SUPREME COURT OF INDIA

K.V. Sudharshan

Vs.

A. Ramakrishnappa

C.A.No.5646 of 2008

(Tarun Chatterjee and Harjit Singh Bedi JJ.)

15.09.2008

JUDGMENT

Tarun Chatterjee, J.

1. Leave granted.

2. This is an appeal by special leave against the judgment and final order dated 24th of July, 2006 of the High Court of Karnataka at Bangalore in RFA No. 126/2006 whereby the High Court had affirmed the decision of the Trial Court dismissing the suit of the appellant for partition and separate possession along with mesne profits.

3. The relevant facts leading to the filing of this appeal, as emerging from the case made out by the appellant in the plaint, are as under :-

> "Late Anjanappa had two sons viz., Ramakrishnappa and Venkataramachar, arrayed as defendant Nos. 1 and 2 in the suit. Defendant No.2/respondent No.2 is the father of the plaintiff/appellant. Defendant No. 3/respondent No.3 is the wife of Defendant No. 1/respondent No.1. When Anjanappa was alive, he was serving as an Archak of Sri Anjaneya Swamy Temple situated in Belesivalaya and there were Devadaya inam lands attached to the temple, which were cultivated by him. After Anjanappa's death, the said lands were granted to the respondent No. 1 with the consent of the Tehsildar obtained on the ground that he was the eldest son of Anjanappa. Apart from these inam lands, Late Anjapppa also possessed ancestral and self acquired properties and after his demise, the respondent No.1 was acting as the manager of the family but the joint family of the appellant and the respondents possessed all these properties as joint family properties described in Plaint Schedule A to D of the plaint. Schedule A consisted of ancestral properties viz., two agricultural lands measuring 4.11 acres and 1.34 acres respectively and five house sites. Schedule B property was a vacant site. Schedule C property consisted of two agricultural lands, which were inam lands, granted subsequently in the name of respondent No.1. Schedule D properties were

moveable properties. There was no partition effected by metes and bounds and the respondent No.1, taking advantage of the simplicity of respondent No.2 was managing all the properties and had also refused to effect partition. On 4th of July, 1988, the appellant issued a legal notice to the respondent No.1 demanding partition of the joint family properties. The respondent No.1 replied to the said notice alleging that the moveable properties had already been partitioned on 23rd of April, 1962 and subsequently on 8th of May, 1996, the immoveable properties were also partitioned. Since the respondent No. 1 refused to partition the immovable properties, the appellant was constrained to file the suit for partition and separate possession of his share in Plaint A to D schedule properties along with mesne profits."

4. The respondent no.1 and 3 entered appearance by filing a written statement in which they denied the material allegations made in the plaint. In the written statement, it was alleged by them that since partition had already been effected between respondent no.1 and respondent no.3 i.e. the father of the appellant and that they were separately enjoying the properties that had fallen to their respective shares. It was further alleged that after the death of Anjanappa, respondent No.1, became the archak of the said temple and he was looking after and cultivating the lands attached to the said temple i.e. `C' schedule properties of the plaint. After coming into force of the *Mysore (Religious and Charitable Inams) Abolition Act, 1955*, (in short `the Act') the respondent No.1 filed an application for grant of occupancy rights in respect of `C' schedule properties as the Archak of the temple which was conferred on him.

5. The respondent No.2 supported the plaint case and deposed that there was no partition of the properties by metes and bounds and that the respondent No.1 did not allow him to cultivate the lands belonging to the joint family but only a small portion of the same was allowed to be cultivated. The reason behind staying under separate mess was stated to be the quarrel between the women in the family.

6. The Trial Court by the judgment and order dated 25th of January, 1996 dismissed the suit filed by the appellant on the ground that the parties were shown to be in possession of separate portion of the lands and having separate mess. Relying on the deposition of respondent No.2, it held that prior partition was established in view of the admission of respondent No.2 and as such the appellant could not demand partition. Against this decision of the trial court, the appellant filed an appeal before the High Court, which, however, was dismissed. The appellant filed a review petition in the High Court, which was also dismissed. It is this decision of the High Court, which is impugned in this appeal in respect of which leave has already been granted.

