[2024] 3 S.C.R. 46 : 2024 INSC 165

Srinivas Raghavendrarao Desai (Dead) By Lrs.
v.
V. Kumar Vamanrao @ Alok and Ors.

(Civil Appeal Nos. 7293-7294 of 2010)

04 March 2024

[C.T. Ravikumar and Rajesh Bindal,* JJ.]

Issue for Consideration

A suit was filed by the plaintiff claiming share in the suit schedule properties. The Judgment of the High Court placed reliance upon 1965 partition which was not the pleaded case in the plaint initially filed. Whether the High Court committed a grave error in placing reliance upon the partition allegedly effected in the year 1965; whether evidence could be led beyond pleadings.

Headnotes

Pleadings – Evidence beyond pleadings – Appellants submitted that the judgment of the High Court deserves to be set aside for the reason that reliance has been placed upon 1965 partition which was not the pleaded case in the plaint initially filed – Propriety:

Held: The High Court committed a grave error in placing reliance upon the partition allegedly effected in the year 1965, in terms of which Schedule 'A' properties were allotted exclusively to the share of defendant No.1 – The fact remains that it is not even the pleaded case of the plaintiffs in the suit that there was any partition of the family properties in the year 1965 – The suit was filed on 26.05.1999 – Even the pleaded case of the defendants, especially defendant No. 1 who is the husband of plaintiff No. 3 and father of plaintiffs No. 1 and 2, in the written statement filed by him was not that there was any partition in the year 1965 – The plaintiffs sought to amend the plaint seeking to raise pleadings regarding 1965 partition – The Trial Court, vide order dated 11.10.2006 rejected the application for amendment of the plaint – The aforesaid order was not challenged any further – Meaning thereby, the same attained finality as far as the case

* Author

sought to be set up by the plaintiffs based on 1965 partition – There is no quarrel with the proposition of law that no evidence could be led beyond pleadings – It is not a case in which there was any error in the pleadings and the parties knowing their case fully well had led evidence to enable the Court to deal with that evidence – In the case in hand, specific amendment in the pleadings was sought by the plaintiffs with reference to 1965 partition but the same was rejected – In such a situation, the evidence with reference to 1965 partition cannot be considered. [Paras 14 and 15]

Case Law Cited

Jehal Tanti and others v. Nageshwar Singh (dead) through LRs., **2013 (14) SCC 689;** *Ghanshyam Sarda v. Sashikant Jha, Director, M/s J. K. Jute Mills Company Limited and others,* **(2017) 1 SCC 599;** *Bhagwati Prasad v. Chandramaul,* **[1966] 2 SCR 286 : AIR 1966 SC 735 – referred to.**

List of Keywords

Pleadings; Partition of family properties; Evidence beyond pleadings.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.7293-7294 of 2010

From the Judgment and Order dated 19.12.2008 of the High Court of Karnataka at Bangalore in RFA Nos.1463 and 1782 of 2007

Appearances for Parties

M. Gireesh Kumar, S. K. Kulkarni, Ankur S. Kulkarni, Ms. Uditha Chakravarthy, Ms. Shalaka Srivastava, Ms. Priya S. Bhalerao, Varun Kanwal, Advs. for the Appellants.

Basava Prabhu S Patil, V. Chitambresh, Sr. Advs., Ankolekar Gurudatta, Korada Pramod Kumar, Amith J, Purushottam Sharma Tripathi, Amit, Mrs. Vani Vyas, E. C. Vidya Sagar, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Rajesh Bindal, J.

1. The appeals[1] filed by the plaintiffs having been partly allowed by the High Court[2], the defendant No. 7 has challenged the judgment and decree[3] of the High Court before this Court.

