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Court : Karnataka

Decided On : Mar-26-1996

Reported in : AIR1996Kant321; ILR1996KAR1883; 1996(2)KarLJ563

Judge : P. Krishna Moorthy, J.

Acts : Hindu Law; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115 - Order 39, Rule 1; Karnataka Inams Abolition Act, 1977; [Transfer of Property Act, 1882](#) - Sections 53A

Appeal No. : Civil Revn. Petn. No. 406 of 1996

Appellant : Muniyappa

Respondent : Ramaiah

Advocate for Def. : B.S. Manjunath, Adv.

Advocate for Pet/Ap. : M.B. Chandrachooda, Adv.

Judgement :

ORDER

1. The defendant in a Suit for injunction is the Revision Petitioner. The plaintiff filed a Suit for permanent injunction restraining the defendant from interfering with his possession of the plaint schedule property, alleging that he purchased the same from one Chinnappa, the brother of the defendant under a Registered Sale Deed

dated 26-3-1984. Chinnappa obtained the property on 30-4-1982 on the basis of an order under the Inams Abolition Act. It is alleged by the plaintiff that he is put in possession of the plaint schedule property and the Revenue Records has been changed in his name. He has also secured a loan of Rs.4,09,500/- from a Financial Institution on the security of the plaint schedule land. The defendant, who has no manner of right over the plaint schedule property, is attempting to trespass into the suit schedule property and accordingly, the suit is filed for permanent injunction. Along with the suit, the plaintiff also filed I.A. II under O.39, R. 1 of the Code of Civil Procedure for a temporary injunction restraining the defendant from encroaching on the suit schedule property.

2. The defendant filed an objection contending that the plaintiff is not the absolute owner of the plaint schedule property. The vendor of the plaintiff, his brother Chinnappa has absolutely no manner of right to alienate the plaint schedule property. According to the defendant, Chinnappa his brother, was managing the affairs of the joint family on behalf of himself and his brother and Chinnappa, after coming into force the Karnataka Inams Abolition Act, 1977, filed an application before the Land Tribunal for grant of occupancy rights as a member of the Joint family and the Land Tribunal confirmed the occupancy rights jointly in the name of the defendant and his brother Chinappa as members of the joint family. The plaintiff, in collusion with his brother Chinnappa has obtained the sale deed in his favour. The defendant has also filed a Suit in O.S. No. 448/94 against Chinnappa for partition and separate possession of his share in the plaint schedule and other properties. It is further alleged by the defendant that the plaintiff is not entitled to an order of injunction in respect of the joint family property on the basis of the sale deed executed by one of the members of the family. It is also pleaded by him that there cannot be any injunction restraining one coparcener from the enjoyment of the joint family property and that his brother Chinnappa had no absolute right to alienate the plaint schedule property and that it is not binding on the defendant. On these allegations, he prayed for dismissing the application for temporary injunction.

3. The trial Court came to the conclusion that the plaintiff has, prima facie, proved that he is in possession and enjoyment of the plaint schedule property on the basis

of the Sale Deed executed by the defendant's brother Chinnappa, on 26-3-1984. It was also found by the trial Court that, admittedly, Chinnappa, being the manager of the Joint Hindu Family he is competent to alienate the property and the remedy of the defendant, if at all, is to file a Suit for partition and to get his share and that he is not entitled to interfere with the possession of the plaintiff over the suit schedule property. Accordingly, a temporary injunction was granted by the trial Court. Though the defendant filed an appeal against the order before the lower Appellate Court, that Appeal was also dismissed confirming the order passed by the trial Court. The defendant has come up in Revision against these orders.

4. Before this Court also, the contention raised by the learned counsel for the revision petitioner is that, the proceedings before the Land Tribunal produced by him would indicate that Chinnappa obtained occupancy rights only on behalf of the joint family and that, he being only a member of joint family, he is not competent to alienate the property and an injunction cannot be granted restraining the defendant, who is admittedly, a member of the joint family, from enjoying the property. In considering the above contention, it is necessary to state the facts which are proved or admitted by the parties.

