

(2013) 12 KAR CK 0338

In the Karnataka High Court

Case No : Regular Second Appeal No. 5233 of 2009 (DECLN and P.I.)

Sri. Vittal Sultan Hegade, Sri. Kallappa Shiddappa Hegade
and Sri. Hanamant Vittal Hegade

APPELLANT

Vs

Sri. Mayappa Gangaram Hegade, Sri. Ningappa Gangappa
Hegade, Sri. Siddappa Gangappa Hegade and Sri. Sultan
Bhimappa Hegade

RESPONDENT

Date of Decision : 02-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0338

Hon'ble Judges : Sreenivase Gowda, J

Bench : Single Bench

Advocate : R. K. Kulkarni, for the Appellant; B. S. Kamate, for R.1 to R.3, for
the Respondent

Final Decision : Dismissed

Judgement

Sreenivase Gowda, J.—This second appeal is by defendants 1, 2 and 4 in the suit challenging the concurrent judgment and decree passed by the courts below whereby the Trial Court decreed the suit of the plaintiffs which was confirmed by the lower appellate court.

For the sake of convenience, the parties are referred to as they are referred to in the suit before the Trial Court.

I have heard the learned Counsel appearing for the parties and perused the judgments and decrees of the courts below.

2. The learned Counsel for defendants 1, 2 and 4/appellants herein, submit that, defendant Nos. 1 and 2 together were given 20 guntas and defendant No. 4 was given 20 guntas of land in the suit R.S. No. 145/1 + 2B and on the basis of joint varadi given by the plaintiffs and defendants entry to that effect was made in the name of defendants 1 and 2 for 20 guntas and in the name of defendant No. 4 for 20 guntas. The courts below without considering this have committed error in

decreeing the suit of the plaintiffs holding that they are the owners in possession and enjoyment of 4 acres 4 guntas in the suit land bearing RS No. 145/1 + 2B.

3. Learned Counsel for the appellants submits, entries were made in the joint names of defendants 1 and 2 for 20 guntas and in the name of defendant No. 4 for 20 guntas, from out of RS No. 145/1+2B during the year 1979 and 1980 respectively and the suit brought in the year 2007 is hopelessly barred by time. The courts below without considering this have committed an error in decreeing the suit. He submits the judgments and decrees of the courts below are not based on proper appreciation of oral and documentary evidence on record and therefore, he prays for allowing the appeal by answering the substantial question of law urged in the appeal memo in favour of the appellants.

4. Learned Counsel appearing for the respondents submits, the judgments and decrees of the courts below are based on proper appreciation of oral and documentary evidence on record. He submits there is no illegality or infirmity in the judgment and decrees passed by the courts below warranting interference of this Court, much less, no substantial question of law arises for consideration and he prays for dismissal of appeal.

5. The material on record discloses that the original propositus by name Sultan Hegade had four sons by name Bheerappa, Siddappa, Gangaram and Vithal (defendant No. 1). Plaintiffs 1 to 3 are sons of Gangaram. Defendant No. 2 is the son of Siddappa. Defendant No. 3 is the grandson of Bheerappa. Among the four sons of original propositus Sultan Hegade, his last son Vittal, the defendant No. 1 in the suit alone is alive. After the death of original propositus names of his four sons were recorded in the Record of Rights as per ME. No. 3136 during the year 1965. Later on, defendant Nos. 1 and 2, deceased father of plaintiffs and deceased father of defendant No 3 got the land belonging to the propositus in R.S. No. 145/1 + 2B partitioned by allotting 1/4th share towards each sharer. As per the said partition, land bearing RS No. 145/1 + 2 has been divided into 4 equal shares among the 4 sons of original propositus and different numbers were assigned. Land bearing R.S. No. 145/1 + 2A measuring 4 acres 5 guntas was allotted to the exclusive share of defendant No. 1-Vithal, land bearing R.S. No. 145/1 + 2B measuring 4 acres 4 guntas was allotted to the exclusive share of deceased father of plaintiffs by name Gangaram, land bearing R.S. No. 145/1 + 2C measuring 4 acres 4 guntas was allotted to the exclusive share of defendant No. 2 Kallappa who is the son of Siddappa-2nd son of original propositus and land bearing RS. No. 145/1 + 2D was allotted to the exclusive share of deceased father of defendant No. 3, belonging to the branch of Bheemappa who is the first son of original propositus. The said partition is effected by metes and bounds and in the said partition some area was kept for common enjoyment of Well and since then the parties are enjoying water of the common well.

