

(2013) 04 KAR CK 0001

In the Karnataka High Court

Case No : Regular First Appeal No. 249 of 2010

Smt. Lakshmamma

APPELLANT

Vs

Sri A. Puttaswamy and Others

RESPONDENT

Date of Decision : 17-04-2013

Acts Referred:

Citation : (2013) 3 KarLJ 443

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : V.B. Shivakumar, for the Appellant; Gangadhara Aithal, Advocate for Respondent No. 1 and Shri D. Nagaraj, Advocate for Respondent Nos. 3 to 8 (a and b), for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—Heard the learned counsel for the parties. The parties are referred to by their rank before the trial court for the sake of convenience.

2. The first respondent was the plaintiff. The suit was for partition and separate possession of the suit property. It was the case of the plaintiff that he and the defendants constituted a Joint Hindu family. It was asserted that Appaji, the father of the plaintiff, had purchased the suit property as a house site, as on 27.10.1958. Appaji is said to have died in the year 1959.

Defendant no. 1, Lakkamma @ Lakshmamma, was the mother of the plaintiff Defendant no. 2, Gowramma and Defendant no. 8, Lakshmamma, were the sisters of the plaintiff. Defendant 3, Kenchamma was the widowed sister-in-law (wife of late Krishnappa who died in the year 1988). Defendants 4 and 5 were the son and daughter, respectively, of Kenchamma. Defendant no. 6, Sudhakara was the brother of the plaintiff. Defendants 7(a) and 7(b) were the widow and son of Ramu, a "deceased brother of the plaintiff, who died during the pendency of the suit.

It was claimed that after the death of Appaji, the mother of the plaintiff and his

brother Krishnappa were managing the family. Kenchamma, was unable to get along with the mother of the plaintiff. Krishnappa and Kenchamma therefore left the joint family and lived separately from the year 1966.

The plaintiff claimed that the burden of maintaining the family fell on him and the plaintiff, out of his earnings as a mason and from vending milk was able to take care of the family and also managed to construct seven small tenements on the site acquired by his father, which is defined as the suit schedule property. The tenements were let out and the mother of the plaintiff was collecting the rents and utilizing the same for maintenance of the family.

Though the plaintiff had married in the year 1970 and also had to set up a separate house on account of the mother of the plaintiff not being able to tolerate the presence of the wife of the plaintiff, he claimed that he continued to provide for the family and maintained it.

It was claimed that till the year 1994, this state of affairs continued. The plaintiff performed the marriage of his daughter in that year. The plaintiff had sought financial support from his mother to perform the marriage, from out of savings and the rental income. Though she had assured him of such aid, she is said to have resiled later, allegedly at the instance of Ramu, the brother of the plaintiff, who was alive at that point of time. This led to a rift between the plaintiff and his family. The plaintiff realizing that he would certainly be denied of a share in the family property was constrained to file the suit.

The suit was initially decreed without contest, as on 28.6.2003. It was subsequently restored to file at the instance of Defendant no. 8 and others and was contested by Defendant no. 1, the mother of the plaintiff and Defendant no. 8, a sister of the plaintiff. There was dispute about the claim of defendants 7(a) and 7(b) as the legal representatives of Ramu, the deceased brother of the plaintiff.

Defendant no. 1 died during the pendency of the suit. However, her stand was that the suit property though purchased as a vacant site, in the name of her husband, it was actually funded by her, by selling her jewellery and the savings from the milk vending business that she was carrying on. It was hence claimed as her self-acquired property. It was also asserted that it was out of her earnings that construction was put up over the property. She also claimed that she had generously contributed substantial sums of money to the plaintiff, when he secured a job in BEML, for his son's medical expenses, when the plaintiff purchased a site and constructed a house at No. 1363, Indiranagar, Bangalore. Defendant no. 1 hence claimed that if the plaintiff seeks to claim the suit property as joint family property, the house afore said should also be included as joint family property.

Defendant no. 8 had filed her written statement to contend that after the death of Appaji the Khatha in respect of the suit property had been transferred in the first defendant, in the year 1963. Defendant no. 1 had sold the property as on

10.2.1965, acting for herself and on behalf of her minor children, for legal necessity, in favour of one Chennaveeramma. This was supplemented by Krishnappa, who was by then living separately with his wife, by executing a release deed in respect of his right to the property, by a registered deed dated 16.6.1965, in favour of the said Chennaveeramma on receiving a sum of Rs. 1,000/- in consideration thereof. It was also stated that Chennaveeramma had simultaneously executed an agreement to reconvey the said property to the first defendant, if the said defendant exercised an option to purchase the same within three years from that date. It was claimed that the same was extended subsequently, by a further period of two years and finally, Chennaveeramma had executed a registered release deed dated 7.2.1968 in favour of the first defendant and delivered possession to her. It was contended that the suit property thus became the absolute property of defendant no. 1. The same had then been bequeathed in favour of Defendant no. 8 and Ramu, under a will dated 26.8.1994. It was claimed that the first defendant having died in the year 2004 and Ramu having died earlier, in the year 1995, she claimed to succeed to the property under the will absolutely. It was claimed that Defendants 7(a) & (b) were not the legal representatives of deceased Ramu, as according to Defendant no. 8, he had not married during his life time. Therefore it was contended that they were impostors planted by the plaintiff as such. Further that Krishnappa had separated from the family much earlier and hence his legal representatives were not entitled to any share.

