

irappa and Another Vs. Gouravva and Others

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Court : Karnataka Dharwad

Decided On : Mar-25-2014

Judge : A.V. Chandrashekara

Appeal No. : Regular Second Appeal No. 5314 of 2010 (DEC. & INJ)

Appellant : irappa and Another

Respondent : Gouravva and Others

Judgement :

(Prayer: This Appeal Is filed Under Section 100 Of CPC Against The -Judgment And Decree Dated 20.10.2009 Passed In R.A.No.23/2006 On The File Of The Presiding Officer, Fast Track Court, Bailhongal, Dismissing The Appeal, Against The Judgment And Decree Dated 29.05.2006, Passed In O.S.No.39/2003, On The File Of The Prl.Civil Judge Vjr.Dn.), Bailhongal, Decreeing The Suit Filed For Declaration And Injunction.)

1. Defendants 3 and 4 of an original suit bearing O.S.No.39/2003, which was pending on the file of the Court of Principal Civil Judge (Jr.Dn.), Bailhongal, Belgaum District are before this Court by filing an appeal under Section 100 of CPC. Respondents 1 and 2 herein are the plaintiffs in the said suit. Respondent No.3 is defendant No.2 in the said suit. Since suit against defendant No.1, Chief Manager Pension Dept., State Bank of Mysore, Head Office at Bangalore, had been dismissed in the trial Court, no appeal has been filed against it. Parties will

be referred to as plaintiffs and defendants as per their ranking given in the trial Court.

2. First plaintiff, Gouravva is the mother of second plaintiff Panchapna. The case of the plaintiffs, as put forth before the trial Court is that, Gouravva had married one person by name Irappa Chanabasappa Uppin. The said Irappa Uppin was working in Indian Army. He suffered severe injuries and therefore, he was discharged from military service on medical grounds in the year 1963. After returning to Bailhongal, his native place, he was employed as security Gunman in State Bank of Mysore, Ramdurg branch and he continued to be a watchman till his death. It is averred that, deceased Irappa Uppin married the first plaintiff about 36-37 years ago prior to the filing of the suit and their marriage was performed at Bailhongal in front of the house of the deceased. After her marriage 1st plaintiff started living with deceased Irappa Uppin. It is their case that, 1st plaintiff and Irappa resided for about six months at Bailhongal and deceased was travelling from Ramdurg to Bailhongal every week. Later on, he rented a house at Ramdurg and took plaintiff No.1 to Ramdurg and there second plaintiff was born.

3. According to the plaintiffs, the deceased was under the complete influence of his younger brothers Basappa and Mallappa and Mallappa's wife. After the birth of plaintiff No.2, plaintiff No.1 came to Bailhongal and lived for about six months. Some disputes arose between Basappa's wife and plaintiff No.1 and Basappa's wife raised hue and cry. Then deceased Irappa took the plaintiffs to Munavalli and they stayed there for six months and later on Irappa took a house in Pyati Khoot of Ramdurg and took both the plaintiffs to Ramdurg. Because of adverse climate, both the plaintiffs returned to Munavalli and plaintiff No.1 insisted the deceased to take both of them either to Bailhongal or Ramdurg. According to 1st plaintiff, deceased declined their offer stating that, if they were taken to Ramdurg, health of the child would be affected and if they were taken to Bailhongal, harmony in the family would be affected.

4. Later on, the deceased purchased a house and land in the name of plaintiff No.1 at Munavalli in the year 1979 after the pension amount was received by him from Army and the savings of his salary. Since then, plaintiffs are stated to be

living in the said house at Munavalli and cultivating the land.

5. The deceased, according to the plaintiffs, was not a spendthrift man and was getting a good salary and also pension from the Army. Deceased Irappa retired from the service in the year 1995 and while forwarding his pension claim, he sent the photos of plaintiff No.1 as his wife for the purpose of making provision for family pension through defendant No.2 to defendant No.1. After his retirement, Irappa stayed at Munavalli and because of poor health, he died on 05.07.2002.

6. Plaintiffs wanted a surviving legal heir certificate from Tahasildar and it was issued. Then defendants 3 and 4 objected to the same by filing an appeal before the Assistant Commissioner who gave an endorsement to the plaintiffs to approach the Civil Court and obtain necessary declaratory reliefs. Hence plaintiffs were forced to file a suit for the relief of declaration that 1st plaintiff is the wife of deceased Irappa and second plaintiff is the son born out of the legal wedlock between 1st plaintiff and deceased Irappa and for entitlement to receive pension benefits.

7. Defendants 3 and 4 have filed detailed written statement denying all material averments. According to them also, Ratnavva is the legally wedded wife of deceased Irappa Chanabasappa Uppin and that she is alive and that she is not made a party. According to the defendants, plaintiff No.1 had been living an immoral life and that no marriage had taken place between Irappa and the plaintiff No.1 and therefore, plaintiff No.2 does not have any legal status as the son of Irappa. Hence they had requested the Court to dismiss the suit.

