

**Siddraju and Others Vs. Gangadhara and Others**

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**Court :** Karnataka

**Decided On :** Mar-21-2012

**Judge :** Huluvadi G. Ramesh

**Acts :** Transfer of Property Act - Section 8

**Appeal No. :** Regular Second Appeal No. 2672 of 2006

**Appellant :** Siddraju and Others

**Respondent :** Gangadhara and Others

**Advocate for Pet/Ap. :** For the Appellants: K. Vijayakumar, M/s. C. R. Gopaldaswamy and Associates, Advocates. For the Respondents: R2 - K. V. Narasimhan, Advocate.

**Judgement :**

1. This second appeal is by the legal representatives of deceased plaintiff-Siddaiah challenging the judgment and decree passed by the Principal District Judge, Mandya in R.A. No. 89/2003 dated 23.6.2005.

2. Suit was filed by plaintiff-Siddaiah for declaration and permanent injunction in respect of the suit schedule property. According to the plaintiff, he is the absolute owner of the suit schedule property as it was settled in his favour by one Chowdamma, D/o Karisidda of Bevinahalli village, executed on 3.8.1951 before the sub-Registrar, Mandya and defendants have no semblance of right or interest

over the suit property. On the death of Chowdamma on 9.3.1990, by virtue of the Settlement Deed dated 3.8.1951, plaintiff is in possession and enjoyment of the suit property. Since after the death of Chowdamma the defendants started interfering with the peaceful possession and enjoyment of the suit property by the plaintiff, he filed a suit. The matter was contested by the defendants contending that, Sy. No.148/3 totally measures 2 acres and 1 gunta including 9 guntas of kharab land. Chowdamma D/O Karisidda was the owner in possession of the said land. The said land has been bifurcated by a channel and an extent of 24 guntas is situated on the northern side of the channel and remaining 48 guntas is situated on the southern side of the channel. Chowdamma had settled only 38 guntas of land in favour of the plaintiff out of 48 guntas situated on the southern side and remaining extent of 10 guntas and the land measuring 24 guntas were not at all settled in favour of the plaintiff and it was settled in favour of the 1<sup>st</sup> defendant who was a minor then, represented by his father Javaraiah as a guardian on 26.2.1975 and thereafter, the 1<sup>st</sup> defendant was enjoying 34 guntas of land as a full owner and thereafter, it was sold in favour of the 2<sup>nd</sup> defendant on 15.5.1989. It is further alleged that, based on the lawful ownership and the revenue entries there is a change of khata in the name of the 1<sup>st</sup> defendant. Based on the pleadings, the trial Court has raised as many as 5 issues and 3 additional issues. While answering the relevant issues in favour of the plaintiff, the trial court has decreed the suit of the plaintiff and declared that plaintiff is the owner of the suit schedule property and granted permanent injunction to the plaintiff as against the defendants or his agents. Against the said order, defendant No. 2 preferred an appeal before the Prl. District Court, Mandya, wherein the learned District Judge while allowing the appeal in R.A. No. 89/2003, has reversed the finding of the 1 Additional Munsiff, Mandya in O.S. No., 719/1990. Hence, this second appeal by the legal representative of deceased plaintiff.

3. At the time of admission of 18.1.2007, the following substantial question of law has been framed:

Whether the interpretation placed by the lower appellate Court on Ex.P1, the settlement deed, to the effect in so far as second item of the property is concerned, it constitutes a Will, is valid?

4. Heard the counsel for the respective parties.

5. According to the learned counsel to the appellants, Ex.P1 is the settlement deed which confirms the right to the extent of 38 guntas in favour of the plaintiff and according to which, the remaining 10 guntas is to be settled in favour of the plaintiff on the death of settler namely Chowdamma. Making use of the alleged subsequent transaction, the defendant are denying the right and title over 10 guntas of land in favour of the plaintiff. According to him, once the property is settled, there cannot be any subsequent settlement in favour of others and the settlement if any, made in favour of defendant No. 1, is not binding on the plaintiff, moreover when the plaintiff is in possession of 10 guntas. The trial Court has rightly decreed the suit of the plaintiff, but the lower appellate Court, while interpreting Ex.P1, has held that it is a Will, which is erroneous. Accordingly, he has relied upon the judgment of the **Apex Court reported in AIR 1996 SC 2220 in the case of Namburi Basava Subramanyam versus Alapti Hymavati and others** wherein referring to Section 8 of the Transfer of Property Act, the Apex Court has held that, where a Settlement Deed or a Will, deed creating right and interest 'in praesenti' in favour of settlee regarding the properties mentioned therein with life estate for her enjoyment during her lifetime, settlee was to acquire absolute right to enjoyment, alienation etc., on settlor's demise. Deed is Settlement Deed and not Will. Settler cannot subsequently bequeath the same property in favour of other.

6. Learned counsel for the respondents has submitted that, defendant No. 1 being the relative of settler, he has been given 24 guntas of land plus another 10 guntas, which was retained by the settler for her lifetime. The Deed if any, executed is only in respect of 38 guntas in favour of the plaintiff and the remaining extent of 10 guntas is retained by the said settler and subsequently, it has been settled in favour of defendant No. 1 and he gets the right and he continued to be in possession of the suit property. Accordingly, he has resisted the appeal.

7. As per the ratio laid down in the above noted case, when once the Settlement Deed is made in favour of the plaintiff to the entire extent of 48 guntas, the land which is retained by the settler to the extent of 10 guntas as a life interest is only a

limited estate and not the absolute right and subsequently, any such settlement made in favour of the 1<sup>st</sup> defendant to the extent of 10 guntas out of 48 guntas is void. The trial Court has decreed the suit of the plaintiff in entirety. Even the assertion of the right of the plaintiff is, he is in possession of the property. Once there is a conveyance by way of settlement deed in favour of the plaintiff, the right if any, retained by the settler is only life interest and not absolute right. In the circumstances, the lower appellate Court has erroneously reversed the finding of the trial Court.

8. Even the ratio of the Apex Court is leaning towards the judgment of the trial Court. As is provided under Section 8 of the Transfer of Property Act, once property is settled under the Settlement Deed, the question of further alienation does not arise and any such alienation made subsequently by the settler out of life interest retained by her, is only a void transaction.

9. In so far as possession is concerned, the plaintiff asserts that he is in possession, on the other hand, defendants 1 and 2 have denied the same. It appears, there is no clear finding given by both the Courts below as to who is exactly in possession of the property. As claimed by defendants 1 and 2, if they are in possession, their possession would be illegal on the death of Chowdamma, the settler. However, without there being any order for mesne profits, it is hereby ordered that, if there is any standing crop, it is for defendants 1 and 2, who ever is in possession, to hand over the possession to the plaintiff after harvesting the standing crop if any, within a reasonable time. It is also made clear that the respondents shall not dispute or raise any query to hand over the possession after harvesting of crop. The relevant entries in the revenue record in favour of defendants 1 or 2 if any, shall be changed in the name of the plaintiff.

Accordingly, while answering the substantial question of law in favour of the appellant-plaintiff, appeal is allowed.

Parties to bear their own costs.

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