

Jayarama and Others Vs. Nagappa and Others

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Court : Karnataka

Decided On : Nov-21-2016

Judge : S. Abdul Nazeer & The Honourable Mrs. Justice K.S. Mudagal

Appeal No. : Regular First Appeal No. 838 of 2015 (PAR)

Appellant : Jayarama and Others

Respondent : Nagappa and Others

Judgement :

(Prayer: This RFA is filed under Sec.96 (1) of the CPC, 1908. Against the Judgment and Decree dated 31.03.2015 passed in O.S.No.2005/2008 on the file of the Presiding Officer, Fast Track Court-1 Bangalore Rural District, Bangalore, dismissing the suit for partition and separate possession and mense profits.)

1. Learned Counsel for the appellants has filed a memo seeking deletion of respondent Nos.8 to 12 as the appellants are not seeking any relief against them.
2. Memo is accepted. Appellants are permitted to delete respondent Nos.8 to 12. Since respondent No.1 is no more, respondent Nos.2 to 6 are treated as his LRs.
3. Appellants and respondent Nos.2 to 7 have filed an application under Order 23 Rule 3 of the CPC reporting settlement of the matter. Appellants and respondent Nos.2 to 7 are present before the Court and are identified by their respective learned Counsel. The terms of the compromise memo are as under:

The LRs of the appellant and respondent Nos.2 to 7 in the above appeal file the Compromise Petition as follows:

The Father of the Appellants late Jayaram filed suit in O.S.No.2005/2008 on the file of the Fast Track Court-1, Bangalore Rural District, Bangalore as against Respondent Nos.1 to 7 and others for partition and separate possession of their alleged share in suit schedule properties which are described as Item No.1 to 8 in the suit schedule attached to the plaint.

The Respondent No.1 to 7 contested the said suit by contending that the lands in Sy.No.72/2A measuring 04 acres 13 guntas and Sy.No.40/4 measuring 3 acres 22 guntas of Balagere Village, Varthur Hobli, Bangalore East Taluk are the only ancestral properties left behind by the propositer one late Nagappa. That the sons of Late Nagappa by name Venkatappa and Nanjundappa partitioned the said properties around the year 1930 equally and the rest of the suit schedule properties are the self acquired properties of Respondent Nos.1 to 4. The trial court by its Judgment dated 31.03.2015 dismissed the suit of the plaintiffs/appellants and the plaintiffs filed the present appeal.

That after filing of the above appeal the first respondent died on 11.05.2015. The Appellants and respondent Nos.2 to 7 have amicably settled their claims at the intervention of elders of the village on the following terms:

1. The LRs of Appellant and Respondent Nos.2 to 7 do admit that there was partition of ancestral properties i.e., suit Item Nos.2 and 3 already around the year 1930 between Venkatappa (father of the appellant late Jayaram and Respondent No.7) and Nanjundappa (father of Respondent No.1 and grandfather of Respondents 2 to 6). Under the said partition Venkatappa got towards his share Eastern portion of Sy.No.40/4 (suit schedule Item No.3) measuring an extent of 01 acre 31 guntas and western portion of Sy.No.72/2A measuring 02 acres 05 guntas (suit schedule item No.2). Nanjundappa got his share western portion measuring 01 acres 31 guntas in Sy.No.40/4 (suit item No.3) and eastern portion of Sy.No.72/2A measuring 2 acres 08 guntas (which extent is not included in the suit).

2. The respondents 2 to 6 to put an end to the litigation have agreed to part with an extent of 08(eight) guntas in favour of LRs of Appellant late Jayaram (Appellants 1 to 3) and an extent of 04 (four) guntas in favour of Respondent No.7 out of the land in Sy.No.21/3 of Balagere Village, Varthur Hobli, Bangalore East Taluk (part of suit schedule item No.4) which properties are morefully described in the schedule to this compromise petition as A and B schedule properties respectively. The Appellant No.1 to 3 and respondent No.7 have been put in possession of the compromise petition schedule properties.

3. The Appellants and Respondent No.7 do admit that suit schedule Item Nos.1 and 4 properties are self acquired properties of deceased first respondent, Suit schedule item Nos.5 and 6 are the self acquired properties of respondent No.3 and suit schedule item Nos.7 and 8 are the self acquired properties of respondent No.4.

4. The Appellants and respondent No.7 do admit that the respondents 1 to 6 partitioned the ancestral properties allotted to the share of Nanjundappa and the self acquired properties of defendant No.1 under Registered partitioned Deed dated 03.03.2003 registered as document No.569/2003-04 and the defendants 2 to 6 are in exclusive possession of the properties allotted to their shares.