7. Before we proceed further, we may note that the notice in the instant appeal has been issued confined to the claim in relation to Schedule `C' properties of the plaint and accordingly, the dispute in the instant appeal also revolves only concerning Schedule `C' properties of the plaint.

8. Let us, therefore, look at the rival submissions of the parties advanced before us. The learned senior counsel for the appellant, Mr. S.B. Sanyal, strongly contended that in respect

of the Schedule C properties (inam properties granted to respondent No. 1), the High Court had committed an error by holding that since the appellant and the respondent No.2 had not performed the duties as Archak of the Inamdar Temple and they had not personally cultivated the said lands, they were not entitled to the grant of the Inam lands. In this regard, he submitted that the courts below were not justified in holding that Inam lands were granted to the respondent No.1 in his individual capacity as Archak of the temple. In support of his contention, he relied on a decision of this court in *Nagesh Bishto Desai Vs. Khando Tirmal Desai*[1].

9. These submissions of the learned senior counsel for the appellant were contested by the learned senior counsel for the respondent Nos. 1 and 3, Mr. A.K. Ganguli. Mr. Ganguli submitted that the respondent no.1 had got the Schedule `C' properties vacated from the tenants who were cultivating the same and was personally cultivating them and accordingly, after coming into force of the act, an application for grant of occupancy rights was moved on his behalf which was conferred on him by the competent authority after proper inquiry and therefore, the `C' schedule properties were the self acquired properties of the respondent no.1 and accordingly, the appellant could not claim partition of the same. Mr. Ganguli relied on Section 6A of the Act and submitted that the respondent no.1 was admittedly the archak of the temple and he was also cultivating the properties personally for a continuous period of 3 years prior to the date of vesting and therefore, he was entitled to apply for registration of his rights under the act to the competent authority. He vehemently contended that the grant of such right is a personal right which cannot be characterized as an ancestral right because in this case, even if Anjanappa was alive, he could not have become entitled to grant of occupancy rights because he was not cultivating the lands and that the lands were being cultivated by the tenants. He also submitted that the authority relied upon would not apply to the present case as it pertains to Karnataka Village Offices Abolition Act whose scheme is entirely different from the present act.

10. At this stage, we may note the findings of the High Court as also the trial court with regard to the properties comprised in Schedule `C' only. The High Court arrived at the following findings:-

> ".....once there is division of status, the same is applicable to the granted or tenanted lands also. It is also to be noted that Anjanappa died in the year 1964 and thereafter, admittedly and undisputedly it is defendant no.1 who alone was the Archak of the temple. Only after coming into force of the land reforms act, he has got the occupancy rights conferred on himself. On perusal of the evidence of both plaintiff and his father/defendant No.2, it is clear that there was absolutely no evidence to show that at any point of time either plaintiff of his father/defendant no.2 acted or performed the archakship of the temple and also enjoyed the lands.....If one peruses the Karnakata Land Reforms Act and the Karnataka Hindu Religious Institution and Charitable Endowments act, under Section 6(a) of the Act which came into force on 7.12.1973 two types of people were entitled to grant of occupancy rights... .....As we find that neither plaintiff has performed the duties of Archak to the temple nor there is any material to show that along with the defendant no.2, he

cultivated and enjoyed the lands, the grant of occupancy rights of these inam lands must be held in the individual capacity of the Archak viz., defendant no.1....."

11. Having heard the learned counsel for the parties and after examining the judgment of the High Court as well as of the trial court and other materials on record including the depositions of respondent Nos.1 and 2 before the trial court, we are of the view that this appeal deserves to be allowed for the reasons set out hereinafter.

12. Let us first see if the submission of the appellant regarding Schedule C properties, which, as noted herein earlier, are the inam lands granted to the respondent no.1 holds any water. In order to ascertain this, we need to see whether the respondent no.1 had been granted occupancy rights in his individual capacity as an Archak under Section 6A of the Act. It is clear from the judgment of the High Court that it has proceeded on the assumption that since only the archak of the religious institution is entitled to be granted such inam lands, it becomes self acquired and individual property of such grantee. In *Nagesh Bishto Desai Vs. Khando Tirmal Desai etc.*[2] it was held that inam lands granted to a member of joint family upon abolition of inams cannot be considered as indvidual property of such grantee and should be considered as a joint family property available for partition. In the present case, the grant in favour of respondent no.1 was made because his father was the archak of the temple and he, being the eldest in the family, there was no objection expressed for granting the land to him. In this view of the matter, we are of the considered opinion that the inam lands cannot be regarded as the individual property of the grantee and the High Court has committed an error by holding that since the appellant has not performed functions as archak, nor cultivated the land personally, he was not entitled to seek partition. We are not inclined to accept the submission of the learned counsel for the respondent Nos. 1 and 3 that the decision in Nagesh Bishto's case (supra) would not apply to the facts of the present case.

