

ismail Vs. Abdul Rahiman and Others

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Court : Karnataka

Decided On : Sep-14-2012

Judge : K. Sreedhar Rao & V. Suri Appa Rao

Appeal No. : R.F.A. No.1698 of 2005

Appellant : ismail

Respondent : Abdul Rahiman and Others

Judgement :

(Prayer: This Regular First Appeal is filed under Section 96 of the Code of Civil Procedure, prays that this Honourable Court be pleased to set aside the Judgment and Decree of the Court of the Principal Civil Judge (Sr. Dvn.) and CJM, Mangalore, D.K. District in O.S. No.208/1994 dated 17.08.2005 and further be pleased to allow this appeal.)

V. SURIAPPA RAO, J.

1. This appeal is filed against the Judgment and Decree dated 17th August 2005 in O.S. No.208/1994 on the file of the Principal Civil Judge (Sr.Dvn.) and CJM, Mangalore.

2. The plaintiffs filed the suit for partition and separate possession of their share and for mesne profits. The Trial Court decreed the suit for partition and for mesne profits. Aggrieved by the Judgment and Decree passed by the Trial Court, the

defendant No.1 filed this appeal. For the sake of convenience the parties are referred to as arrayed in the suit.

3. It is the case of the plaintiffs that they are the children of late Iddikunhi through his second wife late Pathumma and the defendants are the children of the Iddikunhi through his first wife late Ashyamma. During the life time of Iddikunhi he was cultivating the suit schedule properties. Subsequently, he died on 05.11.1979 after coming into force of the Karnataka Land Reforms Act. The 1st defendant being his elder son was allowed to file declaration under Section 48-A of the Karnataka Land Reforms Act on behalf of all children of late Iddikunhi. The Land Tribunal as per the order dated 21.10.1978 granted 'B' schedule property in the name of the 1st defendant only. Therefore, the 1st defendant is in possession and enjoyment of the property and 'B' schedule property consisting of more than 1200 yielding areca trees and 60 coconut trees, a house, cattle shed and bathroom and appropriating the income for himself. He has not complied with the demand made by the plaintiffs for partition though the plaintiffs and defendants are equally entitled for share in the properties. Therefore, the plaintiffs filed the suit for partition.

4. The 1st defendant resisted the suit filed by the plaintiffs denying the contentions of the plaintiffs that the suit schedule properties are the ancestral properties, the lease hold properties are cultivated by their ancestors and their late father Iddikunhi. He further contended that 'B' schedule properties are his property in his individual capacity, even during the life time of their father he was cultivating the same. Therefore, he filed a Declaration also. The Land Tribunal conferred occupancy rights in his favour. He further contended that his father was not an agriculturist and he was a businessman. After the death of his mother and after the marriage of his father with 2nd wife, he obtained the lands on lease and took up cultivation and improved the 'B' schedule property by raising areca and coconut garden. As such, he is the absolute owner of the 'B' schedule property.

5. The 1st defendant further contended that his father was alive at the time of coming into force of the Karnataka Land Reforms Act, but he has not filed declaration. Therefore, his father has lost the right if any as such the plaintiffs have

no right over the properties.

6. The other defendants filed written statement supported the contentions raised by the 1st defendant.

7. On the basis of the above pleadings, the Trial Court framed the following Issues :

1. Whether plaintiffs prove that the plaint 'B' schedule properties are the lease-hold properties of the ancestors and the father of plaintiffs and defendants?

2. Whether plaintiffs further prove that occupancy right of plaint 'B' schedule property was granted in favour of defendant No.1 for and on behalf of the family?

3. Whether plaintiffs further prove that the plaint 'B' schedule property is liable to be partitioned into 24 shares by metes and bounds and that the plaintiffs are entitled to 18 such shares?

