SUPREME COURT OF INDIA

Marabasappa

Vs.

Ningappa & Ors.

C.A.No.3495 of 2001

(G.S.Singhvi and H.L.Dattu,JJ.,)

08.09.2011

JUDGMENT

H.L.Dattu,J.,

1. This appeal is directed against the Judgment and Order of the High Court of Karnataka at Bangalore, dated 30th March 1999 in R.F.A. No. 385 of 1993, R.F.A. No. 258 (sic.) of 1994 and R.F.A. No. 775 of 1995 (sic.), wherein the High Court has modified the Decree of the Trial Court and has held that the properties described in `A' Schedule to the suit are joint family properties and the parties to the suit are entitled for 1/3rd share in those properties. The other observations and directions of the Court is not relevant for the purpose of this appeal.

2. The question that is contested by the parties and has fallen for our consideration is whether the properties in dispute are the personal acquisitions of Parwatevva, or, as held by the High Court, a part of the joint family property.

3. The factual matrix in brief is as follows:-

> "Siddappa and Parwatevva got married in 1924 and at the time of the marriage, the father of Parwatevva gifted her land in Survey No. R.S. No. 271/1 measuring 8 Acres 16 Guntas under registered Gift Deed dated 30th April 1924 ["A7"]. Siddappa, after his marriage, continued to reside in his in-laws house. During his life time, Siddappa had no other source of income except from the tenanted lands which was only a small extent and was totally dry lands. Parwatevva purchased lands in R.S. No. 91 measuring 19 Acres 13 Guntas under a registered Sale Deed from the income of the land that was gifted to her by her father on 5th October, 1944 [A(4) - A(6)]. Thereafter, on 2nd June, 1951, with the income from the above two lands, Parwatevva purchased another land being R.S. No. 143 measuring 28 Acres 23 Guntas [A(8)-A(12)]. Siddappa died in the year 1951. The couple had four sons and one daughter - Marabasappa (appellant-defendant), Ningappa (respondent-plaintiff), Bhimappa

> (deceased - legal heirs are on record), Sangawwa and Channappa (pre-deceased without any heirs).

4. In her life time Parwatevva relinquished her share in R.S. No. 91 in favour of the present appellant (Marabasappa). Thereafter, subsequent to an oral partition, she gave one part of the other property bearing R.S. No. 143/1 and R.S. No. 143/2 to the respondent (Ningappa) and the heirs of Bhimappa respectively. In June 1984, Parwatevva executed a will of `stridhana' land to her daughter, Sangawwa. Parwatevva died on 08.07.1984. The present dispute is between her children and their heirs.

5. The respondents-plaintiffs filed a suit bearing O.S. No. 40/1990 before the Court of the Civil Judge, Gadag [hereinafter referred to as "the Trial Court"], inter alia alleging that the entire property mentioned above is the joint family property and the same was not the personal property of Parwatevva, and hence, a prayer for partition and separate possession of 1/3rd share was made in respect of Schedule `A' to `C' properties. Schedule `A' properties consist of agricultural lands, Schedule `B' properties consist of houses and open places and Schedule `C' properties consist of movables of all the properties held by the defendants-appellants except the plaintiffs' properties. The Trial Court negatived this contention of the respondents-plaintiffs on the basis of the oral and documentary evidence and found, inter alia, that the said properties were self acquired properties of Parwatevva, accordingly, has partly decreed the suit in favour of the plaintiffs- respondents.

6. Being aggrieved, the parties to the suit preferred Regular First Appeals. The High Court, by the impugned Judgment and Order, set aside the Judgment of the Trial Court and took the view that apart from the stridhana land, the rest of the property was a part of the joint family property purchased from the income and funds of the joint family property and, therefore, the decree, as sought by the plaintiffs, requires to be granted. Against this finding and the conclusion reached by the High Court, the appellants-defendants are before us.

7. Shri. Rajesh Mahale, learned counsel, appears for the appellants and Shri. Gireesh Kumar, learned counsel, appears for the respondents.

8. The original appellants and respondents have all died during the pendency of the Suit and the Regular First Appeal and their legal representatives have been brought on record with the permission of the Court. Since, it is a family dispute between the brothers and their heirs, it was suggested to the parties through their learned counsel that the course of mediation be adopted to settle the dispute. This Court [G.S. Singhvi and A.K. Ganguly, JJ.] passed the following order on the 9th of December, 2010:

> "During the midst of arguments, learned counsel for the parties agreed that their clients may be given an opportunity to make an attempt to amicably settle their dispute by negotiations. In view of the statement made by the learned counsel, we direct both the parties to appear before the Mediation Centre, Karnataka High Court, Principal Bench at Bangalore, on 17.01.2011. The Incharge, Mediation Centre,

> Karnataka High Court, Principal Bench, Bangalore, shall send a report to this Court within next four weeks. List the case in the first week of March 2011."

