SUPREME COURT OF INDIA

Prema & Anr.

Vs.

Deva Rao & Ors.

C.A.No.2286-2287 of 2011

(Mukundakam Sharma and Anil R.Dave,JJ.,)

03.03.2011

JUDGMENT

Anil R.Dave,J.,

1.Leave granted.

2. Being aggrieved by the common Judgment delivered by the High Court of Karnataka at Bangalore on 6th December, 2007 in RFA No. 1067/2006 and RFA No. 1068/2006, these appeals have been filed by the original plaintiff and defendant no.3.

3. For the sake of convenience, the parties to the litigation have been referred to as arrayed before the trial court.

4 The plaintiff (appellant No. 1 herein) is a sister of defendant no.4 who filed a suit claiming her right to the extent of 1/6th share in the properties described in Schedule-A to the plaint. The case of the plaintiff before the trial court was that her father, Appuraya was an absolute owner of the suit property and, therefore, the plaintiff had a right in the said property. According to her, after the death of her father Appuraya, defendant No.4, brother of the plaintiff was in occupation of the suit property but as the suit property was an absolute property of her father, she too had a share in the property. Moreover, defendant no.4 had also executed a writing to the effect that he would give 1/6th share in the suit property to the plaintiff. Inspite of the above fact, as no part of the suit property was given to the plaintiff, the plaintiff was constrained to file O.S. No.92/1995 in the Court of Additional Civil Judge (Sr. Div.), Udupi, claiming her right in the suit property.

5. After considering the evidence led before the trial court, the trial court decreed the suit holding that the plaintiff was entitled to 1/18th share in the suit property.

6. Being aggrieved by the judgment delivered by the trial court, the plaintiff; and defendant nos. 1 and 3 filed RFA No. 1067 of 2006 whereas defendant no. 4 filed RFA No. 1068 of 2006 in the High Court of Karnataka. The High Court heard both the appeals together and by

the impugned common judgment, the High Court dismissed RFA No. 1067/2006 filed by the plaintiff and allowed RFA No. 1068/2006 filed by the 4th defendant.

7. For coming to the aforesaid conclusion, the High Court had considered the fact that by virtue of the order passed by the Land Tribunal, defendant no. 4 was declared to be a tenant in respect of the suit property. The order passed by the Tribunal, whereby occupancy right in respect of the suit property had been granted to defendant no. 4 had never been challenged by the plaintiff or by any other party and, therefore, the occupancy right in favour of defendant no.4 had become final. In view of the said fact, the High Court came to the conclusion that defendant no. 4 was having occupancy right in respect of the land in question and, therefore, the plaintiff, sister of defendant no. 4 had no right of whatsoever type in suit property.

8. The High Court brushed aside the documents whereby defendant no. 4 had agreed to give 1/6th share in the suit property to the plaintiff because according to the High Court, by virtue of the said assurance, the plaintiff would not get any share in the suit property. The plaintiff had asserted her right in the property because it was her case that the property belonged to her father and, therefore, she had 1/6th right in the suit property.

9. The High Court also came to the conclusion that the plaintiff had failed to establish that the suit property was an absolute property of her father and in absence of any evidence to that effect, the occupancy right given in favour of defendant no. 4 by the Land Tribunal would prevail. Therefore, the High Court had come to the conclusion that the Trial Court was not right when it decreed the suit and granted 1/18th right in the suit property to the plaintiff.

10. We heard the learned counsel appearing for the parties.

11. Learned counsel appearing for the appellant/original plaintiff submitted that the Land Tribunal ought not to have recognised defendant no.4 as a tenant in respect of the land in question as the land was not agricultural land as there was a building and shops on the land and so the land was a house site and, therefore, the Land Tribunal was in error while deciding any right in respect of the land in question. He further submitted that even a deed was executed by defendant no. 4 whereby he had agreed to give share of the plaintiff-sister to her. But for the reasons best known to defendant no. 4, he did not give any share to the plaintiff. In the circumstances, he submitted that the trial court was right when it decreed the suit filed by the plaintiff.

12. On the other hand, the learned counsel appearing for defendant no.4 submitted that the conclusion arrived at by the High Court is just and proper for the reason that the Land Tribunal had jurisdiction to decide the matter pertaining to the suit land. He submitted that the order passed by the Land Tribunal was never challenged by the plaintiff and it had become final. According to him, the plaintiff could not be permitted to submit at this stage that the Land Tribunal had no jurisdiction, especially when the Land Tribunal had recognised right of defendant no.4 by an order dated 27.11.1976. He, therefore, submitted that the conclusion arrived at by the trial court was incorrect and that the order passed by the High Court required no interference.

13. Upon hearing the learned counsel, we find substance in the submissions made by the learned counsel appearing for defendant no. 4.

14. In our opinion, the High Court has rightly set aside the decree passed by the Trial Court. By virtue of the order passed by the Land Tribunal dated 27.11.1976, right of defendant no. 4 had been recognised. The Land Tribunal had arrived at a finding that as on 1.3.1974 defendant no. 4 was a tenant in respect of the land in question and, therefore, he was declared to be a tenant and he got right in respect of the suit land. The said order has already become final and, therefore, it would not be proper to take a view that the land in question was not an agricultural land at the time when right of defendant no. 4 was recognised by the Land Tribunal on 27.11.1976.

15. The deed executed by defendant no. 4 in favour of the plaintiff would also not give any right to plaintiff to ask for partition or share in the suit land as the plaintiff had no share in the suit property.

16. In our opinion, for the aforestated reasons, the High Court has rightly allowed the appeal of defendant no.4 and dismissed the appeal filed by the plaintiff and defendant nos.1 and 3. In the facts and circumstances of the case, we dismiss both the appeals with no order as to costs.