

(2014) 03 KAR CK 0013

In the Karnataka High Court

Case No : Regular Second Appeal No. 5354 of 2009 (PAR)

Vijay and Gururaj

APPELLANT

Vs

Partha, Smt. Vasanti and Smt. Shree

RESPONDENT

Date of Decision : 11-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100 96

Evidence Act, 1872 — Section 115

Land Acquisition Act, 1894 — Section 18

Citation : (2014) 03 KAR CK 0013

Hon'ble Judges : A.V. Chandrashekara, J

Bench : Single Bench

Advocate : Prabhakar A. Kulkarni, for the Appellant; M.C. Hukkeri, for C/R1, for the Respondent

Final Decision : Dismissed

Judgement

A.V. Chandrashekara, J.—Plaintiffs are before this Court by filing an appeal u/s 100 of CPC, as they are aggrieved by the quantum share allotted to them by the trial Court and affirmed in the first appeal. Plaintiffs have been granted only 1/5th share in respect of property bearing GPC No. 148A situated in Galagali village of Bilagi Taluk. Against the said judgment and decree, plaintiffs had filed separate appeal in R.A. No. 62/2007, before the Court of District Court at Bagalkot and the same was transferred to FTC-II, Bagalkot. Defendant Nos. 3 and 4 namely, Smt. Vasanti and Smt. Shree had filed separate appeal in R.A. No. 47/2008 on the ground that the share granted in their favour by the trial Court was lesser. Both these appeals have been clubbed and have been disposed of by a common judgment dated 25.03.2009. These appeals have been dismissed confirming the judgment of the trial Court, under which plaintiffs and defendant Nos. 3 and 4 have been allotted 1/5th share each. These concurrent judgments which are called in question on various grounds as set out in the appeal memo. Appellant in R.A. No. 62/2007 are the plaintiffs in the said suit and respondent No. 1 herein is the defendant No. 2 in the said suit. Defendant No. 1-

Ramachandra died and his legal representatives are already on record. Parties will be referred to as plaintiffs and defendants as per their ranking given in the trial Court.

2. The facts leading to the filing of the suit in O.S. No. 24/2005 before the Court of Senior Civil Judge, Biligi is as follows:

Defendant No. 1-Ramchandra is the father of plaintiffs and defendant Nos. 3 and 4. Plaintiffs chose to file a suit for partition and separate possession in respect of 4 items of house properties bearing VPC Nos. 146, 147, 148B and 148A of Galagali village of Biligi Taluk. Plaintiffs have claimed together 7/15th share on the ground that suit property had been inherited by their deceased father defendant No. 1 from the adoptive father. When the deceased defendant came to know that all the properties were likely to be submerged because of Upper Krishna Project, he thought of getting more compensation and therefore, created a document for having relinquished his interest in respect of three houses in favour of plaintiffs and defendant No. 2 by submitting an application to the Gram Panchayat without the consent of the plaintiffs. On enquiry, plaintiffs came to know that, this was an act done behind their back. As defendant No. 1 was bedridden due to paralysis, defendant No. 2 started claiming as exclusive owner of the house property in respect of which, his name appears in the records and therefore, they wanted their legitimate share.

3. Defendant No. 2 chose to file detailed written statement admitting the relationship, but denied all the material averments. The averment that all the schedule properties are joint family properties and plaintiffs together have 7/15th share has been specifically denied. According to them, defendant No. 1 effected partition in the year 1994 and that has been acted upon by the parties and that the only property available for partition is the property bearing GPC No. 148A. With these pleadings, he had requested for dismissal of the suit. On the basis of the above pleadings, following issues came to be framed.

- i) Whether plaintiffs prove that they form joint Hindu Family with defendants in respect of the suit properties that they have got 7/15 the share together?
- ii) Whether they prove that to defeat their rights, defendants are trying to dispose of the suit properties?
- iii) Whether defendant No. 2 proves that the suit suffers from non-joinder of necessary parties?
- iv) Whether defendant No. 2 further proves that in the form of their share defendant No. 1 has paid money and gold to plaintiffs as well as defendants No. 3 and 4?
- v) Whether the suit is properly valued and paid proper court fee?
- vi) Whether the plaintiffs are entitled for their share as prayed?
- vii) What judgment or decree?

