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Court : Karnataka

Decided On : Jul-28-1997

Reported in : ILR1997KAR3089; 1998(1)KarLJ413

Judge : T.N. Vallinayagam, J.

Acts : [Hindu Succession Act, 1956](#) - Sections 14(2); [Transfer of Property Act, 1882](#) - Sections 10

Appeal No. : Regular Second Appeal No. 350 of 1986

Appellant : Badigera Veeravva and Others

Respondent : Badigera Bhadrachari and Another

Advocate for Def. : Sri K.G. Shanthappa, Adv.

Advocate for Pet/Ap. : Sri T.N. Raghupathy, Adv.

Judgement :

1. The defendants are the appellants. The suit for permanent injunction in Original Suit No. 24 of 1982 was decreed by the learned Munsiff Harapanahalli on 14-3-1983. On appeal in Regular Appeal No. 15 of 1983, the learned Civil Judge, Hospet confirmed the judgment and decree of the Trial Court and dismissed the appeal on 30-11-1985. Hence, the second appeal.

2. The plaintiffs are the sons of one Badagere Veerappa who died on 9-11-1954. Badigera Veerappa was also known as Gedde Veerappa, in the village. The said Veerappa had a brother by name Badigera Rudrappa who died on 21-11-1934, leaving the first defendant and one Honnavva, being the daughter through his second wife Lakshnavva. The said Honnavva is now dead. The father of defendants 2 to 4, Mallajja and one Badigera Shankerappa are the sons of late Sirasavva who is the daughter of the first wife of Rudrappa and who pre-deceased her father. The first defendant's father Rudrappa executed a registered Will dated 19-11-1934, bequeathing all the properties to the first defendant for life time creating life interest in favour of the first defendant and his sister Honnavva and ultimately, the properties should go to the plaintiffs father Veerappa. Though there are other dispositions under the Will, the plaintiffs are concerned only with the bequeath made in favour of Veerappa, which is to take effect after the life time of the first defendant and his sister Honnavva. Honnavva is dead as mentioned above and the first defendant can have only a life interest over the property. The plaintiffs' father having died about 20 years ago, vesting under the Will has taken place, which however remains suspended, during the life time of the first defendant. Now the first defendant along with defendants 2 to 4 are contemplating to sell away the property to defendant 5. Therefore, they have come forward with the suit for injunction restraining defendants 1 to 4 from alienating the property either in favour of defendant 5 or anybody and also for injunction restraining the fifth defendant from obtaining the registered deed in respect of the suit property.

3. In the written statement filed by the first defendant it was claimed that the plaintiffs' father died on 9-11-1954 and though the properties given to the first defendant to enjoy during his life time, the property has become absolute in her hand under Section 14(1) of the Hindu Succession Act and therefore she has every right to alienate the properties in favour of the fifth defendant. They also contended that the suit is premature.

4. The learned Trial Judge held that the legacy came to be vested on the plaintiffs and the first defendant has not become the absolute owner of the property and therefore granted injunction as prayed for. The Trial Court relied upon Section 14(2) of the Hindu Succession Act, but held that the first defendant did not acquire

absolute right because the property has been acquired under the Will and such property cannot become the absolute property in her hands. The Appellate Court concurred with such finding and dismissed the appeal.

5. In this second appeal, it was contended that the father is not under a moral obligation to maintain his widowed daughter during the life time and to make provision out of the self acquired property for maintenance after his death. Even if such provision is made, such provision cannot become a legal obligation on his death. Therefore, such legal obligation cannot be regarded as a legal right so as to attract the application of provision of Section 14 as to make the widowed daughter as the full owner of the property in which she is restricted to alienate during her life time.

6. It was also contended that the Will has not been properly understood by the Courts below. Further, the submission was that Badigera Veeravva would not get any right over the property. The appellants also claimed that under Section 14(1) of the Hindu Succession Act, the first appellant became the full owner of the suit property.

7. It cannot be argued in this case that the plaintiffs have not succeeded to the property because their father died in 1954 itself and the first defendant was alive. The only thing being that their succession will be postponed till the death of the first defendant/first appellant, the right under the Will cannot be taken away because of death of Veerappa earlier to the life interest holders. So far as the claim that the testator has given only limited interest, it cannot be disputed by the appellant that it is not so. In fact, the appellants are now trying to put forth a new case than the case put in the written statement; the appellants cannot now develop a new case than what was pleaded by them. The lower Appellate Court has correctly applied the provisions of Section 14(2), but held that the first defendant cannot become the absolute owner of the property taking advantage of her life interest over the same. Ultimately, the property has to vest with the plaintiffs only. The more important question that has not been considered is whether a suit against alienation is maintainable in law. In my view such an injunction is not maintainable because if such injunction is granted it will be against

the very tenor, tone and ambit of the Transfer of Property Act. On this ground the suit is not maintainable and the claim of the plaintiffs has to be dismissed.

8. This point has not been considered by the Courts below. I allowed both the Counsel to answer the point of law. Nothing is shown as to how such a suit is maintainable in law.

9. But on the facts of this case, it is found that there is an attempt made by defendants 1 to 4 to create complications by selling the property to defendant 5. No doubt, what the fifth defendant produced was only a life interest of the first defendant making it clear that such life interest of the first defendant can be alienated, but it shall be subject to the right of the plaintiff who is the ultimate owner of the property and who shall be entitled to possession after the life time of the first defendant/first appellant.

10. In this view holding that the suit for an injunction restraining the alienation, is not maintainable, the appeal is allowed. The judgment and decree of the Courts below are set aside and the suit is dismissed.