

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 30th day of July, 1998

BEFORE

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

R.S.A.NO: 48 OF 1991

BETWEEN:

1. Lalasaheb Faku Tahsildar,
Since deceased by L.Rs.
 - a). Faku Lalsab Tahsildar,
Age: 55 years, Occ: Agril,
R/o. Shahabundor, Tq. Hukeri.
 - b). Kashimsab Lalasab Tahsildar,
Age. 50 years, rest-do--
2. Mohadin Hussain Tahsildar,
Age: 40 years, Occ: Agril,
R/o. Shahabunder village,
Tq. Hukeri.
3. Babu Nannu Saheb Tahsildar,
Since deceased by L.Rs.
 - a). Hafisa, w/o. Babu Tahsildar,
Age: 55 years, Occ: house-
hold work, r/o. Gokak Falls,
Gokak.
4. Rahim Khasim Saheb Tahsildar,
Age: 50 years, Occ: Agrl.,
R/o. Shahabunder village.

: APPELLANTS

(By Sri. R.U. Goulay , Advocate)

AND:

- Maktum Faku Tahsildar,
Age. 62 years, since deceased
By L.Rs.
 - 1.a. Aminabi, w/o. ~~XXXXXXXXXX~~
Mohamed Bastwade, 36 years,
3rd Road, Gandhi Nagar,
Belgaum.
(deleted as per the Order
dated.14-3-1995)

Contd...2/-

- 1.B. Rahimatbi, w/o. Babu Naik (Hugar), major, Occ: Household work R/o. Basapur, Tq. Hukeri.
2. Baba Saheb Maktum Tahsildar, Age: 65, Occ: Business, R/o. Dhupadal, Tq. Gokak.
3. Gaffar Saheb Maktumsaheb Tahsildar, age 40, rest-do--
4. Badesaheb Maktum Saheb Tahsildar, age: 55 years, Occ. Agril, R/o. Shahabunder Tq. Hukeri.
5. Mahaboobi, d/o. Babu Tahsildar Age: 35, Occ: household work, r/o. Gokak Falls, Tq. Gokak.
6. Smt. Aminabi, w/o. Husansaheb Eastawade, Age: Major, (deleted as per Court Order dated.20-10-1992)
7. Ramzan Khutubu Tahsildar, age: 23 years, R/o. Shahabundar Tq. Hukeri.
8. Hasan Khutubu Tahsildar, age: 25 years, rest-do--
9. Shabboor Khutubu Tahsildar, age; 23 years, rest-do--
10. Mumtaj, w/o. Shaikandar Mulla, major residing at Umarani Tq. Chikkodi.
11. Dastagiri Hussain Tahsildar, age:55, Occ: Agri., r/o. Shabandur.
12. Ramija Dastagir Mulla, age; Major, Occ: Agril., R/o. Shahabandar.
13. Shahajad Tainulla Naikwadi, Major, Occ: Agriculture and household R/o. Ichalkaranji, (Maharastra State).
14. Avuma, w/o. Immamsaheb Mulla, age:Major, r/o. Umarani Tq. Chickodi.

: RESPONDENTS

15. Faku Khutubu Tahsildar,
Age: 35 : Occ: Agril., R/o.
Shahabunder.
16. Smt. Aminabi w/o. Chilabu Tahsildar,
Shahabandar, Tq. Hukeri,
Dist. Belgaum.
17. Rahimatbi, w/o. Bapunaute,
R/o. Basapur, Tq. Hukeri,
Dist. Belgaum. : RESPONDENTS

(By Sri. B.S. Kamse, Advocate
for R1-B.)

This Regular Second Appeal filed U/S. 100 of CPC against the Judgment and decree dated. 24-11-1990 passed by the Additional Civil Judge, Chikodi, in R.A.NO:116/1986, reversing the Judgment and decree dated.19-9-1986, passed by the Additional Munsiff, Hukkeri, in O.S.NO: 103/1975.

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

J U D G M E N T

The plaintiff in O.S.NO: 103/1975, suit for partition claiming 4/5th share in Sanadi lands, who lost their case before the first Appellate Court though the suit was decreed by the trial Court, have preferred the present Regular second appeal.

2. It is seen from the Order sheet that the appeal has not been admitted and the matter is pending for a period nearly 7 years on the preliminary stage, it is because of death of so many parties.

3. The question of law that is raised to the following effect:-

(1) "Whether the lower appellate Court was right in coming to the conclusion that the property which is admittedly Sanadi and enjoyed by the family lost its character as a family property and became the individual property of the 2nd defendant in the absence of resumption of the land to the State Government and fresh appointment of defendant No.2 as an individual while as records showed the lands were sold in public auction and Hussain Faku was auction purchaser and defendant No.2 was on behalf of auction purchaser."

4. The suit is one for partition and separate possession of the suit land. Though the suit was decreed by the Trial Court, the first Appellate Court proceed on the basis of the 2nd defendant was appointed as Sanadi and on that ground held that the properties is not partitiable and dismissed the suit.