8. Defendant No.2 has also filed written stating that defendant No.2 is not a necessary party and that no relief is claimed against the second defendant. It is averred that second defendant is ready to disburse the amount as per the direction given by the Hon'ble Court in the decree.

9. On the basis of the above pleadings following issues came to be framed:

"i. Whether the plaintiff prove that they are the class I legal heirs of deceased Irappa Chanabasappa Uppin?

- ii. Whether the defendants 3 and 4 prove that Ratnavva Dundappa Pachapure is the legally wedded wife of deceased Irappa Chanabasappa Uppin?
 - iii. Whether the defendant 3 and 4 prove that plaintiff No. 2 had born to plaintiff No.1 earlier to the illicit relationship in between deceased Irappa Uppin and plaintiff No. 1?
 - iv. Whether plaintiffs are entitled for the relief as sought for?
 - v. What order?"
10. Second plaintiff is examined as PW1 and 12 exhibits have been got marked on behalf of the plaintiffs. Third defendant is examined as DW1 and three more witnesses have been examined on behalf of the defendants 3 and 4. Five exhibits have been got marked on behalf of the defendants.
11. Issues No.1 and 4 are answered in the affirmative and issue No.2 and 3 are answered in the negative. Ultimately, by virtue of a judgment and decree dated 29.05.2006, plaintiffs are declared as the wife and son of late Irappa Chanabasappa Uppin respectively and defendant No.1 is directed to give service benefits of the deceased Irappa to plaintiffs 1 and 2. Suit is decreed with costs.
12. Against the said judgment and decree, an appeal came to be filed before the Court of Senior Civil Judge, Bailhongal in R.A.No.23/2006 under Section 96 of CPC. Several grounds have been urged in the appeal memo filed under Section 96 of CPC. Ultimately, appeal has been dismissed by affirming the judgment of the trial Court vide judgment dated 20.10.2009. It is these concurrent findings, which are called in question on various grounds as set out in the appeal memo.
13. Learned Counsel for the appellant has submitted his arguments. Perused the original records of both the Courts and the appeal memo.
14. Defendants 3 and 4 have opposed the case of the plaintiffs. Their case is that. 1st plaintiff is not the legally wedded wife of deceased irappa Chanabasappa Uppin and therefore, second plaintiff cannot be clothed with any legal status as the son of Irappa Chanabasappa Uppin. Specific case of the defendants 3 and 4 is

that, one Ratnavva is the legally wedded wife of late Irappa Chana'oasappa Uppin and that she is alive. Therefore, they have chosen to examine Ratnavva as DW4. She has filed affidavit in lieu of her examination in chief and she was further examined in chief on 09.01.2006. She has been cross-examined partially. During the course of partial cross- examination conducted on 09.01.2006, she has specifically deposed that Irappa is her husband and admitted that Irappa is the father of defendant No.3 and therefore, third defendant is her son. She has pleaded ignorance about the names of persons indicated in Ex.D5 - ration card issued by department of food and civil supplies, Government of Karnataka on 26.10.2004. She has further admitted that, name of Ratnavva is mentioned as the mother of Irappa Mallappa Uppin. She has also deposed that, she has not given birth to any child. She was permitted to be present on the subsequent date of hearing for cross- examination. She did not appear on 16.01.2006 as directed by the Court. In the light of her absence in the subsequent hearing also on 31.02.2006, the learned Judge of the trial Court posted the case for hearing the arguments on merit holding that DW4 - Ratnavva was not available for further cross-examination. Hence defendants evidence was closed.

15. On perusing her evidence, we find some important admissions being culled out from her mouth. If really she was the legally wedded wife of Irappa Chanabasappa Uppin, she would not have avoided herself from being tendered for further cross-examination. Even otherwise, nothing came in her way to get herself impleaded as one of the defendants to oppose the case of the plaintiffs. Her conduct speaks for volumes.

16. Learned Counsel for the appellants has vehemently argued than initial burden cast upon the plaintiffs has not been effectively discharged and therefore, onus does not shift on the defendants. Learned Counsel for the appellant has drawn the attention, of this Court to the mandate of Section 101 of the Evidence Act stating that, unless the initial burden is effectively discharged, the plaintiff cannot take advantage of the weaknesses of the defendants.

17. It is useful to refer the judgment of the Apex Court rendered in AIR 1960 SCC 100 in the case Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak

Gosavi and Others. While dealing Sections 101 to 104 of the Evidence Act, the Hon'ble Apex Court has vividly explained the concept 'burden of proof'. According to the Apex Court, 'burden of proof' means some times that a party is required to prove an allegation before the judgment can be given in its favour; it also means that on a contested issue one of the two contending parties has to introduce evidence. The burden of proof is of importance only where by reason of not discharging the burden, which was put upon it, a party must eventually fail. However, where parties have joined issue and have led evidence and the conflicting evidence can be weighed to determine which way the issue can be decided, the abstract question of burden of proof becomes academic. In paragraph 10 of the said decision, the aspect of burden of proof has been eloquently explained.