5. The Appellants and Respondent No.7 do admit and declare that the suit schedule item 1 bearing Sy.No.76/3 measuring 02 acres 03 guntas, Western Half portion of the suit schedule Item No.3 bearing Sy.No.40/4 measuring 01 acres 31 guntas bounded on the East by: Appellants share in same Sy.No., West by: land of Ravi, Badrinath and Narayanappa, North by: land of H.Krishnappa and South by: Road, Suit Schedule item No.4 measuring Sy.No.20 measuring 01 acres 35 guntas, Sy.No.21/2 measuring 32 guntas, Sy.No.21/3 measuring 24 guntas (excluding 12 guntas given to appellants and respondent No.7 under A and B schedule to this compromise petition) are the absolute properties of respondent Nos.1 to

6. The appellants and respondent No.6 do further admit and declare that the suit schedule item No.5 and 6 are the self acquired properties of respondent No.3 and suit schedule item No.7 and 8 are the self acquired properties of respondent No.4

and respondent No.3 and 4 are absolute owners in exclusive possession and enjoyment of these self acquired properties and neither the appellants nor the respondent No.7 have no manner of right or claim whatsoever over these properties.

6. The respondent Nos.1 to 6 and 7 do admit and declare that the suit schedule item No.2 bearing Sy.No.72/2A1 now subdivided and phoded as New Sy.No.72/6 measuring 01 acre 2 guntas, suit schedule item No.3 bearing Sy.No.40/4 measuring 35 guntas on the eastern side of the land belongs to respondents 1 to 6 out of this Sy.No.40/4 are the absolute properties of the appellants 1 to 3. The respondent No.1 to 6 and 7 do further admit and declare that the appellants 1 to 3 are the absolute owners in exclusive possession and enjoyment of these properties and the respondent No.1 to 6 and 7 shall have no manner of right or claim whatsoever over .these properties.

7. The Appellants and respondent No.1 to 6 do admit and declare that the western portion of land measuring 01 acre 02 guntas out of Sy.No.72/2A1 was allotted to the share of respondent No.7 long back and he had sold the same in favour of one Krishna Reddy. Eastern portion of land bearing Sy.No.40/4 measuring 35 guntas was also allotted to the share of respondent No.7 and he had sold some portions in favour of respondent No.10 to 12. The appellants 1 to 3 and respondent Nos.2 to 6 shall have no manner of right or claim whatsoever over these properties.

8. The respondents 2 to 6 hereafter shall not have any right or claim whatsoever over the schedule A and B properties to this compromise petition which are given to the Appellants and respondent No.7 respectively.

9. The Appellants and Respondent No.7 do admit that the respondents 2 to 6 partitioned the ancestral properties that were allotted to the share of late Nanjundappa grandfather of respondents 2 to 6 and the self acquired properties of respondent No.1 under registered partition deed dated 03.03.2003 registered vide Document No.569/2003-04 and the respondents 2 to 6 are in exclusive possession of the properties allotted to their shares.

10. The appellants and respondents 1 to 7 do admit that they shall not make any claim in respect of the properties alienated by respondent Nos.1 to 6 and 7 in favour of respondents 9 to 12 and the appellants filed a memo for dismissal of the above appeal against the respondents 8 to 12 as not pressed.

11. The parties to bear their own costs. Wherefore, the Appellants 1 to 3 and Respondents 2 to 7 prays that this Hon ble Court be pleased to Decree the suit of the appellants in terms of this compromise petition and kindly ordered to draw Final Decree accordingly to meet the ends of justice.

SCHEDULE A PROPERTY GIVEN TO APPELLANTS SMT.ANASUYAMMA, SRI.SAMPATH KUMAR B.J. and SRI.JAYARAJ B.J.

All that piece and parcel of portion of agricultural land bearing Sy.No.21/3 measuring 08 (eight) guntas situated at Balagere Village, Varthur Hobli, Bangalore East Taluk and bounded on the

East by: Portion of land in same Sy.No. given to respondent No.7 Sri.Ramakrishnappa.

West by: Rajakaluve

North by: Remaining land in same Sy.No. belongs to Second respondent.

South by: Land belongs to Muniyappa.

SCHEDULE B PROPERTY GIVEN TO RESPONDENT NO.7 SRI.RAMAKRISHNAPPA.

All that piece and parcel of portion of agricultural land bearing Sy.No.21/3 measuring 04 (four) guntas situated at Balagere Village, Varthur Hobli, Bangalore East Taluk and bounded on the East by: Remaining land in same Sy.No. belongs to second respondent.

West by: Portion of land in same Sy.No. given to Appellants-Smt.Anasuyamma, Sri.Sampath Kumar B.J., and Sri.Jayaraj B.J.

North By: Remaining land in same Sy.No. belongs to second respondent.

South by: Land belongs to Muniyappa.

4. Having heard the learned Counsel for the parties, we are of the view that the compromise entered into between the parties is lawful, just and reasonable. Hence, the appeal is disposed of in the aforesaid terms. No costs. Draw the decree accordingly.

5. In view of disposal of the appeal as above, IA Nos.1/2015 and 1/2016 are accordingly disposed of.

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