9. The learned counsel for the parties has reported to us that there is no settlement reached between the parties.

10. Shri. Mahale, learned counsel, submitted that the Trial Court, after appreciating the evidence on record, had reached the conclusion that the properties in question are the self acquired properties of Parwatevva. It is submitted that the High Court, while considering the evidence on record and the conclusion reached by the Trial Court, has erroneously come to the conclusion that the property in dispute is a joint family property and therefore, the findings of the High Court are perverse and further, the High Court has committed serious error in law in holding that the disputed property is a joint family property. Shri. Gireesh Kumar, learned counsel for the respondents, has supported the findings of the High Court.

11. The sum and substance of the allegations in the suit are that out of the tenanted land, 2 Acres, 10 Guntas, late Siddappa acquired all the other properties including the land in R.S No. 271/1 and R.S. No. 91 and R.S. No. 143. Therefore, all the properties are joint family properties, though they stand in the name of Parwatevva. The Trial Court has relied upon the registered Gift Deed [Ex. D.60] and has come to the conclusion that the property marked A7 was the stridhana property of Parwatevva, and by virtue of Section 14(1) of the Hindu Succession Act, 1955 read with the Explanation, was the absolute property of Parwatevva and could not be blended in the joint family property. The Trial Court, while considering the nature of the lands A(4) to A(6), has taken into consideration the certified copy of the sale deed in respect of that land [Ex.D.8], and has come to the conclusion that there is no evidence adduced by the respondents- plaintiffs to deny the fact that the lands A(4) to A(6) were not purchased from the independent income of the Parwatevva, and hence, negatived the contention of the respondents-plaintiffs that the lands were joint family property, and has also held that these lands were purchased by Parwatevva from the income derived from the stridhana lands, i.e., A7. With regard to the lands A(8) to A(12), the Trial Court, relying on the certified copy of the sale deeds of the said lands [Ex.D. 45], has again found that there was no proof that the said property was acquired out of the income of the joint family property as asserted by the respondents-plaintiffs, and concluded that the same was purchased from the income derived from the aforementioned two properties by Parwatevva.

12. The High Court has found fault with the finding of the Trial Court and has held:

> "21. Coming to the properties said to have been purchased in the name of Parvatewwa under the registered sale deed dated 5-10-1944, twenty years after the Gift deed, the learned Judge find that R.S.No. 91 which lands in A(4) to A(6) was purchased under Ex.D. 8. Now the reasoning given by the learned Judge that if Siddappa is the protected tenant of the said land, there is no reason for him to purchase the said land under Ex.D. 8 cannot be appreciated. In any event, whenever a mother is there and the properties are purchased in the name of the mother, the presumption is that it is for the benefit of the family. It is nobody's case that the lands purchased is for the

intention and for the benefit of the mother alone and she also did not differentiate between her sons and daughters. This is a natural and human aspect which has not been considered by the trail court. The finding that Siddappa do no continued (sic.) as tenant or protected tenant of all the lands as mentioned in Ex.P. 20 except 1 acre 20 guntas of land in R.S.274/3 and A(3) land in R.S. No.:9/3A is not sustainable. Why should valuable tenancy rights given up and then the purchase made in the name of the mother is not understandable nor it is not explained; probably in confirmation of tenancy rights and make it clear that the properties does not go out of the family. The sale is taken in the name of the mother. Therefore, in my opinion, the purchase made by the mother is only from and out of the income from the family and there is no evidence to show that she had any independent or individual income from the gifted property to purchase these properties. Therefore, irresistible inference shall be drawn that the property purchased in the name of the mother is for the benefit of all the members of the family. Now no doubt the plaintiff came forward with the case that suit lands A(4) to A(6) and A(8) to A(12) were purchased from and out of the family income and the income from the A(1) to A(3) lands. But once it is seen that the 1st defendant was managing the affairs of the family as `karta', the burden shifts on him to prove that the properties purchased was not for the benefit of the family, but they were exclusively belong to the mother. In those days income from 3 acres 30 guntas cannot be considered as thin nucleus as has been wrongly held by the trial court. Having held that applying the dictum in I.L.R. 1990 Kar Pg-1182, the initial burden lies upon the plaintiff. But once such burden is discharged and shifts on the defendant, the trial court should have considered that whether the defendant has proved that the purchase was made from any other source of income excepting the income from A(1) to A(3). In the absence of any positive evidence spoken to by D.W. 2 or the witnesses examined on behalf of the defendant that the mother was trying to save the property either for herself or not for the benefit of the everybody, the irresistible conclusion is that the mother is always mother and the properties purchased in her name shall be the properties of the family. There is a clear evidence adduced by the plaintiff that the suit lands in A(1) to A(3) were the basis the income of which was utilized for acquisition of the lands in A(4) to A(6) and A(8) to A(12) lands. But the trial court has relied upon the gift in question and left it not been considered on erroneous approach. The mere fact that the mother has the son and ip-so-facto that the mother is cultivating the land when there admittedly sons who is professional agriculturist and whether it is mother alone or father himself cultivating the lands; everybody contributes (sic.) their right and labour to cultivate the land. It is nobody's case that Parwatevva kept her income separately or that income was not occrued (sic.) by the father Siddappa. When it is found by the court below that the plaintiff was only 16 years of age in 1944, and defendant no. 1 was about 22 or 23 years of age, the burden should have been shifted to 1st defendant to explain as to what really happened and what is the necessity for purchase of the property in the name of the mother. This has not been done. Having been found that during the lifetime of Siddappa, Parwatevva could not have being (sic.) the karta of the family. That defendant-1 alone would have become `karta' of the family, the court below ought to have placed the burden on the defendant and the defendant has not proved or discharged that burden at all. The

