

(2003) 03 KAR CK 0017

In the Karnataka High Court

Case No : Regular Second Appeal No. 888 of 1999

Smt. Rukmini Bai and Another

APPELLANT

Vs

Venkoba Rao and Others

RESPONDENT

Date of Decision : 12-03-2003

Acts Referred:

Citation : AIR 2003 Kar 473 : (2003) ILR (Kar) 2192 : (2003) 4 KarLJ 416 : (2003) 2 KCCR 1434

Hon'ble Judges : A.V. Srinivasa Reddy, J

Bench : Single Bench

Advocate : M.M. Poonacha, for the Appellant; K.N. Srinivasa, for the Respondent

Final Decision : Allowed

Judgement

Srinivasa Reddy, J.—This regular second appeal is preferred by the appellants in R.A. No. 6/96 being aggrieved by the judgment and decree of the court below dismissing the appeal preferred by them and affirming the judgment and decree of the trial Court in O.S. No. 185/91 which was partly decreed by the trial Court.

2. For the sake of convenience the parties are referred to in the course of this judgment with reference to their rank in the trial Court.

3. The suit schedule properties belonged to one Sakkubayamma. She had a daughter by name Bhagyamma who pre-deceased her in the year 1967. The said Bhagyamma had four daughters and one son. Sakkubayamma died in the year 1980. During her life time Sakkubayamma sold part of the suit property measuring 105 x 48 feet to one Krishnoji Rao which was subsequently purchased by Padmavathamma, the second defendant under a registered deed of sale on 28.9.1977. Sakkubayamma has executed the document Ex.D. 10 transferring the remaining part of the schedule property to Padmavathamma, who was one of her grand daughters. The plaintiffs are the brother and two sisters of Padmavathamma and Rukmini Bai who is arrayed as the first defendant is their another sister. The suit property is in possession of the second defendant in

whose favour the said document was executed. The plaintiffs filed a suit for partition and separate possession of 1/5th share in the suit property which is site bearing No. 980 of Harnahalli village, Kasaba Hobli, Arasikere Taluk, measuring east to west 108 feet and north to south 54 feet on the ground that the property belonged to their grandmother Sakkubayamma. The suit was defended by the defendants on the plea that she has been in possession of portion of the suit property measuring 85 x 24 feet in her own right as owner having purchased the same from its vendor Mr. Krishnoji Rao under a registered sale deed on 28.9.1977. In respect of the other portion, the stand taken by the defendants was that the same was transferred to her under Ex.D.10 by her grand-mother Sakkubayamma and, therefore, the plaintiffs are not entitled to any decree in their favour in respect of the entire suit schedule property.

4. The trial Court formulated the following points as arising for its consideration :

1. Whether the plaintiff proves that the suit schedule property originally belonged to Smt. Sakubayamma and she has executed an will dated 5.9.1947 in favour of her daughter Smt. Bhagyamma?

2. Whether the plaintiff proves that he is entitled for 1/5th share in the suit schedule property?

3. Whether the 2nd defendant proves that a portion of the suit property measuring about E.W.81", N.S.24" feet belongs to Thimmoji Rao and he has executed a sale deed in his favour on 28.9.1977?

4. Whether the 2nd defendant proves that the Sakkubayamma has executed an agreement dated 17.12.1967 and put in possession of a portion of the suit schedule property?

5. Whether the 2nd defendant proves that she has perfected her title to the suit schedule property by way of adverse possession?

6. What order or decree?

Points 1 and 4 have been answered in the negative and point No. 5 is answered partly in the negative while point 2 was answered in the affirmative and point No. 3 was answered partly in favour of second plaintiff. Thus, the trial court partly decreed the suit. In so far as the portion of the property measuring 85 x 24 feet purchased by the second defendant from Krishnoji Rao the suit of the plaintiffs was dismissed.

5. Aggrieved by the judgment and decree passed by the Trial Court as aforesaid the defendants went in appeal to the lower appellate Court. The Court-below framed the following issues for its consideration.

Both the issues were answered in the negative. On the findings so recorded by it, the Court-below dismissed the appeal. The defendants being aggrieved by the dismissal of the regular appeal, have come up before this Court in the present appeal.

6. The substantial question of law raised for consideration in this appeal is:

Whether the construction placed by both the Courts below on Ex. D.10 as being an agreement of sale is correct?

7. I have heard learned counsel for both sides on the point.

8. The entire case rests on the interpretation of Ex. D10 the document executed by the late Sakkubayamma in favour of the second defendant Padmavathamma. While the plaintiffs contend that the said document is merely an agreement to sell, it is now contended in this appeal by the appellants that it is a Will bequeathing the suit property in favour of Padmavathamma. The execution of the document as such is not in dispute. It is submitted by learned Counsel for the plaintiffs that the construction of the document Ex. D10 under which the claim to property is made by the defendants is not a substantial question of law. There is no substance in this contention as the question whether the construction of a document is a substantial question of law or not has been settled long ago by the Privy Council in the case of GURAN DITTA v. T. RAM DITTA AIR 1928 PC 172 and has been reiterated by the Apex Court in Santakumari and Others Vs. Lakshmi Amma Janaki Amma (D) By Lrs. and Others, . In Santakumari's case supra, the Apex Court has held that construction of a document by the Court deciding the issues between the parties raises a substantial question of law.

