

(2011) 11 KAR CK 0127

In the Karnataka High Court

Case No : Regular Second Appeal No. 658 of 2011 (PAR)

Sri. Anil kumar

APPELLANT

Vs

Smt. Sargjamma and Others

RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Citation : (2011) 11 KAR CK 0127

Hon'ble Judges : K.N. Keshavanarayana, J

Bench : Single Bench

Advocate : T. Seshagiri Rao, for the Appellant; T.H. Chikkavenkate Gowda, for C/
R1 to R5, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Mr Justice K.N. Keshavanarayana

1. The appellant was Defendant. No. 4 in O.S. No. 3/2004 on the file of the Civil Judge (Sr.Dn.) Doddaballapur. Respondents-1 and 2 as plaintiffs filed the said suit against Respondents-3 to 5 and the appellant for partition and separate possession of their 1/5th share in the land bearing Survey No. 13 of Rojipura Village, Doddaballapur Taluk measuring 8.62 guntas.

2. The case of the plaintiffs was that, they are the daughters. Defendants-1 & 2 are the sons and Defendant No. 3 is the wife of Lakshminarayanappa; that the suit schedule land namely land to an extent of 10 guntas in Survey No. 13 of Rojipura Village, was purchased by their father Lakshminarayanappa and till his death, he was in possession and enjoyment of the same. After the death of Lakshminarayanappa, the suit schedule property was succeeded by each of his heirs.

3. It was also contended by the plaintiffs that out of 10-00 guntas, 1.38 guntas was sold and thereby the extent of land remained to the family was 8.62 guntas. Therefore, they sought for the relief of partition. Defendants - 1 to 3 filed their written statement contending that the suit schedule property was self-acquired

property of Lakshminarayanappa and was never a joint family property.

4. The 4th defendant who claims to have purchased the entire extent of land in Survey No. 13 from various sharers contested the suit inter alia contending that the land bearing Survey No. 13 was a service inam land covered under the Karnataka Village Offices Abolition Act, therefore the sale in favour of Lakshminarayanappa to the extent of 10 guntas was void since the same was effected after the Amendment Act came into force in the year 1978. It was also his defence that the sale in favour of the vendor of Lakshminarayanappa by one of the sharers namely Munivenkatappa to an extent of 10 guntas was in excess of the right to which the Munivenkatappa was entitled to out of the said land, therefore, the plaintiffs are not entitled for the relief of partition.

5. The trial Court framed the following issues:-

i) Whether the plaintiffs prove that the 3rd defendant getting records of suit schedule property changed into her name conniving with the mother -defendant No. 4, in order to deprive their legitimate interest?

ii) Whether the plaintiffs further prove their joint possession and enjoyment of the suit schedule property with defendants.

iii) Whether the plaintiffs are entitled to get the relief of partition, if so, what is their share?

iv) For what order or decree?

6. After the parties led evidence, the trial Court by its judgment dated 13.06/2007 decreed the suit and held that each of the plaintiffs are entitled to 1/5th share, while Defendants-1 to 3 are entitled to 1/5th share. The defence of the 4th defendant was rejected. The appeal filed by the 4th defendant before the Lower Appellate Court came to be dismissed and thereby, the judgment of the trial Court was affirmed. It is against this concurrent judgment of the Courts below, the appellant has presented this appeal.

7. I have heard Sri. T. Shesbagiri Rao, learned counsel appearing for the appellant and perused the judgments under appeal as well as other papers made available for perusal.

8. There is no serious dispute that land bearing Survey No. 13 is a service inam land attached to the village office of Rojipura village. It is also not in dispute that one Munivenkatappa was one of the holders of the village office. It is in evidence on record that the said Munivenkatappa sold 10 guntas of land in Survey No. 13 to one Venkataramanappa on 21.04.1969 and the said Venkataramanappa in turn sold the said 10 guntas of land in favour of Lakshminarayanappa on 18.12.1978. It is also not in serious dispute that after the Amendment brought to Karnataka Village Office Abolition Act came into force in the year 1978, the re-grant proceedings were initiated and subsequently as per Ex.D3, re-grant order was passed by the Tahsildar on 30.08.1980 ordering re-grant of the land in

favour of the holders of the village office, who were numbering about 22. The Lower Appellate Court having regard to the fact that though the sale in favour of Lakshminarayanappa was effected on 18.12.1978, subsequent to coming into force of the Amendment Act, since the initial sale of the land by Munivenkatappa in favour of Venkataramanappa was before coming into force of the Amendment Act, the sale cannot be held to be void. This position of law is not disputed by Sri. T. Sheshagiri Rao. He fairly submitted that sale in favour of Venkataramanappa and further sale in favour of Lakshminarayanappa cannot be termed as void.

9. The main contention urged by Sri. Sheshagiri Rao is that, since Munivenkatappa was one of the holders of the village office along with other persons, he had a limited right in the land in question and he could not have executed the sale deed in respect of 10 guntas and therefore, the sale in excess of his right is void and the sale effected by him would be binding only to the extent of right held by Munivenkatappa.

10. As noticed supra- Munivenkatappa the vendor of Venkataramanappa from whom Lakshminarayanappa purchased, was one of the holders of the village office. As per Ex.D2, the re-grant has been made in favour of 22 persons. None of the other holders of the village office have questioned the sale effected by Munivenkatappa in the year 1969 for any excess of his right. Assuming for the purpose of argument that the said Munivenkatappa had a share only to an extent of 5 to 6 guntas, in view of the fact that the other sharers have not questioned the sale effected by Munivenkatappa to the extent of 10 guntas it is not open to the present appellant/defendant No. 4, who claims to be the purchaser of the entire property from the other sharers, to contend that the sale in excess of the right held by Munivenkatappa cannot be recognized.

11. Having regard to the fact that Munivenkatappa sold 10 guntas of land in the year 1969 in favour of Venkataramanappa, who in turn sold the same in favour of Lakshminarayanappa on 18.12.1978 and in view of the fact that the sale effected in favour of the present appellant was subsequent to the order of re-grant, it is not open for the appellant to contend that Lakshminarayanappa had not derived title to the extent of 10 guntas. There is no dispute that after the death of Lakshminarayanappa, his heirs sold the land to an extent of 1.38 guntas in favour of one Ramachandrappa on 31.02.2003. Initially, when the suit was filed, the claim was to an extent of 10 guntas. When the subsequent sale to an extent of 1.38 guntas of land was brought on record, the plaintiffs amended the plaint by reducing the extent of land to 8.62 guntas. The Courts below have granted the relief only to the extent of 8.62 guntas in Survey No. 13. The finding recorded by the Courts below is in accordance with the documentary and oral evidence on record.

12. Under these circumstances, I find no question of law muchless substantial question of law being involved in this appeal. Therefore, I find no merit to entertain this appeal. Accordingly the appeal is rejected.