

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 7111-7112 OF 2000

H.S. NATARAJ(DEAD) BY LRS.

Appellant (s)

VERSUS

CHINNAMMA & ORS

Respondent(s)

(With office report)

Date: 18/03/2009 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA
HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Appellant(s)

Mr. Naveen R. Nath, Adv.
Ms. Lalit Mohini Bhat, Adv.
Ms. Hetu Arora, Adv.

For Respondent(s)

Mr. S.N. Bhat, Adv.

UPON hearing counsel the Court made the following
ORDER

The appeals are allowed to the extent indicated in the
signed order. Parties are left to bear their own costs.

(Ajay Kr. Jain)
Court Master

(Vinod Kulvi)
Court Master

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 7111-7112 OF 2000

H.S. Nataraj (Dead) By Lrs.

.... Appellants

Versus

Chinnamma & Ors.

.... Respondents

ORDER

1. The legal representatives of H.S. Nataraj, who was Defendant No. 5 before the Trial Court in O.S. No. 47/1979, are the appellants before us. They have challenged the judgment and decree of the learned Single Judge of the High Court of Karnataka at Bangalore dated 8th day of October, 1998 rendered in R.S.A. Nos. 185/1996 and 282/1996 allowing the appeal of the plaintiff and legal representatives of Defendant No. 1 in respect of Suit Schedule Property Item No. 1

and declaring them entitled to 1/2th share each in respect of the said Property and in respect of Suit Schedule Property Item Nos. 2 and 3, all of them were declared entitled to 1/5th share, thereby setting aside the judgment and decree of the First Appellate Court. As a consequence thereof the decree passed by the Trial Court in favour of original plaintiff was modified to the extent indicated in the judgment.

2. The facts giving rise to the filing of the present appeals are that one Patel Veerappa was the original propositor who died on 1.8.1977 leaving behind his five sons, namely, Madappa (D-1), H. Lingappa, H.V. Subanna (D-2), H.V. Veerappa (Plaintiff), H.V. Rajammanni, Jayamma (D-4) and one daughter. H.S. Nataraj (D-5) is the son of D-2 and grandson of Plaintiff H.V. Veerappa. H.Lingappa has not been given any share in the property as he was given in adoption. So his share was not the subject matter of dispute. A registered partition was effected on 3.2.1959 by which Patel Veerappa was allotted a share out of the Schedule-A suit property Item No. 1, namely, house property and lands in other villages mentioned at Item Nos. 4, 5, 6 and 7 for life estate only and other property as his absolute property. As per the family arrangement entered into between Patel Veerappa and his sons, it was agreed that Patel Veerappa shall have life interest in certain items of the property allotted to his share and after his death the Northern half of the said property should go to Defendant No. 1, Southern half should go to the Plaintiff. Thus, the Plaintiff and Defendant No. 1 would be entitled to half share each in Ist item property. During the life time Patel Veerappa purchased Suit Schedule Property Item Nos. 2 and 3 from out of his income, which he derived from Item No. 1. Item No. 3 property has not been included in the said partition. On the death of Patel Veerappa, Plaintiff and Defendants No. 1 to 4 claimed to be entitled to equal share under the Hindu Succession Act in respect of Item Nos. 2 and 3 of the Suit Schedule properties and in respect of Item No. 1, the Plaintiff and first Defendant alone were entitled to half share each. The 5th Defendant, grand son of the plaintiff claimed some rights under a document, which was denied by the plaintiff.

3. It appears from the record that the plaintiff filed O.S. No. 47/1979 on the file of the Civil Judge and JFMC, Nanjangud for partition and separate possession of 1/5th share of the suit schedule properties left behind by Patel Veerappa. The Trial Court finally decreed the suit and declared that the plaintiff was entitled to partition and separate possession of 1/5th share in all the suit schedule properties. In addition thereto, the plaintiff and defendants No. 1, 3 and 4 were directed to be entitled to mesne profits from the date of suit, for which a separate inquiry shall be

made under Order XX Rule 12 CPC.

4. Being aggrieved against the said judgment and decree of the Trial Court, defendant No. 5 filed an appeal before the IInd Addl. District Judge, Mysore which was numbered as R.A. No. 16/1984. The learned Addl. District Judge, Mysore by judgment and decree dated 18.12.1995 allowed the appeal by giving detailed reasons and set aside the judgment and decree dated 16.2.1984 of the learned Civil Judge and JFMC, Nanjangud in O.S. No. 47/1979. Consequently, the suit filed by the plaintiff was dismissed. The Cross Objections filed by defendant No. 1 were also dismissed.

5. Feeling aggrieved thereof, the judgment and decree of the First Appellate Court, the legal representatives of defendant No. 1 and the plaintiff preferred two separate second appeals numbered as R.S.A. No. 185/1996 and 282/1996 before the High Court. The High Court by a common judgment and order allowed both the appeals and passed the aforesaid decree. The legal representatives of defendant No. 5 are, thus, before us in these appeals by special leave.

6. We have heard learned counsel for the parties and with their assistance examined the judgment of the High Court as well as the judgment of the First Appellate Court and other documents placed on record.

7. During the course of hearing of the appeals, learned counsel appearing on behalf of the appellants fairly stated before us that there exists no dispute in regard to property covered under Schedule suit property Item No. 1 in the teeth of the admission made by the appellants in their written statement filed before the Trial Court. So far as Schedule Suit property Item Nos. 2 and 3 are concerned, we find that the High Court while deciding the second appeals has not recorded any reason for upsetting the well reasoned and well merited judgment of the First Appellate Court. Though the High Court has formulated two substantial questions of law at page 11 of the judgment, yet after going through the material on record, no finding has been recorded in regard to the said questions of law. The High Court has simply extracted the reasonings of the Trial Court and thereafter allowed the appeals and decreed the suit of the plaintiff.

8. We find that the manner in which the High Court has decided the second appeals is not in conformity with the established principles of law which are to be borne in mind by the High Court while deciding the second appeals. Therefore, without going into the merits of the case, we set aside the judgment and decree of the High Court so far as it relates to Suit Schedule property Item Nos. 2 and 3 only.

9. The appeals are partly allowed. The judgment and decree of the High Court dated 8.10.1998 is set aside to the extent it relates to Suit Schedule property Item Nos. 2 and 3 only and the matter is remitted back to the High Court with regard to the said properties for consideration and final decision on merits in accordance with law.

10. The second appeals shall stand revived to their original numbers. We request the High Court to make an endeavour to expedite hearing of the appeals and dispose of the same as far as practicable within six months from the date of this order.

11. Appeals are allowed to the extent indicated above. Parties are left to bear their own costs.

.....J.
(LOKESHWAR SINGH PANTA)

J.
(B. SUDERSHAN REDDY)
New Delhi
March 18, 2009