

(2014) 10 KAR CK 0197

In the Karnataka High Court

Case No : Writ Petition No. 83558/2013 (GM-CPC)

Somanath

APPELLANT

Vs

Laxman

RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Hindu Succession (Amendment) Act, 2005 — Section 6
Hindu Succession Act, 1956 — Section 6

Citation : (2014) 10 KAR CK 0197

Hon'ble Judges : Mohan M. Shantana Goudar, J

Bench : Single Bench

**Advocate : K. Raghavendra Rao and V. Vidya, Advocate for the Appellant;
Sangram S. Kulkarni, Advocate for the Respondent**

Judgement

Mohan M. Shantana Goudar, J.—The order dated 26.09.2013 in F.D.P. No. 18/2006 passed by the Prl. Senior Civil Court, Jamkhandi, is questioned in this petition.

2. Before proceeding further, it would be beneficial, if this Court narrates the facts in brief.

The petitioner herein filed O.S. No. 69/1987 for partition and separate possession against his parents, brothers, sisters and purchasers. He claimed 1/4th share in the suit agricultural property bearing Sy. No. 450/1B of Jamkhandi which totally measures 9 acres. Suit came to be dismissed on 08.06.2000. Unsuccessful plaintiff filed R.A. No. 39/2000 before the District Court, Bijapur, which later came to be transferred to District Court, Bagalkot wherein it was renumbered as R.A. No. 134/2001. The District Court at Bagalkot allowed the appeal and consequently decreed the suit by awarding 3/10th share in favour of the plaintiff in respect of the suit land. At the time of decreeing the suit, the first Appellate Court had taken into consideration the Hindu Succession Act as it then existed and based on the notional partition, the share of the parties were determined. Questioning the judgment and award passed in the Regular Appeal, the

purchaser (original defendant No. 7) filed R.S.A. No. 1538/2007 which came to be dismissed on 19.08.2008. Even at the time of disposal of Regular Second Appeal 1538/2007, the amended provisions of Section 6 of the Hindu Succession Amendment Act, 2005, were not taken into consideration. Based on the decree passed in R.A. No. 134/2001 (arising out of O.S. No. 69/87) as confirmed by this Court in R.S.A. No. 1538/2007, the plaintiff filed F.D.P. No. 18/2006. The same is still pending consideration. Even the interlocutory orders passed by the Court dealing with the final decree proceedings were questioned before this Court. However, it has to be noted that recently the purchaser/defendant No. 7 approached this Court in R.S.A. No. 5640/2009 questioning certain interim order passed by the court dealing with final decree proceedings. The same came to be disposed of on 26.06.2014 with a direction to the Tahsildar to execute the commission warrant in accordance with law and complete the entire process within 45 days from the date of receipt of the records.

3. When the facts stood thus, the purchaser/defendant No. 7 filed IA-II praying for modification of the share of the plaintiff as 1/8th share instead of 3/10th share in view of amendment of Section 6 of the Hindu Succession Amendment Act, 2005. The said application is allowed by the impugned order by the Court below on 26.09.2013.

4. Smt. V. Vidya, learned advocate appearing on behalf of the petitioner/original plaintiff submits that defendant No. 7/respondent herein has no locus standi to file application for altering the share of the plaintiff inasmuch as the dispute is virtually between brothers and sisters. The sisters of the plaintiff have not come forward to seek modification of share in their favour; defendant No. 7/petitioner herein who has failed in R.S.A. No. 1538/2007 before this Court has no locus standi to file such application seeking modification of the plaintiffs share. She further submits that this Court while deciding R.S.A. No. 5640/2009 directed the Court below to complete the process within 45 days and therefore the Court below is not left with any option but to complete the process based on the initial decree passed in R.A. No. 134/2001 (which arose out of O.S. No. 69/87). Sri Sangram S. Kulkarni, learned counsel appearing for the respondent, per contra, argued in support of the order of the court below contending that the impugned order is in consonance with the settled principles of law and the dictum laid down by the Apex Court in various judgments to the effect that any party to the suit can seek modification of the share till the actual final decree is passed.

5. The relationship between the parties is not in dispute. Defendant No. 7/respondent herein purchased the suit property to an extent of 5 acres 28 guntas from Sri Shivaputrappa who is the husband of defendant No. 2, father of plaintiff and defendant Nos. 3 to 6. It is relevant to note that vendor Sri Shivaputrappa himself was arrayed as defendant No. 1 in the suit. During the pendency of the suit, said Shivaputrappa expired.

6. It is not in dispute as on the date of filing of the suit, the provisions of Hindu Succession Act were not amended. As aforementioned, the suit came to be

dismissed initially. However, the said judgment of dismissal came to be reversed by the first Appellate Court in R.A. No. 134/2001 and consequently, the suit came to be decreed which was ultimately confirmed by this Court in R.S.A. No. 1538/2007. Undisputedly, in none of these proceedings, a contention was taken by any of the parties on the basis of the amendment of Hindu Succession Act which came into force in the year 2005. The purchaser could have taken such ground at that stage itself which would have avoided all these subsequent proceedings. Consequently, the proceedings in F.D.P. No. 18/2006 came to be filed by the successful plaintiff based on the decree passed earlier which was in turn based on the provisions of unamended Hindu Succession Act. It is no doubt true that there is lot of delay in deciding the final decree proceedings. There cannot be any dispute that the purchaser (defendant No. 7) has failed in his Regular Second Appeal as well as in all the applications filed in final decree proceedings. But that does not mean that he is not entitled to get his due share in the property.

7. The defendant No. 7/purchaser steps into the shoes of the original owner who has sold the property in his favour. Therefore, rule of equity demands that the purchaser would get the same share as his vendor would have got in the suit property. In view of the amendment of Section 6 of Hindu Succession Act in the year 2005, the earlier law relating to division of the property based on notional partition is not continued any further. All the sisters are treated as coparceners along with their brothers. They have got equal right in the joint family property. The defendant No. 7/purchaser is also party to the suit. Merely because the sisters of the plaintiff i.e., defendant Nos. 3 to 6 and defendant Nos. 1(a) and 1(b) have not filed any application for modification of the share in the final decree proceedings, the defendant No. 7 is not debarred from doing so. It is for him to protect his interest by getting such property allotted in favour of his vendor. In this view of the matter, the trial court has rightly concluded based on the judgments of the Apex Court, that the application filed by the defendant No. 7/purchaser needs to be allowed and consequently the share needs to be altered in accordance with Section 6 of the Hindu Succession Amendment Act, 2005. Undisputedly, the final decree is yet to be drawn. The proceedings are still pending consideration. Hence, no interference is called for.

8. However, it is not disputed by learned advocates on both the sides that wife of Shivaputrappa namely Gangavva (original defendant No. 2) has also expired. Her legal representatives are already on record before the court below. Therefore, plaintiff and his brothers and sisters are entitled to 1/6th share each.

With these observations, the writ petition stands disposed of.