

Karishetty and Others Vs Saraswathi and Others

Court: Karnataka High Court

Date of Decision: Aug. 18, 2015

Acts Referred: Hindu Succession Act, 1956 - Section 6

Hon'ble Judges: B.V. Nagarathna, J

Bench: Single Bench

Advocate: Ravi R.S., for the Appellant

Final Decision: Dismissed

Judgement

B.V. Nagarathna, J

The defendant Nos. 1, 2 and 4 in O.S. No. 751/2009 have preferred this 2nd appeal, assailing the judgment and

decree in R.A. No. 304/2012, passed by the Fast Track Court-II, Mysuru, dated 18.1.2013, confirming the judgment and decree passed in O.S.

No. 751/2009 by the third Addl. Senior Civil Judge at Mysuru, dated 22.5.2012.

2. For the sake of convenience, the parties shall be referred to in terms of their status before the trial court.

3. The first respondent, who is the daughter of the 2nd appellant/2nd defendant filed a suit, seeking partition and separate possession of her 1/10th

share in the suit schedule properties. It is the case of the plaintiff that her grand father, one Channashetty had two sons viz., Karishetty and her

father Javarashetty-the first and 2nd defendants. After the demise of Channashetty, joint family status continued and there was no partition between

the brothers. Channashetty was the Kartha of the joint family and he was managing the suit schedule properties during his life time and he died

intestate leaving behind the plaintiffs and the defendants as his legal heirs. After the demise of Channashetty, the suit schedule properties continued

as joint family properties and in joint possession of all the parties.

4. It is the case of the plaintiff that she is entitled to a share in the joint family properties just as her brothers are entitled to a share. According to the

plaintiff, after the demise of the plaintiffs grand father, defendants No. 1 and 2 turned hostile towards the plaintiff. She demanded partition of the

suit schedule properties and claimed her legitimate share. There was also a panchayat convened on 10.12.2009 to effect partition of the suit

properties. But nothing positive turned out from the Panchayat proceedings. Therefore, the plaintiff was constrained to file a suit seeking for

partition and separate possession in respect of the suit schedule properties by meets and bounds.

5. In response to suit summons and notice issued by the trial court, defendants No. 1, 2 and 4 appeared through counsel. Defendant No. 5

remained absent and was placed ex parte. Defendants No. 1 and 4 filed written statement contending that the suit was not maintainable and that a

daughter could not seek partition during the life time of her father, even under the amended Section 6 of the Hindu Succession Act 2005. While

denying the rest of the allegations, they contended the suit being not maintainable it was liable to be dismissed. Defendants No. 1 and 4 also

contended that they had divided the properties and there had been a prior partition and they were absolute owners of the same and that the plaintiff

had no right, title and interest over the suit schedule properties.

6. On the basis of the above pleadings, the trial court framed the following issues:

1. Whether the plaintiff proves that Plaintiff and Defendants constituted joint family?
2. Whether the Plaintiff proves that all the suit schedule properties are joint family properties?
3. Whether Defendants prove that already there was partition in the joint family as contended in the written statement?
4. Whether Plaintiff is entitled for any share in the suit schedule properties? If yes, what is her share?
5. Whether Plaintiff is entitled for the reliefs claimed?
6. What order or Decree?

7. In support of her case, the plaintiff examined herself as PW1. She produced five documents which were marked as Exs.P.1 to P.5. While the

first defendant examined himself as DW1. No documentary evidence was produced on behalf of the defendants.

8. On the basis of the said evidence, trial court answered issue No. 1, 2 and 4 in the affirmative, Issue No. 5 partly in the affirmative, Issue No. 3

in the negative and decreed the suit of the plaintiff with costs by holding that the plaintiff and defendants 2 to 5 were entitled to 1/10th share in the

suit properties and defendant No. 1 was entitled to half share in the said properties. A direction for drawing up of the Preliminary decree to that

effect was issued by the trial court. Being aggrieved by the judgment and decree of the trial court, defendants 1, 2 and 4 filed R.A. No. 304/2012

before the First Appellate Court. The First Appellate Court on hearing the parties raised the following points for its consideration:

1. Whether the Trial Court is justified in decreeing the suit of the Plaintiff?
2. Whether the Judgment and Decree passed by the trial court calls for interference?
3. What order?

9. The first Appellate court answered Point No. 1 in the affirmative, Point No. 2 in the negative and dismissed the appeal.

10. Being aggrieved by the Judgment and decree of the First Appellate Court, defendants No. 1, 2 and 4 preferred this second appeal.

11. I have heard the learned counsel for the appellants. Drawing my attention to the relationship between the parties, he contended that the plaintiff

is the daughter of the 2nd defendant-Javarashetty. The first and 2nd defendants are the brothers. They are the sons of Channashetty. There has

been no partition between the family properties. They have remained in joint status even after the demise of Channashetty. The plaintiff, who is a

daughter, has no right to claim partition during the life time of her father. He contended that it is only when the partition takes place between the

family members, a share can be allotted to a daughter, who is equivalent to that of a son, which could normally happened on the demise of a male

member of Hindu Mithakshara Joint family. But Section 6 does not give any right to a female of a Hindu Mithakshara joint family to seek partition

of the joint family properties. While reiterating the submission that the amendment made to Section 6 is only applicable at the time of succession

and not during the life time of father of a daughter, who is the plaintiff herein, he contended that the suit was not maintainable and that both courts

below lost sight of this position of law and have erroneously decreed the suit. He therefore, contended that substantial questions of law arise in this

appeal, which requires admission of the matter for a detailed consideration at the hands of this court.

12. Having heard learned counsel for the appellants and on perusal of the material on record, it is noted that there is no dispute with regard to the

relationship between the parties. Channashetty is the grand father of the plaintiff and defendants No. 3 and 4 and 5. They are the children of

Javarashetty. Javarashetty and Karishetty are brothers, who are the sons of late Channashetty. It is also not in dispute that on the demise of their

father-Channashetty, family continued to be remained joint and there was no partition or division of the joint family properties.

13. Section 6 of the Hindu Succession Act, no doubt is a provision under the Succession law. But Section 6 categorically gives rights to a female

Hindu of Mithakshara joint family as that of a son in coparcenary property. That means just as a son, she has a right by birth in coparcenary, joint

family or in ancestral property. Thus a daughter has also an identical right as that of a son in coparcenary property. One of the rights of a

coparcener is to seek partition and separate possession of the coparcenary properties. It is that very right which has been asserted by the plaintiff

in the instant case. The daughter need not wait till the demise of a male coparcener in order to assert her right in the joint family property. When the

daughter has a right by birth in coparcenary property, she can claim that right as and when she deems fit. Therefore, the plaintiff seeking partition

and separate possession of the schedule properties is an instance of assertion of right, which has been granted to her under amended Section 6 of

the Hindu Succession Act 1956.

14. In that view of the matter, both courts were right in holding that the suit was maintainable and thereby dividing the suit schedule properties

between the parties, in accordance with law. No substantial question of law arise in this appeal. The appeal is dismissed.

In view of the dismissal of the appeal I.A. No. 1/2013 would not survive for consideration and it is also dismissed.