, admittedly, the partition has not been effected before 20-12-2004 either by a registered instrument of partition or by a decree of the court. The only stage that has reached in the suit for partition filed by Respondent 1 is the determination of shares vide preliminary decree dated 19-3-1999 which came to be amended on 27-9-2003 and the receipt of the report of the Commissioner.

7. Sri. R.B. Sadashivappa, learned counsel for the appellant submits that certain ancestral properties which belong to the joint family are not listed in the

schedule to the plaint and that appellants be permitted to add those properties in the Final Decree Proceedings. There is no reason why the appellant cannot seek leave of the Court in the Final Decree Proceedings to include all such properties which form joint family ancestral properties for a comprehensive partition. No substantial question of law arises for consideration, hence the appeal is dismissed.