4. Whether plaintiffs prove that they are entitled for mesne profits from the date of suit and if so, at what rate?

5. Whether defendants prove that plaint 'B' schedule properties are self-acquired lease-hold properties of defendant No.1 and that defendant No.1 is in exclusive possession of the same and as such the same are not liable to be partitioned?

6. What order or decree the parties are entitled?

Additional issues framed on 15.10.1998 :

1. Whether defendant No.1 proves that the occupancy right has granted in his favour during the life time of his father and therefore he became the sole occupant as contended in para 5(a) of his written statement?

2. Whether defendant No.1 further proves that the order passed by the Land Tribunal is final?

Additional Issue framed on 2.3.1999 :

3. Whether the Court fee paid is correct?

8. During the trial, on behalf of the plaintiffs PWs 1 and 2 are examined and relied upon Ex.P1 to P16. DWs 1 and 2 are examined on behalf of the defendant and relied upon Ex.D1 to D7.

9. Considering the oral and documentary evidence adduced by both the parties, the Trial Court decreed the suit of the plaintiffs for partition and mesne profits. Aggrieved by the Judgment and Decree passed by the Trial Court, the 1st defendant filed this appeal.

10. We have heard the learned Counsel for both the parties.

11. According to the plaintiffs, 'B' schedule properties are originally cultivated by their ancestors as tenant. Thereafter, their father cultivated during his life time and in the meanwhile, Karnataka Land Reforms Act came into force. The 1st defendant being the eldest son was allowed to file declaration under Section 48(A) of the Karnataka Land Reforms Act on behalf of all the children of the defendants. Therefore, the plaintiffs are entitled for share in the 'B'schedule property though the Land Reforms Tribunal granted 'B' schedule property in the name of 1st defendant alone.

12. The relationship between the parties is not in dispute. Admittedly, late Iddikunhi is the father of plaintiffs and defendants, he died intestate on 05.11.1979. During the life time of Iddikunhi, the 1st defendant filed Declaration before the Land Tribunal, Bantwal and occupancy rights in respect of 'B' schedule property conferred upon him on 21.10.1978 i.e. prior to the death of Iddikunhi. It is the contention of the plaintiffs that the 1st defendant being the elder son was allowed to file Form No.7 on behalf of all the members of the family as their father Iddikunhi was not keeping in good health. To substantiate their contention the plaintiff filed Ex.P1 certified copy of Form No.7 filed by 1st defendant. Ex.P14 - statement of the 1st defendant filed before the Land Tribunal and Ex.P2 - order of the Tribunal. A combined reading of Ex.P2 - order of the Tribunal and Ex.P14 - Statement given by the 1st defendant clearly indicates that the suit schedule lands are being cultivated since time of forefathers. As per Ex.P1 - copy of Form No.7

filed by 1st defendant, his age was shown as 35 years as on the date of filing of the declaration on 20.08.1974. Admittedly, the father of the plaintiffs and 1st defendant died in the year 1979. During his life time, the 1st defendant was not tenant in respect of the land on the date of vesting in the State Government i.e. by 01.03.1974. Since the father of the 1st defendant was a tenant in respect of 'B' schedule property as on the date of vesting in the State Government, all the family members of Iddikunhi are entitled for share in the 'B' schedule property, which is the joint family property.

13. The learned Counsel for the appellant placed a reliance in 1979 (1) KLJ207 (Jahirodin Versus Land Tribunal), this Court held 'the essential qualification of a person entitled to be registered as an occupant is that he was a tenant in respect of the land of which he claims occupancy right before the date of vesting and which he has been cultivating personally, 2nd respondent was not the tenant in respect of the land in question on the date of vesting in the State Government, which was on 1.3.74 and he was not entitled to maintain his claim for occupancy right.

