

(2010) 06 KAR CK 0080

In the Karnataka High Court

Case No : Regular Second Appeal No. 533 of 2007

S.S. Bopaiah Subraya

APPELLANT

Vs

S.S. Vasudeva Subraya, S.S. Pushpavathi and Smt.
Vijayalakshmi

RESPONDENT

Date of Decision : 21-06-2010

Acts Referred:

Coorg Land and Revenue Regulations, 1899 — Regulation 145, 167, 167 (1)
Karnataka Land Revenue Act, 1964 — Section 202

Citation : (2010) ILR (Kar) 3334 : (2010) 6 KarLJ 262

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : M.V. Ramesh Jois and H.R. Durgaprasad, for Jois Associates, for the Appellant; B.S. Basavaraju, for P.N. Prashanth, for R1 and R2, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J.—This appeal is filed by the plaintiff, against the judgment and decree dated 10.11.2006 of the District Judge, Kodagu-Madikeri in R.A. 12/2002. By the said judgment/decreed, the first appellate Court reversed the judgment and decree of the Trial Court, which had decreed the suit.

2. One Sirakaje Subraya, had 5 sons, who all constituted a joint Hindu Family, governed by Mithakshara School of Hindu Law and possessed immovable properties at Korangala and Cherangala villages of Madikeri Taluk, Kodagu District. The genealogical tree is as follows:

Sirakaje Subraya (Propositus) _____
\\ / / / / S.S. Bopaiah S.S.
Vasudeva S.S. Sukumara S.S. Ganesha S.S. Nagaraja Rao (Plaintiff) (Defendant
-1) (Dead) (Dead) (Died-unmarried) / \\ Smt. S.S. Pushpavathi Smt.
Vijayalakshmi (wife) Defendant-2) (Wife) (Defendant-2)

3. S.S. Bopaiah - the plaintiff, filed O.S. 3/1998 in the Court of Civil Judge (Sr.

Dn.), Madikeri, for partition by metes and bounds and for allotment of 1/4th share, in each of the plaint Schedule properties and for separate possession. S.S. Vasudeva - the 1st defendant, filed written statement and contended that, the joint family properties were already subjected to partition under a partition agreement dated 8.3.1970 and separate shares allotted. Defendants 2 and 3, filed written statement, conceding the claim of the plaintiff and also sought for partition and allotment of separate shares to them, at 1/4th share each.

4. The Trial Court framed issues. During the trial, plaintiff deposed as PW. 1. Exs. P1 to P5 were marked. For the 1st defendant, DWs.1 and 2 deposed. Exs. D1 to D4 were marked. Considering the rival contentions and after appreciation of the evidence, the Trial Court held that; defendant 1 failed to prove that there was a prior partition on 8.3.1970; that all the parties are entitled to 1/4th share each in the suit properties. The suit was decreed.

5. Aggrieved, the 1st defendant filed an appeal and reiterated the contentions raised in his written statement. That apart, it was contended that, the suit properties being Jamma lands, the suit is not maintainable and even otherwise, the appreciation of evidence by the learned Trial Judge is wholly erroneous.

6. Learned first appellate Judge, after raising the point for consideration and upon re-appreciation of the evidence, held that, the judgment and decree passed by the Trial Court on the materials available on record cannot be said to be illegal. However, by noticing the contention with regard to the maintainability of the suit, raised for the first time in the appeal, by relying upon a decision in the case of B.R. Sharathchandra and Ors. v. K.D. Poovaiah and Ors. ILR 2006 Kar 3605, held that, since the parties belong to Coorg family and the suit properties are Bane lands, the suit is not maintainable. As a result, the appeal was allowed and the judgment and decree of the Trial Court, was set aside and the suit was dismissed, as not maintainable in law. Aggrieved, the plaintiff has filed this second appeal.

7. Sri M.V. Ramesh Jois, learned Counsel appearing for the appellant, contended that:

(i) The decision on which reliance was placed by the first appellate Court i.e., in the case of B.R. Sharathchandra (supra), is not applicable and that the learned Judge has mechanically applied the said decision, without noticing the material facts and circumstances of the cases.

(ii) Maintainability of the suit was not in issue before the Trial Court and hence, the first appellate Court is not right in considering the issue of maintainability.

