

**SUPREME COURT OF INDIA**

H. Lakshmaiah Reddy

Vs.

L.Venkatesh Reddy

C.A.Nos.3725-3726 of 2015

(V.Gopala Gowda and C.Nagappan JJ.)

17.04.2015

**JUDGMENT**

**C. NAGAPPAN, J.**

1. Leave granted.

2. These appeals are preferred against judgment dated 8.9.2010 in R.S.A. No.1500 of 2009 by which the High Court of Karnataka at Bangalore allowed the Second Appeal filed by the respondent herein and against the final order dated 25.11.2010 in RP No.398/2010 by which the High Court dismissed the Review Petition filed by the appellant.

3. The respondent herein filed the suit against the appellants seeking for the relief of declaration of his title to the suit property and for consequential relief of permanent injunction restraining the appellants herein from interfering with his physical possession. Briefly the case of the plaintiff is that the suit property belonged to Guramma wife of the first defendant and the mother of the plaintiff and on her death the first defendant had given declaration before the revenue authorities to change the Katha in the name of the plaintiff in respect of the suit schedule property and mutation was effected accordingly and the revenue record stood in the name of the plaintiff for a long period of time. It is the further case of the plaintiff that the first defendant entered into second marriage with one Jayamma and defendants 2 to 5 are their children and they denied the ownership of the plaintiff in the suit property and therefore, the suit came to be filed.

4. A common written statement was filed by the defendant stating that the suit property was purchased in the name of Guramma under registered sale deed dated 14.11.1959 and sale consideration was paid by the first defendant and after the death of Guramma, the first defendant married Jayamma in 1973 and defendants 2 to 5 were born out of the wedlock and the plaintiff as well as the first defendant being the legal heirs of Guramma had succeeded to the suit property and the first defendant gifted a portion of suit property measuring 5 acres in favour of defendants 2 to 5 by registered gift deed dated 12.12.2003 and the suit is liable for dismissal.

5. The trial court framed seven issues and after consideration of oral and documentary evidence dismissed the suit. On the appeal preferred by the plaintiff, the lower appellate court held that the plaintiff and the first defendant being class-I heirs of deceased Guramma are entitled to half share each in the suit property and decreed the suit in part. Challenging the same the plaintiff preferred second appeal and the High Court allowed the same by setting aside the judgment of the lower appellate court and decreed the suit in full as prayed for. Aggrieved by the same the defendants have preferred the present appeals. For the sake of convenience, the parties are described in this judgment as arrayed in the suit.

6. Mr. Basavaprabhu S. Patil, the learned senior counsel appearing for the appellants mainly contended that the High Court has failed to note that the plaintiff himself had never pleaded a case of relinquishment of the share by the first defendant in the suit property and what was pleaded in the plaint was that he had succeeded to the property of his mother absolutely and his father namely the first defendant has consented before the revenue authorities for change of name in the Katha in favour of the plaintiff in respect of the suit schedule property and thus the first defendant had acquiesced to the fact of the entire suit property being put in the name of the plaintiff and according to the learned counsel the mutation entry can never be considered as relinquishment of right or title and the High Court has committed a serious error in accepting the case of the plaintiff and in support of his submissions relied on the decision of this Court in *Balwant Singh and another vs. Daulat Singh (Dead) by Lrs. And ors.* [(1997) 7 SCC 137].

7. Per contra the learned Senior counsel appearing on behalf of the respondents contended that pursuant to the statement made by the 1st defendant to the Revenue Authorities, the entire suit property was put in the name of plaintiff, by effecting mutation entry in Katha and revenue records and thus the 1st defendant, by his conduct had acquiesced to the said fact, as rightly held by the High Court. Alternatively the learned senior counsel contended that even if this Court holds in

law that the 1st defendant continues to be the title holder of half of suit property as class-I heir of deceased Guramma, in view of special circumstances, the justice of the case does not require interference or the relief could be moulded in a different fashion. In support of his submission he relied on Taherakhaton (D) By Lrs. Vs. Salambin Mohammad (1999) 2 SCC 635 and Chandra Singh & Ors. Vs. State of Rajasthan & Anr. (2003) 6 SCC 545).

8. We considered the rival contentions. There is no dispute in the factual matrix. Guramma was the first wife of 1st defendant and the plaintiff was their only son and suit property was purchased by Guramma by Exh. P-1 sale deed dated 14.11.1959 and the property stood in her name in revenue record. The plaintiff was born on 1.10.1965 and Guramma died on 20.1.1966. As per Section 15 of the Hindu Succession Act, the husband and the son of deceased Guramma, namely 1st defendant and the plaintiff, being class-I heirs succeeded to the suit property. As per Exh. P-8, Katha of suit property was changed to the name of plaintiff from his mother on 9.1.1990 and the endorsement therein made by the Tahsildar reveals that the 1st defendant accepted the mutation of entry in the name of the plaintiff, being their only son and on the basis of the said declaration, the mutation was effected and it was not challenged. Exh. D-10 is the RTC extract covering the period from 1989 to 1992 and the plaintiff was shown as the owner of the suit property.

9. As rightly contended by the learned senior counsel appearing for the appellants, 1st defendant did not relinquish or release his right in respect of the half share in the suit property at any point of time and that is also not the case pleaded by the plaintiff. The assumption on the part of the High Court that as a result of the mutation, 1st defendant divested himself of the title and possession of half share in suit property is wrong. The mutation entries do not convey or extinguish any title and those entries are relevant only for the purpose of collection of land revenue. The observations of this Court in Balwant Singh's case (supra) are relevant and are extracted below :

"21. We have considered the rival submissions and we are of the view that Mr Sanyal is right in his contention that the courts were not correct in assuming that as a result of Mutation No. 1311 dated 19-7-1954, Durga Devi lost her title from that date and possession also was given to the persons in whose favour mutation was effected. In Sawarni vs. Inder Kaur (1996) 6 SCC 223, Pattanaik, J., speaking for the Bench has clearly held as follows: (SCC p. 227, para 7) "7. ... Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land

revenue in question. The learned Additional District Judge was wholly in error in coming to a conclusion that mutation in favour of Inder Kaur conveys title in her favour. This erroneous conclusion has vitiated the entire judgment."

22. Applying the above legal position, we hold that the widow had not divested herself of the title in the suit property as a result of Mutation No. 1311 dated 19-7-1954. The assumption on the part of the courts below that as a result of the mutation, the widow divested herself of the title and possession was wrong. If that be so, legally, she was in possession on the date of coming into force of the Hindu Succession Act and she, as a full owner, had every right to deal with the suit properties in any manner she desired."

In the circumstances, we are of the opinion that the High Court erred in concluding that the 1st defendant by his conduct had acquiesced and divested himself of title of his half share in suit property and the said erroneous conclusion is liable to be set aside.

10. The learned senior counsel appearing for the respondent/plaintiff strenuously contended that the 1st defendant is now 90 years old and owns lots of properties as enumerated in the list furnished by him before this Court and the plaintiff is his only son through first wife and litigation pertains to only one property namely the suit property and though this Court gave ample opportunities, no settlement could be arrived at between the parties and considering the special circumstances, this Court in exercise of jurisdiction under Article 142 of the Constitution may not interfere with the High Court judgment, which will do complete justice to the parties and relied on the decisions cited supra.

11. We are not in a position to appreciate this contention. The High Court misdirected itself and committed serious error warranting our interference with the impugned judgment.

12. In the result the impugned judgment and decree of the High Court are set aside and the judgment and decree of the lower appellate court is restored and the appeals are allowed in the above terms. No costs.