

(1997) 07 KAR CK 0008

In the Karnataka High Court

Case No : Regular Second Appeal No. 658 of 1987

Umavathi and Others

APPELLANT

Vs

Sunanda and Others

RESPONDENT

Date of Decision : 17-07-1997

Acts Referred:

Citation : (1998) ILR (Kar) 2329 : (1998) 6 KarLJ 591

Hon'ble Judges : T.N. Vallinayagam, J

Bench : Single Bench

Advocate : Sri P. Vasudeva Aithal, for the Appellant; Sri Udaya Holla, for the Respondent

Judgement

1. Defendants 14 to 25 who are the L.Rs of the second defendant are the appellants before this Court. The suit is one for partition between the plaintiff, second defendant who is now represented by defendants 14 to 25 and defendants 3 to 5. Each claim 1/4th share along with their mother who is the first defendant from the father Ishwara Rai. The mother died during the pendency of the suit. Thereafter, the share of the parties increased to 1/3rd. This suit for partition apart from mesne profits in C.S. No. 379 of 1979 was decreed by the First Additional Munsiff, Mangalore, on 24-11-84. On appeal by the defendants in R.A. No. 13 of 1985 the learned Second Additional Civil Judge, Mangalore, Dakshina Kannada confirmed the decree of the Trial Court and dismissed the appeal on 1-8-1987. Hence the second appeal.

2. The second appeal has been admitted on the following question of law;

""(i) Whether the Courts below were right in decreeing the suit for partition in Chalageni holdings which were the suit agricultural lands, after the Karnataka Land Reforms Act, came into force and when the tenancy lands vested in the Government?"

3. The shares of the parties is not disputed and the fact that all of them claim under one Ishwara Rai is also not disputed. Equally so "originally Ishwara Rai

was the tenant of the entire property and he was having the occupancy right". Now that occupancy right is sought to be divided between the parties as the legal heirs. No doubt, there may be inter se rivalry between the brothers and sisters as it is usual and common in every family. But that does not mean that there are rival claims to the property. Their claim is rival so far as the shares are concerned and not to the property of Ishwara Rai. According to me when Ishwara Rai was held to be the original tenant and his right is sought to be partitioned in a Civil Court, the question of application of the Karnataka Land Reforms Act or any other Act does not therefore arise. In a Hindu family for a partition the right between the sons and daughters from their father cannot be disputed nor can be denied by them.

4. It is not disputed that the parties are entitled to 1/3 each after the death of the mother. The only ground on which the defendants-appellants want to deprive the other sharers of the property is that subsequent to the death of the father, the second defendant was cultivating the land. The mere fact that the second defendant was cultivating the land cannot give him the exclusive right but cultivating the lands on behalf of the joint family is only as a member of the joint family. In this view of the matter, the application of the aforesaid Acts will not arise. It is also seen that second defendant's L.Rs want to deprive the members of the other branch of the family. But D.Ws. 1 and 2 cannot deprive their own brothers and sisters who are of the same blood and skin. In equity also the issues of one father are entitled to equal share and that is what the law has been declaring in this country. So viewing even from the angle of equity the Court below is right in granting 1/3rd to each of the three branches of the original propositus Ishwara Rai.

5. No other point of law was raised before me. Therefore, the concurrent findings of the Courts below confirmed and the second appeal is dismissed. So far as the payment of the cost is concerned the cost of each party shall come out of the estate. To this extent, the decree of the Court below is modified.