learned judge would embarked upon the surmises and imagination regarding the income and came to wrong conclusion that the family did not have nucleus to acquire the properties mentioned in `B' and `C' Schedule."

13. As is clear from the above conclusion, the High Court has not accepted the findings and conclusion reached by the Trial Court. The High Court has, in our opinion, wrongly shifted the burden of proving that the said lands were a part of the self acquired property of Parwatevva and not a part of the joint family property of the appellants-defendants, when there was no affirmative proof of anything contrary. In our view, the High Court has erred in shifting the burden of proof on the appellants-defendants, especially when there was nothing on record either by way of oral or documentary evidence produced by the respondents-plaintiffs before the trial court.

14. The genealogical relation between the parties is not in dispute. Propositor Siddappa died in the year 1951 and he was survived by his wife Parwatevva, plaintiffs and defendants. He was the tenant of the suit lands A(1) to A(3). It is claimed that Siddappa had purchased lands in R.S. No.91 under a Registered Sale Deed dated 05.10.1944 out of the joint family income and funds but in the name of his wife Parwatevva. The lands in R.S. No. 91 is further divided as A(4) to A(6). It is also claimed that lands in R.S. No.143 was purchased out of joint family funds in the name of Parwatevva. These lands are sub- divided as Serial Numbers A(8) to A(12). Lands in R.S. No.271/1, which was gifted to Parwatevva by her father, was claimed that it got blended and treated with the other joint family property. Marbasappa, defendant No.1, being the eldest in the family had applied to the Land Tribunal for grant of occupancy rights of tenanted lands A(1) to A(3) and the same has been granted in his name and conferment of occupancy rights would enure to the benefit of the joint family. Plaintiffs assert that the Suit Schedule properties are joint family properties and, therefore, the same requires to be partitioned according to their shares by a decree of partition and separate possession. The claim of the plaintiffs is denied by the contesting defendants. Parties have led in copious oral and documentary evidence.

15. At present, we are mainly concerned with `A' Schedule properties. The parties to the appeal have no grievance so far as decree passed in respect of `B' and `C' Schedule properties are concerned.

16. In so far as lands shown as A(1) to A(3) are concerned, it is claimed by the plaintiffs that the propositor Siddappa was a tenant of the lands and continued as such till his death in the year 1951. Thereafter, the HUF continued to be the tenants of the lands and the defendant No.1, being the head of the family, had applied for grant of occupancy rights in respect of those tenanted lands and the Land Tribunal had granted occupancy rights in his favour. On the death of Siddappa, the tenancy lands A(1) to A(3) were mutated in the name of his sons. It is claimed that the occupancy rights so granted would enure to the benefit of the whole joint family. Therefore, it is a joint family property and requires to be partitioned among the members of the joint family. The defendants have denied that the lands A(1) to A(3) are the joint family tenancy lands.