Facts of the case

2. A suit[4] was filed by Kumar Vamanrao alias Alok son of Sudheendra Desai(plaintiff No.1), Kumar Vyas alias Prateek Sudheendra Desai (plaintiff No. 2) and Aruna wife of Sudheendra Desai (plaintiff No.3), sons and wife of Sudheendra (defendant No. 1) respectively, impleading the parents of defendant No.1 and great grant mother of the plaintiffs No.1 and 2. Kumari Arundhati (defendant No. 5) was daughter of Ramarao (defendant No.2 and sister of defendant No.1. Martandappa (defendant No.6) was said to be proposed purchaser of the part of the land. Srinivas Raghavendrarao Desai (defendant No.7) was impleaded in the suit vide order dated 02.01.2001.

   2.1 Defendant No.7 is in appeal before this Court against the judgment and decree of the High Court. He having died during the pendency of the Special Leave Petitions, his legal representatives have been brought on record vide order dated 23.03.2015. Prahlad (defendant No.8) brother of defendant No. 7 was impleaded in the suit vide order dated 11.07.2003. Whereas Administrative Officer-Murugharajendra Vidyapeeth (defendant No. 9) was impleaded vide order dated 08.06.2005, as defendant No. 7 had sold Regular Survey No.106/2 in favour of defendant No. 9 by executing sale deed dated 25.07.2001.

3. The suit was filed by the plaintiffs claiming 5/9th share in the suit schedule properties. Further prayer was made for grant of mesne profits. Along with the plaint, the following schedule of the properties was attached of which partition was sought:

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1 R.F.A. No. 1463 of 2007 and R.F.A. No. 1782 of 2007

2 High Court of Karnataka, Circuit Bench at Dharwad

3 Judgement and decree dated 19.12.2008

4 O.S.No.60 of 1999

"SCHEDULE- 'A'

The properties standing in the name of defendant No. 1

S. No.	TALUKA	VILLAGE	R.S.NO. BLOCK NO.	AREA A-G	ASST. Rs.PS.	VALUATION
1.	Dharwad	Dhandikoppa	50/1	4-6-1/2	11-49	Rs. 50,000/-
2.	Dharwad	Saptapur	106/2	3-14	9-28	Rs. 50,000/-
3.	Dharwad	Lakamanahalli	86/2B	7-32	26-32	Rs. 80,000/-
4.	Dharwad	Kelgeri	69	6-10	6-53	Rs. 50,000/-
5.	Dharwad	Kelgeri	152/4	7-01	20-82	Rs. 70,000/-

SCHEDULE- 'B'

The properties standing in the name of D.2

S. No.	TALUKA	VILLAGE	R.S.NO. BLOCK NO.	AREA A-G	ASST. Rs.PS.	VALUATION
1.	Dharwad	Saptapur	120	3-20	5-36	Rs. 40,000/-
2.	Dharwad	Kanavi Honnapur	87A	2-06	0-51	Rs. 10,000/-
3.	Hubli	Sutagatti	9A/2	2-01	1-11	Rs. 10,000 [1/2 share in this property to RV Desai D-1]
4.	Dharwad city R.S. No. 55A flat in plot No. F-2 Lakamanahalli village in ground floor VCidyagiri, the House in Century Park bearing Municipal No. 14184/A//0B2					Rs 2,00,000/-
5.	Dharwad	Nuggikeri Village	R.S. No. 44/4	7-00	1-12	Rs. 70,000/-

SCHEDULE – 'C'

Standing in the name of defendant No.4's husband V. H. Desai

S. No.	TALUKA	VILLAGE	R.S.NO. BLOCK NO.	AREA A-G	ASST. Rs.PS.	VALUATION
1.	Hubli Taluka	Suttagatti	9A/9	1-18	1-53	Rs. 10,000/-

SCHEDULE- 'D'

