P. Thimmayya Vs. P. Siddappa

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Court : Chennai

Decided On : Apr-19-1923

Reported in : AIR1925Mad63

Appellant : P. Thimmayya

Respondent : P. Siddappa

Judgement :

1. The first point taken is that, on the date of suit, the plaintiff had no title to the property, as two of the daughters of the original owner, Thimmayya, were alive and they were entitled to the property in spite of the relinquishment of their rights in favour of Nagamma. It is contended that their relinquishment did not involve the loss of their right to take by survivorship to Nagamma. This would really depend upon the nature and extent of the relinquishment. If they expressly relinquished their right to take the estate after the death of Nagamma, they could not, in our opinion take it subsequently on the ground of survivorship, but it will pass to the heirs of Thinomayya as if all the daughters were dead, that is in this case to the daughters sons, the plaintiff and Hanumanthu.

2. Here, however, there is no deed of relinquishment and it is not possible on the facts to say positively whether the relinquishment involved the loss of right to enjoy the property on Nagamma's death.

3. We would, therefore, assume that, at the date of suit, the plaintiff's title is not established. In this connection reliance was placed by the appellant on the case in Muthiyalu Chengappa v. Burada Gunta (1920) 43 Mad. 885. With all respect to the learned Judges, we feel considerable doubt as to its correctness. We need not, however, deal further with that case on the view we are taking of the effect of relinquishment.

4. Although we assume that the plaintiff had no title on the date of suit, it is found that, very soon after the suit was filed and before the case was disposed of by the First Court, the two daughters died and then, at all events, plaintiff and Hanumanthu became entitled as co-owners of the suit property. It is conceded that an amendment of the plaint could have been allowed setting forth the claim as arising on the death of the daughters. That being so, we think the Subordinate Judge was right in disposing of the suit on that footing. If necessary, we would allow an amendment ourselves, but as no useful purpose would be served we think it unnecessary to insist on a formal amendment.

5. It is next argued that taking defendant to be a trespasser, on the findings of the lower Court, one co-owner cannot eject even a trespasser without the other co-owner being a party to the suit. This argument is directly opposed to the ruling in Ahmad Sahib Shutari v. Magnesite Syndicate Ltd. (1916) 39 Mad. 501. The case cited by the appellant in Punnaya Tirumalai Vandaya v. Kandaswami Vandaya (1912) 17 I.C. 136 is not opposed to this view provided one co-owner does not deny the other co-owner's right. Plaintiff does not deny before us that Hanumanthu is also jointly entitled with him and the decree in plaintiff's favour will be for the benefit of both himself and Hanumanthu.

6. The plea of res judicata is clearly untenable.

7. All the points taken by the appellant failing, second appeal fails and is dismissed with costs.