17. After perusing the records and the order passed by the Land Tribunal, Gadag, it appears to us that defendant No. 1 had applied to the Land Tribunal for grant of occupancy rights in respect of land in Survey No. R.S. No. 9/3A and R. S. No. 274/3 measuring an extent of 2 Acres and 10 Guntas and 1 Acre and 20 Guntas respectively. Land Tribunal had granted occupancy rights in favour of the applicant- defendant No. 1 in respect of the said two lands. Shri Mahale, learned counsel for the appellants, does not contend contrary to the findings and conclusion reached by the Trial Court. He admits that though occupancy rights are granted by the Land Tribunal in the individual name of the appellant-defendant No.1, the said occupancy rights enure to the benefit of all the members of the Joint family.

18. Suit Land A(7) bearing R.S. No.271/1 was `stridhana' property of Parwatevva. This property was gifted to her by her father under a registered Gift Deed dated 30th April, 1924. She was the owner of the said land. She continued to be in possession of the said land till she bequeathed the same in favour of defendant No.5 under a will dated 30.06.1984. On the death of Parwatevva and on the basis of the said Will, the legatee-defendant No.5 claims she has become owner of the said land. The same has been noted in the Revenue Records. The Will and the Revenue entries made are questioned by the plaintiffs and has successfully proved that the said Will was not executed by Parwatevva. Therefore, defendant No.5 cannot claim title over A(7) under a Will Ex. D-51. Accordingly, this property cannot be brought into the hotchpotch of the joint family property and would not be available for partition. Stridhana belonging to a woman is a property of which she is the absolute owner and which she may dispose of at her pleasure, if not in all cases during coverture, in all cases during widowhood. Since the plaintiffs have proved that Parwatevva had not alienated the property by executing a Will in favour of defendant No. 5 during her lifetime, the property is the absolute property of Parvatevva and would not be available for partition among the members of joint family since it does not partake the character of joint family property.

19. Now coming to Suit Schedule properties Item No.A(4) to A(6), it is the case of the plaintiffs that the said properties were purchased by Siddappa, father of the plaintiffs and the defendants under a Sale Deed dated 05.10.1944, but, in the name of his wife Parwatevva from and out of the income of the tenancy lands A(1) to A(3) for the purpose of the joint family for which he was also the Karta of the family. However, it is the case of the contesting defendants that the said property is the self acquired property of Parwatevva from and out of her income derived from the property gifted to her by her father in the year 1924. The defence that is also put up by the defendants is that Siddappa was the tenant of the property A(1) to A(3) only from the year 1947 and, therefore, plaintiffs cannot claim that from out of the income of the property A(1) to A(3), lands in item A(4) to A(7) were purchased. It has come in evidence of the contesting defendants that propositor Siddappa was the tenant of the lands A(1) to A(3) only from the year 1947. The same is not disputed by the plaintiffs by leading any other cogent evidence to prove that Siddappa was the tenant of the lands A(1) to A(3) even prior to 1944, the date of the Sale Deed. In the absence of any evidence, much less cogent and reliable evidence, it is difficult to accept the version of the plaintiffs that the suit schedule A(4) to A(6) should be put into common hotch potch and partitioned by meters and bounds.

20. We may also notice the observations made by the Trial Court, which we also agree, in the course of its judgement.

> "61. Now let us firstly take up A(4) to A(6) lands. Ex.D.8 is the certified copy of the sale deed in respect of said land, dated 05-10-1944. It is necessary to emphasize that according to the plaintiffs, Shiddappa was protected tenant of the lands mentioned therein as per Ex.P.20, which pertains to 1947. They have obviously, not produced any records, such as R.O.Rs. or mutation entries to show that Shiddappa was the tenant of those 11 lands, mentioned in Ex.P.20 even prior to 1947. It is essential because, we are assessing the productivity of nucleus as on the date of Ex.D.8. Ex.D.8 is admittedly of 1944. Since no document is produced by plaintiffs to show that Shiddappa was the tenant even prior to 1947 of the lands referred to in Ex.P.20, it cannot be said that he had no `independent source of income at the relevant time of 1944 (Ex.D.8). Evidence on record justified that at the relevant time of Ex.D.8, Parvatewwa was already owner and possessor of A(7) land, extent of which is 8 acres 16 guntas. Excepting this land, the family of the parents of plaintiff No.1, defendant No.1 and Bheemappa, is not shown to have had any other source of income. Hence, it follows that the land in Ex.D.8 could not have been acauired at all by Shiddappa, out of his income, since he is not shown to have had any income at all. It is too much to say that the income of the lands at A(1) to A(3) was the source of income for acquisition of the lands A(4) to A(6) (Ex.D.8). This argument pre-supposes that Shiddappa was a tenant of A(1) to A(3) lands even prior to 1944 (Ex.D.8). Absolutely there is no evidence. Hence, it cannot be said that Shiddappa had purchased A(4) to A(6) lands, which is land in Ex.D.8, out of the income of the joint family. Indeed, he was living in the house of his parents-in-law with Parvatewwa and Ex.D.60 of 1924 shows that he had no financial strength. Hence, I am of the definite opinion that the land in Ex.D.8 must have had been acquired by Parvatewwa out of the income she had derived from A(7) land. It cannot be said and it is not acceptable that Shiddappa had purchased the land mentioned in Ex.D.8 in the name of his wife Parvatewwa. I make it clear that it was purchased by her only out of her income derived from A(7) land. Plaint shows that plaintiff No.1 and defendant No.1 were of 62 and 70 years respectively on the date of suit. It shows that in 1944, the year of Ex.D.8, plaintiff No.1 was about 16 years of age, and defendant No.1 was about 22 or 23 years of age. I am emphasizing these facts to show that neither of them had independent source of income. It must mean that Parvatewwa was the absolute owner of the suit lands A(4) to A(6) mentioned in Ex.D.8. Hence, it cannot be said as joint family property. Joint family did not have at all, any nucleus to acquire the land in Ex.D.8. Hence, said finding is recorded." Therefore, the findings contrary to the above view by the High Court are erroneous and cannot be sustained.

