

Kamalavva Vs. Siddappa

Kamalavva Vs. Siddappa

SooperKanoon Citation : sooperkanoon.com/1177941

Court : Karnataka Dharwad

Decided On : Jun-02-2015

Judge : Ravi Malimath & P.S. Dinesh Kumar

Appeal No. : Regular First Appeal No. 3085 of 2011 (PAR/SEP. POSSN)

Appellant : Kamalavva

Respondent : Siddappa

Judgement :

1. Aggrieved by the judgment and decree of the lower Court in dismissing the plaintiff's suit for partition, the plaintiff has filed this appeal.
2. The case of the plaintiff is that the suit schedule properties were owned by her father and the defendants. Defendants 1 and 2 are her brothers and defendants 3 and 4 are her sisters. Their father died intestate leaving behind the plaintiff, defendants and their mother, Smt. Bandamma. Their mother had filed a suit in O.S. No.76 of 2003 before the II Additional Civil judge (Senior Division), Hubli, seeking for partition and separate possession. During the pendency of the suit, she died. The plaintiff filed an application to transpose herself as a plaintiff. However, the suit came to be abated and was dismissed with liberty to file a fresh suit. Hence, the present suit.
3. The case of the plaintiff is that defendants 1 and 2 namely her brothers are unnecessarily wasting the suit properties by creating a lease in favour of third

parties by taking undue advantage of their names entered in the record of rights and they are threatening and arranging to dispose off the entire suit schedule properties being the joint family and the ancestral property to which the plaintiff is entitled to a share. Since her request for a share was denied, the instant suit for partition was filed. On service of summons, the defendants entered appearance. They denied the suit of summons, the defendants entered appearance. They denied the suit averments. They contended that there was a dispute raised by the plaintiff much prior to the filing of the suit which was settled in the Panchayat, in terms whereof, five tolas of gold in lieu of their share in the joint family property was given to the plaintiff also. Consequently, the properties were divided in terms of a palu patti vide EX. D. Hence, they sought for dismissal of the suit. Based on the pleadings of the parties, the Trial Court framed the following issues for its consideration:

1. Whether the plaintiff proves that the suit schedule properties are owned by her father during his lifetime and he was in possession of the suit properties?
2. Whether the plaintiff proves that she is having a share in suit schedule property along with the defendants?
3. Whether the second defendant proves that the suit schedule properties are divided about 10 years back i.e., in the year 1998 Ugadi Festival time and he got the share in the properties and those properties are his separate properties as stated in para 8 of the written statement?
4. Whether the second defendant proves that suit is hit by principle of res judicata as contended in his written statement?
5. Whether the second defendant proves that the suit schedule R.S. No. 13/1 was acquired for the purpose of extension of Bangalore-Poona National Highway by the concerned Highway Authorities and he received the award amount of Rs.87,067/-likewise the first defendant has also received the compensation amount for the acquisition of the land belonged to him?
6. What reliefs the parties are entitled to?

4. The plaintiff examined herself as P. W. 1 and got marked six documents. The defendants examined five witnesses and marked three documents. Issues 1, 3 and 5 were held in the affirmative and Issues 2 and 4 were held in the negative. By the impugned judgment, suit of the plaintiff was dismissed. Hence, the present appeal by the plaintiff.

5. Learned Counsel for the plaintiff/appellant contends that the impugned judgment and decree being erroneous is liable to be dismissed; that the document-Ex. D. 3 relied upon by the Trial Court is an unregistered document which cannot be relied upon. When there was no material to show that 5 tolas of gold was given to the appellant in lieu of her share in the joint family properties, the Trial Court could not have dismissed the suit. Hence, he prays that the appeal be allowed.

6. Counsel for the respondents are absent.

7. Heard the learned Counsel for the appellant and examined the records.

8. The following points arise for consideration:

(i) Whether the Trial Court was justified in dismissing the suit of the plaintiff by accepting the Palu Patti vide Ex. D. 3?

(ii) Whether the judgment of the Trial Court is perverse and calls for any interference?

9. The defendants set up a plea that they rely upon the document-Ex. D. 3, dated 17-8-1998 to contend that a partition having taken place, the plaintiff would not be entitled to claim her share subsequent to the said date. When a dispute was raised by the plaintiff with regard to her share in the joint family properties, a panchayat was convened and the matter was settled therein. In terms of the oral submission arrived at with the intervention of the panchayat, five tolas of gold were given to each of the sisters namely plaintiff 1 and defendants 3 and 4. As a consequence to giving of five tolas of gold to each of the three of sisters, the Palu Patti-Ex. D. 3 was accepted. The landed properties were divided between defendants 1 and 2. Therefore, the plaintiff having received her share in the joint family property in

terms of gold and she having accepted to the same, the Trial Court was justified in holding that the plaintiff was not entitled for a share in the property. The Trial Court having accepted the evidence as led in by the defendants, was justified in holding that the prior partition having taken place and even the material on record would show that the plaintiff as well as defendants 3 and 4 have received the property in lieu of their share, would not be entitled for a second partition.

10. Even in the cross-examination of the plaintiff, she has narrated to the effect that there was a dispute raised by her with regard to share in the joint family property and that such a dispute was amicably settled by intervention through the Panchayat. However, she has denied the suggestion that five tolas of gold was given to each of the sisters. However, the evidence would clearly show that the dispute having been resolved and in view of the categorical evidence of the defendants with regard to giving of five tolas of gold to each of the sisters, we are unable to accept the case of the plaintiff.

11. Even, otherwise the settlement has taken place as far back as in the year 1998. The suit was filed in 2003. The plaintiff as well as defendants 3 and 4 were married 25 years earlier. It is only much thereafter that the instant suit has been filed. Hence, on all these grounds, we do not find any error committed by the Trial Court.

12. For the aforesaid reasons, we are of the view that the Trial Court was justified in accepting the Palu Patti vide Ex. D. 3; that in terms of Ex. D. 3, the plaintiff and defendants 3 and 4 having received five tolas of gold each in lieu of their share in all the joint family properties, the Trial Court was justified in dismissing the suit of the plaintiff. The judgment of the Trial Court is based on the material and evidence on record. The conclusion arrived at by the Trial Court is just and appropriate. It cannot be said that the judgement of the Trial Court is perverse or calls for any interference. Hence, both the points for determination are accordingly answered.

13. For the aforesaid reasons, we find no error in the impugned judgment that calls for any interference. Consequently, the appeal being devoid of merit is dismissed.