

Lakshmi and Other Vs. Neelamma and Others

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Court : Karnataka

Decided On : Aug-21-2015

Judge : B.S. Patil

Appeal No. : C.R.P.No. 138 of 2014

Appellant : Lakshmi and Other

Respondent : Neelamma and Others

Judgement :

(Prayer: This C.R.P. is filed under Section 115 of CPC against the order dated 02.01.2014 passed on I.A.No. 2 in O.S. 1320/2011 on the file of XLIII Additional City Civil and Sessions Judge, Bangalore, dismissing I.A.No. 2 filed under Order 7 Rule 11(A) CPC and etc.,)

1. Application filed by defendants 6 to 8 under Order VII Rule 11(a) of Code of Civil Procedure, 1908 praying for rejection of the plaint presented in O.S.No. 1320/2011 having been dismissed, they are before this Court in this revision petition.

2. Defendants 6 to 8 are the purchasers of item No.1 of the suit schedule properties. They have purchased this property under a registered sale deed dated 26.06.1972 from the father of the plaintiffs late Annaiah Reddy and his brother late Krishna Reddy. The suit has been filed in the year 2011 seeking partition and separate possession of the suit schedule properties consisting in all 5 times. It is

submitted by the counsel for the plaintiffs / respondents that by way of amendment to the plaint certain additional items have been added and that is how the suit schedule properties now consist of 5 items.

3. The plaintiffs have not sought for cancellation of the sale deed dated 26.06.1972 or for declaration that the said sale deed was not binding on the plaintiffs. Plaintiffs have simply added item No.1 and have arrayed the purchasers of the said property to the suit. In other words, no relief is sought against the present petitioners / defendant Nos. 6 “ 8.

4. Contention of the revision petitioners is that in view of proviso to Sub “ section (1) of Section 6 of the Hindu Succession Act 1956, as amended, any disposition or alienation of the property which had taken place before 20.12.2004 will not be affected or invalidated by virtue of the amendment made to Section 6 clothing the daughters with co-parcenary rights in the property governed by the Mitakshara Hindu family.

5. All the plaintiffs are the daughters of late Annaiah Reddy. Annaiah Reddy, during his life time, along with his brother has sold suit schedule item No.1 on 26.06.1972. After lapse of nearly 39 years from the date of sale the daughters of Annaiah Reddy have filed the suit without seeking any relief against the purchasers and without making any specific prayer in respect of the alienation made by their father.

6. As is clear from the proviso to sub-section 1 of Section 6, alienations made prior to 20.12.2004 are not affected due to the amendment made conferring co-parcenary rights to the daughters. Therefore, it is evident that plaintiffs do not have any cause of action against the revision petitioners/defendants 6 and 8 in respect of the property purchased by them on 26.6.1972. Hence, the plaint in so far as item No.1 of the suit property directed against these defendants, is liable to be rejected.

7. Learned counsel for the petitioners is right and justified in placing reliance on the judgment of the Apex Court in the case of Church of Christ Charitable Trust and Educational, Charitable Society Vs. Ponnamman Educational Trust, (2012) 8

SCC 706 urging that rejection of the plaint in respect of one or some of the defendants is permissible, if the plaint did not disclose any cause of action and did not fulfill the statutory requirements against the said defendants.

8. The Trial Court has not applied its mind to any of these circumstances. It has simply rejected the application without considering the effect of the provisions contained in Section 6(1) of the Act and without examining the fact that no relief had been sought against defendants 6 to 8 in the plaint.

9. Hence, the revision petition is allowed. Impugned order is set aside. Plaint is rejected as against defendants 6 to 8 in respect of item No. 1 of the suit property. As regards other items and against other defendants this order will not affect the plaintiffs from prosecuting the suit.

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