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Court : Karnataka

Decided On : Oct-29-2010

Judge : K Govindarajulu J.

Appeal No. : REGULAR SECOND APPEAL NO.477 OF 2007

Appellant : NagendrappaA. and ors

Respondent : Kariyappa, and ors

Advocate for Def. : SRI G.BALAKRISHNA SHASTRI ADV.

Advocate for Pet/Ap. : SRI L.GOVINDRAJ. ADV

Judgement :

1. Plaintiffs in OS 32/2000 are the appellants in this second appeal.
2. Plaintiffs have filed a suit seeking for declaration of title to the plaint schedule property in their favour and for permanent injunction against the defendants and for such other reliefs.
3. Case of the plaintiffs is that Kavalu Hanumanthappa had two sons viz., Kare Hanumanthappa and Ugrappa. Kare Hanumanthappa had got three sons viz., Kavalu Kariappa. Ugrappa and Sanna Hanumanthappa. Kavalu Kariappa had got two sons viz., Hanumanthappa and Narasimhappa. Plaintiffs 1 to 5 are the sons of Hanumanthappa. Plaintiff no.6 is the son of Narasimhappa. Kavalu

Hanumanthappa's sons were Kavalu Kariappa and Ugrappa orally partitioned the joint family properties. Kavalu Kariappa separated from joint family. Kavalu Hanumantappa and his second son Ugrappa enjoyed the properties. Second son of Kare Hanumanthappa i.e., Ugrappa died living behind his wife Sanamma and three daughters by name Kariamma, Eramma and Narasappa. Defendants 1 to 3 are the sons of said Eramma. 3rd son of Kare Hanumanthappa by name Sanna Hanumanthappa was adopted by L'grappa as Ugrappa did not have any issues. Sanna Hanumanthappa had one daughter by name Kanamma. She is the 4th defendant. Defendants 5 to 8 are the sons of 4th defendant. Plaintiff schedule property fell to the share of Kavalu Kariappa. Plaintiff has got right, title and interest over the properties. Kavalu Kariappa having enjoyed the properties without any interference after the death of Hanumanthappa and Narasappa. Plaintiffs are in lawful possession and enjoyment of the property. Defendants have no right, title or interest over the property colluding with each other revenue entries are created. So, pray for decreeing the suits.

4. Defendants 1 to 3, 4 to 7 have filed written statement. They admit the relationship and adoption pleaded. Contend that the claim of the plaintiffs in regard to the right of title claimed by them is denied. Further contend that there is a partition between the brothers and cousins and each of the brothers are enjoying the properties separately. So, claim of the plaintiffs for the reliefs prayed for are without any merit. So, seek for dismissal of the suit.

5. Learned trial Judge has framed issues. Permitted parties to lead evidence. PW1 and PW2 are examined. Ex.P. 1 to P.20 are marked. DW1 and DW2 are examined on behalf of the defendants. Ex.D. 1 to D.60 are marked. Learned trial Judge has answered the following Issues with the following reasonings while dismissing the suit:

ISSUES

(1) Whether the plaintiffs prove that they are absolute owner in possession of schedule properties?

(2) Whether the plaintiffs prove the alleged interference?

(3) Does the plaintiffs entitle for the relief as sought for?

(4) What order or decree?

6. Aggrieved plaintiffs preferred RA 31/2004 on the file of the II Addl. Civil Judge (Sr.Dn.), Chitradurga. Learned Sr. Judge has raised the following points for consideration and while answering them as follows while dismissing the appeal:

POINTS

1. Whether the lower Court was justified in holding that, the plaintiffs who have approached the Court with a definite claim, have failed to establish their lawful possession and title over the suit property for grant of necessary relief?

2. Whether lower Court was justified in disbelieving the boundary mentioned in

Ex. P.2, as sole basis to consider the claim of the plaintiffs?

3. Whether the lower Court has erred in properly appreciating the oral and documentary evidence resulted in miscarriage of justice?

4. What order or decree?

FINDINGS

Point No. 1: In the affirmative Point No.2 : In the affirmative Point No 3 . In the negative Point No.4 : As per final order for the following reasons:-

Plaintiffs are in second appeal.

7. Learned advocate for the plaintiffs substantiates his clients case contending that the properties are ancestral in nature. Defendants have not produced any document to prove title. The document Ex.D.48 which is relied upon is not a document which creates title. The finding on title is not given by the Courts below. In regard to the plea of the defendants of there being partition, Court was obliged to ask a question whether the plaintiff was obliged to file a rejoinder, the answer is no.

8. In the light of the above material, the contentions of the parties are considered. It is the case of the plaintiffs for declaration of title and also for consequential reliefs. As against the declaration sought for, the positive defence in the form of Ex.D.48 referred to in the document list and also the discussion of the learned Courts below probabalise the division between the co-owners and there being separate enjoyment. In this situation, separate document of title is not required. If any of the documents specially Ex.D.48, if it is disputed, there was a duty cast upon the plaintiffs to further substantiate. No such effort is done. For the first time such an argument is advanced at the stage of admission against a concurrent finding. So the appeal is rejected as it is devoid of any merit at the stage of admission.

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