IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2590 OF 2001

VEERAMMA ...APPELLANT

VERSUS

K.R. SANATHKUMAR & ANOTHER ...RESPONDENTS

ORDER

1. This appeal is directed against the judgment dated 11.1.2000 passed by the High Court of Karnataka at Bangalore in R.F.A. No. 552 of 1994.

2. The brief facts, which are necessary for disposal of this appeal, are recapitulated as under:

K.R. Sanath Kumar-respondent No. 1 herein (plaintiff before the trial court) filed a Original Suit bearing No. 7 of 1993 for partition and separate possession of his alleged 1/6th share in B-Schedule property and for mesne profits etc. before the Civil Judge, Puttur against K.M. Neelamma-defendant No. 1, Veeramma-defendant No. 2 (appellant herein), K. Ramappa Gowda-defendant No. 3 and K.R. Sharath- defendant No. 4 (respondent No. 2 herein).

3. It is necessary to understand the inter-se relationship between the parties and for that the genealogy chart indicating the relationship is set-out as under:

" PUTTAYA GOWDA

!

MALLAPPA GOWDA (son) K.RAMAPPA GOWDA (son)

! !

NEELAMMA VEERAMMA (wife) SUSHEELA (wife)

! !

Veeramma (daughter) Sanath Kumar (son)

Sharath Kumar (son)"

4. According to the plaint, plaintiff who claims 1/6th share out of one half share of defendant No. 3 filed a suit for partition claiming that 'B' Schedule properties are ancestral joint family property of defendant No. 3 and his late brother Mailappa Gowda. It was further stated that 'B' schedule properties fetch an annual income of seven candies of areca, 2000 coconuts and 200 muras of paddy besides one quintal of cashewnut which was sufficient for the maintenance of entire family and there was no need for incurring debts. It was claimed that for the purpose of convenient enjoyment,

there was an oral agreement under which it was orally agreed between late Mailappa Gowda and K. Ramappa Gowda-defendant No. 3 that the property bearing S. Nos. 46/3, 48/3, 47/6, 55/1B, 47/1, 54/IJ, 124/2, 127/2, 51/3G, 55/2 and 124/3B of Sampaje Village shall be retained by Mailappa Gowda for his maintenance and for the branch of his family and the remaining properties at serial Nos. 51/2B, 52/1C, 51/3B, 53/3, 53/7, 54/1J portion, 55/1B, 54/3A, 48/2, 54/2 and 124/3 of Sampaje Village were made over to defendant No. 3 and his branch. It was further submitted that the arrangement was for the purpose of convenience and enjoyment only and there was no outright partition and as such, there has been no severance in the status of the family or members thereof.

5. Defendant Nos. 1 & 2 filed a written statement and took a stand that the plaintiff had filed a suit in collusion with defendant Nos. 3 and 4; there was a partition in the family during the year 1958 and, therefore, this suit for partition is bad in law. The Trial Court, by a detailed judgment, dismissed the suit holding that there was a partition in 1958. Aggrieved by the judgment of the trial court, plaintiff filed a Regular First Appeal before the High Court.

6. The High Court in the impugned judgment has examined

the entire record of this case and according to

the comprehensive reasoning of the High Court, the trial court's finding that there was a partition in the year 1958 is entirely untenable and was set-aside. The High Court allowed the Regular First Appeal and decreed the suit in favour of plaintiff. Aggrieved by the impugned judgment of the High Court, defendant No. 1 has filed the present appeal by special leave.

7. It may be pertinent to mention here that during the hearing of appeal before the High Court, defendant No. 1 Neelamma (mother of defendant No. 2) and defendant No. 3 K. Ramappa Gowda (father of plaintiff) died and, therefore, in the present appeal, they have not been arrayed in the memo of parties.

8. We have heard learned counsel appearing for the parties and gone through the relevant record.

9. Learned counsel appearing for the appellant submitted that there was an oral partition in the year 1958 and the finding of the High Court that there is no document with regard to the partition is erroneous.

10 It was also submitted by the learned counsel appearing for the appellant that certain properties have not been reflected in the schedule-B of the joint Hindu family properties. It was further submitted that the judgment of the High Court suffers from perversity in

terms of appreciation of evidence which has been dealt with in a summary manner.

11. It was also alleged that the High Court without formulating issues, considered all the oral and documentary evidence and gave findings on each issue whereas, in a number of decisions of this Court, it has been held that a court in a first appeal is bound to consider the entire evidence and re-appreciate

the same and cannot upset the findings of the trial court in a summary manner without giving any reasons whatsoever.

12. Learned counsel appearing for the respondents, on the other hand, has submitted that there was no partition in the family and the oral partition claimed by defendant No. 2 cannot be accepted as true.

13. The trial court framed issue No. 5 with regard to partial partition which reads as under:

> "5: Is the suit bad for seeking partial partition without including property as contended in para 25 of written statement of defendants 1 & 2 ?

14. With regard to issue No. 5, it was stated in the written statement in para 25 as under:

> "Without prejudice to the above, it is submitted that the suit is also bad for partial partition. The property which was

> allotted to the share of the 3rd defendant being in the possession of the tenants, partly, the tenants having filed declaration and occupancy right is granted in favour of the tenants. In respect of that property vested with the Government, the plaintiff and the defendant Nos. 3 and 4 would be entitled to the amount of compensation that may be awarded. Without including the same, the suit for partition is also not maintainable at law. The plaintiff should have shown the said property separately. Some of the properties included in the 'B' schedule also includes lands in respect of which occupancy right is granted in favour of the tenants. Those lands are also not available for partition. This defendant has herewith furnished the details of the property vested with the Government in the 'Y' schedule here below."