5. It is seen that the occupancy rights in respect of the plaint schedule property was obtained jointly in the name of Chinnappa and his brother, in a proceeding before the Land Tribunal, for and on behalf of the joint family. The case of the defendant is that his brother Chinnappa is not entitled to alienate the property and put the plaintiff in possession of the same. Anyhow, it is a matter to be decided in the partition Suit in O.S. No. 448/84 which the defendant has already filed and for the purpose of this case, I will assume that the property belonged to the joint family. It is an admitted fact that, Chinnappa was the manager of the joint family though he is a junior member. It is well settled that, even a junior member can be a Manager of the joint family with the consent of the other members (See : : [1976]105ITR109(SC)) Narendrakurnar J. Modi v. Commissioner of Income-tax, Gujarat II, Ahmedabad. The Manager Chinnappa has executed a Sale Deed of whole property to the plaintiff by a registered Sale Deed dated 26-3-1984. It is also concurrently found, prima facie, by both the Courts below that the plaintiff has established his possession to the plaint schedule property and that he is enjoying

the same. But the question is as to whether, in these circumstances, the plaintiff is entitled for a permanent injunction restraining the defendant from interfering with his possession, though the defendant is also a member of the joint family and he was not a party to the Sale Deed in favour of the plaintiff.

6. Learned counsel for the revision petition placed considerable reliance on a Division Bench Decision of the Andhra Pradesh High Court in *Vadla Krishnaiah v. Nelli Narasimhareddy*, : AIR 1976 AP395 . In that case, the plaintiff agreed to purchase the suit land from one Balanarayana, brother of defendants 1 and 2 for a sum of Rs. 500/-, under an Agreement of Sale Ex.A.1 dated 6-12-1960. He has executed the aforesaid agreement in his capacity as the Manager of the joint Hindu family consisting of himself and his two brother-defendants 1 and 2. Consequently, on the execution of Ex.A.1, the plaintiff was put in possession of the land and since then, the plaintiff has been paying the land revenue. The plaintiff claiming possession under Section 53A of the Transfer of Property Act, 'filed a Suit for perpetualinjunction restraining them from interfering with his possession of the suit schedule land by the defendants. The defendants contended that their brother had no authority to sell the suit schedule land which is an ancestral property and there was a plea that there was no legal necessity. The question was considered by the Division Bench as to whether, in such circumstances, the plaintiff is entitled to an order of injunction restraining the defendant who is admittedly a member of the joint family from interfering with his possession. The Division Bench following the decision of the Supreme Court in *Sidheshwar Mukherjee v. Bhubneshwar Prasad Narain Singh*, : [1954]1SCR177 ; *M.V.S. Manikayala Rao v. M. Narasimhaswami*, : [1966]1SCR628 and a Full Bench decision of the Madras High Court in *K. Peramanayakam Pillai v. S.T. Sivaraman*, : AIR1952 Mad419 , held that Section 53A of the Transfer of Property Act cannot be invoked against non-alienating coparceners. It was also further held that a transferee put in possession pursuant to an agreement of sale does not stand in any better position than a transferee put in possession under a registered sale deed. In that decision, Their Lordships proceeded on the basis that an alienee from a coparcener is only entitled to his share of the alienated property and that he cannot maintain an action against non-alienating coparcener for injunction restraining them from interfering with his possession of the property. On the basis of this decision, it is

contended by the learned counsel for the revision petitioner that the plaintiff is entitled to an injunction in this case as well as the alienation in favour of the plaintiff was only by a member of the joint family and that he was not a party to the sale.

7. On the other hand, it is contended by the learned counsel for the respondent-plaintiff that, in this case, the alienation was admittedly by the Manager of the joint family which is only a voidable transaction at the instance of a junior member. It is not as if the brother Chinnappa alienated only his share in the property but he transferred the property to the plaintiff and he being admittedly the Manager of the family, is competent to do the same. It is also contended by the learned counsel for the respondent that this distinction between alienation by the manager of a joint family and an ordinary coparcener is not kept in mind by the Division Bench of the Andhra Pradesh High Court while deciding that case. It is also contended by him that in the Andhra Pradesh case, there was only an agreement of sale and that there was no complete sale by the Manager.

