

SUPREME COURT OF INDIA

K. Keshava Bhat

Vs.

Devaki Amma

C.A.No.5734 of 2008

(R.V. Raveendran J.)

18.09.2008

ORDER

1. Leave granted. Heard learned counsel for the parties.

“This appeal arises out of a suit for partition filed by respondents 1 to 5. The appellant and the sixth respondent were respectively the defendants 1 and 2. For convenience, we will also refer to the parties by their rank in the trial court.”

2. Briefly stated, the facts are : Keshava Bhat - the first defendant, Narayana Bhat - the second defendant, and late Anantheshwara Bhat (husband of plaintiff no.1 and father of plaintiffs 2 to 5) were sons of one Sham Bhat who died around the year 1964. The plaintiffs filed the suit for partition of the joint family properties in the year 1971. In addition to defendants 1 and 2, the plaintiffs impleaded as defendants, the six sons of first defendant (defendants 3 to 8), the only son of second defendant (defendant no.9), the widow of Sham Bhat (defendant no.10), two daughters of Sham Bhat (defendants 11 and 13) and a daughter of a deceased daughter of Sham Bhat (defendant no.13). Sham Bhat's widow (10th defendant) died during the pendency of the suit. The plaintiffs alleged that the first plaintiff was a young widow and the plaintiffs 2 to 5 were all minors when the suit was filed 37 years ago; that they were kept away from the joint family properties; and that they had no access to the records pertaining to the joint family properties.

3. The plaintiffs alleged that the immovable properties described in Schedule `A' and the movables described in Schedule `B' to the plaint were the joint family properties which required to be partitioned. Schedule `A' consisted of four parts (referred to as `items' in the plaint) of the following description:

“(i) Part I of `A' Schedule enumerates the muli right properties, that is, properties which belonged to the joint family. They were in the possession of tenants and were the subject matter of tenancy claims by tenants. It is not in dispute that none of these

lands is available for partition, as occupancy rights in respect of these lands have been granted to the tenants under the *Karnataka Land Reforms Act, 1961*.

(ii) Part II of 'A' Schedule enumerates the mulgeni properties, that is, lands held by the joint family on perpetual tenancy. It is admitted that these are joint family properties and are in the possession of the family (except an extent of 23 cents in survey No.94/1B and an extent of 1A.56 Cents in survey No.97/2).

(iii) Part III of 'A' Schedule enumerates the chalgeni properties, that is, lands held under tenancy at will in regard to which claims for occupancy rights in Form No.7 under the Karnataka Land Reforms Act were filed by the first defendant and occupancy rights have been registered in the name of first defendant. The plaintiffs contend that they are the joint family properties as they were earlier in the occupation of Sham Bhat and that the first defendant as the eldest son of Sham Bhat was representing the family in the tenancy claim proceedings and benefit received by registration of occupancy rights in his favour would enure to the joint family and therefore, the said lands were liable for partition. The first defendant on the other hand contended that they were his self- acquired properties. He denies that his father Sham Bhat was the tenant of any of these lands.

(iv) Part IV of 'A' schedule refers to properties which were added as joint family properties, subsequent to the filing of the suit, by an amendment to the plaint.

Item (a) stood in the name of Sham Bhat and items (b), (c) and (d) stood in the names of the first defendant.

4. Appropriate issues were framed by the trial Court.

“Plaintiffs examined three witnesses and defendants examined two witnesses. The documentary evidence of plaintiffs consisted of Ex.P1 to Ex.P22 and the documentary evidence of defendants consisted of Ex.D1 to D80. After considering the oral and documentary evidence, the trial Court, by judgment and decree dated 31.3.2005 decreed the suit in part. The trial Court held that the plaintiffs together were entitled to a share of 31/108, the first and second defendants were each entitled to a share of 37/108, and defendants 11, 12 and 13 were each entitled to a share of 1/108, in the following joint family properties :

(i) All lands described in Part-II of 'A' Schedule (excluding Sy. No.94/1B measuring 23 Cents and Sy. No. 97/2 measuring 1.56 Acres).

(ii) Land described as item (a) of Part IV of 'A' Schedule, that is Sy. No.96/2A measuring 6A.24 Cents.

(iii) Movable described in the 'B' Schedule.

Insofar as properties described in Parts I, III and items 2 to 4 of Part-IV of Schedule 'A', the claim of plaintiffs for partition was rejected.

5. Feeling aggrieved by refusal of relief in regard to the properties enumerated in Part-III of Schedule `A' to the plaint, the plaintiffs filed a first appeal before the High Court. When the appeal was listed for admission on 21.9.2005, the High court indicated that the appeal will be heard finally at the stage of admission itself. Accordingly it heard the appeal on merits on several dates of hearing, without admitting the matter and ultimately by judgment and decree dated 27.8.2007 allowed the appeal. The High Court held that the lands described in Part-III of 'A' Schedule were joint family properties and that the appellants, first defendant, and second defendant were entitled to one-third share each in those lands. The judgment of the trial Court in regard to other items of the plaint schedule was not disturbed. The said judgment and decree of the High Court is challenged by the first defendant in this appeal.

6. One of the submissions made by the appellant (first defendant) is that the High Court had reversed the decision of the trial Court by completely ignoring the evidence of the first defendant. The appellant pointed out that the 80 documents were exhibited by him in support of his contention that the properties described in Part-III of the Schedule were his self acquired properties, and none of them were either referred or considered by the High Court in its judgment.

