Babusab and Others Vs. Maniksab and Others

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Court : Karnataka Dharwad

Decided On : Aug-24-2012

Judge : N. Kumar

Appeal No. : Regular Second Appeal No. 894 of 2001

Appellant : Babusab and Others

Respondent : Maniksab and Others

Judgement :

(Prayer: This RSA is filed under Section 100 of CPC against the judgment and decree dated 31.07.2001 passed in R.A No.55/95 on the file of the 1st Addl. District Judge, Dharwad, sitting at Hubli, dismissing the appeal and confirming the judgment and decree dated 11.7.95 passed in O.S No.112/90 on the file of the Addl. Civil Judge, Hubli.)

1. This is a defendants second appeal against the concurrent finding recorded by the Courts below that the schedule properties are all Shetsanadi lands pertaining to Walikarki service which was granted in favour of Peersab, the father of defendants which enure to their benefit and therefore the plaintiff is entitled to half share in the property which was re-granted in favour of Peersab.

2. For the purpose of convenience, the parties are referred to as they are referred to in the plaint.

3. The subject matter of the suit are agricultural lands situated in Unkal Village of Hubli Taluk, originally an inam village Myadkoppa. They are clearly set out in para 2 of the plaint. These lands were held as Shetsanadi lands and after abolition and amalgamation of Myadkoppa Village into Unkal Village they are re- numbered and shown in RR extract. The survey number particulars are also set out in para 2 of the plaint. The kabjedar Mayannawar Bheemappa Doddappa died leaving behind him two sons who are in possession and have been arrayed as defendants No. 6 and 7 in the suit. Plaintiff was not a party to the proceedings under the Karnataka Land Reforms and he is not bound by orders. House property within the limits of the Hubli Dharwad Municipal Corporation in Ward No. III-A and renumbered as 918 and 917A valued at Rs.30,000/- and assessed separately as by an adhoc and tentative arrangement defendant and plaintiff have been residing separately. Plaintiff is in possession of only one kitchen and padasala of land ankana while major portion of the house is in possession of defendants No.1 to 4.

4. In para 3 of the plaint, the genealogy is set out. According to the genealogy, Imambu wife of Peersab Valikar had two daughters by name Fatobi and Rajabi. They were married. Imambu wife of Peersab Walikar prior to the death made a gift of the suit lands in favour of her aforesaid daughters namely Fatobi wife of Fakrusab Mullur and Rajabi wife of Gaususab Mohadinsabannavar and along with delivery of possession executed a gift deed dated 28.7.1927 and got it duly registered. The gift deed recites that the two donees are the only heirs to her and she has by this deed constituted the two donees as absolute owners of the property. Fatobi died leaving behind her only one son the plaintiff and Rajabi also died leaving behind her only one son Peersab and his widow Roshanbi. Defendants 1 to 5 are the children of Peersab. Besides the plaintiff Fatunbi has left behind her one daughter Kasimbi.

5. The lands in suit were shetsanadi lands pertaining to walikarki services in Unkal (originally Myadkoppa) an inam village which was subsequently merged in Unkal Village. The services of Walikarki came to be rendered by Fakrusab husband of Fatobi, after his death by some persons appointed and later by defendants father Peersab and some times by plaintiff who is the natural brother of Peersab. But the name of Peersab came to be entered as kabjedar of the lands and was recognised

as Sanadi called upon to render services. The aforesaid suit valikariki lands were re- granted in the name of Peersab whose name was shown as kabjedar in RR. The grant enures to the benefit of all holders and co-owners and plaintiff who is the owner of specified undivided half of the suit lands undeniably has a right to claim partition in the re-granted lands. There has been no partition of the suit properties so far. The re-grant enures to the benefit of plaintiff as well and his rights to the half share in the suit properties is unaffected. The possession of Peersab and after his death the defendant was also for and on behalf of plaintiff as it was the joint property belonging to both of them as owners. Plaintiff is an unsophisticated agriculturist and a simpleton obeying the brother Peersab. Peersab nor defendants appraised plaintiff of the dealings in suit lands. After the death of Peersab defendants continued to manage the properties as tenants in common with the plaintiff. Plaintiff was cultivating the lands and defendants father was in management of the suit properties till his death. Plaintiff and defendants father were taking portions of agricultural produce for their maintenance according to their needs.