14. In Column No.9 of Ex.P1 - Form No.7 filed by the 1st defendant, it has been mentioned that he has been cultivating the land since 22 years. If the entries made in the said Column are taken into consideration, the 1st defendant was aged about 13 years only. In view of the entries made in Form No.7 and the statement given by the 1st defendant before the Land Tribunal, clearly indicates that the suit schedule lands are being cultivated by the ancestors of the 1st defendant. Therefore, the contention of the 1st defendant that he has taken the 'B' schedule property and taken the lease hold rights of the suit schedule property and he was cultivating the 'B' schedule land in his individual capacity at the age of 13 years cannot be believed.

15. The plaintiffs filed Ex.P13 - Voters List relating to the year 1966 to prove that the house situated in suit schedule land bearing Door No.1-3 and that himself and the father are living in the same house. The Trial Court basing on Ex.P13 - Voters List clearly observed that as on 1966 the 1st defendant was living with his father. Therefore, the allegations that after the death of his first wife, his father Iddikunhi

neglected his children born through his first wife and that he had taken 'B' schedule property with the influence of some other people and started cultivating the land cannot be accepted.

16. The learned Counsel for the plaintiffs contended that though the 1st defendant being elder male member of the family was allowed to file declaration in Form No.7 and occupancy rights are conferred in his name only cannot deny the share of other family members and the lease hold rights of the 'B' schedule property taken from the ancestors of the plaintiffs and 1st defendant. The learned Counsel for the plaintiffs placed a reliance in the case of Basavaraj M. Versus State of Karnataka and Others reported in 1982 (2) KAR. L.J. 531, wherein this Court held that a member of a joint family is entitled to file an application under Section 48(A) of the Karnataka Land Reforms Act claiming occupancy rights in the agricultural land if it constitute a joint family properties/joint family property is partible just like any other properties of the joint family. In another decision in the case of Venkatesh Versus State of Karnataka reported in ILR 2000 KAR 4809 it is held that all the legal heirs of the tenant including the daughter had a right in the property left by the tenant and the occupancy rights granted ensure to the benefit of all other heirs also who are otherwise eligible for a share in the land in question.

17. The Trial Court further relied on Ex.D2 - rent receipt produced by the 1st defendant, wherein the landlord has referred the tenancy since the time of father of 1st defendant and the plaintiffs. Ex.P2 - order passed by the Land Tribunal clearly indicates that 1st defendant has deposed before the Tribunal that they have been tenant at the time of his ancestors and the same was corroborates by Ex.D2 - Rent Receipt issued by landlord. Considering the entire evidence on record and proper appreciation of the documents and the oral and documentary evidence produced by both the parties, the Trial Court has rightly come to the conclusion that the lease hold rights of the 'B' schedule property are taken by the ancestors of the plaintiffs and defendants and the 1st defendant being the elder member of the family was allowed to file declaration in Form No.7 before the Land Tribunal as the father of the plaintiffs and defendants was not keeping in good health. Merely because the occupancy rights of the 'B' schedule property was granted in the name of 1st defendant, cannot deny the shares of the plaintiffs in the schedule

properties. The Trial Court was therefore, justified in decreeing the suit filed by the plaintiffs for partition.

18. In the instant case, the original tenant - father of the plaintiffs and 1st defendant by name Iddikunhi died in the year 1979. Admittedly, the 1st defendant was not tenant in respect of the land in question on the date of vesting in the State Government. The statement given by DW-1 before the Tribunal that as his father was not keeping well he filed Declaration in Form No.7 before the Land Tribunal admitting that the tenancy is from the time of their ancestors. Considering the statement, the Land Tribunal granted occupancy rights in his name when the original tenant Iddikunhi is having other children through his first wife and second wife all are entitled for share in the 'B' schedule property, in which the occupancy rights were conferred in the name of the 1st defendant alone, who being the elder member of the family.

19. Therefore, we are of the view that there are no grounds to interfere with the Judgment and Decree passed by the Trial Court by decreeing the suit filed by the plaintiffs for partition and separate possession. Consequently, the appeal filed by the 1st defendant is therefore liable to be dismissed and accordingly, the appeal is dismissed.

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