7. On perusal of the judgment, we find that there is considerable force in the submission of the appellant.

“Paragraphs 1 to 7 of the judgment refer to the facts leading to the appeal. In paragraph 8, the Court commented that the trial Court has not appreciated the documentary evidence produced by the plaintiffs (Ex.P3 to Ex.P18) in the correct perspective. In paragraphs 9 and 10, the High Court referred to Ex.P3 to Ex.P10 exhibited by plaintiffs.

Paragraph 11 stated that the decisions relied on by the counsel for the first defendant were not relevant. In paragraph 12, the High Court drew an adverse inference against the first defendant for non-production of Form No.7 filed by him under the Karnataka Land Reforms Act claiming grant of occupancy rights, recorded a finding that the chalageni lands (enumerated in Part-III of `A' Schedule) were earlier held by Sham Bhat, and therefore, they were the joint family properties. In paragraph 13, it noted that second defendant who had supported the case of the first defendant in the trial Court, had turned round and supported the case of the plaintiffs at the hearing of the appeal, by stating that the chalageni lands (described in Part-III of `A' Schedule) were indeed joint family properties. In paragraph 14, the High Court allowed the appeal, reversed the decree of the trial Court for the reasons stated in paras 9, 10 and 11 of its judgment, and allotted one-third share to the appellants, first defendant and second defendant in the lands described in Part-III of Schedule `A' to the plaint.”

8. The High Court did not formulate any points for consideration. It did not refer to the evidence of DW1 and DW2. It did not refer to the voluminous documentary evidence (Ex.D1 to Ex.D80) tendered by the first defendant, on the basis of which the trial Court had held that properties in Part-III of `A' Schedule were the self- acquired properties of the first defendant. In fact not even a single document of first defendant was referred. The High Court has not assigned any reason for ignoring the said evidence. It did not also record any finding that the documents exhibited by first defendant were not relevant.

“In the circumstances, we are of the view that allowing an appeal filed by plaintiffs by referring only to the exhibits of the plaintiffs and not considering the evidence of the defendants would amount to reversal of the decision of trial court without consideration of the evidence.

Therefore, the judgment in appeal cannot be sustained. The matter requires to be remanded to the High Court for fresh consideration and disposal in accordance with law. In view of the above, it is not necessary for us to consider the various contentions on merits.”

9. Before disposing of the matter, certain incidental issues also require to be addressed. They relate to grant of interim maintenance, impleading necessary parties, reference to mediation etc.

10. When the matter was pending in the trial Court, it is stated that there was a direction that the first defendant should pay interim maintenance to the plaintiffs in the form of produce namely 3.33 candies of areca nut (or money equivalent to thereof) every year. One of the grievances of the plaintiffs is that the first defendant has not been delivering/paying the same. On the other hand, the first defendant contended that whatever was due has been given and the plaintiffs were not entitled to the said payment after the disposal of the suit by the trial court. After some arguments, ultimately, a consensus was arrived at.

“Accordingly, the appellant shall deposit in the High Court, without prejudice, a lump sum of Rs.6,00,000/- (Rupees six lakhs only) towards the interim maintenance to plaintiffs and a lump sum of Rs.4,00,000/- (Rupees four lakhs only) towards interim maintenance to second defendant. The appellant shall deposit half of the said amounts by December 2008 and the remaining half by end of February 2009. The plaintiffs and second defendant will be entitled to withdraw the same, without prejudice to their contentions. No separate security need be taken in regard to such withdrawals as their share in the Schedule `A' Part-II properties will be the security therefor. It is made clear that if the amount is not so deposited, the order appointing of Receiver (passed by the Executing Court) shall stand revived.”

11. We are told that defendants 3 to 9 and defendants 11 to 13 were made parties to the appeal before the High Court. They were subsequently deleted because the dispute was only in regard to Schedule `A' Part-III properties which first defendant had claimed to be his own.

However, it will be appropriate if they remain to be parties to the appeal before the High Court.

12. This long pending litigation (37 years) is among family members. The second defendant was supporting the first defendant in the trial Court. He is supporting the plaintiffs in the appellate stage. Some of the original parties are said to be no more. Both sides agreed that having regard to the facts and circumstances of the case, this is a fit case where a genuine effort should be made to arrive at a negotiated settlement by subjecting themselves to mediation process in the High Court.

13. During the pendency of the appeal before the High Court, an application was filed by plaintiffs under Order 41 Rule 27 CPC. The second defendant had filed an application seeking permission to file additional written statement. The appeal was disposed of without considering those applications. All pending interlocutory application may be disposed of by the High Court either separately or along with the appeal.

14. We, therefore, allow this appeal, set aside the judgment and decree of the High Court and remit the appeal to the High Court with the following incidental directions/observations:

“(i) The High Court may permit the appellants before it to re-implead other defendants who were deleted. The learned counsel for appellant and respondents assure that there will be no delay in either service or appearance of such additional respondents.

(ii) The High Court shall refer the matter to the Bangalore Mediation Centre for attempting a negotiated settlement before the appeal is heard on merits.

(iii) As the appeal relates to a suit which was filed in the year 1971, the High Court shall endeavour to dispose of the appeal expeditiously within six months from the date of impleading the additional respondents.

(iv) The High Court shall dispose of the pending interlocutory applications.

(v) Nothing stated above shall be construed as expression of any opinion on merits of the case.”

The parties shall bear their respective costs.