5. It is submitted before me that the above finding is erroneous because there is no appointment Order issued by any authorities in favour of the 2nd defendant. Earlier Dada was the Sanadi and defendant-2 claimed that he was doing the Sanadi work on behalf of Dada. Exhibit.P.9 shows that 2nd defendant is Legal representative of Dada. But it is to be noted that the land is not

Sanadi land. It has been converted into Rythaavari land as pleaded by the plaintiff himself. Neither of these is admitted by the defendant in para-3 of the written statement that they are now Rythavar lands at the hands of the 2nd defendant. Therefore, the lands is not a Sanadi Inam land as per Revenue entry 1277, dated.19-7-1975 and the lands have been converted into Rythwa lands by the Order dated. 19-3-1975.

6. A Division Bench of this Court in Bhimappa Ramappa Ghasti-VS-Arjan Laxman Ghasti, I.L.R. 1992 Karnataka, page-3594 has held that the lands is partible after re-grant.

" Following the Ruling in ILR 1987, KAR 3155, held that after the abolition of the village office and resumption of the land, it becomes a Ryotwari land only on regrant and as such, it would be released from the nature of its impartibility and becomes available for partition."

The dictum of the Supreme Court that mere fact that an estate is impartible does not make it the separate and exclusive property of the holder as in the case NAGESH BISTO DESAI-VS- KHANDO TIRMAL DESAI(AIR. 1982, Supreme Court, page-887)

" The property though impartible may be the ancestral property of the joint Hindu family. The impartibility of property does not per se destroy its nature as joint family property or render it the separate property of the last

holder, so as to destroy the right of survivorship; hence the estate retains its character of joint family property and devolves by the general law upon that person who being in fact and in law joint in respect of the estate is also the senior member in the senior line."

Another Division Bench Ruling of this Court in I.L.R. 1988 Karnataka, page-2103 (Mohamadsa-VS-Allisa) reiterate its earlier views

" Before the abolition of the Village office, on the coming into force of the Act, the lands assigned to the village office were to be enjoyed by the officiator of the village office. After the abolition of the village office, on the coming into force of the Act, that basis has disappeared. The suit lands have ceased to be seth Sanadi lands assigned to the village office and on re-grant, the suit lands have become Ryotwari lands available for partition among those who are entitled to a share in them as per the personal law relating to succession and inheritance of properties."

The Supreme Court in Kalgonda Babgonda Patil-VS-Balgonda Kalgonda Patil and others, AIR-1989, Supreme Court, page-1042 has reiterated that " on the abolition of Inam property tenures for the benefits of the joint family and the other members of the family are entitled to claim partition and possession.

AIR

7. In/1984 Supreme Court page 1122(Anant Kibe-VS-Purushottam Rao) the Supreme Court laid down the following Principles:-

" that the inam lands together with the properties acquired from the income of the iname were ancestral immoveable estate since the same had devolved by survivorship by the rule of lineal primogeniture and therefore constitutes joint family property and that the rule of impartibility and the special mode of succession by the rule of lineal primogeniture were nothing but incidents of the inam which stood extinguished by Section 158(1) (b) of the Code of by

virtue of which the inam lands became bhumi-swamy, the succession to which was governed by the personal law of the parties. Therefore the inam lands at Kasba Indore and Mauja Palashiya Hana constituted joint family property of the parties, consequently the plaintiffs' claim for partition and separate possession to the extent of their half share in the properties could be decreed."

8. As against this, the learned Counsel for Respondent relied upon the Judgment of Supreme Court in Civil Appeal No. 944 Of 1973 (Shiddappa Satappa Muruguda & others-VS- Ramappa Shivalingappa Murugude and others) dated.25-11-1986 for the following proposition:-

" Rama (grandfather of the plaintiff) died in 1933. Upon his death an enquiry was made and Shivalinga(the father of the plaintiff) being the eldest son of Rama was recognised as the now holder of the Sanadi Inam which castoon him the obligation to serve as a Sanadi Inam, and conferred on him the right to enjoy the income of the Inam. The Inam was thus his separate and exclusive property with the aforesaid rights and obligation since 1933 when he was recognised as Inamdar. It was not a joint family property and original defendants 1 to 3 who were his brothers (on whom there was no obligation to serve as Sanadis of the State) had no right in the said Inam lands."

The authorities relied upon by the Respondent was distinguished by the appellant on the ground that in that decisions the pleadings of the parties were that Princely State of Kolhapur Utta Ukums (Royal Dictums) were followed by the family and law of Primoge nature and impartible Estate and heritable by eldest son of the erstwhile holder where the principles applicable to the parties.

that case proceeded on the basis of the private Princely State of Kolhapur laws. Therefore, that decision is not applicable to the facts of our case.

9. In view of the dictum of the Supreme Court referred at supra, which re-iterates the views of the Division Bench of this Court, the view of the First Appellate Court has to be set aside and the decree of the trial Court has to be restored. Accordingly the same is done and the second appeal is allowed. No costs.

Sd/-
Judge

/Vge/