

Chikkavenkatarayappa and Others Vs. Muddappa and Another

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Court : Karnataka

Decided On : Jun-30-2015

Judge : S. Abdul Nazeer

Appeal No. : Regular Second Appeal No. 1435 of 2014 (DEC/PAR)

Appellant : Chikkavenkatarayappa and Others

Respondent : Muddappa and Another

Advocate for Pet/Ap. : Sri. Prakash T. Hebbar

Judgement :

(Prayer: This Regular Second Appeal is filed under Sec.100 of CPC against the judgment and decree dated 22.9.2012 in R.A.No.63/2008 on the file of the Senior Civil Judge and JMFC, Sidlaghatta, etc.)

1. This appeal under Section 100 of the CPC is directed against the judgment and decree in R.A.No.63/2008 dated 22.9.2012 on the file of the Senior Civil Judge and JMFC, Sidlaghatta.

2. Muddappa is the plaintiff in the suit. The defendants are Chikka Venkatarayappa and Ramakka. The plaintiff and the first defendant are undivided brothers and the second defendant is their sister. It is the case of the plaintiff that his grand father was cultivating the suit schedule properties (for short the land') as a tenant. After his death, his father was cultivating the said land. After the

amendment of the Karnataka Land Reforms Act, 1961 (~Act for short) in the year 1974, neither the plaintiff nor the first defendant filed form No.7 for grant of occupancy rights. The first defendant being the elder brother was managing the family after the death of their father. He has not given any share to the plaintiff in the joint family properties. Therefore, the plaintiff filed a suit for partition and separate possession of the family properties in O.S.No.47/1989. The said suit was decreed and final decree proceedings in FDP No.1/2001 are pending for final adjudication. During the year 1998, the first defendant filed an application in form No.7A before the competent authority under Section 77-A of the Act for grant of land. The competent authority has granted the said land in favour of the first defendant for and on behalf of the family. The plaintiff has approached the first defendant for allotment of his share in the said land. However, defendant No.1 refused to allot his share with ulterior motives.

3. Defendant No.1 filed the written statement contending that the plaintiff and the defendants are not the members of the undivided joint family for the past over 25 years. The plaintiff was separated from the first defendant about 25 years back. The first defendant alone was cultivating the land as a tenant. The land vested in the State Government after the Land Reforms Amendment Act, 1961 came into force in the year 1974. He filed form No.7-A before the competent authority for grant of land. At the time of filing of the application, his family consisted of his wife and children. The plaintiff was not a member of the family. After considering the application, the competent authority granted the land exclusively in his favour.

4. On the basis of the pleadings of the parties, the trial Court has framed the following issues:

(i) Whether plaintiff proves that plaint schedule properties are the ancestral properties?

(ii) Whether plaintiff is entitled for $\frac{4}{9}$ th share in the plaint schedule properties?

(iii) What order or decree? ?

5. The plaintiff got himself examined as P.W1. Documents Ex.P1 to Ex.P4 were marked in his evidence. First defendant was examined as D.W1. A witness was examined as DW2. He has produced documents Ex.D1 to Ex.D7. On appreciation of the materials on record, the trial Court has decreed the suit by holding that plaintiff and the defendants are entitled for 1/3rd share each in the suit schedule properties.

6. The first defendant has filed an appeal R.A.No.63/2008 challenging the said decree before the Senior Civil Judge and JMFC, Sidlaghatta. During the pendency of the appeal, the first defendant died and his legal representatives have been brought on record. The first appellate Court on consideration of materials on record, has dismissed the appeal. The legal representatives of the first defendant have filed the instant appeal challenging the aforesaid decree of the first appellate Court.

7. Sri Prakash T. Hebbar, learned Counsel for the appellants contends that the father of the appellant/first defendant was cultivating the land as a tenant. Prior to that, his grand father was cultivating the land. After the amendment to Section 44 of the Karnataka Land Reforms act, 1961, the land vested in the State Government. After the death of his father, the first defendant was cultivating the land. He did not file form No.7 for grant of occupancy rights. After introduction of Section 77-A, he filed form No.7-A for grant of land. The competent authority has granted the land in his favour in his individual capacity. It is his absolute property and neither the plaintiff nor the second defendant has any share in the said property.

8. I have carefully considered the arguments of the learned Counsel for the appellants and perused the materials placed on record.

9. It is not in dispute that the grand father of the appellants was the tenant of the land. After his death, father of the appellants was cultivating the land as a tenant. Section 44 of the Act was amended by Act No.1/1974 with effect from 1.3.1974. All lands held by or in the possession of tenants immediately prior to the date of commencement of the Amendment Act, other than lands held by them under lease permitted under Section 5, stood transferred and vested in the State Government.

