

Bharathi and Others Vs. Dhanalakshmi and Another

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Court : Karnataka

Decided On : Sep-13-2011

Judge : Huluvadi G Ramesh

Appeal No. : Regular First Appeal 210 of 2009

Appellant : Bharathi and Others

Respondent : Dhanalakshmi and Another

Advocate for Pet/Ap. : For the Appellants: P. Krishnappa, Advocate. For the Respondents: M.S. Varadarajan, A.M. Muthanna, Advocates.

Judgement :

(Appeal is filed under S.96 of the Code of Civil Procedure praying to set aside the judgment and decree dated 20.12.2008 in OS 4522/2003 by the XXII Addl. City Civil Judge, Bangalore.)

Appeal is by defendants 2 to 5 challenging the order of the XXII Addl. City Civil Judge, Bangalore in OS 4522/2003 on 20.12.2008.

In respect of the suit properties at the hands of the father Muninarayanappa, his only daughter Dhanalakshmi filed a suit against the defendants viz., the mother, and brother's wife and children, for 1/3rd share. Earlier to the death of Muninarayanappa i.e., during the lifetime of Muninarayanappa, there was a suit filed by the present plaintiff along with her brother Ramanjaneya seeking for

partition and 1/3rd share. The said suit ended in compromise in respect of property in Sy.No.159 measuring 3.20 acres. In the compromise, 1.00 acre was given to the plaintiff and her brother Ramanjaneya. Remaining property was retained by their father Muninarayanappa. After the death of the father during 2003, suit came to be filed by the daughter against her mother who succeeded to the estate of the father of the plaintiff and the husband of 1st defendant, also making the wife and children of the deceased brother - Ramanjaneya as defendants.

The contention of appellants/defendants 2 to 5 is, after the earlier partition, there was severance of status of co-parcenary and the property at the hands of the father Muninarayanappa is separate property. However, since Ramanjaneya son of Muninarayanappa even after division continued to be in joint status, according to the appellant's counsel, the entire property should be made available to be shared by the wife and son of Muninarayanappa on such severance of status of co-parcenary as per S.6 of the Hindu Succession Act.

Per contra, counsel for the respondent representing the daughter/plaintiff submitted, as per S.8 of the Hindu Succession Act, property at the hands of the father shall be made available even after division when the father died intestate and should be divided equally among the wife and children of Muninarayanappa since the property lost the character of co-parcentary property on the death of Muninarayanappa. According, in support of his argument, he relied upon the decision of the Patna High Court in the case of Satyanarain Mahto and Anr Vs Rameshwar Mahto and Ors - AIR 1982 Patna 44 wherein the Division Bench of the said Court in similar situation held, the property shall be made available among the shares. The facts therein are, a hindu father separated from all his sons died leaving behind his widow, two daughters, one son and heirs of two predeceased sons. In the said situation, referring to Explanation II to S.6 r/w S.8, it was held the proviso would apply to the succession of the co-parcenary property the deceased owned. The property should be divided equally and each set of heirs has to get a share. It is also made clear that it is not correct to say that in view of explanation II to S.6 proviso, because the deceased had separated from his sons, the sons or their heirs cannot claim a share against the property and that his wife shall be the sole successor. It is also held, as per explanation II, the undivided person

excludes the divided one from succession. All the sons had separated and no one had preference over the other and therefore, the explanation did not apply.

In the case on hand, what is not in dispute is, in the suit filed by Ramanjaneya and Dhanalakshmi, son and daughter of Muninarayanappa against Muninarayanappa which ended in compromise, out of 3.20 acres 1.00 acre was given to them. It is the case of the wife and children who represent Ramanjaneya that they continued to live together with Muninarayanappa even after partition and joint status has not been severed and as such they succeed to the estate of Muninarayanappa. This contention could have been accepted provided, Ramanjaneya had not joined the plaintiff Dhanalakshmi seeking for partition. Since there is a suit filed for partition in which both Dhanalakshmi and Ramanjaneya had joined together and had taken share, for all practical purposes, Ramanjaneya's status was severed from the joint family. If he were to continue without claiming any share with his father, then the position of the plaintiff Dhanalakshmi would have been different and she could have been excluded from claiming share or the property could have been disposed of by Muninarayanappa by way of testamentary succession or by way of any other transfer. But since Ramanjaneya's status also remained as that of Dhanalakshmi the plaintiff, he cannot stand on a better footing to exclude Dhanalakshmi. Might be that this Ramanjaneya has left behind three children whereas plaintiff may have an issue or not, it is immaterial. If at all the plaintiff Dhanalakshmi is agreeable to workout any compromise to part with the property, it would be at the discretion of the plaintiff. The finding of the trial court cannot be faulted.

Appeal is dismissed. Parties to bear their own costs.

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