

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 6th day of July, 1998

BEFORE

THE HON'BLE MR. JUSTICE T.N. VALLINAYAGAM

R.S.A.NO: 788 OF 1992

BETWEEN:

Sri. Shristi Singh,
s/o. Shivalal Singh, major
resident of Naregal, Tq. Koppal,
Dist. Raichur,

: APPELLANT

(By Sri. Vigneswar S. Shastry,
Advocate)

AND:

1. Sri. M. Shivaram Singh,
S/o. late Shantaram Singh,
major, Agri., r/o. Hampi,
Dist. Bellary.

2. Smt. Meerabai, w/o.
late Shantaram Singh,
major, r/o. Hampi,
Dist. Bellary.

: RESPONDENTS

(By Sri.V.J. Rayareddi and Sri.
N.B. Patil, Advocates)

This Regular Second Appeal filed U/S. 100 of CPC against the Judgment and decree dated.25-2-1992, passed by the Civil Judge, Hospet, reversing the Judgment and decree dated. 9-12-1988, passed by the Principal Munsiff, Hospet, in O.S.NO: 293/1987.

This second appeal having been reserved for Judgment, coming on for pronouncement of Judgment this day, the Court delivered the following:

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TNVJ:6-7-1998

R.S.A.NO: 788/192

J U D G M E N T

Aggrieved by the dismissal of his suit for declaration of ownership in respect of 4 acres 25 cents of land in Sy.No. 139-A and for possession by the first appellate Court, though he succeeded before the Trial Court, the plaintiff is before this Court in this regular second appeal.

2. Defendant-1 is the son of defendant-2 and the plaintiff is his uncle. The father of defendant-1 and the plaintiff were brothers. The Plaintiff had two other brothers, namely Tuljaram Singh, and Shantaram Singh and in the partition effected amongst them, the suit land exclusively allotted to the plaintiff's share. Pursuant to the partition in 1972-1973, mutation entries was effected. It is claimed by the plaintiff that he has allowed his brother, the father of the defendant to look after the said land. But suddenly came to know that his title is being disturbed by them, the suit came to be filed.

3. The defendants however contended that the suit land has ~~been~~ fallen to the share of the father of the first defendant apart from other properties, with the condition of discharging the loans of one Srinivasareddy. Both the brothers claiming that the suit properties has fallen to their share under the partition.

4. The Trial Court accepted the case of the plaintiff. However the first appellate Court reversed the finding of the trial Court and holding that the suit land did not fall~~er~~ to the share of the plaintiff under the family partition and that his deceased brother and the father of the first defendant were not in permissive possession of the suit land, the suit came to be dismissed. The first appellate Court came to the conclusion that " even though defendants contended that mutation has been changed in their name and they failed to prove the same, we cannot draw an adverse inference and say that as the defendants failed to ^{pr}rove that their names have been entered in the record of Rights, the contention of the plaintiff has to be accepted and he is to be held as owner." However the suit was dismissed on the ground that the plaintiff has not proved his case.

5. The second appeal has been admitted on the following two grounds:-

- 1) Whether the learned Civil Judge was right in holding that the plaintiff has failed to prove that suit lands fell to his share in the family partition especially when the documents produced by the plaintiff such as Ex.P.1(Form No.20) and other revenue records show that the suit land has fallen to his share ?

2) Whether the learned Civil Judge was right in dis-believing Ex.P.1(Form No.20) especially when it is maintained as per Rules 62 and 64 or the Karnataka Land Revenue Rules by the revenue Authorities and as well as Ex.P-2(Certified copy of record of rights) pertaining to the suit land which evidenced the factum of partition ? "

6. It is contended that the Ex.P.1 is Form No.20, one maintained as per Rules 62 and 64 of the Karnataka Land Revenue Rules. Under Exhibit.P.1 it is recorded that the factum of partition is reported between plaintiff and his three brothers and 4 acres 25 cents of land were allotted to the plaintiff and there was also an endorsement in Order No. 33/72-73 by the revenue authorities acting upon such partition. Exhibit.P.2 is the certified copy of the Record of Right of the suit land, there is also admission of the 2nd defendant that soon after ~~the~~ the partition, the properties fallen to the share of her husband namely Shantaram Singh share were mutated to his name. Ex.P.2, the record of rights speaks otherwise. The Patta of the land ~~is~~ still stands in the name of the father of the appellant. When the respondents themselves admitted the nature of the properties is a joint property, the burden is upon them to prove that the property has fallen ~~to~~ to their share. There is no documents produced by the

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defendants as against Exhibit.P.1. While supporting the Judgment of the first appellate Court, the respondents re-iterated the contention made in the written statement. The reasons by the first appellate Court not to rely upon the Exhibit.P.1 is not legal nor proper. In the absence of any positive documents of title, the available evidence on record has to be appreciated to weigh the contention of the respective parties. In this case, both the plaintiff and his deceased brother through the present defendant claimed the same property has been allotted to them under the family partition. Therefore, the fact that there was a partition took place is not disputed. Exhibit.P.1 and 2 which have got statutory value and there is no document at all filed by the defendants to substantiate their claim. There is absolutely no reason for the first appellate Court to come to a different conclusion than the one arrived at by the Trial Court.

7. I am convinced that the view of the first appellate court is prima facie un-tenable and the same is therefore set aside and the Judgment decree of the Trial Court is restored. The second appeal is allowed.

Sd/-
Judge

/Nge/