

Bhadreshappa and Others Vs. Rudramma

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Court : Karnataka

Decided On : Oct-06-2016

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

Appeal No. : Regular First Appeal No. 1929 of 2013

Appellant : Bhadreshappa and Others

Respondent : Rudramma

Judgement :

(Prayer: This Regular First Appeal is filed under Section 96 of CPC, against the judgment and decree dated 31.10.2013 passed in O.S.No.30/2011 on the file of the Senior Civil Judge and Principal JMFC, Tarikere, dismissing the suit for partition.)

1. Heard on admission.

For the sake of convenience, henceforth parties will be arraigned as per their status before the Trial Court.

2. This is a plaintiffs' appeal aggrieved by the judgment and decree dated 31.10.2013 passed by the Senior Civil Judge and Principal J.M.F.C., Tarikere, in O.S.No.30/2011, whereby the plaintiffs' suit for partition and possession of 1/3rd share each in the suit schedule properties with mesne profits came to be dismissed.

3. Case of the plaintiffs before the Trial Court was, they along with the deceased husband of the defendant namely, Mallappa constituted Hindu undivided family and the suit properties are the ancestral undivided joint family properties. The mother of Late Mallappa namely Smt. Nanjamma after the death of her husband Rudrappa had kuduvali with Late Basappa. Plaintiffs are the children of Basappa and Nanjamma. Said Rudrappa was the sole son of one Melappa, thus had inherited the properties from him. After the death of Rudrappa, the properties were transferred to the name of their mother Late Nanjamma. Their father Basappa and Nanjamma were managing the entire family affairs and all the suit schedule properties, which are joint family properties. On their demand, the defendant's husband Mallappa had agreed to give share in the joint family properties to them. Temporarily, he had given 1 acre 31 guntas in survey No.11 and 1 acre 14 guntas in survey No.114 to the plaintiffs, which are in exclusive possession of the plaintiffs. Mallappa expired suddenly on 16.06.2011. On his death, the defendant got the properties transferred to her name and is attempting to sell the properties.

4. The suit was contested by the sole defendant and the relationship between the parties and the allegation of joint family status and nature of suit properties as joint family properties was denied. Very identity of plaintiffs was disputed.

5. On completion of the pleadings, the Trial Court framed the following issues:

"1) Whether the plaintiffs prove that they constituted a Hindu undivided family along with husband of the defendant?

2) Whether the plaintiffs prove that suit schedule properties are their ancestral joint family properties?

3) Whether the plaintiffs prove that during the lifetime the husband of the defendant he has temporarily allotted some of the suit schedule properties and delivered the possession of the same to them as alleged?

4) Whether the defendant proves that the suit schedule properties are absolute properties of her husband and plaintiffs have no right over the same?

5) Whether the plaintiffs are entitled for partition of the suit schedule properties? If, so what is the share of the plaintiffs?

6) What decree or order?"

Trial was held. Both parties placed their oral and documentary evidence. After giving audience to both parties, the Trial Court answered the issues against the plaintiffs and in favour of the defendant, thus dismissed the suit.

6. Sri. Girish, learned Counsel appearing for the appellants/plaintiffs submits that the plaintiffs and husband of the defendant namely, Mallappa are brothers by uterine blood. The genealogical tree, marriage invitation cards and the photographs coupled with oral evidence adduced through PWs.1 to 10 clearly establishes the above fact but the Court below without proper consideration of the evidence has disbelieved the relationship between the parties. There was sufficient evidence to establish that the plaintiffs' family and Mallappa's family lived together as members of the Hindu undivided family. On the death of her husband Rudrappa, the khatha of his property was transferred to the name of Nanjamma and she acquired right over the entire suit schedule properties. Having lived together as members of Hindu undivided family, the suit schedule properties were thrown into common hatch pot and were enjoyed by all the members of the family jointly. Thus, the plaintiffs are entitled for 1/3rd share along with their uterine brother/husband of the defendant - Mallappa. The witnesses PWs.3 to 10 had corroborated the case of plaintiffs. The Court below has dismissed the suit solely on the ground that the plaintiffs were not the lineal descendents of the original propositus Melappa. The finding arrayed by the Court below is contrary to the material on record and erroneous. Hence, the impugned judgment and decree is liable to be set-aside.

7. Sri.V.Javahar Babu, learned Counsel appearing for the respondents/defendants seeks to sustain the impugned judgment and decree.

8. In the light of the above, we have perused the lower court records and the impugned judgment.

9. The suit schedule properties being the ancestral properties of Mallappa/the husband of the defendant, not being the ancestral properties of the family of Basappa and Nanjamma, learned Trial Judge emphasized on the admission emerging during the cross-examination of PW.1 whereby he had stated that the suit schedule properties are not his ancestral properties and they have no legal right over the same. The Court took note, that there was no documentary proof that plaintiffs, mother Nanjamma, who had married Rudrappa/father-in-law of the defendant, on the death of her husband, got the khata of entire suit properties changed over to her name, managed the said properties along with Basappa after their kuduvali. It was evident from the revenue documents that after the death of Rudrappa the properties were changed over to the name of his son Mallappa/husband of the defendant. Furthermore, the allegation that the defendant's husband during his lifetime had handed over some properties to the plaintiffs, under their family arrangements suffered without corroborative documentary proof. The family photographs produced by the plaintiffs failed to gain over the defence set up.

10. The age of the plaintiffs by itself indicates that (while instituting the suit in the year 2011, they were aged 65 years and 58 years respectively) were born before enactment of Hindu Succession Act, 1956. That being so Rudrappa having died intestate prior to the era of 1956 Act, the property held by him, inherited from his father devolved upon his son i.e. sole serving co-parcener Rudrappa by survivorship. It is not the case of the plaintiffs that the defendant's mother-in-law - Nanjamma by virtue of Section 6 of the Hindu Succession Act, 1956 succeeded for any share in the property of her husband Rudrappa, on his death, thereby the plaintiffs on his death as her Class-I heirs became entitled for share in the suit schedule property.

11. The Court below on proper appreciation of evidence recorded that the relationship between the plaintiffs' father Basappa and the defendant's mother-in-law Nanjamma is not proved by the plaintiffs. The Trial Court being the Primary Fact Finding Authority has based its finding on consideration of entire evidence and has not found merit in the case of the plaintiffs. No valid ground either on the facts or on the question of law is made out by the appellants/plaintiffs.

The appeal is dismissed accordingly. No order as to costs.

In view of the dismissal of the appeal, IA.Nos.1/2013, 2/2013, 3/2013 and 4/2013 do not survive for consideration and the same are dismissed.

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