

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 5867-5868 OF 2005

SHIVAGOUDA R. PATIL (D) BY PROP. LRS. Appellant (s)

VERSUS

MALAGOUDA BHIMAGOUDA PATIL (D) BY LRs & ANR. Respondent(s)

O R D E R

These two appeals have been filed against the judgment and order dated 25.8.2003 passed by the High Court of Karnataka at Bangalore in R.S.A.No.920/1998 and 921/1998. The proceedings were initiated by the appellant herein to set aside and declare the sale deed dated 23.4.1975 executed in favour of the present respondent No.1 was null and void as the same had been executed by the adoptive father of the appellant without any legal necessity, and more so, the same was not binding upon him being bogus. The said sale deed was to the extent of a land admeasuring 5 acres and 13 guntas in Sy.No.441/1 and 442 situate at Adi Village, Chikodi Taluk, Belgaum District. The respondent No.1 contested the suit. Taking into consideration the pleadings taken by the parties, a large number of issues and additional issues were framed by the civil court and one of the additional issue was in respect of legal necessity. The trial court after appreciating the evidence on record came to the conclusion that there was legal necessity as the adoptive father of the appellant had taken certain loan and incurred expenses for his medical treatment as he had been suffering tuberculosis for one year.

Aggrieved, the appellant preferred the first appeal which was also dismissed concurring with the findings recorded by the trial Court, particularly, on the issue of legal necessity. The High Court in Second Appeal has held that there was no legal necessity and the appellant was not bound by the sale deed to the extent of his share in the property. However, the High Court came to the conclusion that the appellant's share in the property came to one-sixth of the total property. Hence these appeals.

We have heard Mr. G.V. Chandrasekhar, learned counsel appearing for the appellant and Ms. Kiran Suri, learned counsel appearing for the respondent No.1. Admittedly, the findings have been recorded about the legal necessity by the trial court as well as the first appellate court. However, no reasoning has been given whatsoever to reach the said conclusion or as under what circumstances, the adoptive father of the appellant incurred the debt and what was the amount thereof. However, both the courts refer to various exhibits which are respective bills, demand notice, order of attachment and the receipt etc. However, it is for a sum of less than Rupees one thousand, in all. More so, there is no detail regarding medical expenses for the adoptive father of the appellant as he suffered from tuberculosis for one year. The debt liability was incurred by the adoptive father three years subsequent to the date of sale deed. Therefore, those findings recorded by the trial court as well as the 1st appellate court did not stand substantiated.

Thus, in view of the above, the findings of fact recorded by the trial court as well as the first appellate court remain unsustainable.

The High court while deciding the second appeal has gone wrong to the extent that the appellant was entitled for one-sixth (1/6) share in the property. So far as the share of appellant is concerned, admittedly, the adoption date of the appellant was dated 5.2.1968 and the said adoption has also stood judicial scrutiny in earlier proceedings wherein the same had been approved and upheld. The natural son of the adoptive father of the appellant died prior to this date of adoption. Therefore, if the notional share of the dead son of the adoptive father of the appellant is taken into consideration, it would be half of the total property and half remain in the hands of the adoptive father on the date of the adoption. Subsequent thereto, in case, the notional partition takes place, the appellant would be admittedly entitled for one-fourth(1/4) share in the property and not of the one-sixth(1/6) therefore, to that extent, the findings of fact recorded by the High Court stands modified that he was entitled to one-fourth share instead of one-sixth share.

So far as the issue of ignoring the sale by another co-sharer who has never executed a sale deed is no more res-integra. It has been decided in a large number of cases of this Court and after relying upon large number of earlier judgments of this Court in Gajra Vishnu Gosavi vs. Prakash Navasaheb Kamble (2009) 10 SCC 654, this Court came to the conclusion that undivided share can be sold by a co-sharer but he does not have a right to transfer the possession of the same. More so, where a person unauthorizedly executes a sale deed in favour of any person for the land including the share of the other co-sharer, other co-sharer is not bound to the sale to that extent and the sale remains valid only to the extent of share of person who executes it.

In view of the above, we declare that sale deed executed on 23.4.1975 was valid only in respect of the share of the adoptive father of the appellant and not the share of the appellant. In view of the above, the appeal succeeds and is allowed to that extent. As the widow of the married son was also a party to sale deed, her share goes to the respondent No.1.

We request the learned Executing Court to allot one-fourth share to the appellant and to conclude the execution proceedings at the earliest preferably within a period of six months from the date of filing the execution application alongwith the copy of this order.

With the aforesaid observation, appeals stand disposed of.

.....J.
[DR. B.S. CHAUHAN

NEW DELHI
MARCH 18, 2013

.....J.
[FAKKIR MOHAMED IBRAHIM KALIFULLA]

CORRECTED

ITEM NO.105

COURT NO.6

SECTION IVA

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(With appln(s) for permission to file additional documents and prayer for interim relief and office report)

Date: 18/03/2013 These Appeals were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA

For Appellant(s) Mr. G.V. Chandrasekhar,Adv.
Mr. N.K. Verma,Adv.
Ms.Anjana Chandrashekar,Adv.

For Respondent(s) Ms. Kiran Suri,Adv.
Mr. S.J.Amith,Adv.
Mr. Nakibur Rahman Barbhuiya,Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeals are disposed of, in terms of the signed order.

(O.P. Sharma) (M.S. Negi)
Court Master Court Master
(Signed order is placed on the file)