6. It appears subsequently there was proceedings under the Land Reforms Act and the Assistant Commissioner has passed orders regranting lands described as Shetsanadi to the father of defendants No. 6 and 7. Plaintiff was at no time party to the proceedings despite the fact that he was also co-owner and co-sharer along with the father of defendants and defendants as well. Plaintiff is not bound by the orders and his right to half share in the suit properties is unaffected. Plaintiff and father of defendants lived in amenity and deceased Peersab was ready and willing to give separate portion of plaintiff's share to him. Defendants also did not dispute co-ownership or rights of tenancy in common with plaintiff. But of late they are refusing to divide and give plaintiff's half share in suit properties when of late plaintiff came to know of the dealings with the suit properties by defendants' father and defendants. Hence, the plaintiff was constrained to file the suit for partition and separate possession of his share in all the suit house property and lands. He further prayed that if the grant of occupancy rights in favour of defendants 6 and 7 is legal and valid, the said share may be allotted to the defendants and what remains in excess may be allotted to the plaintiff.

7. On service of summons, the first defendant entered appearance and filed his written statement. He did not dispute the relationship between the parties. He denied the execution of the gift deed dated 28.7.1927 and denied the contents of the same. He admitted the service of Walikarki has been rendered by Peersab i.e., father of defendants alone since beginning till his death. So, the suit Walikarki lands were re-granted in the name of Peersab alone. He denied the allegation that the grant enures to the benefit of all holders and co- owners and plaintiff who is the owner of specified undivided half of the suit lands undeniably has a right to claim partition in the re-granted lands. He denied that the re-grant enures to the benefit of the plaintiff as well and his rights to the half share in the suit properties is unaffected and it was the joint property belonging to both of them as co-owners. He denied that the plaintiff was cultivating the lands and defendants' father was in management of the suit properties and they were taking portion of agricultural produce for their maintenance according to their needs. He admitted that the suit agricultural lands originally belonged to Smt. Imambu w/o Peersab Valikar. She was very much affectionate with Rajabi, i.e., mother of deceased Peersab. Smt. Imambu w/o Peersab Walikar bequeathed her properties in favour of said late Peersab i.e., father of defendants by a registered Will dated 23.8.1934 and same was registered before the Sub- Registrar, Hubli. By virtue of the said registered Will, after death of Smt. Imambu father of the defendants has become the absolute owner of the suit properties and since then he was in actual possession and enjoyed the suit properties as of his own right. After death of Peersab, the defendants are alone enjoying and cultivating the suit properties as of their own right without hindrance from the plaintiff or any other persons. So the defendants alone are the absolute owners of the suit properties. The plaintiff has no interest, title, share whatsoever over the suit properties. In respect of suit properties there were several litigations before the Land Tribunal, Land Reforms Appellate Authority and the High Court of Karnataka. In all those proceedings the defendants alone have fought the litigations and succeeded in the same. The plaintiff had never participated in the said proceedings because he has no interest, title over the suit properties.

8. Alternatively, the defendant submitted that Peersab Shetsanadi and after his death the defendants have been in exclusive possession and enjoyment of the suit

properties openly, peacefully without any obstruction from anybody whatsoever as owners thereof for more than statutory period. Thus, late Peersab and after his death the defendants have become owners of the suit properties by adverse possession.

9. Defendants 2 to 6 filed a memo adopting the written statement filed by the first defendant.

10. Defendant No. 6 filed a separate written statement. It is his specific case that since the abolition of the Hereditary Offices Abolition Act, all the lands were vested in the Government since 1.5.1951 and the father of defendants No. 6 and 7 Shri Bheemappa Mayannavar who was the protected tenant has paid all the money due to the Government and got his name entered in the record of rights and became holder of the suit lands and he is enjoying all the suit agricultural lands as an owner since then. He admitted that those properties now can be the subject matter of partition among the plaintiff and other defendants. Defendants 6 and 7 have no interest in the house property mentioned in para 2 of the plaint. Since the father of defendants No. 6 and 7 deposited all the dues to Government in respect of the agricultural lands, he has become the owner and holder of the suit agricultural lands and those properties ceased to be the family lands and as such, those agricultural lands are not fit for the partition in the family of plaintiff and defendant Nos. 1 to 4. Those lands become properties of the defendants No. 6 and 7 after the death of Bheemappa. The father of defendants 6 and 7 was the protected tenant. He has paid and deposited all the amount and they are enjoying the suit lands as holders of the lands and those property cannot be the subject matter of partition between plaintiff and defendants No. 1 to 4. Therefore, he sought for dismissal of the suit.