21. Section 14 of the Hindu Succession Act, 1956 clearly mandates that any property of a female Hindu is her absolute property and she, therefore, has full ownership. The Explanation to sub-section (1) further clarifies that a Hindu woman has full ownership over any property that she has acquired on her own or as stridhana. As a consequence, she may

dispose of the same as per her wish, and that the same shall not be treated as a part of the joint Hindu family property.

22. This Court has time and again held that there is no presumption that of joint family property, and there must be some strong evidence in favour of the same. In the case of *Appasaheb Chamdgade v. Devendra Chamdgade and Ors.*[1], after examining the decisions of this Court, it was held:

> "17. Therefore, on survey aforesaid decisions, what emerges is that there is no presumption of a joint Hindu family but on the evidence if it is established that the property was joint Hindu family and the other properties were acquired out of that nucleus, if the initial burden is discharged by the person who claims joint Hindu family, then the burden shifts to the party alleging self-acquisition to establish affirmatively that property was acquired without the aid of the joint family property by cogent and necessary evidence."

23. Insofar as lands at Item A(8) to A(12) are concerned, it is the case of the plaintiffs that on the death of propositor Siddappa, joint family continued and during its continuance, agricultural lands in R.S. No.143, which is now sub-divided as items A(8) to A(12) came to be purchased out of the joint family funds, but, in the name of Parwatevva, since she was eldest member of the joint family at the relevant point of time. The oral evidence was led in support of the assertion made in the plaint. The plaintiffs have not produced any other evidence in support of the claim so made. The defence pleaded by the defendants, apart from others, is that Parwatevva had her independent source of income from A(7) lands. She, with the aid of the said income, acquired not only A(4) to A(6) but also A(8) to A(12) lands and the tenancy lands was held by joint family. It is also contended by them that propositor Siddappa, after marrying Parwatevva, lived in the paternal house of his wife Parwatevva, which fact is not denied by the plaintiffs, and Siddappa had no personal income nor agricultural income which he could utilize for purchase of any property, much less A(8) to A(12) properties. The Trial Court, after considering the entire evidence on record has come to the conclusion that lands A(8) to A(12) is the absolute self acquired properties of Parwatevva . The findings and the conclusion so arrived is based on the proper appreciation of the evidence on record and the respondents have not brought to our notice anything contrary to make a different view. Therefore, while agreeing with the findings and the conclusion reached by the Trial Court, we reject the contention canvassed by learned counsel for the respondents. Therefore, lands in R.S. No. 143, which is now sub-divided as A(8) to A(12) of the suit Schedule is not the joint family property but the absolute property of Parwatevva, which she has purchased/acquired from the income and funds from the lands A(7) and A(4) to A(8). Accordingly, `A' Schedule properties requires to be partitioned among the family members in accordance with law.

24. In the light of above discussion, we are unable to accept with the reasoning given by the High Court. We are in agreement with the reasoning and conclusion reached by the Trial Court.

25. In the result, the appeal is allowed and the Judgment and Order passed by the High Court in RFA No. 385 of 1993 dated 30.03.1999 is set aside and Judgment and decree passed by the Trial Court in O.S.No. 40 of 1990 dated 15.07.1993 is restored. Parties are directed to bear their own costs.

Judgment Referred.

[1]*(2007) 1 SCC 0521*