SUPREME COUR OF INDIA

K.Thippanna @ Thippeswamy

Vs.

Varalakshmi

C.A.No.2473 of 2012

(P. Sathasivam and J. Chelameswar JJ.)

24.02.2012

JUDGMENT

CHELAMESWAR, J.

1. Leave granted.

2. This appeal arises out of S.L.P. (Civil) No.30087 of 2009. The said S.L.P., was filed aggrieved by the Judgment dated 14-07-2009 in W.P.No.61948 of 2009, of the High Court of Karnataka, Circuit Bench at Dharwad, by the respondent therein.

3. The facts are as follows:

> The 1st respondent herein filed O.S.No.87 of 2002 on the file of the Civil Judge, Senior Division at Hospet, for partition of the suit scheduled property and to deliver half of the said property and also for mesne profits, etc. The 1st respondent is the brother's daughter of the appellant herein. The case of the 1st respondent is that the entire suit scheduled property is the ancestral property of the coparcenery consisting of, the father of the 1st respondent and the appellant herein. By Judgment dated 18-11-2005, the Trial Court decreed the suit in part.

4. Consequent upon the abovementioned decree, the 1st respondent herein filed an application (F.D.P.No.8 of 2006) on 03-03-2006 for drawing up the final decree. Subsequently, on 29-11-2006, the 1st respondent filed an application (I.A.No.4 of 2006) for amendment of the abovementioned application.

5. The appellant herein contested I.A.No.4 of 2006 referred to above. By an order dated 08-12-2006, the said I.A., was dismissed.

6. Aggrieved by the order dated 08-12-2006, the respondent filed W.P.No.75 of 2007 in the High Court of Karnataka. The High Court by its order dated 16-06-2008 allowed the writ petition setting aside the order dated 08-12-2006 passed in I.A.No.4 of 2006. The operative portion of the order reads as follows: Accordingly, the writ petition is allowed and the impugned order passed by the trial court on IA. No. 4 in FDP No.8 / 2008 is hereby set aside and the petitioner is permitted to amend the prayer, as prayed in the application. All contentions of the parties are left open. The trial court shall consider the application filed under Order 20 Rule 18 r/w Section 54 of CPC on its merits.

> Aggrieved by the said order, the appellant herein, carried the matter in W.A.No.5020 of 2008, before the Division Bench. The matter, it appears, is pending.

7. In the meanwhile, the Trial Court by its order dated 29-11-2008, rejected the prayer of the respondent for amendment of the application for final decree. The operative portion of the said order is as follows:

> The objection raised by respondent to the extent that, there is no preliminary decree in respect of Mineral stored in the petition schedule property is upheld.
>
> The petitioner is entitled to got the fruits of preliminary decree through the process of court in respect of Item No. 1 to 4 and 6 of the B schedule properties.

8. The respondent once again carried the matter by way of W.P.No.61948 of 2009, to the High Court. By the Judgment under appeal dated 14-07-2009, the said writ petition was allowed. The operative portion of the same is follows:

> The impugned order dated 29th November, 2008 insofar as it relates to the non-granting of permission to the petitioner to amend the prayer column of the petition filed for drawing up of final decree pursuant to the order of this Court in Writ Petition No.75/2007 dated 16th June, 2008 is illegal and consequently, the same is set-aside. The Executing Court shall decide FDP No.8/2006 keeping in mind the order of this court in W.P.No.75/2007. Till such time, the extracted ore shall not be lifted by either of the parties.

The Writ Petition is allowed accordingly. Hence, the instant appeal.

9. The learned counsel for the appellant Mr. S.N.Bhat, very strenuously argued that the effect of allowing I.A.No.4 of 2006 would be to permit the respondent to seek a relief in the final decree, which goes beyond the relief granted in the preliminary decree in the partition suit and, therefore, the High Court grossly erred in allowing the writ petition.

10. To understand the nature of the controversy, it is necessary to examine the prayer in the I.A.No.4 of 2006 as well as the prayer in the suit. The prayer in the I.A.No.4 of 2006 is as follows: Add: Add the following sentence to the existing prayer column at Para XI (a) as:-

> and also to divide the extracted loose mining product stored in the petition schedule item no.1 to 4 properties between the petitioner and the respondent no.1 as the same is part and parcel of the suit properties already decreed. Whereas, the suit is only with regard to the partition of the suit scheduled properties.

11. We have meticulously gone through the plaint. There is no whisper in the plaint regarding the extracted loose mining product stored in the petition schedule item no.1 to 4 properties. On the other hand, there is only a stray sentence at Para 4 of the plaint that the defendant and the deceased-father of the plaintiff were carrying on mining business. The relevant portion reads as follows: ..... The land shown as item No.1 to 4 in `B' schedule are not fit for cultivation, but contain rich iron ore. Balakrishnappa and defendant started partnership concern and started to do mining business.

> Apart from that, there was neither an issue framed, muchless any evidence adduced in the suit regarding the winning of the mineral from that part of the suit scheduled property, which was held liable for partition.

12. Even assuming for the sake of arguments that there is iron ore extracted from and stored on the decree scheduled property by the (defendant) appellant herein, in our opinion, the respondent is not entitled, as of right, to a share in the iron ore by virtue of her being a co-sharer in the decree scheduled property. It must be remembered that the suit was for partition of the suit scheduled property, on the ground that the same is the joint family property of the 1st respondent's father and the appellant herein. The plaint schedule does not deal with the subsoil rights of the

various items of landed property included therein. It is well settled in law that subsoil rights do not form part of surfacial rights of the land. The pattedar / owner of the land is entitled only for the surfacial rights and subsoil rights normally vest in the State (See State of Andhra Pradesh Vs Duvvuru Balarami Reddy and others, AIR 1963 SC 264). Therefore, assuming for the sake of arguments that the appellant herein did, in fact, win the mineral from the decree scheduled property, the respondent is not entitled for the share in the same on the ground that she is entitled for a half share of the surface of the property from out of which, the iron ore was (allegedly) extracted. Extraction of the minerals is governed in this country by the Provisions of the Mines and Minerals Development and Regulatory Act, 1957, which requires a license to be acquired by any person interested in carrying on the mining activity. Such a license is granted under the said Act, subject to various rules and regulations and including a requirement of payment of royalty on the part of the licensee as the mineral essentially belongs to the State. Without any pleading or proof in this regard to the effect that the respondent is a licensee under the provisions of the abovementioned Act, the respondent is not entitled, automatically, to claim a share in the mineral alleged to have been extracted by the appellant herein.

13. For the above mentioned reasons, this appeal is allowed. The Judgment of the High Court is set aside.