

M. Kenchappa Vs. Jayamma and Others

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Court : Karnataka

Decided On : Mar-28-2017

Judge : K.N. Phaneendra

Appeal No. : R.S.A No. 759 of 2014 (PAR)

Appellant : M. Kenchappa

Respondent : Jayamma and Others

Judgement :

(Prayer: This RSA is filed u/s 100 of the Code of Civil Procedure against the Judgment and Decree Dated 20.03.2014 passed in R.A.No.4/2010 on the file of the Senior Civil Judge and Additional Mact at Holalkere, dismissing the Appeal and confirming the Judgment And Decree Dated: 19.12.2009 passed in OS.No.88/2008 on the file of the Additional Civil Judge(JR.DN) at Holalkere.)

1. The plaintiffs are the respondents herein. The first defendant is the appellant herein, who preferred this appeal. The plaintiffs, who are the women folk filed a suit for partition and separate possession of their share claiming that of the suit schedule properties are the ancestral and joint family properties of the plaintiffs and defendants.

2. For the purpose of convenience, the ranks of the parties are referred to as per their ranks before the trial Court.

3. It is the case of the plaintiffs that one Mallappa is the father of the plaintiffs and defendants. He died in the year 1974 leaving behind the plaintiffs and defendants as his legal representatives. The first son of the deceased Mallappa by name Devendrappa alleged to have gone out of the family by taking his share. The 3rd defendant Parvathamma died during the pendency of the suit and legal representatives were brought on record. It is stated by the plaintiffs that during the second week of August, 2008, the defendants 1 and 2, colluding with each other and taking advantage of the revenue entries standing in their names, after the death of Mallappa, they filed a collusive suit before the Civil Judge's Court in OS No.59/2006, without the knowledge of this plaintiff, they entered into a compromise on 30.03.2007 in order to defeat and defraud the rights of the plaintiffs. Thereafter they started making hectic attempts to alienate the suit schedule properties. Therefore, in order to claim their right and in order to curb the activities of defendants 1 and 2, the plaintiffs have filed the present suit. The defendant No.1 appeared before the Court through his counsel and filed his written statement, wherein the defendant Nos.2, 3(a) to (h) were remained absent and placed exparte. Though the first defendant had admitted the relationship between the parties but he contended that, the suit schedule properties are not at all the joint family properties and the said properties have been partitioned by means of a registered partition deed dated 11.07.2000 amongst defendant Nos.1 and 2. It is an admitted fact that the defendants 1 and 2 have entered into a compromise in OS No.59/2006 and therefore, the defendants contend that by virtue of the said division of the properties between defendant Nos.1 and 2, the nature of the properties have been changed. It is contended that the said partition between defendant No.1 and 2 are valid as the plaintiffs are never in joint possession and enjoyment of the properties at any point of time.

4. The trial Court after considering the contentious pleadings has framed the following issues:

(1) Whether the plaintiffs prove that the suit schedule properties are joint family properties and they are in constructive possession of the suit schedule properties and get 3/6th share in the suit schedule properties?

(2) Whether the plaintiffs prove that, the compromise decree dated 30.3.2007 is illegal one and the same is not binding on plaintiffs?

(3) Whether the defendants prove that, the suit is not maintainable?

(4) Whether the plaintiff is entitled for the relief sought for?

(5) What order or decree?

5. The plaintiffs in order to prove their case examined PWs.1 and 2 and marked Exs.P1 to P7. The defendant No.1 has got examined as DW-1 and two other witnesses as DWs.2 and 3 and got marked Exhibits Ex.D1 and D2. The Court after considering the oral and documentary evidence on record has answered the issue Nos.1 and 2 in the Affirmative and issue No.3 in the Negative and finally decreed the suit of the plaintiffs allocating 1/18th share in the suit schedule properties to the plaintiff. Being aggrieved by the said judgment and decree, the first defendant has preferred an appeal in RA No.4/2010 before the Civil Judge (Sr.Dn.) at Holalkere on various grounds. The first appellate Court, after re-appreciating the materials on record has come to the conclusion that the trial Court has considered all the points and dispute between the parties and rendered correct judgment. Hence, concurring with the findings given by the trial Court on all the issues, the first appellate Court has dismissed the appeal with cost. Being aggrieved by the above said two judgments, the appellant is before this Court by way of Regular Second Appeal.

6. Though the learned counsel for the appellant at the initial stages submitted that the plaintiffs have not proved the case against the defendants by establishing that all the suit schedule properties are the ancestral properties. When they themselves have not proved the case, there is no burden on the defendant to show that the properties are the self acquired properties of defendant Nos.1 and 2. Further, the learned counsel has contended that after the death of Mallappa in the year 1974, succession opened to the female heirs, but they did not choose to file any suit till 2008. Therefore, for such a long period, they have slept over their right. Therefore, the suit itself is barred by limitation. The trial Court and the first appellate Court have not properly considered this particular aspect.

7. As could be seen from the trial Court and the first appellate Court, both of them have strongly relied upon Ex.D1 i.e., a decree passed in OS No.59/2006, a compromise decree between defendant Nos.1 and 2, the courts have come to the conclusion that the decree clearly discloses that the plaintiffs and defendant Nos.1 and 2 treating their properties as family properties have divided their properties amongst themselves, that itself is the indication that the properties are the ancestral properties of defendant Nos.1 and 2. It is also evident from the judgment of both the courts that in the year 2006, when the defendants 1 and 2 have clandestinely without making all the parties, who are entitled for a share in the properties as parties to OS No.59/2006 and that the said decree is not binding on the other share holders, definitely it gave cause of action to the plaintiff to file a suit within three years from the date of such decree passed in OS No.59/2006.

8. The trial Court and the first appellate Court having considered the vested right of the plaintiffs and that plaintiffs at no point of time those rights have been divested by means of a decree in OS No.59/2006, unless the right is divested or the right is extinguished, there is no period of limitation for the purpose of filing a suit, for partition. The plaintiffs can claim their right at any time when actually the cause of action arises to exercise such right. As it is evident that the plaintiffs have specifically stated in their plaint and gave evidence that in the year 2006, a clandestine decree was obtained by defendant Nos.1 and 2 and therefore, in order to curb their illegal activity and also claim their share, the cause of action to exercise their right arose from 2006.

9. Considering the above said factual aspects and also the decree passed in OS No.59/2006, the trial Court and the first appellate Court have held that the properties are ancestral and joint family properties. Therefore, the plaintiffs are entitled for their respective legitimate share and accordingly decreed the suit of the plaintiffs.

10. The learned counsel has no grievance so far as the allocation of 1/18th share to the plaintiffs and submit that the same is in accordance with law. When other factors are not in favour of defendant No.1 as noted above and the Court has considered the oral and documentary evidence on record and given findings on

factual aspects, there is absolutely no legal issues raised before the trial Court or before the first appellate Court. Only the factual aspects are questioned before this Court also as questioned before the first appellate Court.

11. It is a fundamental basic principle of civil jurisprudence under Section 100 of C.P.C., that unless the Court comes to the conclusion that there is a substantial question of law involved in a particular case, the RSA itself will not be maintainable. As could be seen from the above said factual aspects considered by the trial Court and first appellate Court and the findings which are given on facts, I am of the opinion that no substantial question of law arises for consideration by this Court. Hence, the appeal is liable to be dismissed at the threshold itself. Hence, I pass the following:

ORDER

The appeal is dismissed at the stage of admission itself. No costs.

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