11. On the aforesaid pleadings, the trial Court framed the following issues : -

1. Whether plaintiff proves that Fatubi wife of Fakrusab and Rajabi wife of Goususab became the joint and absolute owners of the suit properties and came in joint possession, not only by virtue of the gift deed dated 28.7.27 executed by Imambu but also virtue of the being only heirs to her?

2. Whether plaintiff proves that the grant enures to the benefit of all holders and co-owners, and as such it enures to him as well and to his rights to the half share in the suit properties?

3. Whether the plaintiff proves that he enjoys an undivided half of the suit lands undeniably and has a right to claim partition in the regranted lands?

4. Whether plaintiff proves that the suit properties are joint properties belonging to himself and defendants 1 to 5 in joint possession and enjoyment?

5. Whether defendants 1 to 5 prove that their father had acquired absolute right, title and interest and possession over the suit properties by virtue of a registered will dated 23.8.34, allegedly executed by Imambu?

6. Whether defendants 1 to 5 prove that exclusive possession and enjoyment over the suit properties from the time of his father and have perfected their title by virtue of adverse possession?

7. Whether the suit is valued properly and proper Court fee is paid?

8. To what relief plaintiff is entitled?

9. Whether defendants are entitled to compensatory costs as prayed?

10. Whether the suit is barred by time?

11. What order or decree?

Addl. Issues:

1. Whether defendant No.6 proves that the suit properties cannot be the subject matter of partition in view of the contentions in para 4 of his W.S?

2. Whether the suit is bad for misjoinder of parties?

3. Whether the defendants 1 to 5 prove that the suit lands are Walikarki lands?

4. Whether the defendants 1 to 5 further prove that by way of regrant, defendants 1 to 5 are the absolute owners?

12. Plaintiff in order to substantiate his case examined himself as PW1 and produced 11 documents which are marked as Exs. P1to P11. On behalf of the defendants, 6th defendant was examined as DW1 and first defendant was examined as DW1 and they produced 16 documents which are marked as Exs. D1 to D16.

13. The trial Court on appreciation of the aforesaid oral and documentary evidence on record held that the plaintiff has proved that Fatubi and Rajabi became joint and absolute owners of the suit properties and came in joint possession by virtue of the gift deed dated 28.7.1927 executed by Imambu in their favour. It held, as the registered gift deed was more than 30 years old and produced and marked in the said case and the said document is not seriously challenged by the defendants it stands proved. Therefore, it held even though the Will relied on by the defendants is true, on the day Imambu made the Will she was not the owner of the property as she had parted with the property in favour of her daughters. Then, it further proceeded to hold that, in the absence of any evidence on record to show a case of any custom upholding the rule of primogeniture it is only the eldest member in the family who is entitled to hold the office of walikarki and consequently the lands attached to the office. The law is clear that those lands enure to the benefit of all the joint family members or tenants in common. In the instant case, as the land is re-granted in favour of the father of defendants-Peersab who was the eldest in the family the said grant enures to the benefit of the plaintiff also and his right to that property is in tact. Further it held that, suit is not bad for mis-joinder of necessary parties, such as defendants 6 and 7 who are the tenants in possession of the property. Therefore, it proceeded to hold that the plaintiff is entitled to half share in the suit properties and also into occupancy price.

14. Aggrieved by the said judgment and decree of the trial Court, the defendants preferred an appeal. The lower Appellate Court on consideration of the rival contentions framed the following points for consideration:-

1. Whether re-grant made in favour of Peersab was enured to the benefit of all the co-owners of his own benefit?

2. Whether the impugned judgment and decree under appeal is erroneous or perverse calling for interference by this Court?

3. What order?

15. Thereafter, after discussing the evidence on record and also taking note of the documents which were sought to be produced by way of additional evidence held that the gift deed set up the plaintiff is proved, once the gift deed is proved the Will has no value. After re-grant in favour of the father of the first defendant, in the absence of any evidence indicating the rule of primogeniture the said property enures to the benefit of the family who are tenants in common. Therefore, he did not find any error in the judgment of the trial Court which called for interference. Accordingly, the appeal was dismissed.

16. Aggrieved by the said judgment and decree of the two Courts concurrently holding that the re-grant in favour of Peersab-the father of defendants enure to the plaintiff, this second appeal is filed.

