SUPREME COURT OF INDIA

Ninge Gowda

Vs.

Linge Gowda

(K Ramaswamy and G Pattanaik JJ.)

28.10.1996

ORDER

Leave granted.

We have heard learned counsel on both sides. This appeal by special leaves arises against the judgment and decree of the Karnataka High Court made on February 14,1995 in RSA No.350/90.

The admitted position is that appellant's father Chenne Gowda apart from himself being Chenne Gowda had four brothers, namely, Linge Gowda, Hala Gowda, Bale Gowda and Channiah. The appellants (defendants 8 and 7) are sons of Chenne Gowda. The first defendant is the son of Linge Gowda. Bole Gowda is the third defendant and Chenne Gowda is the second defendant. Bole Gowda's sons are defendant Nos. 4 to 6. The appellant had filed the suit for a declaration of his title and injunction against all the defendant to restrain them from interfering with his possession. It is his specific plea that the property was the ancestral property and prior to 1936, there was a partition by meets and bound among five brothers of his father . Subsequently, in 1936, there was a further partition between the appellant and his brother, defendant 7 and 8 and the suit land had fallen to his share and since then he has been in possession and enjoyment of it. From 1968 onwards, defendant started interfering with his possession disclaiming his title. Ultimately, suit came to be filed for a declaration. First defendant has set up his defence in the written statement contending that this property originally belonged to Huchamma, the grand-mother of the defendant No.1, father of the appellant and others. On her demise, this property devolved upon them. Ever since they were jointly in possession and enjoyment of the property which Chenne Gowda, father of the appellant had got fraudulently mutated in the revenue records in the year 1929-30. Therefore, it does not bind them. The trial Court dismissed the suit. On appeal, the appellate court reversed the decree and decreed the suit. In the second appeal, the High Court interfered with the appellate Court's decree and confirmed the decree of the trial Court . In other words, the suit now stands dismissed. Thus, this appeal by special leave.

It is seen from the record and it cannot be disputed that the High Court has recorded a finding that there was a partition between defendants 1 and 2, appellant's father etc. and the courts below have rejected the plea of the defendants of the succession from the grand-mother Huchamma. The appellate Court as well as the High Court accepted the finding that there was a prior partition

between the first defendant and his brother. The first defendant as DW-1 admitted that there was a partition between the appellant and his brothers, defendant 7 and 8 and that they were in possession and enjoyment and their respective properties were partitioned by meets and bounds. It is also not in dispute that in the year 1929-30, there was a transfer mutation of the lands in the name of the father of the appellant. The finding recorded by the appellate Court is that on a joint application signed by all the brothers under Ext.24, the property was mutated in the name of the father of the appellant. No attempt was made from 1929-30 till date of the suit, challenging the mutation effected in the name of the father of the appellant. Thus, these facts conclusively establish that there was a prior partition among five brothers including the father of the appellant and thereafter necessarily the plaint schedule property had fallen to the share of the plaintiff's father and mutation was effected as per joint application, Ext.24 entered in the year 1929-30. Consequently, there was partition by meets and bounds among five brothers and it is admitted that the same was accepted by the High Court as an admission. In view of the admission by the first defendant as DW-12, that there was further partition between the appellant and his brother, necessarily the self-same lands stood in the name of the appellant. The High Court wrongly framed an issue whether the appellant has purchased the property by sale. It is not the case of any of the parties that he had purchased the property. It is ancestral property having been succeeded after the demise of the father y a partition among the brothers. Thereby he acquired the title to the property. The appreciation of evidence by the High Court under section 100, CPC is, therefore, unwarranted to reverse the findings of facts recorded by the first appellate Court, as the final Court of fact. Therefore, the respondents have no manner of right whatsoever to interfere with his possession. Accordingly, the decree of the appellate Courts stands restored and that of the High Court stands set aside. The suit stands decreed as prayed for.

The appeal is accordingly allowed. No costs.