

B. Narayana Murthy and ors. Vs. B. Venkateshalu and ors.

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Court : Karnataka

Decided On : Jul-04-1995

Reported in : I(1996)DMC16; 1995(4)KarLJ553

Judge : M.F. Saldanha, J.

Acts : [Evidence Act, 1872](#) - Sections 114(3); [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 96

Appeal No. : R.F.A. No. 381 of 1993

Appellant : B. Narayana Murthy and ors.

Respondent : B. Venkateshalu and ors.

Advocate for Def. : M.P. Eswarappa, Sr. Adv. and ;K.G. Nayak, Adv.

Advocate for Pet/Ap. : M.B. Prabhakar, ;A. Keshava Bhat and ;Varadaraj Tirumale, Advs.

Judgement :

M.F. Saldanha, J.

1. Two issues, both of which are of slightly unusual complexion, have been canvassed by the parties to this appeal. The first of them, strangely enough concerns the question of the identity of Plaintiff No. I's sisters, in so far as the

defendants who are the second wife and the children have contended that whereas plaintiff No. 1 was the son of the deceased G.V. Balakrishna, that he was the only child and that the sisters who are today arraigned as co-plaintiffs either personally or through their L. Rs. are impostors. The learned Trial Judge has accepted them to be as genuinely 'belonging to the family and has therefore upheld a claim for a share in the property of deceased Balakrishna. The issue that is seriously debated centres around the question as to whether, in the face of the stand taken by the defendants, the plaintiffs have succeeded in establishing their identity. The allied issue that falls for determination is the question as to whether, the property that is now in dispute, which admittedly was purchased by deceased Balakrishna through a regd. sale deed on 14.10.1995 in his name and in the name of his wife, is to be treated as property individually belonging to him or whether only one-half share in that property is to be treated as his for purposes of the present dispute.

2. The brief facts surrounding this dispute need to be summarised. The plaintiff No. 1 and his sisters filed O.S. No. 8471/80 before the City Civil Court at Bangalore claiming 3/7th share in the suit schedule property belonging to their father G.V. Balakrishna. They had claimed partition and separate possession of their respective shares as also further mesne profits. The defendants to the suit are the second wife and her sons. It was contended by the original plaintiffs that despite having demanded their rightful entitlements, that the defendants declined to give them their rightful share of the property which was why they had approached the Court. The defendants, interestingly enough, accepted the fact that plaintiff No. 1 is the son of Balakrishna through the deceased first wife and conceded the position that he would be entitled to a share in the property. They however seriously disputed the very existence of the co-plaintiffs. In effect, they have contended that plaintiff No. 1 was the only child of the first wife and that the remaining plaintiffs have been set up to make a false claim in respect of the property and that they are not the daughters of Balakrishna and deceased Pillamma. It was also contended that it was incorrect to contend that the property belonged exclusively to Balakrishna because, the regd. sale deed very clearly indicated that it was purchased by both husband and wife and that therefore, the second wife Nagamma was a one-half owner of that property . The defendant 1

contend that deceased Balakrishna had purchased the property out of the joint family assets to the extent of one-half share and that the other half of the consideration for the purchase had been contributed by his wife Nagamma out of her stridhana. It was therefore submitted that the property for apportionment was only one-half share and not the whole of the property and secondly that only plaintiff No. 1 was entitled to claim the share. The learned Trial Judge has completely rejected the defence and has held that the plaintiffs collectively are entitled to claim 3/7th share in the whole of the property. This appeal is directed against that decree.

3. The learned Advocates representing the parties have relied on the record which consists of the pleadings, the oral evidence of only two witnesses namely one on the side of the plaintiff and one on the side of the defendants as also the sale deed dated 14.10.1959. The basic controversy in the first instance centres around the question as to the number of sharers. The plaintiff No. 1's share though being admitted, the learned Trial Judge after assessing the evidence observed in passing that it was too far fetched for anybody to accept the contention that the co-plaintiffs would falsely contend that they are the daughters of Balakrishna only in order to try and claim a share in the property if they are in fact not his real daughters and that consequently, their claim requires to be upheld. This aspect of the matter however has been seriously agitated and it therefore requires to be decided.