17. This appeal was admitted on 6.12.2001 to consider the following substantial questions of law : -

1. Whether the Courts below were justified in holding that the suit schedule properties are the partible properties and that the plaintiffs were entitled for half share in the suit schedule property?

2. Whether the Court below was justified in holding that the plaintiff shall get a share in the properties which were admittedly granted under occupancy rights to the father of the appellants after the abolition of the Wathan under the Bombay Paragana and Kulkarni Wathan Abolition Act?

18. The learned counsel for the appellants assailing the judgment and decree of the Courts below contended that the application filed before the lower Appellate Court for additional evidence is not considered. If that evidence had been allowed,

it would have been taken on record and looked into, it would have demonstrated that the grant in favour of father of the defendants was exclusively to him and it did not enure to the benefit of the plaintiff. Therefore, he submits this Court should allow the said application, set aside the judgment and decree of the lower Appellate Court and remand the matter back to the trial Court for fresh consideration. Consequently, he contended that the grant which was made in favour of Peersab-the father of defendants is purely personal to him. Therefore, the plaintiff has no right to seek for a share in the said property. He also contended the defendants who had propounded the Will had not only produced the Will but proved the Will. The lower Appellate Court proceeds on the assumption that the Will is not produced and therefore the case of the defendants is not established and therefore he submits the judgment and decree of the Courts below is liable to be set aside. The lower Appellate Court committed a serious error in modifying the decree of the trial Court and granting relief to defendants 6 and 7 without there being any appeal from them and therefore the order requires to be interfered with.

19. Per contra, the learned counsel appearing for the plaintiff-respondent submitted that the material on record clearly shows that the land in question is Shetsanadi lands. With the abolition of the Village office to which the said land was attached it resumed to the Government. Thereafter, it has been re-granted in favour of Peersab, the father of the defendants. The rule of primogeniture also stood abolished with the resumption of land. Therefore, the said land became a joint family property or the persons belonging to the family held as tenants in common. In that view of the matter, even though the re-grant is in favour of the father of the defendants, he being the eldest in the family, the plaintiff is entitled to half share which has been recognized by the Courts below. He further submitted, no doubt in the suit, the plaintiff's claim title to the said property and a share under a registered gift deed. The defendants set up a registered Will. Both the gift deed and the Will came into existence at an undisputed point of time when the land was attached to the village office. Though the land was heritable it was not partiable and therefore neither the gift nor the Will has any value. Even otherwise, once the property was gifted in the year 1927 by the original holder in favour of her daughters, in 1934 when she is said to have made a Will in favour of the plaintiff's mother, she had no right to bequeath the property and therefore even if the Will is

proved it confers no title on the mother of the defendants and therefore it cannot be construed as their exclusive property. The Courts below on a careful consideration of the entire material on record, keeping in mind the settled legal position have passed a decree which is strictly in accordance with law and do not call for any interference.

20. The facts are not in dispute. The lands in question were all Shetsanadi lands. Admittedly it belongs to Imambu who had two daughters by name Fatobi and Rajabi. Imambu executed a registered gift deed dated 28.7.1927 bequeathing these Shetsanadi lands in favour of her daughters Fatobi and Rajabi. The gift is duly registered. The recitals in the gift deed shows the possession of the land was given to the two daughters. This gift deed has come into existence at an undisputed point of time. The suit is filed nearly 75 years after the execution of the gift deed. Therefore, Section 90 of the Evidence Act is attracted. There is a initial presumption that this gift deed is duly executed by the executant and therefore it is the person who wants to dispute the execution of the gift deed has to prove that the gift deed is not duly executed. The defendants except denying the gift deed have not adduced any evidence to disprove the execution of the gift deed. Therefore, both the Courts below correctly held that the gift deed dated 28.7.1927 marked in the case as Ex.P1 is proved. Once the gift comes into effect and if the land which is the subject of the gift is held to be alienable, the original holder of the village office Imambu lost her title to the suit property. Therefore, on 23.8.1934 though she executed a registered Will in favour of her second daughter Rajabi, even if it is held to be proved, Rajabi got no title to the property under the Will. In fact on the day the Will was executed Rajabi had half share in the property which is bequeathed in her favour. Therefore, both the Courts have concurrently held that when a registered gift deed is proved, Imambu had no right to make a Will and under the Will Rajabi did not get absolute title to the property in question. This finding is based on legal evidence and do not call for any interference.

