

SUPREME COURT OF INDIA

Balawwa

Vs.

Hasanabi

(G.B. Pattanaik and U.C. Banerjee JJ.)

17.01.2000

ORDER

G.B. PATTANAİK, J.

1. Delay condoned in filing application for substitution. Substitution allowed.

2. Leave granted.

3. A suit for partition having been filed in respect of four items of properties, i.e., two house properties and two other landed properties, the learned trial Judge granted a decree in favour of the plaintiff to the extent of 15/32 share. Defendants Nos. 1 and 3, who are the widow of the son of the original tenant-Imamsab and the husband of one of the daughters of Imamsab, claimed their exclusive title in respect of the two items of landed properties, namely, land bearing Survey Nos. 7/2 and 152/1, on the basis of an order passed by the Land Tribunal under Section 48A of The Karnataka Land Reforms Act 1961. The learned trial Judge rejecting the claim of the defendants' exclusive right and title, granted a decree for partition.

4. On appeal, the lower appellate court affirmed the decree so far as it relates to the house property, but reversed the decree so far as it relates to landed properties. In reversing the decree of the trial Judge in relation to the landed properties, the lower appellate court came to the conclusion that the order of the Land Tribunal in favour of those defendants under Section 48A of the Land Reforms Act confers exclusive title on them and therefore the plaintiff cannot be granted a right of partition in the same. The lower appellate court also came to a finding that the plaintiff cannot be held to be a member of the family. On appeal being carried, the High Court reversed the decree of the lower appellate court and granted the relief of partition and it is this decree of the High Court which is the subject matter of appeal in the present case.

5. The learned Counsel for the appellants raised two contentions for assailing the decree of the High Court. (1) The civil court itself has no jurisdiction in view of the Special Tribunal created under the Land Reforms statute and (2) assuming the civil Court has the jurisdiction, but in view of the finding that the plaintiff is not a member of the family, the order of the Tribunal granting right of occupancy in favour of defendants 1 and 3 will not enure to the benefit of the plaintiff and therefore, the decree of partition could not have granted. In support of the first contention reliance has placed on a decision of this Court in *Mudakappa v. Rudrappa and Ors.*

6. The learned Counsel for the respondents, on the other hand, refuting the contention raised, relied upon the decision of this Court in the case of Abdul Inamdar (Dead) by LRs. and Ors. v. Harun Abdul Inamdar and Ors. wherein this Court has held that in case of abolition of inam, the right granted must be held to be in favour of the group of people who would have otherwise been eligible for a right in the property in question.

7. Having examined the provisions of the Karnataka Land Reforms Act and aforesaid two judgments of this Court, we have no doubt in our mind that the civil court cannot be said to be ousted of the jurisdiction, in granting the relief sought for. It is too well settled that when special Tribunal is created under a Special Statute and the jurisdiction of the civil court is sought to be ousted under the said statute, it is only in respect of those reliefs which could be granted by the Special Tribunal under the Special Statute, the jurisdiction of the civil Court cannot be said to be ousted.

8. Looking at the provisions of Section 48A of the Karnataka Land Reforms Act and the relief which is sought for in the present case, it is difficult to hold that the Tribunal had the jurisdiction to grant the said relief so as to must the jurisdiction of the civil court. Under Section 48A, the Tribunal can only grant the relief of declaring the occupancy right in favour of an appellant provided the pre-conditions for the same are satisfied, namely, that the land was in the possession of the tenant concerned on the relevant date. That being the position and the Tribunal under the Land Reforms Act not having the jurisdiction to grant relief of partition, the civil court itself has the jurisdiction to entertain the suit for partition. The first contention of the learned Counsel for the appellants is, therefore, devoid of any force.

9. Coming to the second contention, as it appears, the decision of the learned trial judge granting the relief of partition in respect of two houses has not been assailed. The plaintiff is one of the daughters of Imamsab. Defendant No. 1 happens to be widow of the son of Imamsab and Defendant No. 3 is the husband of the other daughter of said Imamsab. All these persons had a right in the property left by Imamsab. In this view of the matter, the High Court was fully justified in coming to the conclusion that the so-called order of the Land Tribunal under the Karnataka Land Reforms Act would enure to the benefit of the other members who were otherwise eligible for a share in the property in question. Therefore, we see no infirmity with that conclusion so as to be interfered with by the court.

10. Even on equitable consideration, the plaintiff cannot be denied of a right in the property. In this view of the matter, we are not inclined to interfere with the impugned judgment and decree of the High Court. This appeal fails and is accordingly and is accordingly dismissed.