

(2012) 03 KAR CK 0076

In the Karnataka High Court

Case No : Regular Second Appeal No. 140 of 2010 (PAR)

Smt Seetha Poojarthy and SMT. Jayanthi

APPELLANT

Vs

Panju Poojary and Others

RESPONDENT

Date of Decision : 19-03-2012

Acts Referred:

Hindu Succession Act, 1956 — Section 7 (2)

Karnataka Land Reforms Act, 1961 — Section 48 A

Citation : (2013) 3 AKR 353 : (2012) ILR (Kar) 2231 : (2013) 1 KarLJ 43

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : A Nagarajappa and Associates, for the Appellant; T S Mahantesh, for R1 to 6, 8 to 14, for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy

1. The 16th and 17th defendants in O.S.641/92 aggrieved by the judgment and decree dt. 6/1/2002 of the Prl. Civil Judge (Jr.Dn.), Kundapura, declaring plaintiffs and the defendants 1, 2, 4 to 15 are entitled to 1/16th share, while defendants 16 and 17 are jointly entitled to 1/16th share that fell to defendant No. 2 Manja Billava since deceased, in the suit schedule property, preferred R.A.29/05 before the Court of Fast Track, Kundapura, whence by judgment and decree dt. 27/8/2009 whence the trial court's finding was modified entitling plaintiffs 1 & 2 and defendants 1, 4, 5 and 7 to 15 to 1/16th share in "A" schedule property, while defendants 16 and 17 entitled to 1/15th share, jointly, in the suit schedule properties. Hence this second appeal. There is no dispute that one Venkamma Pujarthy had three children namely Anthamma Pujarthy, Manja Billava and Joga Billava.

2. Panju Poojary, the 1st son of Anthamma Pujarthy instituted O.S.641/92 before the Prl. Civil Judge (Jr.Dn.), Kundapura, arraigning as party defendant No. 1, his mother, defendant No. 2 Manja Billava, defendant No. 3 Joga Billava and their

children as also grandchildren as defendants 4 to 15 for declaration partition and separate possession of the lands in question. The 3rd defendant Joga Billava was permitted to be transposed as the 2nd plaintiff by the trial court. During the pendency of the proceedings before the trial court, the 2nd defendant Manja Billava died and his widow and daughter were arraigned as defendants 16 and 17. It was the assertion of the plaintiffs that the suit schedule properties were tenancy rights of the joint family, which when accepted by the Land Tribunal, the 2nd defendant being the eldest male member of the joint family was conferred with the occupancy rights for and on behalf of the joint family. According to the plaintiffs, being governed by the aliyasanthana law were entitled to equal share in the immovable properties belonging to the joint family. Defendants on being served with suit summons, entered appearance through learned Counsel, whence the 2nd defendant resisted the suit by filing written statement denying the assertions, while the 3rd defendant admitted the plaint averments and sought declaration of his share in the suit schedule properties. Defendants 5, 6 and 12 to 15 adopted the written statement filed by defendant No. 3, while defendants 16 and 17, when brought on record as the legal heirs of deceased defendant No. 2, adopted the written statement filed by the deceased. In the premise of pleadings of parties, the trial court framed issues, whereafterwards the 2nd plaintiff Joga Billava was examined as PW-1, while defendant No. 16 was examined as DW-1 and another witness as DW-2. For the plaintiffs, seven documents were marked as Ex.P1 to P7 and none for the defendants. The trial court by judgment and decree, returned findings in the affirmative over issue No. 1, that the suit schedule property being agricultural land, its occupancy right was conferred under Sec. 48A of the Land Reforms Act, by the Land Tribunal, in favour of Manja Billava was for and on behalf of the joint family since the tenancy rights were claimed from the time of the ancestors of Manja Billava, and accordingly in the negative over issue No. 3 that the suit land was not the self acquisition of Manja Billava to allow the suit by declaring that the plaintiffs 1 & 2 and defendants 1 & 2, as also defendants 4 to 15 were entitled to 1/16th share, each, while defendants 16 and 17 representing the share of deceased defendant No. 2 were jointly entitled to 1/16th share in the suit schedule property.