8. On a consideration of the question, I agree with the contention of the learned counsel for the respondent. In the decision referred to above, there was no concluded sale in favour of the plaintiff but there was only an agreement of sale and the suit was filed claiming protection under Section 53-A of the Transfer of Property Act. It is also to be noted that, though no doubt, the sale in that case was also by the Manager of the joint family, the distinction between the sale by the Manager of the joint family and an ordinary coparcener is not kept in mind by their Lordships while deciding the case. As stated earlier, their Lordships have relied on two decisions of the Supreme Court in : [1954]1SCR177 and : [1966]1SCR628 . From the passages quoted from the aforesaid Supreme Court decisions, as could be seen from paragraphs 11 and 12, in both the cases, the purchaser had only obtained the undivided interest of a coparcener in the joint property. In both the decisions, the Supreme Court was considering the question as to what is the right of an alienee of a share from a coparcener. In those cases, the question as to what is the effect of sale by the Manager of a Joint Hindu Family is not considered. So also the decision in *K. Peramanayakam Pillai v. S. T. Sivaraman*, : AIR1952 Mad419 (FB) relied on by their Lordships was also a case, where the Madras High

Court was considering the right of a purchaser of an undivided share from a coparcener and not the case of alienation by the manager of the whole property. On going through the whole judgment, with great respect, I have to state that their Lordships have not kept in mind the distinction between alienation by the Manager of the Joint Hindu Family and alienation of share alone by a coparcener. Their Lordships have adopted the same principles that are applicable to an alienation by a coparcener of his share alone in regard to a sale by the Manager of the joint Hindu family of the whole property. With utmost respect, I do not think that the principles laid down in that decision would apply to a case where the alienation is made by the manager of a Joint Hindu Family of the whole property. Moreover, in that case, there was only an agreement of sale and there was no concluded sale as well, Accordingly I am clearly of the view that the above decision cannot have any application to a case where the alienation of the whole property is made by the manager of the Joint Hindu Family.

9. It is well settled that the Manager of a Joint Hindu Family has the competence and power to alienate the joint family property for family necessity or benefit to the estate. Such a sale would bind not only his share but the share of the other members as well. No doubt, if the father is the manager, he has got certain special privileges but so far the alienation of a joint family property is concerned, the manager of the Joint Hindu Family also got equal power with that of the father to sell the joint family property which would be binding on the other coparceners as well in certain contingencies. Such a sale, even though not for family necessity, is not void but only voidable. If the manager of the Joint Hindu Family alienates the joint family property, the remedy of the coparcener is only to file a suit for partition and recover possession of his share, even if the alienation is without legal necessity.

10. The above position is clear from the decision of their Lordships of the Supreme Court in *Raghubanchani Prasad Narain Singh v. Ambica Prasad Singh (dead) by his Legal Representatives*, : AIR 1971 SC776 . In that case, one Raja settled in 1936 an area of 15 Bighas of land out of the joint family estate in favour of Respondents 1 and 2. The appellant who is the son of Raja, filed a suit in 1942 for partition of the family estate. The suit was compromised and the appellant claimed

that the land settled upon respondents 1 and 2 were allotted to his share by that compromise. In 1946, the appellant dispossessed Respondents 1 and 2 from the land settled upon them. Respondents 1 and 2 commenced an action in the subordinate Judges Court, Patna, against the appellant and his brother for a decree for possession. The appellant by his written statement, denied the settlement and contended that, he and the members of his family were in possession of the property at all times. That suit was decreed by the Court below and in the Appeal before the Supreme Court, it was urged that even on the findings recorded, no decree can be passed in favour of respondents 1 and 2, because, they had failed to establish that the lands were settled for legal necessity or for the benefit to the estate of the joint family and since Respondents 1 and 2 had failed to make out any such case, the suit filed by respondents 1 and 2 must fail. On a consideration of that question, in paragraph 5, their Lordships observed as follows :

'In any event an alienation by the Manager of the joint Hindu family even without legal necessity is voidable and not void. On the findings of the trial Court and confirmed by the High Court, respondents 1 and 2 were in possession of the land, since the year 1936. The appellant forcibly deprived respondents 1 and 2 of possession of the land. In the circumstances respondents 1 and 2 were entitled to be restored to possession of the land, unless the appellant in an action for partition of the joint family established his claim to the land in dispute. No such attempt was made by the appellant.'