(iii) That with the enactment of Karnataka Land Revenue Act, 1964, the Coorg Land and Revenue Regulations, 1899, has been repealed and hence, the suit for partition in the Civil Court is maintainable.

(iv) The decision in the case of Machettira Machaiah and others Vs. Machettira Kariappa and another, , has not been noticed and that, there is illegality

committed in passing of the impugned judgment/decreed.

8. Sri B.S. Basavaraju, learned Counsel appearing for respondent-1, on the other hand, contended that, the parties belong to Coorg family, the suit properties are Bane lands and hence, the provisions under the Coorg Land and Revenue Regulations, 1899, (for short "Regulations") are attracted. Learned Counsel placed strong reliance on the decision in the case of B.R. Sharathchandra (supra) and contended that, the first appellate Court is justified in allowing the appeal and in dismissing the suit, which is not maintainable, on account of bar under the Regulations, for partition of the property.

9. I have perused the records. The impugned judgment has given rise to the following substantial questions of law:

(i) Whether the Coorg Land and Revenue Regulations, 1899 continues in operation, despite its repeal by Karnataka Land Revenue Act, 1964?

(ii) Whether the decision in the case of B.R. Sharathchandra and Ors. v. K.D. Poovaiah and Ors. ILR 2006 KAR 3605, has application to the case?

(iii) Whether a suit for partition of plaint Schedule properties is maintainable in the Civil Court?

10. Learned Counsel on both the sides, made their submissions, on the said substantial questions of law.

11. Re: Point No. (i):

The Karnataka State Legislature, in order to consolidate the laws relating to land and the land revenue administration in the State of Karnataka, has enacted the Karnataka Land Revenue Act, 1964 (for short, "the Act") which was first published in the Karnataka Gazette on 19.03.1964. The said Act has come into force with effect from 1st April, 1964 pursuant to the Notification No. RD 55 LAD 64 dated 19.03.1964. Section 202 of the Act is regarding the repeal and savings. The enactments specified in the Schedule and any other law corresponding to the Act, were repealed. The Coorg Land and Revenue Regulations, 1899 is specified at Serial No. 15 in the Schedule to Section 202 of the Act. Therefore, it is obvious that the entire Regulation was repealed.

11.1 In the case of Cheekere Kariyappa Poovaiah Vs. State of Karnataka, , the 2nd point considered, reads as follows:

Whether Rule 167(1) of the Coorg Land and Revenue Regulations, 1899, continues in operation despite the repeal of the Regulation by the Karnataka Land Revenue Act, 1964?

The said point has been answered as follows:

27. The upshot of this discussion is that Rule 167 of the Rules framed under the Coorg Regulation would not survive after the repeal of Coorg Regulation by Karnataka Land Revenue Act, 1964.

11.2 In the case of Machettira Machaiah (supra), it has been held as follows:

The Coorg Land and Revenue Regulations, 1989 is specified at Sl. No. 15 in the Schedule to Section 202. Therefore, it is obvious that the entire Regulation has been repealed.

In view of the above, the Regulations cease to be in operation, after the Act came into force, with effect from 01.04.1964.

12. Re: Point No. (ii):

The material facts in the case of B.R. Sharathchandra (supra) are that, one Appachu, the propositus of defendants 2 to 6, sold the suit property in favour of the plaintiff on 10.5.1974. Since the defendants refused to hand over possession of the property, suit for declaration and possession was filed. The defendants contended that, the suit property could not have been sold by the propositus, as the same is Bane land and the property continues in the Kuppanda family, without being partitioned and consequently, the same has not fallen to the share of defendants 2 to 6 and the property cannot be partitioned without recourse to the provisions of the Regulations, 1899 and therefore the plaintiff will not get any right over the suit property. The Trial Court decreed the suit. The first appellate Court reversed the impugned judgment and decree and dismissed the suit. The plaintiff filed second appeal, wherein the following substantial question of law was raised for consideration.

Whether the propositus of defendant No. 2 to 6 could have sold the suit property in favour of the third party in the absence of the partition as provided under the Coorg Land and Revenue Regulations, 1899?