4. The appellants' learned Advocate has in the first instance drawn my attention to the pleadings. He states that in the written statement it was clearly mentioned that the averment in the paragraph 3 of the plaint is to the effect that the co-plaintiffs are the daughters has not been admitted. He further drew my attention to a positive statement in the subsequent paragraph wherein the defendants have stated that they admit the identity of plaintiff No. 1 who is the son of Balakrishna through his earlier wife but that he was the only child and that therefore, the co-plaintiffs are not the daughters of Balakrishna nor are they the sisters of plaintiff No. 1. The main plank of argument was that since the identity and status of the co-plaintiffs has been seriously disputed, that the burden of proof of establishing that in fact these ladies were the daughters of deceased Balakrishna shifted

completely to the plaintiff. The learned Advocate pointed out to me that for some strange reason neither these ladies nor anybody on their behalf has come forward to give positive oral evidence in support of their identity and status. Secondly, he submitted that it was elementary in a situation of this type if the co-plaintiffs were serious about their claim that they should have adduced documentary evidence by way of birth certificates, school records or any other material on the basis of which the Court could have conclusively established their identity. In supplementing these submissions, the learned Advocate who represented respondent 2 raised the plea that the Court will have to take judicial notice of the fact that all this material were definitely and most certainly in the possession of the plaintiff or his legal representatives, that this was deliberately withheld from the Court and in the absence of the production of this material, an adverse inference under Section 114(3) of the Evidence Act will have to be drawn. He submitted that this conclusion is inevitable because the defendants with a full sense of responsibility have disclaimed any relationship with the co-plaintiffs and in these circumstances it was incumbent upon them to have established the identity to the satisfaction of the Court and not having done so, that their claims would have to fail on this ground alone.

5. As regards this head, the respondents learned Advocate has drawn my attention in the first instance to the position that obtained in law. He submitted that there are only half-hearted denials in the written statement and in support thereof he places some reliance on the wording of the relevant portion of the written statement wherein the defendants have stated that they 'do not admit' the correctness of the statement in the plaint vis-a-vis identity of the co-plaintiffs. Learned Advocate submits that the law of pleadings is very clear with regard to admissions and denials and he contended that under the provisions of the Civil Procedure Code, at the stage of the pleadings a party who disputes the correctness of a fact must set out that plea unequivocally. Learned Counsel submitted that nothing prevented the defts. from clearly stating that they deny the status of the co-plaintiffs which they have not done. As regards the averment in the written statement wherein it has been contended that plaintiff No. 1 was the only child through the first wife, the learned Counsel draws my attention to the fact that plaintiff No. 1 has completely overcome this material because in the course of

his evidence before the Trial Court he has very clearly stated that he had three sisters. He has named the three sisters and he has mentioned which of them is alive and which of them is not. Learned Counsel points out that even though this witness was cross-examined at considerable length, that this part of the evidence regarding his sisters has not been touched upon at all. He therefore submits that this material has gone uncontroverted. He has reinforced his submissions regarding the pleadings by drawing my attention to certain decisions, the first of them being a decision of the Supreme Court reported in : AIR 1967 SC109 in the case of Jahuri Sah and Ors. v. Dwarka Prasad Jhunjhunwala and Ors. The Supreme Court while dealing with the provisions of Order 8, Rule 5 of the C.P.C. in relation to facts that are to be taken as admitted and those which are to be taken as denied, observed that a statement to the effect that the defendant has 'no knowledge' of the fact pleaded by the plaintiff does not amount to a denial of the existence of that fact and the Court cannot construe it as being a denial. In essence, the Supreme Court held that in the absence of a specific denial, a mere statement that the party has no knowledge or that it has not admitted is insufficient. A similar view has been expressed in another decision reported in : AIR1964 Pat348 in the case of Punit Rai and Anr. v. Mohammed Majid and Ors. wherein again, a Division Bench of the Patna High Court had occasion to take the view that in matters of importance, a specific denial in the pleadings is a must.

6. I do concede that the wording of the relevant portion of the Trial Court's judgment is rather inappropriate and unhappy but in essence and spirit, what the learned Trial Judge has expressed is that a claim to a father's property and that too immovable property before a Court of law is an issue of some seriousness and it would be therefore rather far fetched to assume that a stranger or an impostor would pluck up enough courage to come forward before a Court of Law and contend that she is a daughter of the deceased if in fact she was in no way related to the family. While making his submissions, the respondent's learned Counsel submitted that it is a matter of deep regret and it is quite ironical that merely because properties may have appreciated and are of considerable value, that people are pushed to a position of denying their own kith and kin. A Court is entitled to take judicial notice of the fact that whereas in commercial matters it may be the order of the day to make false claims, that it would be rather inappropriate

