

Shakuntala and Others Vs. Basavaraj and Others

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Court : Karnataka Dharwad

Decided On : Jul-19-2016

Judge : H.G. Ramesh & The Honourable Mrs. Justice Rathnakala

Appeal No. : R.F.A.No. 4212 of 2013

Appellant : Shakuntala and Others

Respondent : Basavaraj and Others

Judgement :

(Prayer: This RFA filed under Section 96 OF C.P.C., against the judgment and decree dated 06.08.2012 passed in O.S.No.119/2008 on the file of the First Addl. Senior Civil Judge, Hubli, dismissing the suit filed for partition and separate possession.)

H.G. Ramesh, J. (Oral):

1. This first appeal is by the plaintiffs and is directed against the judgment and decree dated 06.08.2012 passed by the Court of First Additional Senior Civil Judge, Hubli, dismissing their suit in O.S.No.119/2008 filed for partition of suit properties and for a declaration that the sale deed dated September 9, 2005 executed by their father (Defendant No.1) in favour of defendant No.4 in respect of the suit land measuring 3 acres 38 guntas was not binding on them. The only other suit property is a house property. The plaintiffs claimed 3/6th share in the suit properties stating that the suit properties were ancestral properties.

2. We have heard learned counsel appearing for the appellants, perused the impugned judgment and the record of the trial Court. The parties are referred to herein as per their ranking before the trial Court.

3. The trial Court, on an appreciation of the evidence on record, has held that the suit properties were individual and separate properties of the plaintiffs father-defendant No.1, as they were self acquired properties of his father-Basavanneppa, and therefore, the plaintiffs could not claim any right in the suit properties, and accordingly has dismissed the suit. Hence, this appeal by the plaintiffs.

4. Learned Counsel for the appellants contended that the finding of the trial Court, that the suit properties which had fallen to the share of the plaintiffs father (Defendant No.1) as per partition deed-Ex.P9 were his individual and separate properties, is erroneous in law.

5. The question that requires to be considered in this appeal is, whether the finding of the trial Court that the suit properties were individual and separate properties of the plaintiffs father is correct in law?

6. For clarity, it is necessary to refer to the genealogy of the parties.

(Image)

7. The plaintiffs are the daughters of first defendant. First defendant s father-Basavanneppa died intestate in the year 1972. There is no dispute that the suit properties were purchased by Basavanneppa. Basavanneppa had purchased the suit land by sale deed dated 28.12.1966 as per Ex. P5. Subsequently, in the year 2004, in the partition between the sons, daughters and widow of deceased Basavanneppa, the suit properties fell to the share of the plaintiffs father-defendant No.1. The aforesaid partition was effected by a registered partition deed dated 20.04.2004 as per Ex.P9.

8. Learned counsel for the appellants, in support of his contention that the suit properties were ancestral properties, was not able to refer to any evidence on record to show that the suit properties which were purchased by the plaintiffs, grandfather-Basavanneppa were ancestral properties in his hands. There is no

evidence to show that at the time of purchase of the suit properties by Basavanappa, there were any ancestral properties, and out of income from such ancestral properties, the suit properties were purchased by Basavanneppa. Therefore, the trial Court has rightly held that the suit properties were self acquired properties of Basavanneppa, and hence, the plaintiffs who are his grand daughters will not get any right in the suit properties.

9. After coming into force of the Hindu Succession Act, 1956, self acquired or separate property of a male Hindu, when devolved on his heirs, would assume the character of self acquired property in their hands and they hold it as their individual and separate property. It is relevant to state that there was divergence of judicial opinion as to whether a son who inherits the self acquired or coparcenary property of his father takes it as his separate property or holds it as property of his own joint family, till the decision of the Supreme Court in *W.T. Commr., Kanpur v. Chander Sen* [AIR 1986 SC 1753]. It is appropriate to refer to the following observations made therein:

19. It is necessary to bear in mind the Preamble to the Hindu Succession Act, 1956. The Preamble states that it was an Act to amend and codify the law relating to intestate succession among Hindus.

20. In view of the Preamble to the Act i.e. that to modify where necessary and to codify the law, in our opinion it is not possible when Schedule indicates heirs in class I and only includes son and does not include son s son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by S. 8 he takes it as karta of his own undivided family. The Gujarat High Court s view noted above, if accepted, would mean that though the son of a predeceased son and not the son of a son who is intended to be excluded under S.8 to inherit, the latter would by applying the old Hindu law get a right by birth of the said property contrary to the scheme outlined in S. 8. Furthermore as noted by the Andhra Pradesh High Court the Act makes it clear by S. 4 that one should look to the Act in case of doubt and not to the pre-existing Hindu law. It would be difficult to hold today the property which devolved on a Hindu under S. 8 of the Hindu Succession Act would be HUF property in his hand vis- -vis his own son;

that would amount to creating two classes among the heirs mentioned in class I, the male heirs in whose hands it will be joint Hindu family property and vis- -vis son and female heirs with respect to whom no such concept could be applied or contemplated. It may be mentioned that heirs in class I of Schedule under S. 8 of the Act included widow, mother, daughter of predeceased son etc.

(Underlining supplied)

10. It is also relevant to refer to the following observations made by the Supreme Court in *Yudhishter v. Ashok Kumar* [AIR 1987 SC 558]:

10. This question has been considered by this Court in *Commr. of Wealth Tax, Kanpur v. Chander Sen*, (1986) 3 SCC 567: (AIR 1986 SC 1753), where one of us (Sabyasachi Mukharji, J.) observed that under the Hindu Law, the moment a son is born, he gets a share in father's property and becomes part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore, whenever the father gets a property from whatever source, from the grandfather or from any other source, be it separate property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. This Court observed that this position has been affected by Section 8 of the Hindu Succession Act, 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by Section 8, he does not take it as karta of his own undivided family but takes it in his individual capacity.

(Underlining Supplied)

As stated above, after coming into force of the Hindu Succession Act, 1956, self acquired or separate property of a male Hindu, on his dying intestate, devolves on his heirs in their individual capacity and not as coparcenary property, and in such a case, their children will not acquire any right by birth in such property.

11. The trial Court was right in holding that the suit properties that fell to the share of the plaintiffs father were his individual and separate properties as it is in

accordance with the law stated above. Therefore, the plaintiffs are not entitled for any share in the suit properties. Accordingly, the sale effected by the father of the plaintiffs in favour of defendant No.4 as per the sale deed at Ex.D2 is not liable to be set aside. We also find that the trial Court was justified in holding that the plaintiffs colluded with their father, mother and brother (defendant Nos.1 to 3) in filing the suit to cause loss to defendant No.4, who was the purchaser of the suit land from the plaintiff s father.

12. For the reasons stated above, we find no error in the judgment of the trial Court warranting interference. The appeal is devoid of merit. No ground to admit the appeal. The appeal is accordingly dismissed.

Appeal dismissed.

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