

(2013) 06 KAR CK 0118
In the Karnataka High Court
Case No : R.F. A. No. 808 of 2013

Sri. C.N. Viswanatha

APPELLANT

Vs

Sri. Sridhara, Sri. C.N. Subramanya and Smt. Sunanda

RESPONDENT

Date of Decision : 24-06-2013

Acts Referred:

Hindu Succession Act, 1956 — Section 15, 16

Citation : (2013) 06 KAR CK 0118

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

Bench : Single Bench

Advocate : M.B. Chandra Chooda, for the Appellant; N. Suresh Kumar, for C/R1, Sri. V. Vishwanath, for C/R2 and Sri. G. Chandrashekar, for C/R3, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Keshavanarayana, J.—This appeal by the defendant No. 2 in O.S. No. 6966/2000 on the file of the XXII Additional City Civil and Sessions Judge, Bangalore is directed against the judgment and decree dated 31.01.2013 passed therein decreeing the suit insofar as it relates to declaring the shares of the parties at 1/4th each. The respondent No. 1 was the plaintiff, while the respondents No. 2 and 3 were defendants No. 1 and 3. The subject matter of the suit is property bearing No. 70, Temple Road, Malleswaram, Bangalore measuring East to West 30 feet and North and South 27 feet. The plaintiff and defendants No. 1 and 2 are the brothers, while defendant No. 3 is the sister being the children of one late Nanjunda Shastry and Alamelamma. There is no dispute that the property bearing No. 70, Temple Road, Malleswaram, Bangalore totally measuring East to West 70 feet and North to South 30 feet was the property owned by Alamelamma, the mother of the parties to the suit. There is also no serious dispute that a portion of the said property measuring East to West 30 feet and North to South 30 feet was sold by Alamelamma during her life time for the purpose of performing the marriage of her daughter, defendant No. 3. It

appears that the said Alamelamma had settled another portion measuring 28.9" feet x 24 feet in favour of her elder son namely the defendant No. 1 under a registered settlement deed dated 23.07.1977. On the said portion, the defendant No. 1 has built a house and it appears that the appellant is residing in the said portion as a tenant of defendant No. 1. The plaintiff filed the suit for partition of his 1/4th share in respect of remaining portion described in the schedule to the plaint. Alamelamma died in the year 1983.

2. The defendant No. 1 on his appearance before the trial Court filed his written statement inter alia contending that subsequent to death of the mother, in respect of the remaining partition, there was a settlement between the three brothers namely plaintiff, defendants No. 1 and 2, whereunder, plaintiff by quantifying his share in the suit schedule property has received a sum of Rs. 32,500/- from defendants No. 1 and 2. Therefore, the plaintiff cannot again claim a share in the property. Defendant No. 2 filed his written statement inter alia contending that the settlement deed between the three brothers is a nominal one and it was not acted upon. He further contended that the settlement deed dated 23.07.1977 executed by the mother in favour of the defendant No. 1 is also a nominal one and the defendant No. 1 has not derived any absolute title in respect of the said portion. Therefore, the said portion also is amenable for partition. He contended that, he along with the plaintiff and defendant Nos. 1 and 3 are entitled for 1/4th share each in the entire property excluding the portion sold by the mother.

3. On the basis of the pleadings of the parties, trial Court framed issues. Plaintiff led evidence by examining himself as PW-1 and got marked Exs.-P1 and P2. Defendant No. 2 examined himself as DW-1, however the defendant No. 1 did not contest the matter. The trial Court by judgment and decree dated 03.01.2007 decreed the suit holding that the portion settled in favour of the defendant No. 1 is also available for partition and the parties to the suit are entitled for 1/4th share each in the suit schedule property, as also the property settled in favour of the defendant No. 1. Aggrieved by the said judgment and decree, the defendant No. 1 filed appeal in R.F.A. No. 786/2007 before this Court. The said appeal came to be allowed by the judgment dated 26.07 2011, the judgment of the Court below was set aside and the matter was remanded to the trial Court for fresh disposal in accordance with law with a direction that the trial Court should permit the appellant therein namely the defendant No. 1 to produce documents and also to lead additional evidence, if any. After the remand, the defendant No. 1 examined himself as DW-2 and produced documentary evidence.

4. After hearing both sides and on appreciation of oral as well as documentary evidence, the Court below by the judgment under appeal held that the defendant No. 1 has proved the settlement deed executed by his mother in respect of the partition of the property, therefore, the said portion is not available for partition. The other settlement deed set up by the defendant No. 1 in respect of the suit schedule property was held to be not proved. Having regard to the fact that Alamelalla died intestate insofar as it relates to suit schedule property, the Court

below held that the parties to the suit are entitled for 1/4th share each in the suit schedule property in terms of Sections 15 and 16 of the Hindu Succession Act. Aggrieved by the said judgment and decree, the defendant No. 2 is in appeal before this Court.

5. I have heard the learned counsel for the appellant as well as the learned counsel appearing for defendant No. 1.

6. The grievance of the appellant in this appeal is that in view of the fact that defendant No. 1 had been given a portion of the property by the mother, he should have been excluded while granting share in the remaining portion of the property which is the subject matter of the suit. Having heard the learned counsel for the appellant and on perusal of the judgment under appeal, I find no justifiable ground to admit this appeal as the judgment under appeal is in accordance with the provisions of Sections 15 and 16 of Hindu Succession Act. Admittedly, as noticed supra, the suit schedule property was owned by Alamelamma. It is not in dispute that the said Alamelamma has not left behind any will or any other testament in respect of the suit schedule property. Therefore, Alamelamma has died intestate insofar as it relates to suit schedule property. The parties to the suit are admittedly the heirs of Alamelamma being her children.

7. As per Section 15 of Hindu Succession Act, on the intestate death of a female, her property devolves firstly upon sons, daughters (including the children of any predeceased son or daughter) and husband. There is no dispute that husband of Alamelamma pre-deceased her. Thus, it is clear that Alamelamma left behind three sons and daughter, who are the parties to the suit. Therefore, the Court below is justified in holding that each of the parties to the suit are entitled for 1/4th share in the suit schedule property. No doubt, Alamelamma had settled portion of the property in favour of defendant No. 1 and registered a settlement deed.

8. As observed by the learned trial Judge, from the contents of the settlement deed, it is clear that the settlee namely defendant No. 1 is not excluded from claiming share in the remaining portion of the property left behind by her. Therefore, under law defendant No. 1 is also entitled for a share in the remaining portion of the property left behind by the mother, notwithstanding the fact that a portion of the property had been settled in favour of defendant No. 1 earlier. In this view of the matter, the judgment of the Court below does not suffer from any illegality or irregularity warranting interference by this Court. The submission of the learned counsel for the appellant that having regard to the measurement of the property, it cannot be divided by meter and bounds therefore, parties cannot get separate possession of their shares. However this is a matter which requires to be considered by the Court below in the final decree proceedings, keeping in mind the provisions of Partition Act. In this view of the matter, I find no justifiable ground to admit this appeal. Accordingly, the appeal is dismissed.