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Court : Karnataka

Decided On : Dec-02-1994

Reported in : ILR1995KAR577; 1995(2)KarLJ331

Judge : M.F. Saldanha, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 96; Hindu Law

Appeal No. : R.F.A. No. 687 of 1994

Appellant : Rangachar

Respondent : Siddalingamma

Advocate for Pet/Ap. : Channaraya Reddy, Adv.

Disposition : Appeal dismissed

Judgement :

Saldanha, J.

1. Heard Counsel.

2. This First Appeal has been preferred by the original plaintiff in O.S.No. 14/1993 on the file of the learned Prl. Civil Judge, Bangalore. The Appeal assails the correctness of a judgment dated 17.11.1994 whereby the plaintiff's suit for partition has been dismissed.

3. The learned Advocate who represents the appellant has advanced the submission that the plaintiff had demanded a one half share in the self acquired properties of the husband of the defendant who is the plaintiff's late brother. Briefly stated, the plaintiff's case was that the properties in respect of which the partition is demanded and the share is claimed consisted of joint family properties and acquisitions made out of the income from those properties and that ipso facto, the plaintiff, as a member of the H.U.F., was entitled to a one half share in the same. The contention is put forward that as normally happens, the revenue records stood in the name of the elder brother whom this Court would have to regard more or less as the Karta of the H.U.F. and that the property income which has been used exclusively for the acquisition of the properties in dispute. As far as this aspect of the submission is concerned, I need to note that the position that obtains under Hindu Law is very clear in so far as if it is contended that the properties in dispute should be treated as deeming to form part of the corpus of the joint family property, then it must be demonstrated that the source of acquisition of those properties was from the original joint family properties themselves. It is not unusual for properties to be acquired out of other sources of income and merely because a Karta or member of a Joint Hindu Family is in possession of other properties, it would not ipso facto entitle the other coparceners to claim a share in those properties. More importantly, the existence of the joint family must be established to the satisfaction of the Court to the extent that it must be demonstrated additionally that the joint family status had continued up to the point of time when out of that income the properties in dispute were acquired. It is in this background that the facts of the present Appeal will have to be appraised.

4. The appellant's learned Advocate has submitted that merely because the revenue records in respect of the properties did not stand in the name of the present appellant, because they stood in the name of the brother, that the Court has presumed the severance of the joint family status. It is submitted that this was done for purposes of convenience and it is further submitted that having regard to the status and normal income of the defendant's late husband, that this Court must draw the conclusion that the acquisition of the properties would have come from no source other than the joint family revenue. As far as this head of argument is concerned, it has been carefully dealt with by the learned trial Judge. In the first

instance, he has traced the background and has held on the basis of cogent evidence before him that the joint family status has come to an end several years earlier. He has also held, after evaluating the economic conditions of the plaintiff and the defendant's late husband who was his brother, that the properties, both movable and immovable, in respect of which the present dispute arises are in fact of the individual ownership and are self-acquired properties and that consequently, the present plaintiff has no right to the same. Even though a submission is advanced, that beyond mere oral evidence nothing more can be adduced by the plaintiff, I am not prepared to accept this argument for the reason that it is very necessary for the party claiming the partition to establish its case to the extent that the law requires, before the adjudicating authority, namely, the Court. A mere averment in a plaint or a mere statement in the witness box that runs contrary to the documentary evidence on record will not avail a plaintiff. It is in the light of this background and after a careful evaluation of the evidence before the trial Court that the learned Judge has come to the conclusion that the plaintiff is not entitled to claim one half share in the properties in question.

5. As regards the aspect of joint family status, the appellant's learned Advocate points out to me that this Court must take into consideration the fact that the plaintiff's father constituted the head of the joint family and that after his death, the sons who are coparceners acquired interest in the properties in question. The appellant and his brother who are deemed to be coparceners form part of the joint family. It is the case of the learned Advocate that since the two brothers were residing together that the joint family status continued and it was during this period of time that the properties in question came to be acquired and that they, therefore, constituted part and parcel of joint family property. The fallacy in this argument is that admittedly, the properties were subsequently acquired and did not form corpus of the original joint family because the father of the present appellant did not leave behind any substantial property. The dispute, therefore, is one that has emerged at the subsequent point of time. It is the finding of the trial Court which is to the effect that the joint family was no longer in existence that is seriously disputed by the learned Advocate. Apart from certain legal submissions and apart from the fact that undoubtedly, the two brothers lived in the same place, there is nothing else on record to indicate that they formed part and parcel of a

Hindu Undivided Family. The learned trial Judge has, on the other hand, relied on several pieces of documentary evidence which conclusively indicate separate status. Under the circumstances, the finding of the trial Court to my mind, with regard to the aspect of an absence of the joint family status cannot be interfered with.

6. Lastly, the appellant's learned Advocate points out to me that this is a Regular First Appeal that has been filed against a final judgment. It is, therefore, submitted that the appellant is entitled to at least one review of that judgment. Undoubtedly, it is a convention that a judgment or decree which is claimed to be assailable must normally be looked at or reviewed by the superior Court if the party aggrieved were to approach that Court. This convention or Rule of procedure is subject to the exception that a scrutiny at the stage of admission must indicate that there is at least some substantial error or some material aspect of the matter that is worth reconsidering or that the final decision of the Court is reviewable on some valid or specific ground. In a situation where the appellate Court finds that the order passed by the trial Court is absolutely correct both on facts and in law and where there is virtually no ground either factually or legally that would justify interference by an appellate Court or involving alteration of the original judgment or decree, to my mind, the admission of the Appeal would be purely academic and no useful purpose whatsoever would be served. There is no requirement of law which postulates that merely because an Appeal is filed it must be entertained even if it is devoid of substance.

7. In the circumstances, even though I do concede that this is a Regular First Appeal, in the absence of any ground being made out, to my mind, it does not qualify for Admission.

The Appeal accordingly fails and stands dismissed. Interim application to stand disposed of.