

(2013) 10 KAR CK 0261

In the Karnataka High Court

Case No : Regular First Appeal No. 4104 of 2012

Smt. Sridevi @ Nirmala

APPELLANT

Vs

Vijayalaxmi and Others

RESPONDENT

Date of Decision : 28-10-2013

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2013) 10 KAR CK 0261

Hon'ble Judges : B. Sreenivase Gowda, J

Bench : Single Bench

Advocate : Anand R. Kolli, for the Appellant; S.B. Patil, for R. 9 and Sri. R.B. Kale, for R. 10, for the Respondent

Final Decision : Dismissed

Judgement

B. Sreenivase Gowda, J.—This appeal is by the 6th plaintiff challenging the judgment and decree of the trial Court dt. 2-8-08 passed in O.S. No. 16/2008, wherein it has decreed the suit of the plaintiffs holding that they are entitled for 1/9th share in the plaint suit land and plaintiff No. 1 is entitled to the shares of plaintiff Nos. 2 to 6. Defendants are ordered to give 6/9th share in the suit land to the plaintiff No. 1. Along with the appeal, an application under Sec. 5 of the Limitation Act is filed seeking to condone the delay of 1369 days in preferring the appeal.

2. The plaintiff - appellant has preferred this appeal on 31-7-12. The appellant in para (3) of the affidavit filed in support of the delay application has stated that after the disposal of the suit she could not come in contact with her Counsel before the trial Court and after the judgment she came to know that her sister Smt. Jaidevi had played fraud on her and other respondents and thereafter, she had contacted her Counsel before the trial Court, obtained certified copies and has gone through the judgment and later arranged for some miscellaneous expenditure and Court fee from her relatives and has filed this appeal and therefore, there is delay. She has not stated what is the fraud played on her and

other respondents by her sister Jaidevi. On the other hand, she has stated, after judgment she came to know the fraud played by her sister. That means she is aware of the judgment of the trial Court immediately after its pronouncement and there is absolutely no reason, much less valid reason for condoning the inordinate delay.

3. Even on merits, it is the case of the plaintiff that plaintiffs 1 to 6 and deceased Kashi Vishwanath and defendants 1 to 3 are the children of deceased Mahadevayya and Annapurnadevi, the suit land measuring 06 acres of Yellapur bearing R.S. No. 51/2B2/1 belongs to deceased Annapurnadevi and they all succeeded to the suit land and they are in joint possession and enjoyment of the suit land as co-owners and each of them are entitled for 1/9th share in the suit land and plaintiffs 2 to 6 have executed a relinquishment deed in favour of plaintiff No. 1 on 4-5-2007 and defendants have refused to give up the shares in spite of requests and demands, hence they have brought this suit. Defendants 1 to 3 inspite of service of notice remained absent and they were placed ex parte. Defendant No. 2 though was represented through Counsel has not filed written statement inspite of giving opportunity. The trial Court based on the pleadings has formulated the following point for consideration:

Whether the suit is fit to be decreed?

4. Plaintiffs in support of their case have examined first plaintiff -- Smt. Jaidevi as P.W. 1 and they have produced as many as eight documents which were marked as Exs. P. 1 to P. 8. P.W. 1 in her evidence has stated about the relationship and death of Annapurnadevi and Kashivishwanath and her father Mahadevayya and the suit land belongs to their mother and their joint possession and enjoyment of the suit land and her entitlement to 6/9th share under the relinquishment deed, death certificates and heirship certificate and that plaintiffs No. 2 to 6 have given up their shares to plaintiff No. 1. Her evidence has remained unchallenged. The trial Court considering this material on record has rightly decreed the suit holding plaintiffs are entitled to 1/9th share in the suit land and plaintiff No. 1 is entitled to the shares of plaintiff Nos. 2 to 6 and directed the defendant to give 6/9th share in favour of plaintiff No. 1.

5. I have carefully gone through the judgment and decree of the trial Court and do not find any illegality or irregularity in the said judgment warranting interference.

6. Accordingly, the appeal as well as I.A. No. 1/2012 for condonation of delay are dismissed as devoid of merits. In view of dismissal of appeal, I.A. No. 2/2012 for stay does not survive and it is rejected.

No order as to costs.