21. The Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950 came into force on 25.1.1951. Section 3 of the said Act reads as under : -

"3. With effect from and on the appointed day, notwithstanding anything contained in any law, usage, settlement, grant, sanad or order -

(1) all Paragana and Kulkarni watans shall be deemed to have been abolished;

(2) all rights to hold office and any liability to render service appertaining to the said watans are hereby extinguished;

(3) subject to the provisions of Section 4, all watan land is hereby resumed and shall be deemed to be subject to the payment of land revenue under the provisions of the Code and the rules made thereunder as if it were an unalienated land.

(4) all incidents appertaining to the said watans are hereby extinguished.

Section 4 of the Act reads as under : -

"4. A watan land resumed under the provisions of this Act shall subject to the provisions of Section 4A be re-granted to the holder of the watan to it appertained, on payment of the occupancy price equal to twelve times the amount of the full assessment of such land within 5 years from the date of coming into force of the Act and the holder shall be deemed to be an occupancy within the meaning of the Code in respect of such land and shall be liable to pay land revenue to the State Government in accordance with the provisions of the Code and the Rules made thereunder; all the provisions of the Code and rules relating to unalienated land shall, subject to the provisions of this Act, apply to the said land. Provision of law, usage or practice relating to the succession to any watan contrary to the personal law governing the parties the rule of primogeniture followed and the female heirs were postponed in favour of male heirs from the appointed day, be void and cease to be in force."

22. Therefore, the effect of the said law was that the watan land was resumed by the Government. The holder was entitled to get re-grant. The rule of primogeniture which came in the way of succession was abolished and the said land devolved on the female members in accordance with law of succession applicable to them. The Supreme Court in the case of NAGESH BISTO DESAI, ETC., vs KHANDO

TIRMAL DESAI [AIR 1982 SC 887] had an occasion to consider the incidents of impartible estate. It was held as under:-

The mere fact that an estate is impartible does not make it the separate and exclusive property of the holder, where the property is ancestral and the holder has succeeded to it, it will be part of the joint estate of the undivided family. The grant of watan to the eldest member of a family does not make the watan properties the exclusive property of the person who is the watandar for the time being.

The property though impartible may be the ancestral property of the joint Hindu family. The impartibility of property does not per se destroy its nature as joint family property or render it the separate property of the last holder, so as to destroy the right of survivorship; hence the estate retains its character of joint family property and devolves by the general law upon that person who being in fact and in law joint in respect of the estate is also the senior member in the senior line.

In order to establish that an impartible estate has ceased to be joint family property for purposes of succession, it is necessary to prove an intention, express or implied, on the part of the junior members of the family to give up their chance of succeeding to the estate. The test to be applied is whether the facts show a clear intention to renounce or surrender any interest in the impartible estate or a relinquishment of the right of succession and an intention to impress upon the zamindari the character of separate property. It cannot be said that the junior members of a joint family in the case of an ancient impartible joint family estate take no right in the property by birth and therefore have no right of partition having regard to the very character of the estate that it is impartible.

A person who acquired watan property or held hereditary interest in it without acquiring the hereditary office and without being under an obligation to perform the services attached to such office is also a 'watandar' within the meaning of the Watan Act. The term 'watandar' as defined in Section 4 includes the members of a joint Hindu family. It must follow as a necessary corollary that the expression 'watandar of the same watan' would include members of the family other than the

watandar, who were entitled to remain in possession and enjoyment of the watan property.

The effect of Act No.60 of 1950 and Act No.22 of 1955 was to bring about a change in the tenure or character of the holding as watan land but they did not affect the other legal incidents of the property under personal law.

The Watan Act contemplated two classes of persons. One is a larger class of persons belonging to the watan families having a hereditary interest in the watan property as such and the other a smaller class of persons who were appointed as representative watandars and who were liable for the performance of duties connected with the office of such watandars. It would not be correct to limit the word "Watandar" only, to this narrow class of persons who could claim to have a hereditary interest both in the watan property and in the hereditary office, Watan property had always been treated as property, belonging to the family and all persons belonging to the watan family who had a hereditary interest in such watan property were entitled to be called "watandars of the same watan" within the Watan Act. That being so, the members of a joint Hindu family must be regarded as holders of the watan land along with the watandar for the time being, and therefore the re-grant of the lands to the watandar under sub-Section (1) of Section 4 of Act No.60 of 1950 and under Section 3 of Act No.22 of 1955 must enure to the benefit of the entire joint Hindu family.

