

(1998) 02 KAR CK 0008

In the Karnataka High Court

Case No : Regular Second Appeal No. 804 of 1992

T.R. Subba Jetty

APPELLANT

Vs

T.R. Narasimha Jetty and Others

RESPONDENT

Date of Decision : 18-02-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Limitation Act, 1963 — Section 110

Citation : (1998) ILR (Kar) 3161

Hon'ble Judges : M.B. Vishwanath, J

Bench : Single Bench

Advocate : T.S. Amarkumar, for the Appellant; Venkatachala and G.S. Vishweshwara for R-1, for the Respondent

Final Decision : Dismissed

Judgement

M.B. Vishwanath, J.—Heard both Counsel. The appellant is the first defendant. Respondents-2 to 4 are defendants-2 to 4. Respondent-1 is the plaintiff:

2. The plaintiff filed the suit O.S, No. 98/1989 for partition and separate possession of the suit schedule properties (three items), viz.,

3. The trial Court decreed the suit and granted the plaintiff 1/2 share in the suit properties.

4. The trial Court decreed the suit and granted the plaintiff half share in the suit properties.

5. Aggrieved by the judgment and decree dated 5.4.90 passed by the Learned Munsiff, the first defendant filed appeal in R.A.No. 34/1990 before the Civil Judge, Holenarasipura.

6. The learned first appellate judge by his judgment dated 16.3.1992 dismissed the appeal, thereby confirming the judgment and decree passed by the Court of first instance.

7. The first defendant has filed the present second appeal u/s 100 C.P.C.

8. First plaintiff T.R. Narasimhajetty and first defendant T.R. Subbajetty are brothers. Their mother, who was the second plaintiff, is since deceased. Therefore there was no problem regarding grant of half share to each of the two brothers.

9. At the time of admission the substantial question of law named for determination of this Court is:

"Whether the suit of the plaintiff is barred by limitation under Article 110 of the Limitation Act?"

10. The learned Counsel for the appellant-first defendant took me through the evidence and submitted that the suit was barred by time in view of Article 110 of the Limitation Act.

11. It is clear from the evidence of the plaintiff that he and his mother went on asking the share from the first defendant (appellant herein) and the appellant went on postponing the grant of the share of the plaintiff. The first plaintiff has made it abundantly clear that only when the defendant finally refused, he and his mother filed the present suit.

12. On the basis of the evidence adduced before him, the trial judge came to the conclusion that the plaintiff had not been excluded and ouster was not proved. The Court of first instance held that the suit was within time and was not barred under Article 110. The first appellate Court agreed with the conclusion on facts arrived at by the Court below.

13. In this Court the learned Counsel for the appellant first defendant brought to my notice the decision reported in SINNASAMY GOUNDEN v. SUBBANA GOUNDEN AIR 1915 Mad 1146 wherein it has been held that where a member of the joint family was refused partition of his share and remained out of possession and received no profits for over 12 years and was denied even maintenance, he was excluded from the joint family property.

14. It is clear from the facts of this authority of the Madras High Court that this suit for partition was brought by a stranger to the family. It was in these circumstances the Madras High Court held that the plain plaintiff who had purchased under a registered sale deed the share of the first defendant was entitled to succeed. The Madras High Court came to the conclusion bearing in mind that the suit was brought by a stranger to the family and also in view of the fact that the sale was prior to the suit filed by the stranger. This authority, in my humble opinion, is not applicable to the facts of the present case.

15. The learned Counsel for the appellant-first defendant next pressed into service Chhotelal Babulal and Another Vs. Premlal Girdharilal and Others, . This authority also is clearly distinguishable. Both the Courts below have held on facts that the exclusion and ouster of the plaintiff was not proved.

16. The conclusion arrived at by the Courts below are findings on fact. They are neither illegal nor perverse.

17. This second appeal is therefore dismissed. In the circumstances of the case each party to bear his own costs.

The interim order passed on I.A.No. 3 by this Court on 3.2.1998 is hereby dissolved. In view of the decree passed, mesne profits will be gone into.