Standing in the name of defendant No.4's husband V. H.Desai

S. No.	TALUKA	VILLAGE	R.S.NO. BLOCK NO.	AREA A-G	ASST. Rs.PS.	VALUATION
1.	Dharwad	Dhandikoppa	Block No. 9	5-33	20-81	Rs. 50,000/- standing in the name of D2 and D4]
2.	Dharwad	Hosayallapur	Block No. 170	16-32	46-37	Rs. 60,000/- [1/2 share in the land standing in the name of D2 and D4]
3.	Dharwad	Murakatti	Block No. 69	13-10	22-99	Rs. 70,000/- [standing in the name of D1 and D3]
4.	HOUSE PROPERTIES					
a)	Desai	Galli House	CTS No. 1292	32 Sq. yard		Rs. 50,000/- Standing in the name of D2 and D4
b)	Desai	Galli House	CTS No. 1295	676 Sq. yard		Rs. 1,00,000/- Standing in the name of D2 and D4

4. Vide judgment and decree[5], the Trial Court[6] held the plaintiffs No.1 and 2 and defendants No.1 to 3 and 5 entitled to 1/6th share in the following property:

> "A schedule: Survey No.50/1, 86/2B, 69, 152/4
>
> B schedule: 87/A, 9A/2
>
> D schedule: Block No.9, B.No.170(8 Acres gunthas), CTS No.1292, CTS No.1295
>
> Defendant no.2 was held entitled to Item 4 in Schedule-B.
>
> Defendant no.1 was held entitled to Item 3 in the Schedule-D."

5 Judgement and decree dated 21.04.2007

6 The III Additional Civil Judge (Senior Division) & CJM, Dharwad

The suit pertaining to Regular Survey Nos.106/2, 120 and 9A/9 was dismissed. No mesne profits were granted. The suit was also dismissed against defendants No.6 to 9.

5. Aggrieved against the judgment and decree of the Trial Court, two appeals were preferred before the High Court. R.F.A. No.1463 of 2007 was filed by the plaintiffs raising a grievance of rejection of their part claim. R.F.A. No.1782 of 2007 was filed by defendants No.1 to 3 and 5, aggrieved against grant of 1/6th share each to the plaintiffs being excessive. Findings of the Trial Court with regard to the property at Sr.No.5 in Schedule-B (Regular Survey No.44/4) was also challenged. The High Court disposed of both the appeals by a common judgment holding that:

   * Schedule-A properties (Regular Survey No(s).50/1, 106/2, 86/2B, 69 & 152/4) are exclusive properties of defendant No.1 as these were allotted to him in the partition in the year 1965. Hence, the plaintiffs as well as the defendant No.1 will have 1/4th share each in the aforesaid properties.

   * The claim of the plaintiffs, for share in Schedule-B (Regular Survey No(s).120, 87A, 9A/2, 44/4) and Schedule-C properties (Regular Survey No.9A/9) and Item no.1 (Block No.9) and Item No.2 (Block No.170) of Schedule-D, was rejected.

   * Sale of Item No.2 (Regular Survey No.106/2) of Schedule-A property by defendant No.7 in favour of defendant No.9 was held to be *null and void* and not binding on the plaintiffs and defendant no.1.

   * Property at Item no.4 (CTS No(s).1292 & 1295) in Schedule-D was to be shared equally by the plaintiffs and the defendant No.1 (1/12th share).

   * The matter regarding half share in Item No.3 (Block No.69) of Schedule-D was remitted to the Trial Court to allow the plaintiffs to adduce the evidence to prove that the same was purchased by the defendant No.1 out of the joint family funds.

   * The matter regarding Item no.5 (Regular Survey No.44/4) of Schedule-B was also remitted to the Trial Court. The plaintiffs were held entitled to mesne profits from defendant No.1 of the properties in which they have been granted share.

6. Aggrieved by the aforesaid judgment and decree of the High Court, the defendant No.7 (Srinivas Raghavendrarao Desai) filed two Special Leave Petitions. Leave was granted. As he expired during the pendency of the matters before this Court, his legal representatives have been brought on record. The issue raised in the present appeals is only pertaining to Regular Survey No. 44/4 and Regular Survey No.106/2, which was sold to defendant No.9 by defendant No.7 vide sale deed dated 25.07.2001.

