

IN THE HIGH COURT OF KARNATAKA
GULBARGA BENCH

DATED THIS THE 16TH DAY OF SEPTEMBER 2014

BEFORE

THE HON'BLE MR.JUSTICE N.ANANDA

R.S.A.No.200017/2014

BETWEEN

1. Chandawwa W/o Late Sidramappa Biredar
Age: 81 years, Occ: Agriculture
R/o Halagatharaga village
Tq. Jewargi, Dist. Gulbarga.
2. Bhagamma W/o Bhimaraya Biredar
Age: 56 years, Occ: Agriculture
R/o Murganoor village, Tq. Jewargi
Dist. Gulbarga.
3. Basalingamma W/o Sharangouda Kaalagi
Age: 27 years, Occ: Agriculture
R/o Murganoor village, Tq. Jewargi
Dist. Gulbarga.
4. Sharanagouda S/o Chandramappa Kalagi
Age: 33 years, Occ: Agriculture
R/o Murganoor village, Tq. Jewargi,
Dist. Gulbarga.

... Appellants

[By Sri A.M. Biradar, Advocate for
Sri Biradar Allapatel, Advocates]

AND

Nagamma W/o Kareppa Benkotagi

Age: 60 years, Occ: Agriculture

R/o Halagatharaga village

Tq. Jewargi – 585 310.

Dist. Gulbarga.

... Respondent

[By Sri Gurubasava B. Naik, Advocate for
Sri N. Krishnacharya, Advocates)

This Regular Second Appeal is filed under Section 100 C.P.C., against judgment and decree dated 26.10.2013 passed in R.A.No.4/2013 on the file of the Senior Civil Judge at Jewargi, dismissing the appeal and confirming the Judgment and Decree dated 19.11.2012 passed in O.S.No.138/2012 on the file of the Civil Judge at Jewargi and etc.

This Regular Second Appeal coming on for Admission this day, the Court delivered the following:

JUDGMENT

The unsuccessful defendants in O.S.No.138/2012 have filed this regular second appeal.

2. The plaintiff in O.S.No.138/2012 is the daughter of Late Sidramappa Biredar; first defendant is the wife of Late Sidramappa Biredar; defendants 2 and 3 are the daughters of Late Sidramappa Biredar; the 4th defendant is the husband of third defendant. The suit for partition in relation to properties held and left by Late Sidramappa Biredar was not contested by the defendants.

3. The learned judge of trial court considering oral and documentary evidence adduced by plaintiff granted decree for 4/9th share in the suit property in favour of plaintiff. The learned trial judge has also held that registered sale deed dated 07.03.2012 in respect of one of the suit schedule properties alleged to have been executed by the third defendant in favour of 4th defendant is not binding on the plaintiff.

4. The defendants were before the I-appellate court in R.A.No.4/2013. The learned judge of I-appellate court on reconsideration of the matter has confirmed the judgment of trial court and dismissed the appeal.

Therefore, defendants 1 to 4 are before this court raising following substantial questions of law:

1. Whether the daughter born prior to Hindu Succession Act 1956, could be as coparcener and entitled to share?
2. Whether the court below was justified in decreed the suit and in process did not taken into account the provisions under order VIII rule (2) CPC ?

3. Whether the judgment and decree of court below is justified in law in granting a decreed the suit ?

5. I have heard Sri.A.M.Biradar, learned counsel for appellant and Sri.Gurubasava B.Naik, learned counsel for respondent.

6. In my considered opinion, the aforesaid substantial questions of law do not arise for consideration for the following reasons:

The appellants/defendants had not filed written statement in O.S.No.138/2012 and they had not contended that plaintiff was born prior to the date on which Hindu Succession Act, 1956 was brought into force. The appellants have contended that the court below has considered the provisions of Order VIII Rule 2 CPC.

7. In my considered opinion, the provisions of Order VIII Rule 2 CPC, should have been followed by the defendants by pleading the facts to show how the suit was not maintainable.

8. As already stated, defendants had not filed written statement. Therefore, consideration of provisions of Order VIII Rule 2 CPC, did not arise before the trial court.

9. The learned trial judge on proper appreciation of evidence has held that there was no partition and separate possession of properties held and left by Late Sidramappa Biredar. The learned trial judge has held that third defendant had sold one of the suit properties in favour of her husband (4th defendant) to deprive the plaintiff of her legitimate share, therefore, sale deed is not binding on the share of plaintiff.

10. The learned judge of I-appellate court on reappraisal of evidence has confirmed the findings of the trial court. This second appeal does not involve any substantial questions of law much less questions of law.

11. In the result, I pass the following:

ORDER

The appeal is dismissed.

Np/-

Sd/-
JUDGE