The Court noticed the fact that, even according to the plaintiff, the partition had taken place about 75 years prior to the suit, which was filed in the year 1979, that means, the partition must have taken place during the year 1904 and since during the said period, i.e., 1904, the provisions of the Regulations were in force and any partition without recourse to the provisions of the Regulations, was held to be bad in the eye of law. Since no partition had not taken place in accordance with the provisions of the Regulations, with the intervention of the revenue authorities, as the lands in question were basically granted by the State Government, by making reference to the decision in the case of Kuravanda Nanjappa v. Kurvanda Thimmaiah 1963 (2) MU 486, wherein it had been held that Regulation 145 not only prohibited Civil suit for partition but also prohibited division of the joint family properties amongst the members of the Coorg family without recourse to the Regulations, it was held that the first appellate Court was justified in allowing the appeal and in dismissing the suit.

Rule 145 of the Regulations not only prohibited civil suit for partition but also prohibited a division of joint family properties, amongst the members of the Coorg family, without recourse to the Regulations. Since the partition was alleged to have taken place 75 years prior to the suit i.e., around 1904, when the

Regulation was in force, it was held by the first appellate Court that, no partition in the eye of law could have taken place and the ancestors of defendants 2 to 6 had no exclusive right over the property and hence, could not have sold the property in favour of the third party - plaintiff.

12.1 The decision in the case of B.R. Sharathchandra, has no application to the instant case. The lower appellate Court having misunderstood the ratio of the said decision, has misapplied it and has held that, the suit is not maintainable. The repeal of the Regulations u/s 202 of the Act has not been noticed. The law declared in the cases of Cheekere Kariyappa Poovaiah Vs. State of Karnataka, and Machettira Machaiah and others Vs. Machettira Kariappa and another, , has also not been noticed. The Regulations have ceased to be in operation after coming into force of the Act.

12.2 In the case on hand, the plaintiff contended that, the suit properties are the joint family properties of the propositus -Sirakaje Subraya; there is no partition, despite his request and therefore, the suit for partition was filed. The defence set up by the 1st defendant that, there was a partition in the family on 8.3.70 and since then, the parties are in separate possession and enjoyment of their respective shares, was disbelieved. Both the Courts below have concurrently held that, the partition agreement dated 8.3.1970 i.e., Ex.D1 is a created document for the purpose of the case and that the 1st defendant has not established that there was an earlier partition in the family. Both the Courts below have concurrently held that the suit properties are joint family properties and are liable for division and each of the parties are entitled to 1/4th share.

12.3 The first appellate Court, unfortunately did not discuss the factual aspects and by merely placing reliance on the decision in the case of B.R. Sharathchandra, held that the suit is not maintainable. Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. As is too well settled by a catena of decisions of the Apex Court, a decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge, while giving judgment that constitutes a precedent. The only thing in a Judges decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. What is essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the Judgment. The enunciation of the reasons or principle on which a question before a Court has been decided is alone binding as a precedent. The Judgment in the case of B.R. Sharathchandra, has been rendered merely by having regard to the fact situation obtaining therein, which unfortunately, was not noticed by the learned Judge of the Court below and thus has misapplied the said decision, to hold that the suit is not maintainable.

13. Re: Point No. (iii):

Since the Regulations have been repealed and have ceased to be in force, with

the coming into force of the Act, with effect from 01.04.1964, the prohibition contained under Rule 145 has ceased to be in existence and therefore, Civil Court has the jurisdiction to entertain the suit for partition and adjudicate of the rights of the parties. After the coming into force of the Act, a suit for partition of the family properties by the members of Coorg families, before the Civil Court is maintainable. The first appellate Court has erred in holding otherwise.

In the result, I pass the following:

ORDER

(i) The appeal is allowed.

(ii) Judgment and decree under challenge, passed by the first appellate Court, to the extent of holding that the suit is not maintainable, stands hereby set aside.

(iii) R.A. 12/2002 on the file of the Dist. Judge, Kodagu, Madikeri, stands dismissed. As a consequence, the judgment and decree dated 09.10.2002 passed in O.S. 3/1998 by the Civil Judge (Sr. Dn.), Madikeri, stands restored.

In the circumstances of the case, keeping in view the relationship between the parties, they are directed to bear their respective costs.