Arguments

7. Learned counsel for the appellants submitted that the judgment of the High Court deserves to be set side for the reason that reliance has been placed upon 1965 partition which was not the pleaded case in the plaint initially filed. No evidence led, which was beyond pleadings could be considered. An application seeking amendment of the plaint was filed to take up that plea, however, the same was declined by the Trial Court *vide* order dated 11.10.2006 and the order was not challenged any further. Even the pleadings to that effect sought to be taken in the replication filed by the plaintiffs were struck off by the Trial Court. The pleaded case of the defendants before the Trial Court was that there was a partition amongst the family members on 30.08.1984. The aforesaid partition deed was subject matter of litigation in Civil Suit No. 80 of 1995 filed by the defendant No. 2 wherein the same has been noticed and an order passed thereon.

   7.1 The High Court had totally gone wrong in setting aside the decree dated 23.06.1995 without there being any challenge to the same by any of the parties. That issue did not arise out of the judgment of the lower Appellate Court. It was further submitted that the appellant/defendant No. 7 had not violated any interim order passed by the Trial Court as on the date such an order was passed, he was not even party to the litigation. He was impleaded only on 02.01.2001.

8. On the other hand, learned counsel for the respondents No. 1 to 3/ plaintiffs submitted that the entire effort of the appellants is just to deprive respondents No. 1 to 3 of their rightful share in the family property. The partition of 1965 was rightly relied upon by the High Court as against the partition of 1984, the genuineness of which is quite doubtful. In fact, all the family members had connived to deny rightful claim of the plaintiffs. It was further submitted that the

sale deed which was executed by the appellant-defendant No. 7 in favour of defendant No. 9 in violation of the interim order passed by the Trial Court is *non-est* and deserves to be ignored. In support, reliance was placed upon the judgments of this Court in **Jehal Tanti and others v. Nageshwar Singh (dead) through LRs,**[7] and **Ghanshyam Sarda v. Sashikant Jha, Director, M/s J. K. Jute Mills Company Limoited and others**[8]. He further argued that once the parties go to trial knowing the issues involved, the evidence led even without pleadings can very well be appreciated. In support, reliance was placed upon the judgment of this Court in **Bhagwati Prasad v. Chandramaul**[9].

8.1 The property bearing Regular Survey No. 106/2 was sold by defendant No. 7 to defendant No. 9 to protect his interest. Even though the sale was held to be bad by the High Court, no appeal has been preferred by defendant No. 9. Only defendant No. 7 has challenged the same. No doubt, the application for amendment of plaint to raise the pleading regarding 1965 partition was rejected, however, the High Court had made observations that defendant No. 7 is entitled to argue on the basis of the pleadings and documentary evidence to vindicate his right and also that the Trial Court is not barred to mould the relief and allot shares in accordance with law in a suit of partition.

8.2 Learned counsel for defendant No. 9 adopted the arguments which were raised by learned counsel for the appellants as their interest is common and he is the bonafide purchaser of the property, which is a public institution, from defendant No. 7 on payment of consideration.

9. In response to the submissions made by learned counsel for respondents No. 1 to 3, learned counsel for the appellant submitted that the stand taken by defendant No. 1 before the High Court was a clear somersault as his counsel sought to argue relying upon the proceedings before the Land Tribunal which was not even his pleaded case before the Trial Court. The sale deed was executed