Hence, on re-grant of watan lands, after its resumption, to the holder for the time being of the hereditary office, the watandar is not entitled to remain in full and exclusive possession and enjoyment thereof to the exclusion of the other members of the joint Hindu family.

"The impartibility of the watan properties or the applicability of the rule of lineal primogeniture regulating succession to the estate, being nothing more than incidents of the watan, stand abrogated by sub-Section (4) of Section 3 of Act No.60 of 1955. Therefore, it cannot be said that on re-grant of watan lands, the property cannot be partitioned between the members of the joint family."

23. Therefore, the law on the point is well settled. Though in the instant case the parties are not Hindus and it cannot be considered as a Joint Hindu Family, the land belongs to the family of watandar. All the members of the family are holding this land as tenants in common and therefore all of them are entitled to a share in the said property. The material on record shows Imambu died leaving behind two daughters. It is her husband Peersab Valikar who was the holder of the village office. After his death Imambu continued to hold the land. As already stated, by virtue of the gift deed these properties were given to her daughters. However, it is the husband of Imambu who performed the functions of the village office. But, the family continued to enjoy the property. It is during his lifetime these lands were resumed under the aforesaid Act and re- granted in favour of the defendants father Peersab as he was performing the functions of the office immediately prior to resumption of the land. By executing a registered gift deed Imambu made her intentions very clear that it should go to her both daughters and therefore when the land was re-granted Peersab was holding the said land on behalf of the family members of Imambu. Therefore, it is not an exclusive grant in his favour. There is no evidence on record to show that Fatobi and after her death the plaintiff had relinquished their interest in this land. Therefore, the law laid down as aforesaid by the Apex Court squarely applies to the facts of the case. Both the Courts applied the law and concurrently held that this re-grant enures to the benefit of the plaintiff also and accordingly decreed the suit. Therefore, the judgment and decree passed by the trial Court granting half share to the plaintiff is in accordance with law and does not call for any interference.

24. In so far as the contention that the application for additional evidence was not permitted, if it had been permitted the judgment and decree of the trial Court would have been set aside is concerned, it is without any substance. All the documents which are sought to be produced, if it had been allowed, it would show that the re-grant is in favour of Peersab. The said fact is not in dispute at all. The specific case of the plaintiff is, the land is granted in favour of Peersab but it enures to the benefit of the plaintiff because it was not an exclusive grant. Therefore, the lower Appellate Court rightly looked into the said document and held that the grant was in favour of Peersab only and it was not an exclusive grant and the plaintiff has half share in the property. Therefore, in the facts of the case not permitting the

additional evidence to be brought on record has in no way vitiated the judgment and decree of the trial Court. Therefore, the lower Appellate Court was justified in not allowing the said application.

25. In so far as the contention that, without there being an appeal by the defendants 6 and 7, the lower Appellate Court has modified the judgment and decree of the trial Court is concerned, it is also without any substance. The evidence on record shows though these lands were attached to the village office, the holder of the office was not cultivating the property. From the inception the land was cultivated by the tenants. After the re-grant these tenants filed an application in Form No.7 claiming occupancy rights under the provisions of the Land Reforms Act. When admittedly they were all protected tenants, the land has been granted in their favour. If the family members of the watandar ignoring the said grant of land include the suit for partition the land which does not belong to the family on the day the suit is filed and if a decree is passed by the trial Court ignoring the consequences of a grant under the provisions of the Land Reforms Act, the lower Appellate Court had ample jurisdiction under Order 41 Rule 33 CPC even in the absence of any appeal from defendants 6 and 7 to correct the error committed by the trial Court. Otherwise, it would be a perversity of justice and therefore the contention that without an appeal from the affected person, lower Appellate Court had no jurisdiction to modify the judgment and decree of the trial Court is without any substance.

26. For the aforesaid reasons, it is clear the judgment and decree passed by the trial Court is strictly in accordance with law. The concurrent findings are based on legal evidence. There is no perversity. Hence, there is no merit in this appeal and accordingly the appeal is dismissed.

For the purpose of clarity it is made clear the plaintiff is entitled to half share in the suit properties which are not the subject matter of tenancy claims. The suit property includes agricultural lands as well as house property. So far as lands which are the subject matter of tenancy claims are concerned, they are entitled to half share in the occupancy price.