18. In the present case also, as rightly pointed out by the learned Counsel for the appellants, initially burden was upon the plaintiffs to prove the factum of marriage of 1st plaintiff with Irappa Chanabasappa Uppin and birth of second plaintiff out of the said legal wedlock. It is true that, 1st plaintiff did not enter into witness box to support her case that she is the legally wedded wife of Irappa Chanabasappa Uppin. Therefore, it is argued vehemently that non-examination of 1st plaintiff is fatal to the case of the plaintiffs and therefore an adverse inference has to be drawn under Section 114(g) of Evidence Act.

19. Evidence includes documentary evidence. Second plaintiff has asserted that he is the son of 1st plaintiff and 1st plaintiff had married deceased Irappa Chanabasappa Uppin. As on the date of filing of the suit in the year 2003, age of the second plaintiff was 33 years and age of 1st plaintiff was 55 years. Admittedly, Irappa Chanabasappa Uppin died on 05.07.2002. Therefore, it is his assertion of second plaintiff that, he was living with Irappa till his death alongwith his mother Gouravva. The fact that second plaintiff is the son of 1st plaintiff is not seriously disputed.

20. Plaintiffs have furnished one more document and that is marked as Ex.P4. It is the certified copy of original sale deed dated 17.01.1979 executed in favour of 1st plaintiff relating to the house and agricultural land bearing block No.359 measuring

4.01 acres and the name of purchaser is mentioned as Gouravva W/o. Irappa Uppin, aged 30 years, resident of Munavalli. This document has come into being at an undisputed point of time. If she was not the legally wedded wife of Irappa-her name would not have been mentioned as Gouravva, W/o. Irappa Uppin.

21. Exs.P8 and P9 are the copies of transfer certificate and SSLC marks card of second plaintiff, in Ex.P9 - SSLC marks card, name of second plaintiff is mentioned as Panchappa Uppin and father's name is mentioned as Irappa and date of birth is mentioned as 01.06.1970. Under Section 35(2) of the Evidence Act, the normal presumption is that, the name of pupil and the date of birth will have been submitted by the parents at the time of admission of their children to school. Therefore, it has probative value under Section 35 of the Evidence Act. Even in Ex.PS the transfer certificate, the name of the father of the second plaintiff is mentioned as Trappa. A conjoint reading of Exs. P4, P8 and P8 would support, the case of the plaintiffs. It is in this regard, the burden of proof, which had been cast initially on the plaintiffs is effectively discharged. On the other hand, the onus had shifted on the defendants 3 and 4. The said onus has not been properly rebutted by tendering DW4 for further cross-examination. Apart from that, useful admissions have been culled out from the mouth of DW4, which in fact are helpful to the case of the plaintiffs.

22. Therefore, the trial Court has come to the conclusion that 1st plaintiff is the legally wedded wife of late Irappa and the second plaintiff is born to them. Similarly, it is held that plaintiffs are entitled to claim service benefits arising out of death of Irappa from defendants 1 and 2. What is argued before this Court by the learned Counsel for the appellant is that, when suit is dismissed against defendant No.1, there cannot be any decree against the 1st defendant directing to pay the service benefits to the plaintiffs. It is useful to know the averments made by the second defendant, Manager of SBM at Ramdurg, in his written statement. Second defendant has unequivocally averred that it is bound by the decree of the Court. The only requirement is that, plaintiffs should obtain a valid declaration that the 1st plaintiff is legally wedded wife of Irappa and second plaintiff is the son born out of the legal wedlock between Irappa Chanabasappa Uppin and 1st plaintiff Gouravva.

23. The trial Court has assessed the entire evidence in right perspective on the touchstone of intrinsic probabilities. The trial Court has considered the probable case of the parties keeping in mind the contention of the parties. Apart from the pleadings of the parties, the First Appellate Court, being the final Court of facts has reassessed the entire evidence in right perspective and has discharged its responsibility by concurring with the judgment of the trial Court by assigning cogent and convincing reasons. By no stretch of imagination, the judgment of the trial Court and the First Appellate Court could be considered either perverse or illegal. Though several questions of law have been proposed to be considered as substantial questions of law in the appeal memo, they are not substantial questions of law within the purview of Section 100 of CPC. Even otherwise, no substantial question of law arises for consideration in the present case and hence the suit is liable to be dismissed as unfit for admission.

ORDER

Appeal filed under Section 100 of CPC is dismissed as unfit for admission. The judgment of the trial Court and the First Appellate Court are upheld.

There is no order as to costs.

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