3. The Lower Appellate Court while concurring with the reasons, findings and conclusions arrived at by the trial court on issue Nos. 1 and 3, however concluded that 17 shares were liable to be partitioned into 15 shares, because the 6th defendant by name Gowri Poojarthy had died and defendant No. 15 was her legal representative, while the 2nd defendant Manja Billava's legal representative being defendants 16 and 17 were jointly entitled to the share of the deceased and accordingly modified the judgment and decree of the court below by the judgment and decree.

4. The appeal, when admitted on 28/9/2010, the following substantial question of law was framed:

Whether the Courts below were justified in applying Aliyasanthana law of

succession, subsequent to coming into force of the Hindu Succession Act, 1956

5. Manja Billava, the father of the appellants, filed Form No. 7, Ex.P5 under Sec. 48A of the Karnataka Land Reforms Act, 1961, stating that his ancestors were the tenants of the suit lands and that his sister Smt. Anthamma and brother Joga Billava and himself were residing and living together in one house. In addition the said Manja Billava testified before the Land Tribunal and the deposition Ex.P7 discloses that the tenancy rights are that of his ancestors. The 1st appellant, the widow of Manja Billava in her depositions as DW1 admits the contents of Ex.P5 & P7. In that view of the matter the trial court recorded its finding in the affirmative over issue No. 1, that the Suit Schedule property is the joint family property and answered in the negative issue No. 3 rejecting the claim of the said Manja Billava, the second defendant that it was his self acquisition.

6. The Lower Appellate Court, being the final fact finding court, on a reappraisal of the evidence both oral and documentary, concurred with the findings of the trial court on the said issues, following the observations of this court in (i) Balagouda Alagouda Paul & Ors. Vs. Babasaheb Ramagouda Patil¹ holding that tenancy right if acquired by a member of the family shall be held to be for the benefit of the entire family and; (ii) Verupegowda & ANR. Vs. Shankregowda & Anr.², that when the occupancy right is ordered to be registered in the name of a member of the family whose name appeared in the Record of Rights, it would enure to the benefit of the entire family and such property becomes partible. The findings on Issue Nos. 1 & 3 do not call for interference.

7. The occupancy right over the suit schedule property when conferred on the 2nd defendant Manja Billava for and on behalf of the joint family of deceased Venkamma Poojarthy and became partible, after the coming into force of the Hindu Succession Act, 1956, though parties admittedly, when governed by the system of inheritance known as Aliyasanthana in which the descendent is traced in the female line, nevertheless, the inheritance under Aliyasanthana was inapplicable to the parties, in the light of Sec. 7(2) of the Hindu Succession Act, 1956, for short "Act", which runs thus:

7. Devolution of interest in the property of a tarwad, tavazhi, kutumba, kavaru or illom -

(1) XXX

(2) When a Hindu to whom the aliyasantana law would have applied if this Act had not been passed, dies after the commencement of this Act, having at the time of his or her death an undivided interest in the property of a kutumba or kavaru, as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the aliyasantana law.

Explanation - For the purposes of this sub-section, the interest of a Hindu in the

property of a kutumba or a kavaru shall be deemed to be the share in the property of the kutumba or kavaru as the case may be that would have fallen to him or her if a partition of that property per capita had been made immediately before his or her death among all the members of the kutumba or kavaru as the case may be, then living, whether he or she was entitled to claim such partition or not under the aliyasantana law, and such share shall be deemed to have been allotted to him or her absolutely.

(3) xxx

8. Both the courts below failed to notice the said provision of law in the matter of devolution of interest in the property of a kavaru not in accordance with the Aliyasanthana law. In that view of the matter Venkamma Poojarthi having left behind defendants 1 & 2 and the 2nd plaintiff as her children, were equally entitled to 1/3rd share, in accordance with the "Act", while the 1st plaintiff, none other than the son of Anthamma Poojarthy along with the other siblings defendants 4, 5 and 6, would be entitled to a share each from out of the 1/3rd share in the suit schedule properties which Anthamma Poojarthy is entitled. The substantial question of law is answered in the negative, in other words, holding that the courts below were not justified in applying Aliyasanthana law of succession to the immovable property which became partible after the coming into force of the "Act".

In the result, this appeal is allowed. The judgment and decree of the courts below in so far as determination of shares of the parties, are set aside and in all other respects remains unaltered and it is declared that defendants 1, 2 and plaintiff No. 2 are entitled to 1/3rd share each in the suit schedule properties.