Neither the plaintiff nor the defendants made an application for registration as occupants of the land. The first defendant was the elder member of the family. He continued to be in possession of the property.

10. Section 77-A of the Act was inserted by Act No.23/1998 with effect from 1.11.1998. Under this provision, a person, who was in actual possession and cultivation of any land not exceeding one unit immediately before the first day of March, 1974, which has vested in the State Government under Section 44 and being entitled to be registered as an occupant of such land under Section 45 or 49, has failed to apply for registration of occupancy rights in respect of such land under sub-section (1) of Section 48A within the period specified therein and has continued to be in actual possession and cultivation of such land on the date of commencement of the Karnataka Land Reforms (Amendment) Act, 1997, was entitled to make an application for grant of land. The Deputy Commissioner or any other Officer authorized by the State Government in this behalf is satisfied after holding such enquiry, may grant the land to such person subject to such restrictions and conditions and in the manner as may be prescribed.

11. The first defendant made an application for grant of land under this provision in form No.7-A. On consideration of the said application, the competent authority granted the land in his favour. The question for consideration is whether the grant of land in favour of the first defendant is in his individual capacity to the exclusion of other members of the family?

12. The tenancy under the Land Reforms Act is heritable, which is clear from Section 24 of the Act. It is manifest from Section 44 as amended by Act No.1/1974, which has come into force from 1.3.1974 that all lands held by or in possession of the tenant immediately prior to the date of commencement of the said Amendment Act, other than the lands held by them under the lease permitted under Section 5, has been vested in the State Government. The first defendant was the elder brother of the plaintiff and the second defendant. He was cultivating the land at the time of grant. Earlier, his grand father was cultivating the land as a tenant. After the death of his grand father, his father continued to cultivate the land as a tenant. After the death of his father, the possession and cultivation of the land

by the first defendant has to be taken as cultivation on behalf of the entire family and not in his individual capacity in the absence of any plea or proof of ouster. After vesting of the land on 1.3.1974, he did not make an application for grant of occupancy rights. In the absence of such an application, Section 77-A permitted him to make an application for grant of land. The grant of land made by the competent authority was not in his individual capacity because he used to cultivate the land for and on behalf of the family as the eldest member of the family. The grant of land to the first defendant as the eldest member of the family could not result in extinction of the rights of the plaintiff and the second defendant, who had an equal claim, no way inferior to that of defendant No.1 to succeed to the estate left behind by his father including succession to all such rights that may have been inchoate on the date of the demise of his father. The possession of a co-heir is in law treated as possession of all the co-heirs. If one co-heir has come in possession of the properties, it is presumed to be on the basis of a joint title. Just because the grant of land was made in the name of the first defendant did not mean that the properties ceased to be joint family properties. 13. An identical question in relation to inam land inherited by the members of the joint family but in possession and cultivation of one of them, who had obtained occupancy rights under A.P. (Telangana Area) Abolition of Inams Act, 1955 was considered by the Hon'ble Supreme Court in N.PADMAMMA AND OTHERS VS. S.RAMAKRISHNA REDDY AND OTHERS “ (2015) 1 SCC 417. It has been held as under:

10. It is fairly well-settled principle of law that the possession of a co-heir is in law treated as possession of all the co-heirs. If one co-heir has come in possession of the properties, it is presumed to be on the basis of a joint title. A coheir in possession cannot render its possession adverse to other co-heirs not in possession, merely by any secret hostile animus on his own part, in derogation of the title of his other coheirs. Ouster of the other co-heirs must be evidenced by hostile title coupled by exclusive possession and enjoyment of one of them to the knowledge of the other ?

It has been further held as under:

15. It is evident from the above that the right of partition was held to have been lost by operation of law. Till such time the grant was made no such right could be recognized, observed this Court. This Court specifically held that it was not concerned with the consequences that would ensue after grant is made. The suit in the present case was filed after the grant of occupancy rights. The question here is whether the grant of such rights is for the benefit of one of the members of the joint family or for all the heirs left behind by Ramachandra Reddy. Our answer to that question is in favour of the appellants. In our opinion, the grant of such occupancy rights in favour of respondent 1 was for the benefit of all the legal heirs left behind by Ramachandra Reddy. ?

14. The principles of law laid down in the aforesaid decision are squarely applicable to the instant case. The trial Court has therefore rightly held that plaintiff and defendant Nos.1 and 2 are entitled for 1/3rd share in the suit schedule properties. The first appellate Court has concurred with the findings of the trial Court. I do not find any error in the said findings. The appeal does not involve any substantial question of law. It is accordingly dismissed.

15. In view of the dismissal of the appeal as above, I.A.No.2/2014 does not survive for consideration. It is accordingly dismissed. No costs.

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