

(2001) 07 KAR CK 0074

In the Karnataka High Court

Case No : Regular First Appeal No. 822 of 2000

Smt. Kamala and Others

APPELLANT

Vs

Smt. Lingamma Hengsu and Others

RESPONDENT

Date of Decision : 23-07-2001

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 24

Citation : (2002) 2 KarLJ 456

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : S.K. Venkatareddy, for the Appellant; Pundikai Ishwara Bhat, for the Respondent

Judgement

K. Sreedhar Rao, J.—The case was posted at the admission stage. Paper books were already filed. At the request of the Counsel for the appellants and the respondents, heard on merits for final disposal.

2. The appeal is filed against the judgment and decree passed in O.S. No. 44 of 1993 on the file of the II Additional Civil Judge (Senior Division), Mangalore. The appellants are the defendants in the suit. The respondents/plaintiffs filed the suit for partition and possession of their share in the suit schedule property consisting of agricultural lands situate in Kula Village of Buntawal Taluk. One Annappa Gowda, who is the propositor was the Chalgeni tenant of the suit schedule lands. He died in the year 1968 leaving behind the plaintiffs, who are the daughters, widow Thimmakka and son by name Monappa. The appellants are the children of deceased Monappa. Thimmakka died in the year 1981. After passing of the Karnataka Land Reforms Amended Act, 1974, an application was filed by Thimmakka for grant of occupancy rights in respect of the suit schedule lands and the same was granted in her favour. The plaintiffs claim share in the said lands, contending that the tenancy was a joint tenancy and they have a right of inheritance in the lands in question after the death of their father Annappa Gowda. The Trial Court decreed the suit of the plaintiffs, granting 1/6th share

each. Being aggrieved by the judgment and decree, the present appeal is filed by the defendants.

3. The relationship between the parties is not in dispute. The contention of the plaintiffs that they are entitled to share in the properties by virtue of provisions contained in Section 24 of the Karnataka Land Reforms Act as amended in the year 1974. The provision reads as follows:

"24. Rights of tenant to be heritable.--Where a tenant dies, the landlord shall be deemed to have continued the tenancy to the heirs of such tenant on the same terms and conditions on which such tenant was holding at the time of his death".

Per contra, the Counsel for the appellants relied on the provision of Section 24 of the Karnataka Land Reforms Act, 1961 which reads as follows:

"24. Rights of tenants to be heritable.--(1) Where a tenant dies, the landlord shall be deemed to have continued the tenancy--

(a) if such tenant was a member of an undivided family, to the surviving members of the said family, and

(b) if such tenant was not a member of an undivided Hindu family, to his heirs, on the same terms and conditions on which such tenant was holding, at the time of his death.

(2) The interest of a permanent tenant in his holding shall on his death pass by inheritance or survivorship in accordance with his personal law".

Monappa Gowda died in the year 1968. It is the contention of the appellants that on the death of Monappa Gowda, the tenancy rights held by Monappa Gowda were devolved as heirs u/s 24 of the Act.

4. The Counsel for the respondents, on the other hand, strenuously contended that the inheritance shall be in accordance with the amended provisions of Section 24 of the Karnataka Land Reforms Act who are all the heirs of Annappa Gowda would be entitled to equal share. The Counsel for the respondents also relied on the ruling of the Division Bench of this Court in Sha Chunnilal Sohanraj v. T. Gurushantappa 1972(1) Mys. L.J. 327, wherein it is held thus:

"Where the amending Act states that the existing section is substituted by a new section, the inference is that the legislature intended that the substituted provision should be deemed to be part of the Act from the very inception.

Thus, where eviction proceedings were pending when Section 21(2) of the Rent Control Act was substituted by Mysore Act 14 of 1969, and came into force, it is amended provision that has to be applied".

In view of the law laid down, it was argued that the amendment to Section 24 in the year 1974 was brought by way of substitution. Therefore, the amendment relates back to the date of Act and as such, the inheritance has to follow in accordance with amended Section 24 of the Act and not in accordance with the

provisions of 1961 Act.

5. After going through the provisions and the decision cited at the Bar, I am unable to agree with the contentions of the respondents although the amendment was by way of substitution and it may relate back to the date of Act, however after the death of Annappa Gowda in 1968, the succession was already open and by virtue of the provisions of Section 24, the succession had to take place and the parties were invested with the rights in the property. The legal fiction introduced by amendment in 1974 by way of substitution cannot have the effect of divesting the rights of the heirs who have already succeeded to the estate as per the provisions of Section 24 of 1961 Act. Therefore, only the family members named u/s 24 of 1961 Act alone would be entitled to inheritance by way of succession after the death of Annappa Gowda.

6. It is the contention of the appellants that four of the daughters were already married, only one unmarried daughter, one son and the mother were the heirs. On the other hand, the Counsel for the respondents strenuously contended that only two daughters are married and three were unmarried and as such, three unmarried daughters, a son and widow had a right in the properties. A reference was made to the statement made in para of the evidence, wherein the plaintiffs have clearly stated that only two of the daughters were already married and after the death of Monappa Gowda, a year later they were married on the same day and in evidence of P.W. 1 it is stated that the mother alone celebrated the marriage of plaintiffs 3 and 4. In the cross-examination also, the same thing is reiterated by P.W. 1.

7. The Counsel for the respondent, on the other hand, relied on the evidence of D.W. 1. At the time of giving evidence, he was aged only 35 years and he states that the first plaintiff was married about 50 years ago, the second plaintiff was married 30 years ago and the 3rd and 4th plaintiffs were married 30 years ago. At the same time, plaintiff 5 was married 20 years ago. The evidence was recorded on 16-2-2000. Based on the evidence of D.W. 1, the counsel for the appellants contended that it is only the 5th plaintiff who was married after the death of Annappa Gowda and all the other plaintiffs were married during his lifetime. However, I am unable to agree with the contention of the counsel for the appellants. There is a clear averment in the plaint regarding the period of marriage of 3rd and 4th plaintiffs as being subsequent to the death of Monappa Gowda. In the written statement, there is no categorical denial of this fact. Besides, the evidence of P.W. 1 also reiterates the fact that the plaintiffs 3 and 4 are married subsequent to the death of Monappa Gowda which in fact is subsequent to the death of Annappa Gowda. The date of marriage of the 5th plaintiff is not disputed. Therefore, on record, the evidence is placed to show that three of the unmarried daughters survived Annappa Gowda at the time of his death. Besides, he left behind a son. In that view of the matter, three daughters, widow and a son each would get 1/5th share each in the property. So far as the plaintiffs 1 and 2 are concerned, they would be entitled to 1/30th share each in

the property as they would be entitled to inherit the share of their deceased mother. The plaintiffs 3 and 5 would be entitled to 7/30th share in each of the suit property. So also the defendants jointly would be entitled to 7/30th share. Accordingly, the judgment and decree of the Trial Court is modified as indicated above and a preliminary decree to be drawn accordingly.