7 2013(14) SCC 689

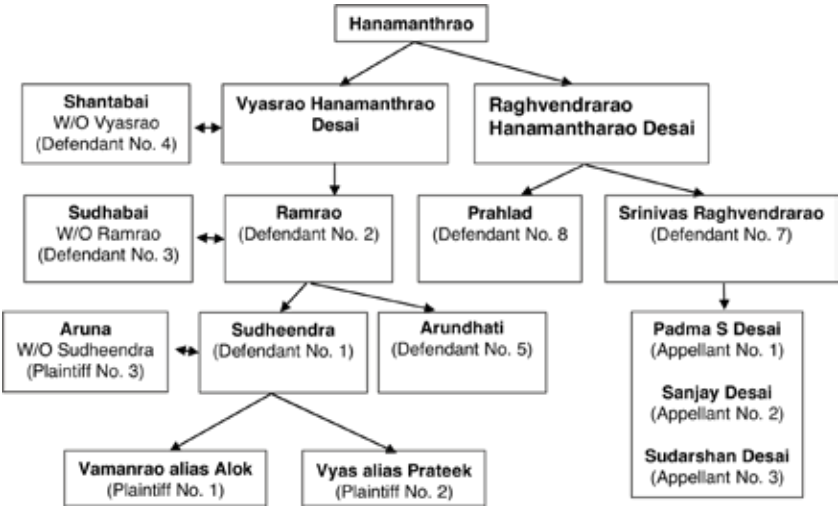
8 (2017) 1 SCC 599

9 AIR 1966 SC 735

by defendant No. 7 on 25.07.2001. The same was well within the knowledge of defendant No. 1, however, he did not challenge the same during his life time, in case there was any error committed by defendant No.7. It was for the reason that the property had come to the share of defendant No. 7.

10. Heard learned counsel for the parties and perused the relevant referred record.

11. To understand the relations between the parties, we deem it appropriate to frame the family tree, as is evident from the material on record:



12. The High Court finally found that the properties forming part of Schedule 'A' are exclusive properties of defendant No. 1 allotted in the partition in the year 1965. The plaintiffs and defendant No. 1 will have 1/4th equal shares each.

12.1 The claim of the plaintiffs for share in Schedule 'B', 'C' and item Nos. 1 and 2 of Schedule 'D' properties was rejected.

12.2 Sale of Item No. 2 of Schedule 'A' property by defendant No. 7 to defendant No. 9 was declared to be null and *void*, hence not binding on the plaintiffs and defendant No. 1.

12.3 The plaintiffs and defendant No. 1 were held entitled to 1/4th share in item No. 4 of Schedule 'D'. Meaning thereby 1/12th share each.

12.4 With regard to ½ share of item No. 3 of Schedule 'D' properties, the matter was remitted to the Trial Court to allow plaintiff No. 1 to adduce evidence to prove that ½ share in item No. 3 was purchased by defendant No. 1 out of joint family funds.

12.5 In respect of item No. 5 of 'B' Schedule also, the matter was remitted to the Trial Court to allow defendants No. 2 and 7 to adduce necessary evidence as to extent of land allotted to the share of defendant No. 7 in the partition. In other words, it was to be decided whether it is 4 acres in Sy. No. 44/4 of Nuggikere village is allotted to the share of defendant No. 7 or entire extent of 7 acres is allotted. The defendant No. 7 and defendant No. 2 were permitted to file additional pleadings and adduce evidence available with them to prove their respective cases.

13. In the written statement filed by defendants No. 1 to 3 (father and grand parents of plaintiffs No. 1 and 2) to the suit filed by the plaintiffs, the definite stand taken is that the property bearing Regular Survey No. 106/2 does not belong to the joint family of the answering defendants, rather it had gone to the branch of Raghvendrarao, hence cannot be made subject-matter of partition.

14. As is evident from the judgment of the High Court, much reliance was placed upon the oral partition effected between the parties in the year 1965. In our opinion, the High Court committed a grave error in placing reliance upon the partition allegedly effected in the year 1965, in terms of which Schedule 'A' properties were allotted exclusively to the share of defendant No.1. The fact remains that it is not even the pleaded case of the plaintiffs in the suit that there was any partition of the family properties in the year 1965. The suit was filed on 26.05.1999. Even the pleaded case of the defendants, especially defendant No. 1 who is the husband of plaintiff No. 3 and father of plaintiffs No. 1 and 2, in the written statement filed by him was not that there was any partition in the year 1965. Quite late, the plaintiffs sought to amend the plaint seeking to raise pleadings regarding 1965 partition. The Trial Court, *vide* order dated 11.10.2006 rejected the application for amendment of the plaint. The aforesaid order was not challenged any further. Meaning thereby, the same attained finality as far as the case sought to be set up by the plaintiffs based on 1965 partition.