4. Plaintiff No. 1 is examined as P.W. 1 and seven exhibits have been got marked. Defendant No. 2 is examined as D.W. 1 and defendant No. 3 is examined as D.W. 2. 31 exhibits have been got marked on their behalf. Ultimately suit is decreed in part granting 1/5th share each to the plaintiffs and 1/5th share to defendant Nos. 3 and 4 vide considered judgment dated 03.08.2007. This judgment was called in question in regular appeal filed u/s 96 of CPC in R.A. No. 47/2008 filed by defendant Nos. 3 and 4 and R.A. No. 62/2007 by the plaintiffs. Both these appeals have been clubbed and have been disposed of vide considered judgment dated 25.03.2009. The judgment of the trial Court has been upheld. The concurrent findings are called in question.

5. The learned counsel for the appellants has submitted his arguments in regard to the admission of the case on hand. He has requested the Court to admit the matter by framing suitable substantial questions of law, taking into consideration the questions of law proposed in the appeal memo as substantial questions of law.

6. The only point that arises for consideration is, whether the defendants have been able to probabalize the earlier partition effected by deceased defendant No. 1 who was the father of the plaintiffs and remaining defendants.

7. Ex. D1 is a partition deed dated 27.01.1994 effected by defendant No. 1. Signatures of defendant No. 1 is marked as Ex. D1(a). Though it is an unregistered document, the same has been acted upon, more particularly, in the light of having given an application to the jurisdictional Panchayat to enter the names of the person whose names are found in Ex. D4. This application is dated March 1995. Property bearing GPC No. 146 is given to plaintiff No. 1, property bearing GPC No. 147 is given to plaintiff No. 2 and property bearing GPC No. 148A was retained by defendant No. 1 for himself. The fact that properties bearing GPC Nos. 146, 147 and 148B are submerged because of Upper Krishna Project is not in dispute. The parties have already filed applications seeking enhancement of compensation u/s 18 of the Land Acquisition Act and such references are pending before the Reference Court and that is admitted by P.W. 1.

8. P.W. 1 has unequivocally admitted that Ex. D1 is not challenged in any manner. What is deposed by him is that, since his father was an advocate and since he was looking after the affairs of the joint family and since he had lot of trust and confidence in him, he did not make any attempt to get Ex. D1 annulled.

9. The learned counsel for the appellants has relied upon a decision of this Court reported in Hanumath Bheemappa Sanadi and Others Vs. Rudrappa Thammanna Sanadi and Others, . In the said decision, it is stated that mere entry in varadi is not sufficient to evidence partition, more particularly, in the light of the presumption of jointness in a Hindu family. There is no second opinion about this proposition. But the fact is that, though the said document is an unregistered document, the same has been acted upon by the parties by making necessary applications to the jurisdictional Panchayat and the parties have already received

their compensation and they have filed necessary applications seeking enhancement of compensation u/s 18 of the Land Acquisition Act. On the basis of such applications, reference has been made and such references are pending before the reference Court. Therefore, the subsequent events, appellants are estopped as contemplated u/s 115 of the Evidence Act. Therefore, the presumption of jointness has stood rebutted in view of the principles of estoppel available u/s 115 of the Evidence Act. P.W. 1 has admitted that he has already received compensation in respect of house bearing GPC No. 261 to an extent of Rs. 3,00,000/- and the same is with him. He has also admitted that anybody has sought any partition in respect of this land. This also speaks volumes about the partition that has already taken place.

10. Taking all these into consideration, the trial Court has held that the only property available for partition is the property retained by defendant No. 1, bearing GPC No. 148A. Hence, partition is granted declaring the share of the plaintiffs Nos. 1 and 2 as 1/5th each. This cannot be found fault with in any manner. Taking into consideration the totality of the case and the important admissions culled out from the mouth of P.S. 1 and other surrounding circumstances, the trial Court has rightly decreed the suit in part granting only 1/5th share each to the plaintiffs and defendant Nos. 3 and 4. This cannot be found fault with in any manner. The first appellate Court, being the final Court of facts, has reassessed the evidence in right perspective and has given cogent and valid reasons as to why it has concurred with the judgment of the trial Court. Both the Courts have adopted right approach to the real state of affairs and no infirmity or perversity is found in the judgment of the trial Court and the first appellate Court. There are no good grounds to interfere with the well considered concurrent findings of facts in regard to the earlier partition and the same being acted upon by the parties. There are no merits to admit the appeal. Hence, it is liable to be dismissed.

ORDER

The appeal is dismissed as unfit for admission. There is no order as to costs.