13. There is another aspect of the matter. Under the scheme of the Act, inam lands are liable to be granted to the tiller of such lands, be, as it may, as tenants, archaks or office bearers of the inamdar temple. Accordingly, we are of the view that such grants are meant for the benefit of the family of the tiller and not him individually and for this reason, there can be no justification to disregard the rights of the junior members of the family if their eldest member was performing the duties of archak with the consent of others. For this reason and in view of the decision of this court in Nagesh Bishto's case [supra], we are of the view that grant of land to archak cannot disentitle the other members of the family of the right to the land and such granted land, therefore, is also available for partition. Furthermore, it also emerges from the judgment of the Trial Court that the tenants cultivating the land had stated that respondent no.2 had requested his father, Anjanappa to allow him to cultivate the lands who accordingly gave his consent before the land tribunal also. Such being the position, if other members of the family had not objected to his becoming the archak of the temple because he was the eldest and also allowed him to cultivate the lands then, if subsequently he was, by virtue of the fact that he was the archak and also personally cultivating the lands, granted the lands, he cannot take away the rights of such other members of the family in the granted lands.

14. We may look at this case from yet another angle. It is pellucid that respondent no.2 is relying only on Section 6A to submit that he was granted the occupancy rights. When we look at Section 6A, it is clear that the respondent no.2 satisfied the conditions enumerated therein and for that reason, he was granted the occupancy rights. If we look at this in isolation, we may well come to the conclusion that since respondent no.2 had fulfilled the conditions of Section 6A, he was granted the occupancy rights and the question of bringing the other family members did not arise. However, we are not inclined to look at Section 6A in isolation. If seen in totality, it is discernible that the father of respondent no.2 gave his consent and allowed respondent no.2 to cultivate the land after taking the same from the tenants. Even the land tribunal, while passing the order granting occupancy rights, had not confined itself to the fact that the conditions in Section 6A were fulfilled. Rather, the land tribunal had observed that the father of respondent no. 2 was the archak and anubhavdar of the temple and this was a prime consideration in granting occupancy rights to the respondent no.2. Therefore, it would be wrong to hold that simply because the conditions in Section 6A were fulfilled, the respondent no. 2 was granted occupancy rights and it was his individual rights. The truth is that the respondent No.2 became the Archak after the death of his father because he was the eldest in the family and only then came the question of satisfying the conditions of Section 6A.

15. Apart from this, it is wrong on the part of the respondent no.2 to say that his father, even if he had been alive, would not have been granted occupancy rights because the lands at that time were cultivated by the tenants. For grant of occupancy rights, personal cultivation is just one condition. The other conditions include that if a person is managing the properties, which his father was doing, would also be entitled to the grant of occupancy rights. We are, therefore, clearly of the view that the respondent no. 1 was made archak after the death of his father because he was the eldest member of the family. Being the archak, he cultivated the lands and obtained occupancy rights. In such circumstances, it would be highly unjust to deprive the other members of the family from getting their share in Schedule `C' properties by relying only on Section 6A. Therefore, we are also of the opinion that the granted lands are also available for partition. In our view, grant of occupancy to one member will not disentitle the other members. This principle can also be found in the case of *Appi Belchadthi & Ors. vs. Sheshi Belchadthi & Ors.*[3].

16. For the aforesaid reasons, the impugned Judgment is set aside and the appeal is remanded back to the High Court to decide the share of each party in respect of Schedule `C' properties within 3 months from the date of supply of a copy of this judgment to it. The appeal is thus allowed to the extent indicated above. There will be no order as to costs.

[1]*(1982) 2 SCC 79*
[2]*(1982) 2 SCC 79*
[3]*(1982) 2 Karnataka Law Journal 565*