9. Let me now examine whether the interpretation placed by the Court-below on Ex. D10 is correct. The facts leading to the execution of these documents, the manner in which the document was executed and the date of its execution are not disputed by the plaintiffs. Whether the document Ex.D.10 amounts to "an agreement of sale" or a "Will" bequeathing the property in favour of the second defendant is the only contentious issue between the parties. The Courts-below have construed Ex. D10 as an agreement to sell. Therefore Ex. D10 requires to be reproduced in order to determine whether the construction placed by the Court-below on Ex.D.10 is correct or not. Ex. D10 reads:

10. Agreements for sale of Immovable properties have certain specific features which are quid pro quo in nature, particularly with regard to the consideration for executing the document, and these features are provided for in an agreement for sale in respect of Immovable properties with the intention of ensuring that an option for legal action is available, in the event of failure on the part of either of the parties to honour the agreement, to recoup the loss that one may incur on account of such default. Such features include the price agreed upon between the intending purchaser and the seller, the duration within which the transaction has to be gone through and completed and a default clause. The recitals contained in Ex. D10 do not contain any of these features. On the other hand the phraseology employed in Ex. D10 and the tenor of the document shows that it is a volitional transfer sans consideration and it is intended to take effect on the death of Sakkubayamma. The reasons assigned for devising the property in favour of the second defendant if examined in the backdrop of the fact that it

was not drawn up by a Solicitor or by a Vakil but with the help of the village scribe should lead to the inevitable conclusion that Sakkubayamma had intended the document to be a Will and not an agreement of sale. If the tenor of the whole document is considered it becomes clear that the document was executed by Sakkubayamma in the capacity of a testator and not in the capacity of a seller intending to sell the Immovable properly. The conclusion gets substantiated if we take into consideration the close relationship between the parties and the fact that the second defendant had agreed to marry her elder sister's husband at her (Sakkubayamma's) bidding and it is in consideration of such consent given to the marriage by the second defendant that the document Ex.D.10 was executed devising the property in her favour In Manikam Pillai Vs. Venkatesa Chetti and Others, a learned Single Judge of the Madras High Court has laid down the manner in which a Will has to be construed. Emphasising that a Will in vernacular and executed in Muffasil should not be subjected to a strict scrutiny as that of a Will executed in a Presidency town, it was observed by the learned Single Judge.

"In the case of a vernacular Will drawn up and executed in the mufussil, the Court should take care not to apply wholesale the principles of construction which are applicable to the Wills executed in the Presidency Towns and drawn up by Solicitors or Vakil. In construing a Will of this kind, the intention of the testator should be gathered from the tenor of the whole Will and artificial rules of construction should not be applied without due regard to the habits, prejudices and customs of the people among whom the testator lived and the circumstances under which the Will came to be executed."

If we consider the circumstances that the bequeathing is more in the way of a recompense to the second defendant for agreeing to become a second wife for her elder sister's husband to which she had not earlier assented to, as could be gathered from the very recitals contained in Ex. D10, it would be too much to interpret it to be an agreement of sale by applying artificial rules of construction. The recitals, as found in Ex. D10 leaves no room for doubt that the consideration expected of the second defendant by Sakkubayamma was to carry out her filial duties. Thus, I find that the construction placed upon Ex. D10 by the Courts below in construing it as an agreement of sale is totally wrong and is liable to be set aside.

11. It is also noteworthy that the plaintiffs who were very much aware of their rights had done nothing to assert them till 1991 when they filed the suit although Sakkubayamma had died wayback in the year 1980. In all probability it appears that they had known about the execution of the document Ex, D10 bequeathing the property in favour of the second defendant and, therefore, chose not to claim any right in the property. If really Ex. D10 was an agreement for sale, the same having not fructified into a sale during the life time of late Sakkubayamma, the plaintiffs would not have waited for more than a decade after her death to assert their claim over the property when the entire property was in the possession of the second defendant and the property was dealt with by her as the owner

thereof in her individual capacity and not property owned by her and her brother and other sisters.

12. Thus, on an overall consideration of the pleadings and evidence of the parties, I am of the view that the reasoning and findings of both the Courts below on Ex. D-10 cannot be sustained in law. The question is answered accordingly.

13. In the result, for the reasons stated above, the appeal is allowed and the judgment and decree passed by both the Courts-below are set aside. The suit filed by the plaintiffs is dismissed.