

(2010) 04 KAR CK 0064

In the Karnataka High Court

Case No : Regular Second Appeal No. 728 of 2003

Smt. Mahadevamma (Doreswamy and Others)

APPELLANT

Vs

S.D. Devaiah (Sri Prasanna since decd. By his LRs. (Smt. B.J. Nandini, Chi. Sri Shankare Gowda and Kum. S.P. Monisha rep. by their friend Smt. B.J. Nandini) and Smt. Jyothi and Others)

RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Limitation Act, 1963 — Section 109

Citation : (2010) 04 KAR CK 0064

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : R.B. Sadashivappa and Manjula Devi Associates, for the Appellant; V. Srinivas, for R. 2 and B. Rudragowda, for R. 3-9 and 11-12, for the Respondent

Judgement

Subhash B. Adi, J.—This is plaintiffs appeal against the judgment and decree in R.A. No. 53/1999 dated 23rd September 2002 on the tile of Civil Judge (Sr.Dn.), Maddur, reversing the judgment and decree in O.S. No. 211/1978 on the file of Munsiff at Maddur as then existed dated 6.2.1995.

2. Appellant is the wife and legal representative of deceased plaintiff and respondent in the appellate court. The suit is for partition and separate possession of half share in the suit schedule "A" and "B" properties.

3. Case of the appellant is that, the deceased plaintiff and first defendant are in joint possession of the suit schedule property. Defendant No. 1 is his father, he is an illiterate, simple in nature, addicted to bad habits like drinking and gambling. Under the ill-will advice of some persons, without any knowledge and consent of the plaintiff sold the portion of the suit schedule property in favour of defendant Nos. 2 and 3 under two separate registered sale deeds, with an intention to deny the plaintiff's share.

4. Defendant No. 1 had nominally sold the property in favour of Lingasetty, who

is the father of defendant Nos. 4, 5, 6 and 7. Lingasetty is none other than the brother of first defendant. Lingasetty in turn sold the property in favour of defendant No. 3. The transactions are nominal in nature.

5. Defendant Nos. 2 and 3 filed common written statement inter alia stating that the plaintiff is not the son of defendant No. 1. He is not a co-parcener nor he is in joint possession with defendant No. 1. First defendant has sold the suit properties for legal necessity. The first sale deed is of 13.8.1965 for consideration of Rs. 1,000/-. The third defendant has purchased the suit schedule property from Lingasetty on 14.5.1974 for Rs. 2,000/-. Out of 1 acre of land, third defendant has sold 16 guntas of land in favour of second defendant and second defendant has sold 16 guntas in favour of one Chikkegowda.

6. First defendant filed a separate written statement denying the claim of the plaintiff, alleging that, he is the owner of the suit schedule property and sold the land in favour of defendant Nos. 2 and 3 to meet the family expenses and agricultural expenses. Third defendant also filed a separate written statement.

7. The trial court based on the pleading framed three issues and additional four issues and on appreciation of the evidence held that the plaintiff is entitled for partition and separate possession of his half share and decreed the suit. As against the said judgment, and decree, the legal representatives of defendant No. 3 and defendant Nos. 7 and 9 filed R.A. No. 53/1999 before the learned Civil Judge (Sr.Dn.), Maddur. The learned Civil Judge (Sr.Dn.), Maddur on re-appreciation of the evidence held that, the plaintiff has not produced any cogent evidence to prove that the defendant No. 1 was addicted to bad vices and further held that the properties were sold for legal necessity and accordingly, dismissed the suit by allowing the appeal.

8. Being aggrieved by the said judgment and decree, wife of the plaintiff has filed this appeal.

9. This Court by order dated 1.8.2006 admitted the appeal on the following questions of law:

(1) Whether the Appellate Court was justified in reversing the Judgment and Decree of the Trial Court when the relationship of the original plaintiff and defendant No. 1 was admitted?

(2) Whether the Judgment and Decree of the Appellate Court is liable to be interfered in the absence of any evidence regarding legal necessity for selling of a portion of the property?

10. Learned Counsel for the appellant submitted that, the suit schedule properties were sold by the defendant No. 1 and they were not for the legal necessity. In respect of Sy. No. 132/16 in the cultivator's column, name of Dadisidda Marisidda is shown, it is a garden land and column No. 10 describes properties as Pitrarjitha. He submitted, that these properties are ancestral properties. In case of ancestral property, defendant No. 1 has no right to alienate

the suit schedule property. Even if there is any alienation, it must be for legal necessity. Fact that the first, defendant is addicted to vices and sale has been effected by him in such event, the sale cannot be treated as one for legal necessity and if these properties are sold, plaintiff is entitled for partition and separate possession of half share in the suit schedule property. He further submitted that the lower appellate court was not justified in reversing the judgment and decree of the trial court.

11. Sri. Rudragowda, learned Counsel appearing for defendant No. 9 submitted that, the suit is barred by limitation as the suit schedule property was sold under a registered sale deed dated 13.8.1965 and the possession was handed over to Lingasetty, who in turn sold it to the defendant No. 3. Admittedly, the plaintiff had shown his date of birth as 6.8.1955 and in view of the same, he has attained the age of majority in 1973. Even according to Article 109 of the Limitation Act, the minor on attaining the age of majority can seek setting aside of the alienation within three years from the date of attaining the age of majority.

12. The suit is brought after the limitation period insofar as 1 acre of land in item No. 1 is concerned. As regards to the sale deed - Ex.P6 dated 19.9.1977, he submitted that there is a clear recital in the sale deed interalia stating that the sale is for family necessity, presumption arises in favour of the purchaser and nothing to the contrary has been proved except the oral allegation that the defendant No. 1 was addicted to bad vices, however, no supporting evidence is produced.

13. The trial court has found that the suit schedule properties are ancestral properties. In case of ancestral properties, the Manager does have the power to alienate the joint family property or the ancestral property. However said sale should be only for the benefit of the family i.e., for the legal necessity. Legal necessity is required to be proved by the purchaser. As far as suit schedule 1 acre in item No. 1 is concerned, sale is in the year 1965 and the date of birth of the plaintiff being in the year 1955, he has attained the age of majority in 1973. Admittedly, the suit is brought in 1977 i.e., beyond three years of limitation prescribed for setting aside the sale or alienation. However, insofar as remaining items are concerned, item Nos. 2 and 3 are properties available for partition. Only in respect of portion of the item No. 1 is concerned, that has been sold in favour of defendant No. 9 in the year 1977. Assuming that the legal necessity has not been established, still the defendant No. 1 is entitled for half share in the suit schedule property, in such event, half of the share of defendant No. 1 could be determined from the half share of the defendant No. 1 to adjust the same to sale of land to defendant No. 9 and from remaining land, the plaintiffs half share could be adjusted. It is submitted that from out of suit schedule properties, the land sold to defendant No. 9, could be adjusted from the half share of the defendant No. 1.

Accordingly, the appeal is partly allowed. The appellant is entitled for partition and separate possession of half share of the suit schedule property from item

Nos. 2 and 3. Item No. 1 to the extent of 1 acre of land sold in 1965 is concerned, suit is barred by limitation. Insofar as the land sold to defendant No. 9 is concerned, that portion could be adjusted towards the share of defendant No. 1 and the remaining item Nos. 2 and 3 could be adjusted towards the share of the plaintiff.