This deals with the entitlement of compensation. Therefore, the appellant is not justified in expanding the scope before this Court. Regarding oral partition, the only evidence which was brought on record was of DW2 Kukkappa Gowda. The trial court rejected the testimony of DW 2 holding that :

> "At para 11, DW 2 states that he cannot say what extent of property with particular income was allotted to Mailappa Gowda and defendant

No. 3. No measurements or demarcation of boundary of property took place. He cannot give boundaries of the property that were allotted to both. He did not know what actually transpired under the talks. A week after partition, Mailappa Gowda started to reside in a cottage and Ramappa-defendant No. 3 continued to reside in the family house. This witness was not present at the time of last sitting of panchayatdara but he only learnt about it from others. This aspect goes to show that this witness was not present and, therefore, he cannot give first hand information. His evidence, if any, is only hearsay. But his evidence has to be accepted only when he says that from a particular point of time, Kailappa Gowda started to reside in the cottage and defendant No. 3 continued to reside in the family house."

Despite this clear finding, the trial court came to a total untenable conclusion that :

"we cannot expect defendant No. 1 to put forth any oral evidence to prove the partition whereas it is

undisputed that certain portions of properties are separately enjoyed by the branches of defendant Nos. 1 and 3. In the absence of direct evidence, the Court will have to proceed on the preponderance of probabilities and attending circumstances."

This conclusion of the trial court is wholly untenable. The High Court rightly set aside the finding of the trial court that the temporary arrangement was only for convenience. The High Court further came to the conclusion that this finding of the trial court is not sustainable because there is no proof of actual division and execution of any document dividing the properties by

metes and bounds. The High Court also noted in its judgment in para 13 as under:

> "Consequently, the finding that there was a partition in the year 1958 has to be set-aside. The discussion of the learned Trial Judge in para 34 is only presumptive, wherein it was held that:
>
> > "So long as there is no partition in joint family, no member of such family can assert that a particular portion of property belongs to him or her. Perhaps this argument is based upon decision in
> >
> > the case of Appovies Vs. Rama Subbayyan.

> > That is the earliest case decided on this point and no body can have dispute with this principle. So long as there is no actual partition by meets and bounds, every inch of property of the joint family will be owned jointly by all the members. One of the members cannot say that a particular portion belongs to him till partition takes place. "

The High Court also quoted the finding of the trial court that "when an oral partition takes place, it is not a hard and fast rule that each item of property has to be measured inch by inch and particular member. What happens in villages is that according to location, income and according to their private understanding, a certain portion will be allotted to one member and remaining portion will be allotted to the other member. Such things are done easily through the intervention of elders or panchayatdars. So it is not necessary that there should be survey measurement and actual demarcation of the property for different persons through the village accountant or surveyor etc. Suffice to say that when such private oral partitions take place, the parties will have their private

identification marks of their own property and start enjoying their share. That has exactly taken place in this case.

15. In the instant case, the trial court instead of relying on the evidence on record, has gone by its own impression about the rural life. We are in agreement with the High Court that such observations are wholly untenable in law. Admittedly, in the revenue record, all the properties stand in the name of the joint family. In case, there was a partition in the year 1958, the revenue record would have certainly indicated so. Apart from that, there has been no demarcation of the properties which is ordinarily done after the partition of the property. It also falsifies the case of the defendant Nos. 1 and 2 that there was an oral partition in the year 1958. Admittedly, the plaintiff and defendant No. 4 were sons of K. Ramagowda and grand children of Pattaya and they have 1/6th shares in the property. The High Court, in our view, has correctly come to the conclusion that the plaintiff is entitled to a partition as prayed for and contrary findings rendered by the trial court is not sustainable. The High Court has also correctly observed that in the final decree court shall take into consideration the

properties in the enjoyment of either of the parties, while allotting their respective share, so that equity may be rendered to all the parties.

16. In our considered view, the impugned judgment passed

by the High Court seems to be just and equitable and no interference is called for under Article 136 of the Constitution of India. The appeal, being devoid of any merit is, accordingly, dismissed leaving the parties to bear their own costs.

......................J.
[DALVEER BHANDARI]

.....................J.
[HARJIT SINGH BEDI]

NEW DELHI
JANUARY 21, 2009.

ITEM NO.101 COURT NO.9 SECTION IVA
part-heard

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 2590 OF 2001

VEERAMMA Appellant (s)

VERSUS

K.R. SANATHKUMAR & ANR. Respondent(s)

(With office report)

Date: 21/01/2009 This Appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE DALVEER BHANDARI
HON'BLE MR. JUSTICE HARJIT SINGH BEDI

For Appellant(s) Mr. Nanda Kishore, Adv.
Mr. N.K. Verma, Adv. for
Mr. P.P. Singh,Adv.

For Respondent(s) Mr. S.N. Bhat,Adv.
Ms. Deepa Mahajan, Adv.

UPON hearing counsel the Court made the following
ORDER

The appeal is dismissed in terms of signed order leaving the parties to bear their own costs.

(Pardeep Kumar) (Neeru Bala Vij)
Court Master Court Master
[SIGNED ORDER IS PLACED ON THE FILE]