3. The trial court framed the following issues on the basis of the above pleadings:-

1. Whether the plaintiff proves that from out of his own earnings, seven small residential tenements were built in the site purchased by his deceased father Appaji and as such, it became the joint family property of the parties?
2. Whether 1st defendant proves that site no. 1363 situated at Indiranagar is also the joint family property of the parties?
3. Further, 1st defendant proves that the suit schedule property is her self acquired property?
4. Whether the suit is liable to be dismissed in view of not including the property No. 1363 situated at Indiranagar?
5. Whether the plaintiff is entitled for 7/24th share and for possession in suit schedule property?

The trial court has answered Issue no. 1 and additional issue no. 1 in the affirmative and has answered Issues no. 2 to 4 and additional Issues no. 2 to 5 in the negative and has decreed the suit holding that the plaintiff is entitled to 1/5th share in the suit property. That defendants no. 2 and 8 are entitled to 1/5th Share, Defendants 3 to 6 being entitled to 1/5th share, as well as Defendants 7(a) and (b) also being entitled to 1/5th share.

It is that which is under challenge in this appeal.

4. The learned counsel for the appellant contends that the court below had failed to consider the primary question as to the nature of the property, having due regard to the established sequence of events, in so far as the suit property having been sold by defendant no. 1 in favour of Channaveeramma and later having acquired it as her absolute property. In that, even if it could be said that the claim of defendant no. 1, that Appaji had originally acquired it in his name though the funds for the purchase had been provided by defendant no. 1 and hence it was her absolute property from inception, could not be sustained, the subsequent unconditional acquisition under the registered release deed executed by Channaveeramma in favour of defendant no. 1 conferred on her absolute title to the property and therefore the subsequent bequest in favour of defendant no. 8 and Ramu, by defendant no. 1 was not impeachable.

It is contended that the trial court in its laboured reasoning having assumed that the sale deed in favour of Channaveeramma, Ex-D3, was merely meant to be security for a loan provided to Defendant no. 1 for the benefit of her minor children and herself, is based on a surmise and is not with reference to any apparent material evidence. It is also pointed out that the purchaser Channaveeramma had in order to ensure that there should be no defect to her title had also obtained a registered Release deed from Krishnappa, the major son of the first defendant, who was not a party to the sale deed, Ex-D3. The consideration under the Release Deed was independent of any loan transaction, which is totally inconsistent with the theory propounded by the trial court. It is also pointed out that if ultimately the property was reconveyed on the footing that defendant no. 1 had reimbursed the purported loan amount, this ought to have been reflected as corresponding to the amount shown as consideration for the Release Deed executed in favour of the first defendant by Channaveeramma. Though no such circumstance was demonstrated the court below having readily accepted such a possibility even if it was plausible, in the absence of cogent evidence, has resulted in a travesty of justice.

5. The learned counsel for the appellant has placed reliance on the following authorities to support the case of the appellant:-

1. Kuppuswamy Chettiar Vs. A.S.P.A. Arumugam Chettiar and Another,
2. Ranganayakamma and another vs. K.S. Prakash (D) by legal representatives and others, 2008 AIR SCW 6476,
3. Gangadharan Vs. Janardhana Mallan and others,
4. Sri Ramakrishna Mutt Rep. by Manager Vs. M. Maheswaran and Others,
5. Terene Traders vs. Rameshchandra Jamnadas and Company and another, AIR 1987 SC 1492.
6. On the other hand, the learned counsel for the respondents seek to justify the

judgment of the trial court. In the light of the above, the claim of the mother of the plaintiff that the suit property though initially purchased in the name of Appaji, was actually funded by her and therefore was always her absolute property has been negated by the trial court. In this regard the trial court has rightly found that there was no evidence produced on behalf of defendant no. 1 or defendant no. 8 to indicate that defendant no. 1 had any independent source of income or that she had sold her jewellery to fund the purchase of the suit property. On the other hand it was established that the plaintiff was working as a mason, that he was engaged in milk vending and that he was also employed with BEML. Hence his claim of having constructed the tenements and having purchased another site over which he had constructed a house has been accepted by the trial court. Further, the sale deed Ex-D3, on the face of it, did not indicate that the first defendant had contributed the sale consideration or that the property was being purchased for her benefit. Secondly, it is also found that the recitals in the sale deed executed by the first defendant in favour of Channaveeramma, indicated that the property was the self acquired property of Appaji.

The trial court has also held that the execution of a release deed for due consideration by Krishnappa, to fortify the sale transaction by the first defendant in favour of Channaveeramma - also established that it was only on account of a pre-existing right in Krishnappa.. that such a transaction was found warranted and hence the exclusive and absolute ownership claimed by defendant no. 1 could not be sustained. The above reasoning of the trial court is fully supported by the material on record and this court affirms the said finding.

The further circumstance that Channaveeramma had executed an agreement to reconvey the property to the first defendant and had acted on it by the execution of a registered release deed - Ex. D-6 would not enable the first defendant to claim the suit property as her absolute property. Hence, the trial court having held that Ex.D-3, the sale deed executed by Defendant no. 1 and the release deed Ex D-5 executed by Krishnappa, the brother of the plaintiff, were only to secure the refund of monies received by the first defendant to provide for minor children and herself, cannot be said to be a baseless finding. This court affirms the said finding as well. Consequently the release deed executed by Channaveeramma in favour of the first defendant did not confer any absolute right on the first defendant, she continued to hold the property for the benefit of all the legal heirs of Appaji.

In the above background, the trial court having held that the will executed by the first defendant, bequeathing the suit property in favour of defendant no. 8 and Ramu, proceeding on the basis that the same was her absolute property was irrelevant, cannot be faulted.

The further incidental findings as to the identity of the legal representatives of Ramu etc., are not even under challenge in the appeal.

Therefore, given the facts and circumstances, the case law cited is not discussed.
The appeal is dismissed. No costs.