

Govindappa and Others Vs. Anjinappa and Others

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Court : Karnataka Dharwad

Decided On : Jun-09-2014

Judge : A.V. Chandrashekara

Appeal No. : RSA No. 5239 of 2011 (DEC/INJ) c/w RSA No. 5240 of 2011 & RSA No. 5174 of 2011

Appellant : Govindappa and Others

Respondent : Anjinappa and Others

Judgement :

(Prayer: This Appeal Is Filed Under Section 100 Of Cpc, Against The Judgment And Decree Dated 15.12.2010 Passed In R.A.No.23/2009 On The File Of The Presiding Officer, Fast Track Court-Iii, Hospet, Partly Allowing The Appeal Filed Against The Judgment Dated 01.12.2008 And The Decree Passed In O.S.No.17/2006 On The File Of The Civil Judge (Sr.Dn.), Kudligi, Decreeing The Suit Filed For Declaration And Partition.)

1. Sri.Ananda defendant No.4 of an original suit bearing O.S.No.17/2006 is before this Court by filing an appeal under Section 100 of CPC in RSA No.5174/2011. Sri.Govindappa defendant No.2 in the said suit bearing O.S.No.17/2006 has filed an appeal in RSA No.5239/2011 and Smt.Sudheelamma defendant No.5 in the said suit has filed an appeal in RSA No.5240/2011. As all these appeals have arisen out of a common judgment and decree passed in O.S.No.17/2006, they are

taken up together for discussion. Respondent No.1- Anjinappa in these appeals is the plaintiff in the said suit. Respondent No.2-Krishnappa is the defendant No.1 in the said suit. Smt.Hemalatha respondent No.4 in these appeals is defendant No.3 in the said suit. Parties will be referred to as plaintiff and defendant Nos.1 to 5 as per their ranking given in the trial Court.

2. Suit filed by the plaintiff Sri.Anjinappa for the relief of partition and separate possession has been decreed as prayed for on 01.12.2008 granting 1/5th share in all the schedule properties. Hence, these appellants and Sri.Krishnappa had filed separate appeals under Section 96 of CPC in R.A.Nos.23, 24, 25 and 50 of 2009 before the District Court at Bellary and those appeals have been withdrawn and transferred to the Fast Track Court-III, Hospet and they have been disposed of by a common judgment confirming the grant of 1/5th share to the plaintiff. But defendants have also been granted 1/5th share each and to this extent, decree passed by the trial Court has been modified vide judgment dated 15.12.2010.

3. Facts leading to the filing of the suit in O.S.No.17/2006 are as follows:

Defendant No.1-Krishnappa has four sons, Govindappa- defendant No.2, Anjinappa the plaintiff, Chandrappa dead represented by his son defendant No.4- Ananda and Prabhakara dead and represented by his wife defendant No.3- Smt.Hemalatha. According to the plaintiff, all the schedule properties are the joint family properties and they are in joint and constructive possession of himself and the defendants. In spite of several demands, defendants did not give him the legitimate 1/5th share and as such, he had to file a suit for the relief of partition and separate possession. Defendant No.3-Hemalatha wife of Prabhakara did not appear before the trial Court and was placed ex-parte. Defendant No.2- Govindappa chose to file detailed written statement and the same came to be adopted by defendant Nos.1, 4 and 5.

4. According to the contesting defendants, partition had taken place orally on 21.12.1988 and the same has been reduced into writing. After the said partition, joint family has ceased to exist and the parties have been enjoying their respective shares in their individual capacity. It is the case of the defendants that, plaintiff had been allotted 2 acres 16 guntas of land in Sy.No.228/2 and he is stated to have

sold the same in favour defendant No.2 on 03.06.1998 and stated to have put him on possession. Land bearing Sy.No.286/1 had been allotted to defendant No.3 and he is stated to have relinquished his right in respect of this land in favour of defendant No.5 on 17.06.2004. According to them, the suit is not maintainable for want of necessary parties, since other sons of Chandrappa being not joined. With these pleadings, that had requested the Court to dismiss the suit. On the basis of the above pleadings, following issues came to be framed.

- i) Whether plaintiff proves that he and defendant No.1 to 4 are members of Hindu un-divided joint family?
- ii) Whether plaintiff further proves that he and defendants are in joint possession of the suit schedule properties?
- iii) Whether defendant No.2 proves that a partition took place between him and his brothers including plaintiff in respect of suit properties as alleged in para-11 of written statement?
- iv) Is suit bad for non-joinder of necessary parties as contended in para-12 of the written statement?
- v) Is suit no maintainable for non-inclusion of properties as contended in para-13 of written statement?
- vi) Is suit barred by period of limitation?
- vii) Is plaintiff entitled for partition and separate possession of his 1/5th share in the suit properties?
- viii) What order or decree?

5. Plaintiff is examined as P.W.1 and has got marked 8 exhibits on his behalf. Defendant No.2 is examined as D.W.1 and defendant No.4 is examined as D.W.2. In all 24 exhibits have been got marked on their behalf. Ultimately, the learned Senior Civil Judge, Kudligi has answered issue Nos.1, 2 and 7 in the affirmative and remaining issues in the negative. Consequently, suit came to be decreed granting 1/5th share to the plaintiff in all the schedule properties.

