

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD

DATED THIS THE 31ST DAY OF OCTOBER 2012

PRESENT

THE HON'BLE MR.JUSTICE K.L.MANJUNATH

AND

THE HON'BLE MR.JUSTICE B. MANOHAR

Regular First Appeal No.3009/2011 (Par.& Pos.)

BETWEEN:

Manappa S/o.Shivappa Shettikeri
Aged about 50 years,
Occ: Agri. & Business,
R/o. Majjur, Tq: Shirahatti,
Dist: Gadag.

...Appellant

(By Sri S.R.Hegde, Advocate.)

A N D:

Smt.Devamma
W/o.Basavantappa Doddamani
Aged about 42 years,
Occ: Household work,
R/o. Majjur, Tq: Shirahatti,
Dist: Gadag.

...Respondent

(By Sri M.I.Shigli and Sri Praveen P. Tarikar,
Advocates.)

This Regular First Appeal is filed under Section 96 of CPC, against the judgment and decree dated 15.11.2010, passed in O.S.No.63/2008, on the file of the Addl. Senior Civil Judge, Gadag, sitting at Laxmeshwar, decreeing the suit filed for partition and separate possession.

This Appeal coming on for final hearing this day, K.L.Manjunath, J, delivered the following judgment:

JUDGMENT

The legality and correctness of the judgment and decree passed in O.S.No.63/2008, passed by the Addl. Senior Civil Judge, Gadag, sitting at Laxmeshwar, dated 15.11.2010 is called in question in this appeal.

2. Heard the counsel for the parties.

3. The facts leading to this appeal are as hereunder:

The plaintiff Devamma and defendant Manappa are the children of one Shivappa Shettikeri, who died

on 8.3.2004. He was a businessman and he had not inherited any ancestral property. After his death his daughter Devamma filed a suit claiming half share in all the plaint schedule properties contending that all the plaint schedule properties were acquired by her father and that her father died intestate and after his death both the plaintiff and defendant are entitle to equal share.

4. The appellant/defendant contested the suit. According to him the suit item No.1A (i) to (iii) are his self acquired properties and that he was doing kirani business in the village and therefore the suit item No.1A are not the properties of his father. It is also his case that during the lifetime of his father he had effected partition and VPC No.69/B of Chabbi village was given to the share of plaintiff and the remaining house properties were given to the share of the defendant. Therefore he contended that the suit is not maintainable. Based on the above

pleadings the following issues were framed by the trial Court.

ISSUES

- (i) *Whether the plaintiff proves that she herself and defendant are joint family members?*
- (ii) *Whether the plaintiff proves that the suit schedule properties are joint family properties and she is having $\frac{1}{2}$ share in the suit schedule properties by metes and bounds?*
- (iii) *Whether the defendant proves that suit A properties are his self-acquired properties?*
- (iv) *Whether the defendant proves that he has spent more than ₹2,00,000/- to convert suit lands into fertile by raising loans in the bank and from private persons?*
- (v) *Whether the plaintiffs are entitled for the relief's sought for?*

(vi) To what order or decree?

5. In order to prove their respective contentions the plaintiff Devamma got herself examined as PW.1. She has also relied upon the evidence of PW.2 and PW.3 and the documents Ex.P.1 to P.14. On behalf of the defendant the appellant defendant got examined himself as DW.1 and he also relied upon the evidence of DW.2 Gudusab Sangli and the documents Ex.D.1 to D.31.

6. The trial Court considering the evidence let in by the parties, held issues No.1, 2 and 5 in affirmative and issues No.3 and 4 in negative and ultimately the suit came to be decreed holding that the plaintiff is entitled to half share in VPC No.69/B of Chabbi village and also in all the agricultural lands which are the subject matter of the suit.

7. Being aggrieved by the judgment and decree of the trial Court the present appeal is filed.

8. Though several grounds are urged in the appeal memo, during the course of arguments Shri S.R.Hegde, the learned counsel for the appellant contends that the trial Court has committed an error in granting a decree in respect of the suit item No.1A(v) property namely R.S.No.9/2 measuring 23 acres 15 guntas, situate in Majjur village of Shirahatti Taluka. According to him the suit land was purchased by him in the year 1978 as per Ex.D.1 and even if the father had assisted the defendant in getting the land purchased, the plaintiff being the daughter cannot claim any share in the properties standing in his name because the appellant did not purchase the property by making use of funds of joint family properties, since no joint family was in existence. He further contends that even if it is considered that there is a joint family, as the appellant was a junior member of the family and he was not the karta of the family, the trial Court could not have granted the decree in respect of the

aforesaid property. Therefore he request the Court to allow the appeal and set aside the judgment and decree of the trial Court to that extent.

9. An attempt is made by the respondent's counsel to support the judgment and decree of the trial Court contending that the defendant/appellant had no income on the date of purchasing the aforesaid item. Since the plaintiff's father has supported the defendant to purchase the property, she is entitled for share. Therefore he request the Court to dismiss the appeal.

10. Having heard the counsel for the parties the only point to be considered in this appeal is whether the trial Court is justified in granting half share in respect of the suit item No.1A (v) of the property.

11. The undisputed fact in this appeal is that the father of defendant had not inherited any

property from his parents. He was doing business independently. Out of his business income he has acquired all the schedule properties except the property which is standing in the name of the appellant.

12. Even if the case of the plaintiff is accepted that her father has financially assisted the defendant in acquiring the property, it cannot be considered as a joint family property of the plaintiff and defendant, since there was no joint family in existence. At best this Court can hold that the father out of love and affection has supported his son to purchase the suit item No.1A (v). Therefore the trial Court has committed an error in granting a decree in the aforesaid property, as during the lifetime of the father he never treated this property as a joint family property. When the father has not exercised such a right, when he died intestate, it is not open for a daughter to contend that she is also having a share

in the aforesaid property. In the circumstances we have to reverse the finding of the trial Court so far as the aforesaid property is concerned.

13. In the result, the appeal is allowed in part. The judgment and decree of the trial Court is confirmed holding that the plaintiff is entitled to claim half share in all the property except Sy.No.9/2 measuring 23 acres 15 guntas, situate in Majjur village of Shirahatti Taluka. Accordingly this appeal is allowed in part.

14. Registry is directed to draw the modified decree.

Sd/-
JUDGE

Sd/-
JUDGE

Mrk/-