6. The grievance of the plaintiffs in the suit is that, defendants 1 and 2 have illegally managed to alter the ROR of land bearing RS No. 145/1 + 2B measuring 4 Acres 4 guntas which was allotted to the exclusive share of their deceased

father by which 20 guntas was entered in the name of defendants 1 and 2 in the ROR. Similarly, another 20 guntas in the said RS. No. 145/1 + 2B was entered in the name of defendant-4 in the ROR, thereby extent of 4 acres 4 guntas allotted to the exclusive share of the deceased father of the plaintiff was reduced by 1 acre. Therefore, on the basis of the said entry the defendants are trying to dispossess the plaintiffs from the said 1 acre of land out of 4 acres 4 guntas in RS. 145/1+2B. Therefore, they were constrained to file this suit for declaration to declare that 4 acres 4 guntas in Sy. No. 145/1 + 2B was allotted to the exclusive share of their deceased father and they are in possession and enjoyment of the same and to grant consequential relief of permanent injunction restraining defendants from interfering with their possession and enjoyment of the suit property.

7. The suit was resisted by defendants 1, 2 and 4 by filing common written statement contending that entry in respect of 20 guntas of land in Sy. No. 145/1 + 2B was entered in the name of defendants 1 and 2 and another 20 guntas in the same survey number was entered in the name of defendant No. 4 on the basis of joint waradi given by plaintiff and defendants 1, 2 and 4. Therefore, the suit brought 25 years after the said entry is barred by time and defendants 1 and 2 have been in possession and enjoyment of 20 guntas of land and defendant No. 4 has been in possession and enjoyment of 20 guntas of land in the suit RS. No. 145/1 + 2B ever since the date of entry effected in their names, therefore, the question of interfering with the possession of the plaintiffs does not arise and they pray for dismissal of the suit.

8. It is not in dispute that the original propositus Sultan Hegade had four sons, viz., namely, Bheerappa, Siddappa, Gangaram and Vittal (defendant No. 1). Among four sons of original propositus only Vittal was alive. After the death of original propositus and his first 3 sons, viz., Bheerappa, Siddappa and Gangaram, partition took place among defendant No. 1 Vittal, deceased father of plaintiffs, deceased father of defendant-3 and grand son of Beerappa in respect of their joint family property bearing Sy. No. 145/1+2B measuring 16 acres 17 guntas. In the said partition, land bearing RS No. 145/1 + 2A measuring 4 acres 5 guntas was allotted to the exclusive share of defendant No. 1 Vittal. The suit land bearing RS No. 145/1+2B measuring 4 acres 4 guntas was allotted to the exclusive share of deceased father of plaintiffs by name Gangaram. The suit land bearing RS No. 145/1 + 2C measuring 4 acres 4 guntas was allotted to the exclusive share of defendant No. 2 Kallappa who is the son of Siddappa-the second son of original propositus, and land measuring 4 acres 4 guntas in R.S. No. 145/1 + 2D was allotted to the exclusive share of the deceased father of defendant No. 3. Accordingly, mutation entries were effected and they have been in possession and enjoyment of their respective share of land, which fact is not disputed by the defendants.

9. The case of the plaintiffs is that without notice to them and without their consent, the entries effected in respect of 20 guntas of land in Sy. No. 145/1 +

2B was illegally effected in the joint names of defendants 1 and 2 and similarly entries in respect of another 20 guntas in Sy. No. 145/1 + 2B was effected in the name of defendant No. 4. But according to the defendants the said entry was effected on the basis of joint varadi of plaintiff and defendants 1, 2 and 4, but it has been seriously disputed by the plaintiff. When once entries were made in the names of respective parties as per the partition effected by them, whether such entries can be changed and shares allotted to them can be reduced without issuing notice to the affected parties. Law permits oral partition and recognises the same provided it is carried out by making necessary entries in the revenue records but entry effecting portion of the land allotted to one of the co-sharers in the name of other co-sharers on the basis of joint varadi is not permitted in law. The trial court considering this material aspect of the matter is justified in decreeing the suit of the plaintiffs holding that they are the owners of the suit land bearing R.S. No. 145/1 + 2B measuring 4 acres 4 guntas.

10. The lower appellate court in the appeal preferred by defendants 1, 2 and 4, on re-appreciation of entire oral and documentary evidence on record dismissed the appeal. I have carefully gone through the judgments of both the courts below and I do not find any illegality or infirmity warranting my interference in the judgments impugned. Moreover, there is no substantial question of law which arise for consideration to admit this appeal.

Accordingly, the appeal being devoid of merits is dismissed. No order as to costs.