6. Being aggrieved by the judgment and decree, defendants had chosen to file separate appeals. Defendant No.2-Govindappa has filed appeal in R.A.No.23/2009, defendant No.1-Krishnappa had filed appeal in R.A.No.24/2009, defendant No.3-Smt.Susheelamma had filed appeal in R.A.No.25/2009 and defendant No.4-Ananda had filed appeal in R.A.No.50/2009. Since all these appeals had arisen out of one judgment passed in O.S.No.17/2006, they were taken up together for common discussion. Ultimately, judgment and decree of the trial Court granting 1/5th share in favour of the plaintiff has been upheld on 15.12.2010 and the judgment of the trial Court has been modified granting 1/5th share to the defendant Nos.1 and 2 each and defendant Nos.3 and 4 have been granted 1/5th share representing their respective branches.

7. Now three separate appeals have been filed. Defendant No.1-Krishnappa has not chosen to file appeal before this Court.

8. Heard the learned counsel appearing for the parties regarding admission.

9. A Hindu joint family presumed to be joint till the contrary is proved. In the present case, defendants have taken up a specific stand that partition took place on 21.12.1988 and the same has been reduced into writing. Both the trial Court as well as the first appellate Court have not accepted this document, as a document evidencing partition, since it requires registration. Even unregistered partition deed can be accepted as a clear document of partition, provided it is quite old and the same has been acted upon unequivocally. The trial Court has specifically held that, there are certain corrections and interlineations in and they have not been properly certified or initials by the parties concerned. Even otherwise, it is held that defendant No.2 is not a party to the said document. The quantum of share allotted to the parties with reference to the boundaries is not forthcoming in the said document. The trial Court has specifically held that this document cannot be considered as a document evidencing partition and it necessarily required registration. The first appellate Court has also assigned cogent and valid reasons as to how this document marked as Ex.D17 cannot be considered as a document evidencing an out and out partition deed.

10. What is argued before this Court by the learned counsel for the appellant Sri.V.R.Datar is that, Defendant No.2-Govindappa has built a house and it bears Door No.217 and that the same has been built by him by availing huge loan from National Mineral Development Corporation, in which he is working. Admittedly, the said house is built upon the schedule property, which is an ancestral property. What is argued before this Court is that, plaintiff had been allotted one property and that he has been sold the same in favour of defendant No.2. But no document is forthcoming in regard to the said sale. Prabhakara is stated to have executed relinquished deed in favour of defendant No.5-Susheelamma wife of Govindappa. The said document is also unregistered document. Any document of relinquishment relating to an immovable property worth more than Rs.100/- necessarily requires registration and the proof of the same requires examination of one of the attester. These facts have been specifically considered by the trial Court and it has held that the said defence is not at all proved in any manner.

11. Insofar as the aspect of non-joinder of necessary parties is concerned, the trial Court has held that branch of deceased Prabhakara is adequately represented by Hemalatha and she is none other than his wife. Similarly, the branch of deceased Chandrappa is adequately represented by his son Ananda and taking this into consideration, the first appellate Court has granted 1/5th share each to the branch of Prabhakara and Chandrappa at par with Govindappa, Krishnappa and Anjinappa. The trial Court has assigned valid and cogent reasons as to how the defendants have failed to prove the aspect of earlier partition and the sale of land by the plaintiff and relinquishment of land by Prabhakara in favour of defendant No.5.

12. Even otherwise, defendant No.2 has put up a house on a land, which belongs to the joint family and therefore, he cannot contend that the house he has built is his absolute property. These aspects have been specifically dealt with by the trial Court. Apart from this, the boundaries of the land alleged to have been allotted to the plaintiff and his brothers are not written in the partition deed marked as Ex.D17. Defendant No.2 has not assigned valid reasons as to why his name does not find a place in the partition deed. Even otherwise, defendants have not produced any revenue records to show that brickyard measuring 10 cents was

allotted to the plaintiff. D.W.1 has further admitted that 2 acres of land in Sy.No.286/1 stands in the name of his wife and he has not been taken permission of the plaintiff to enter the name of his wife in the revenue records. On the basis of important admissions culled out from the mouth of D.W.1 coupled with inadmissible document Ex.D17, the trial Court has specifically held that the defendants have failed to prove the alleged earlier partition deed dated 21.12.1988.

13. The first appellate Court, being the final Court of facts, has reassessed the entire evidence in right perspective. It has referred to various decisions of this Court as well as the Hon'ble Apex Court to hold that, unless the partition is effected by metes and bounds and the same is unequivocally indicated, mere separate residence of the members of the joint family would not raise presumption of partition. It has also assigned valid reasons as to why Ex.D4, the alleged unregistered relinquishment deed cannot be considered as a document in the eye of law. If really the partition of 1988 was genuine and acted upon, the names of the parties would not have found a place in 1994-95 i.e., almost six years after the alleged partition. Even otherwise, there is specific evidence placed on record to show that the joint family possessed more than 11 acres of agricultural land in Bhujangnagar village of Sandur Taluk, Bellary District, which forms sufficient nucleus for acquisition of property.

14. The trial Court as well as the first appellate Court have adopted right approach to the real state of affairs, more particularly, after assessing evidence on the touchstone of intrinsic probabilities. No infirmity or illegality is found in the approach adopted by both the Courts. The questions of law proposed in the appeal memo are not the substantial questions of law in essence under Section 100 of CPC. Even otherwise, no substantial question of law arises before this Court for consideration and hence, the appeals are liable to be dismissed as unfit for admission.

ORDER

Appeals are dismissed as unfit for admission by upholding the judgments of the trial Court as well as the first appellate Court.

There is no order as to costs.

The observation made by the first appellate Court that the partition could be made by the final decree Court by equitable allotment also stands confirmed. Therefore, this comes in handy to defendant No.2-Govindappa to seek equities before the FDP Court on the ground that he has built a house by spending huge amount and he is living there. In such an event, the FDP Court would take a holistic view and pass appropriate orders based on equities.

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