
(2006) 12 KAR CK 0047

Karnataka High Court

Case No: Regular First Appeal No. 2024 of 2006

Rathnakar Rao Sindhe

APPELLANT

Vs

Smt. Leela Ashwath

RESPONDENT

Date of Decision: Dec. 19, 2006

Acts Referred:

- Hindu Succession Act, 1956 - Section 23

Citation: (2007) 1 KCCR 746 : (2007) 5 RCR(Civil) 599

Hon'ble Judges: H.G. Ramesh, J

Bench: Single Bench

Advocate: S. Nagaraja, for the Appellant;

Final Decision: Dismissed

Judgement

H.G. Ramesh, J.

This first appeal by the defendant is directed against the judgment and decree dated 11.08.2006 passed by the Court of the Principal Civil Judge (Sr.Dn.) at Mysore decreeing the suit in O.S.No. 361/1997 filed by the respondent/plaintiff for partition and separate possession of her half share in the suit properties. The plaintiff is the sister of the appellant herein.

2. I have heard the learned Counsel appearing for the appellant and perused the impugned judgment.

3. The suit properties are the self acquired properties of the father of the plaintiff and the defendant and the father had died intestate. The case of the appellant that her sister (plaintiff) had received more money than her share was not proved by any satisfactory evidence.

4. The contention of the learned Counsel for the appellant is that Section 23 of the Hindu Succession Act, 1956 ("the Act" for short) was in force as on the date of filing of the suit and hence, the Trial Court has erred in law in decreeing the suit in so far

as the house property is concerned.

5. It is true that as per Section 23 of the Act, when there is a male heir, unless he chooses to take out his share from the dwelling house, a female heir cannot claim partition against him. But Section 23 of the Act had been omitted during the pendency of the suit. It came to be omitted by the Hindu Succession (Amendment) Act, 2005 (No. 39/2005) with effect from 9.9.2005, Hence, the restriction put on the right of a female heir to claim partition in respect of a dwelling house ceased to be effective from 9.9.2005. Therefore, question of enforcing the said restriction after it ceased to be in force does not arise at all. In my opinion, the effect of omission of Section 23 of the Act would apply to all proceedings whether original or appellate involving adjudication of the rights of the parties and pending as on 9.9.2005 or initiated after that date.

6. On the facts of the case I find no legal infirmity in the impugned judgment passed by the Trial Court granting half share in the suit properties to the plaintiff. In the absence of any ground to admit the appeal, the appeal is liable to be dismissed and is accordingly dismissed.