for a Court of Law to overlook the provisions of the Evidence Act itself which prescribes that a Court is required to take cognizance and judicial notice of certain existing situations. To raise a contention that one or more of the plaintiffs is disentitled to a share is one thing but to dispute the relationship and paternity is perhaps going a bit too far. Fortunately, in the present proceeding there is the tell-tale circumstance that the so called denials on the part of the defendants are weak, half-hearted and half-baked. They are guarded denials which to my mind will have to be rejected particularly in the light of the fact that evidence on oath of P.W. 1 in this regard has gone uncontroverted. It is true that the co-plaintiffs could have and perhaps should have produced better evidence but even on the state of the present record, to my mind, it would be wrong to disqualify them merely because this has not been done. The adverse inference that was pleaded could only arise in law in a situation where there is no other material and would not have any bearing as far as the present situation is concerned. It is in these circumstances that the first finding of the learned Trial Judge namely that all the plaintiffs are entitled to claim a share in the property is liable to be upheld.

7. As regard the second head is concerned, the appellants' learned Advocate submitted that the regd. sale deed dt. 14.10.1959 is on record and this very clearly shows that the property was purchased in the joint names of deceased Balakrishna and his wife Nagamma. He has stated that there cannot be any dispute about the fact that as co-owners each of them hold one-half share and that therefore the apportionment would have to be done in respect of that half share. He draws my attention to the fact that the deceased Nagamma has left behind a Will in respect of her half of the property which can be taken into account as far as the present dispute is concerned. He has also relied on the relevant parts of the record in support of his plea that the consideration emanated from both the persons and that half the consideration has come from Nagamma. He also points out that there is a reference in the record to the effect that another property had been sold for Rs. 10,000/- and that the purchase price of this property was Rs. 15,000/-and he submits that it was therefore clear that consideration did come from another source namely the stridhana of the wife. As far as the legal position is concerned, the learned Advocate has placed strong reliance on a decision of the Supreme Court reported in : [1972]2SCR646 (P.C. Purushothama Reddiyar v.

Perumal) in support of his proposition that once a document is adduced in evidence, that the contents of that document are inseparable from the document itself and that the whole of the contents must be treated as having been proved, This issue had arisen understandably in the above case which was one under the Representation of Peoples Act. The Supreme Court has only reiterated the position in law which is virtually undisputed. In fact, the learned Advocate submitted that the document has to be taken in its entirety and at face- value and that it is not open at this point of time to go behind this document or to dissect its contents.

8. In reply to these submissions, the respondent learned Advocate has contended that admittedly this was a self-acquired property. He states that there is no positive evidence that has been adduced in support of the contention that one-half of the consideration emanated from Nagamma's Stridhana. On the other hand, he draws my attention to various parts of the record which indicated that admittedly another property had been sold for a sum of Rs. 10,000/- and he contends that this position is admitted even by the defendants. As regards the balance of Rs. 5000/- the learned Counsel submits that the evidence indicates that the deceased Balakrishna was other wise employed and that it was not difficult for him to have accounted for the balance amount, out of his own earnings. The submission is that if the whole of the consideration has come from Balakrishna, then the whole of the property would basically have to be held to be his and that consequently, the learned Trial Judge was not wrong in holding that the property was liable to be divided in its entirety.

9. As far as this aspect of the case is concerned, what needs to be taken into account is that it was purchased in the year 1959 under a regd. sale deed. That document is on record and that document clearly and undisputedly indicates that the property was purchased and that it stood in joint names. The controversy between that parties is with regard to the source of the consideration and the question as to how much of it came from which of the parties. To my mind, that issue is completely irrelevant and inconsequential. It is a regd. sale deed and even if one of the parties has contributed the whole or a portion or whatever part of it or even if deceased Balakrishna had paid the whole of the consideration, the fact that

it is purchased in the names of both husband and wife would give each of the parties as co-owners a one-half share in law. The document has to be taken at face value and to my mind there is no ambiguity at all with regard to the aspect of how much share deceased Balakrishna possessed in that property. To this extent, the learned Trial Judge was in error in having recorded the finding that the deceased Balakrishna was the whole and absolute owner of the property in question. That finding would accordingly have to be set aside and substituted by the finding that the disputed property which is liable to be shared between the present plaintiffs and defendants is to the extent of one-half and not the whole of the property in question.

10. Having regard to the aforesaid position, the appeal partially succeeds. The decree passed by the learned Trial Judge is modified to the extent that while the apportionment of 3/7 share to the plaintiffs is upheld, it is clarified that this share shall be in respect of one-half of the property of deceased Balakrishna and not the whole of the property. Subject to this modification, the rest of the decree stands confirmed. The appeal accordingly stands disposed of. In the circumstances of the case, there shall be no order as to costs.