

(1989) 02 KAR CK 0046

Karnataka High Court

Case No: R.F.A No. 150 of 1988 and I.A. No. I

Kuruvali Shivalingappa

APPELLANT

Vs

Y.S.M. Basaiah

RESPONDENT

Date of Decision: Feb. 24, 1989**Acts Referred:**

- Registration Act, 1908 - Section 17 (1)

Citation: (1989) ILR (Kar) 1281 : (1989) 2 KarLJ 28**Hon'ble Judges:** Ramakrishna, J; Chandrakantaraj Urs, J**Bench:** Division Bench**Advocate:** B.P. Holla, for the Appellant; K.N. Patil, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Chandrakantaraj Urs, J.

The short question that falls for determination in disposing of this I.A. which is for staying the operation of the Judgment and decree under appeal is, whether the appellant who is now in possession of the house property, described as suit Schedule II item, is his self acquired property and therefore should be taken out of the purview of the decree.

2. It is submitted that the said item No. 11 of the suit Schedule property was the property of the partnership firm of which the appellant, husband of the first defendant, 2nd defendant and other members of the family were partners and on the dissolution of the firm as evidenced by Ex.D-2, the said item No. 2 of the suit schedule property was allotted to the share of the appellant's father who was one of the original partners.

3. In support of the above proposition, reliance was placed on the decision of the Supreme Court in the case of [Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others](#), In the said decision, the Supreme Court held that the

interest of the partners of a family in the partnership assets was movable property and the document evidencing the relinquishment of interest in such property was not compulsorily registrable u/s 17(1) of the Registration Act. Their Lordships in that manner affirmed the Full Bench decision of the High Court of Andhra Pradesh and over-ruled the decision rendered by the High Court of Madras in AIR 1931 Mad 580.

4. No doubt, Sri. B.P. Holla, learned Senior Counsel appearing for the appellant did not want us to focus our attention on what the Supreme Court held, but specifically drew our attention to the discussion of English Case law on the subject and the nature of the property contributed by the partner or acquired by the firm in the course of its trade or business. His proposition is that all properties, whether moveable or immovable, once brought into the firm by partners or acquired by the firm in the course of its business or activities, becomes moveable properties and as such even if a house, as in the instant case, is passed on by mere a deed of dissolution to one of the partners, it conveys title and therefore, the father of the appellant had acquired independent title to the suit property. Our attention was specifically drawn to the passage occurring in paragraph 5 of the Judgment of the Supreme Court in Narayanappa's case supra -

"(5) It seems to us that looking to the scheme of the Indian Act, no other view can reasonably be taken. The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done whatever is brought in would cease to be the exclusive property of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in, much less over any other partnership property. He would not be able to exercise his right even to the extent of his share in the business of the partnership."

From that observation, the learned Counsel wants us to hold that the distinction between movable and immovable properties disappears and all the assets of the firm are to be treated as movable and therefore, even an unregistered deed of dissolution title of the property would stand transferred to the partners to whose share it was allotted on the dissolution conveying valid title.

5. We are unable to see any such proposition envisaged from the above passage. The learned Counsel even relied on the decision under English law earlier than 1890 decisions. After all, the above passage indicates to us that once the property, moveable or Immovable is passed on to the firm, it is firm's asset; the partner even though he may be one who contributed the asset, will not have any exclusive right over such property, moveable or immovable. But all the partners would have right proportionate to the share in the firm and not single one of them should have right of if disposition over such property. In fact, the question before the Supreme Court

in the aforesaid case was whether the document styled as "Karar Patra" between the two families who jointly owned a hulling mill required registration because one of the families acting through its Karta relinquished its right, title and interest in the machinery of the hulling mill. We have already noticed that the Supreme Court held that it did not require registration because "Karar Patra" related to moveable properties which are not compulsorily required to be registered as in the case of Immovable property valued at more than Rs. 100/-.

6. We, therefore, at this point of time, are not satisfied that a case is made out to stay operation of Judgment and decree at this stage. We reject I.A.I.