15. There is no quarrel with the proposition of law that no evidence could be led beyond pleadings. It is not a case in which there was any error in the pleadings and the parties knowing their case fully well had led evidence to enable the Court to deal with that evidence. In the case in hand, specific amendment in the pleadings was sought by the plaintiffs with reference to 1965 partition but the same was rejected. In such a situation, the evidence with reference to 1965 partition cannot be considered.

16. The plea sought to be taken by the plaintiffs regarding 1965 partition in the replication filed by them would not come to their rescue for the reason that the amendment application filed to raise that plea was specifically rejected. The Trial Court had rightly ignored the plea taken in the replication by the plaintiffs regarding oral partition of 1965, as amendment sought to that effect had already been declined. What was not permitted to be done directly cannot be permitted to be done indirectly.

17. In the written statement filed by defendant No. 7, a specific plea was raised regarding 1984 partition and the property bearing Regular Survey No. 106/2 coming to his share. In the additional written statement filed by defendant No. 7 before the Trial Court, a specific plea was raised that the property bearing Regular Survey No. 44/4 had exclusively fallen to his share in the family partition effected on 30.08.1984. This gets credence from a decree passed by the Civil Court in Civil Suit No. 80 of 1995, titled as "**Sri Ramarao Vyasarao Desai v. Dr. Shriramarao Raghavendrarao Desi and another**", decided on 23.06.1995, which notices the partition of 1984. In the aforesaid suit, father of defendant No. 1, who was the only son of Vyasrao and two sons of Raghvendrarao, namely, Prahlad and Srinivas Raghvendrarao were parties. The High Court had gone wrong in holding the aforesaid compromise decree to be bad without there being any challenge to the same by the parties. It is not even the case set up before the Trial Court.

18. As a consequence, the finding recorded by the High Court that all Schedule 'A' properties were allotted to defendant No. 1 is liable to be set aside. Ordered accordingly.

19. Strangely enough, there is somersault in the stand taken by defendant No. 1. It is for the reason that earlier the plaintiffs and defendant No. 1 were stated to be at loggerheads as lot of allegations had been made by the plaintiffs in the plaint, such as playing cards, drinking

etc. It is for that reason that the suit for partition was filed during the life time of the defendant No. 1. However, now they have joined hands. As a result, defendant No. 1 before this Court is now seeking to support the case of the plaintiffs. Such conduct of the parties, like a pendulum in the clock in fact puts the Court on trial.

20. If the contents of partition dated 30.08.1984 are perused, the property bearing Regular Survey No. 106/2 goes to the share of the appellant. Even otherwise, the property in question, namely, Regular Survey No. 106/2, on which the plaintiffs and defendant No. 1 are now staking claim was sold by defendant No. 7 to defendant No. 9 vide registered sale deed dated 25.07.2001. It was well within the knowledge of defendant No. 1. The Trial Court categorically recorded that even if the signatures on the sale deed were effected by defendant No. 7, stated to be executed on behalf of defendant No. 1, but still defendant No. 1 did not object to the same and in fact supported the stand of defendant No. 7 as the property in question had gone to his share in the family partition. Further, if defendant No. 1 was the true owner of the property in question and had any objection to the aforesaid sale transaction, during his life time he never challenged the same despite being in knowledge thereof. This also establishes that in fact in 1984 partition, the property had gone to the share of defendant No. 7. The partition deed dated 30.08.1984 between Vyasrao Hanamanthrao Desai and Raghavendrarao Hanamanthrao Desai, whose descendants are litigating with reference to their respective shares is extracted below:

> "The portion of the property belonging to Sri Vyasrao Hanamanthrao Desai and Late Capt. Raghavendrarao Hanamanthrao Desai was discussed in detail and the following agreements were agreed to by me. People who attended on Thursday 30th August, 1984.
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> The persons attended are as follows:
>
> 1. Sri R.V. Desai (Son of Sri V.H. Desai)
> 2. Major P.R. Desai
> 3. Dr. R. S. Desai
>
> (Sons of Late Capt. R. H. Desai)
>
> in attendance and according to the advise of Sri V.H. Desai.

The partition has been agreed to and done in the following manner:

SRI V.H. DESAI			LATE CAPT. R.H. DESAI		
Village	AG	S.No./ Bl No.	Village	AG	S.No./ Bl.No.
1) Kelgeri	4-18	69	1) Saptapur	3-00	108/2
2) -do-	4-10	152/2	2) -do-	3-14	106/2
3) Nuggikeri	5-03	37	3) Nuggikeri	13-37	31
4) Lakamanahalli	7-37	86/2B	4) -do-	07-00	44
5) Dondikoppa	5-35	9	5) Lakamanahalli	06-08	3/2
6) Sutagatti	3-37	13	6) Narayanpur	5-19	7+14B/2
7) Hosayallapur	8-16	126/1	7) Hosayallapur	8-16	126/2
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	48-30			48-10	
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Survey No. 109 of Saptapur has not been shown but, it has been included equally among the both the parties and consists of Guava garden.

Following lands have not been divided as they are not in physical position and cases regarding them are pending and they will be equally distributed after the settlement of cases. The above mentioned are as under:

Village	A-G	Sl-No-/Bl.No.
1) Nuggikeri	3-34	129
2) Nuggikeri	1-00	31
3) Nuggikeri	1-00	37
4) Kanavihonnapur	2-09	87/A
5) Kanavihonnapur	1-38	81”

21. Even with reference to property bearing Regular Survey No. 44/4, also we do not find that the matter needs to be remanded back for the reason that in the family partition held in the year 1984 clearly the aforesaid Regular Survey No. was assigned to the share of late

Raghavendrarao Hanamanthrao Desai, who was the predecessor-in-interest of the appellants. The area clearly mentioned therein was seven acres, hence there is no dispute.

22. So far as the argument raised by learned counsel for the respondents regarding sale conducted by defendant No. 7 in favour of defendant No. 9 to be in violation of the interim order passed by the Trial Court is concerned, suffice it to state that the interim order restraining defendants No.1 to 4 from alienating the property in question was passed by the Trial Court on 31.05.1999. As on that date, defendant No. 7 was not party to the suit as he was impleaded only on 02.01.2001. There is no order passed by the Trial Court thereafter directing that the interim order was further extended qua the newly impleaded defendant also, hence it cannot be said to be a case of wilful violation of the order passed by the Trial Court.

23. The order passed by High Court in Writ Petition No. 11431 of 1977 filed by Sudheendra, decided on 25.03.1983, does not come to the rescue of the respondents for the reason that the same was passed before the partition was effected between the parties on 30.08.1984. Secondly, it was a Writ Petition filed by defendant No. 1 through his grand father as he was minor at that time. The Writ Petition was filed against the State seeking quashing of order dated 21.05.1976 passed by Special Land Tribunal, Dharwad. Without there being any material and the parties affected or beneficiary of 1965 partition being party, the Court recorded that there is no dispute that there was such a partition.

24. For the reasons mentioned above, the appeals are allowed. The findings of the High Court with reference to Regular Survey Nos. 106/2 and 44/4 are set aside. The same are held to be the properties coming to the share of the appellants. The sale deed executed by the appellant (since deceased) in favour of defendant No. 9 regarding Survey No. 106/2 is upheld.

Headnotes prepared by: Ankit Gyan

Result of the case:
Appeals allowed.