11. In *Sunil Kumar v. Ram Parkash*, : [1988]2SCR623 , the question arose as to whether a coparcener is entitled to file a suit for permanent injunction restraining the father kartha of the joint family from alienating joint family property for legal necessity. After considering the whole matter, Their Lordships of the Supreme Court held that a coparcener is not entitled to an injunction restraining the father kartha of the joint family from alienating the property, though no doubt, law confers a right on the coparcener to challenge the alienation made by the kartha, but that right is not inclusive of the right to obstruct alienation. The observations contained in paragraph 26 of the Judgment are pertinent which reads as follows :

'I do not think that these submissions are sound. It is true that a coparcener takes by birth an interest in the ancestral property, but he is not entitled to separate possession of the coparcenary estate. His rights are not independent of the control of the karta. It would be for the karta to consider the actual pressure on the joint family estate. It would be for him to foresee the danger to be averted. And it would be for him to examine as to how best the joint family estate could be beneficially put into use to subserve the interests of the family. A coparcener cannot interfere in these acts of management. Apart from that, a father -- karta in addition to the aforesaid powers of alienation has also the special power to sell or mortgage ancestral property to discharge his antecedent debt which is not tainted with immorality. If there is no such need or benefit, the purchaser takes risk and the right had interest of coparcener will remain unimpaired in the alienated property. No doubt, the law confers a right on the coparcener to challenge the alienation made by karta, but that right is not inclusive of the right to obstruct alienation. Nor the right to obstruct alienation could be considered as incidental to the right to challenge the alienation. These are two distinct rights. One is the right to claim a share in the joint family estate free from unnecessary and unwanted encumbrance. The other is a right to interfere with the act of management of the joint family affairs. The coparcener cannot claim the latter right and indeed, he is not entitled for it. Therefore, he cannot move the Court to grant relief by injunction restraining the Karta from alienating the coparcenary property.'

(underlining is mine).

12. From the aforesaid two decisions of the Supreme Court, it is clear that the manager of a Joint Hindu Family is entitled to alienate the joint Family property for joint family necessity or for the benefit of the estate, in certain circumstances. Whether the manager is the father or not, will not make any difference. If such an alienation is made by the manager of the Joint Hindu Family of joint family property, the sale would bind not only his share in the property but the share of the other coparceners as well. No doubt, the other coparceners may be entitled to file a suit for partition and recover their share if the alienation was not for family necessity or for the benefit of the estate. The burden in such cases will also lie on the alienee to prove family necessity or the benefit to the estate to uphold the

alienation by the manager. But that right of a coparcener does not affect competency of the manager to alienate the joint family property. When once such alienation is made, the alienee is entitled to be in possession of the property and right of any other coparcener is to sue for partition and recover possession of his share in the joint family properties. The sale being only voidable unless it is avoided by an action, the alienee is entitled to continue in possession. The position may be different if one coparcener alienates his share alone, but once the alienation is made by the manager of the property, it will be effective until it is properly avoided by the non-alienating coparcener by filing a suit for partition.

13. In this case, admittedly, Chinnappa, the brother of the defendant was the joint family Manager. He has executed a Sale Deed in 1984 of the whole property in favour of the plaintiff. On the prima facie materials, both the Courts below have found that he is in possession which cannot be reversed in Revision under Section 115 of the Code of Civil Procedure. The remedy of the defendant, if at all, is to file a suit and to recover his share which he had already initiated by filing O.S. No. 448/94. Without pursuing his remedies in that suit, he is not entitled to interfere with the possession of the plaintiff who is in possession of the plaint schedule property under a sale deed executed by the joint family manager. In that view of the matter, the Courts below were right in granting a temporary injunction in favour of the plaintiff.

I do not find any ground to interfere with decisions of the Courts-below and accordingly, this Civil Revision Petition is dismissed.

14. Revision dismissed.

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