ADIVEPPA & ORS. A

v.

BHIMAPPA & ANR.

(Civil Appeal No. 11220 of 2017)

SEPTEMBER 06, 2017 B

[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Suit – Suit by appellants-plaintiffs against respondents-defendants (appellant's paternal uncle and aunt) – Declaration was sought in relation to properties described in Schedule 'B' & 'C' as plaintiffs' self-acquired properties – However, partition was sought in relation to the properties described in Schedule 'D' alleging the same to be ancestral – Suit dismissed by trial court – First appeal also dismissed by High Court – On appeal, held: In the instant case, the plaintiffs could not prove that the suit properties described in Schedule 'B' and 'C' were their self-acquired properties and that the partition did not take place in respect of Schedule 'D' properties and it continued to remain ancestral in the hands of family members – On the other hand, the defendants were able to prove that the partition took place and was acted upon – Such concurrent findings of facts, which were not perverse, recorded by the two Courts are binding on Supreme Court – Concurrent findings of the two courts below are upheld. C D E

Hindu Law – Joint Family – Presumption of – Burden to prove otherwise – Discussed.

Dismissing the appeal, the Court F

HELD: 1. The two Courts below, on appreciating the entire evidence, had came to a conclusion that the plaintiffs failed to prove their case in relation to both the suit properties. The concurrent findings of facts recorded by the two Courts, which do not involve any question of law much less substantial question of law, are binding on this Court. Unless the findings of facts, though concurrent, are found to be extremely perverse so as to affect the judicial conscious of a judge, they would be binding on the Appellate Court. [Paras 17, 18][509-H; 510-A] G

H

A **2.1 It is a settled principle of law that the initial burden is always on the plaintiff to prove his case by proper pleading and adequate evidence (oral and documentary) in support thereof. The plaintiffs in this case could not prove with any documentary evidence that the suit properties described in Schedule 'B' and 'C' were their self-acquired properties and that the partition did not take place in respect of Schedule 'D' properties and it continued to remain ancestral in the hands of family members. On the other hand, the defendants were able to prove that the partition took place and was acted upon. [Para 19][510-D]**

C **2.2 In order to prove that the suit properties described in Schedule 'B' and 'C' were their self-acquired properties, the plaintiffs could have adduced the best evidence in the form of a sale-deed showing their names as purchasers of the said properties and also could have adduced evidence of payment of sale consideration made by them to the vendee. It was, however, not done. Not only that, the plaintiffs also failed to adduce any other kind of documentary evidence to prove their self-acquisition of the Schedule 'B' and 'C' properties nor they were able to prove the source of its acquisition. [Paras 20, 21][510-E-F]**

2.3 It is a settled principle of Hindu law that there lies a legal presumption that every Hindu family is joint in food, worship and estate and in the absence of any proof of division, such legal presumption continues to operate in the family. The burden, therefore, lies upon the member who after admitting the existence of jointness in the family properties asserts his claim that some properties out of entire lot of ancestral properties are his self-acquired property. [Para 22][510-G-H]

2.4 The legal presumption of the suit properties comprising in Schedule 'B' and 'C' to be also the part and parcel of the ancestral one (Schedule 'D') could easily be drawn for want of any evidence of such properties being self-acquired properties of the plaintiffs. It was also for the reason that the plaintiffs themselves had based their case by admitting the existence of joint family nucleolus in respect of schedule 'D' properties and had sought partition by demanding 4/9th share. [Para 23][511-B]

H

2.5 It was obligatory upon the plaintiffs to prove that despite existence of jointness in the family, properties described in Schedule 'B' and 'C' was not part of ancestral properties but were their self-acquired properties. The plaintiffs failed to prove this material fact for want of any evidence. [Para 24][511-C-D]

Mulla – Hindu Law, 22nd Edition **pages 346 and 347 – referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 11220 of 2017.

From the Judgment and final Order dated 22.08.2011 passed by the High Court of Karnataka, Circuit Bench at Dharwad in Regular First Appeal No.1793 of 2006.

Ms. Kiran Suri, Sr. Adv. S. J. Amith, Dr. (Mrs.) Vipin Gupta, Advs. for the Appellants

Anand Sanjay M. Nuli, Dharm Singh (for M/s Nuli & Nuli), Radha Shyam Jena, Haris Beeran, Mushtaq Salim, Usman Ghani Khan, Dev Prakash, Advs. for the Respondents

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. Leave granted.

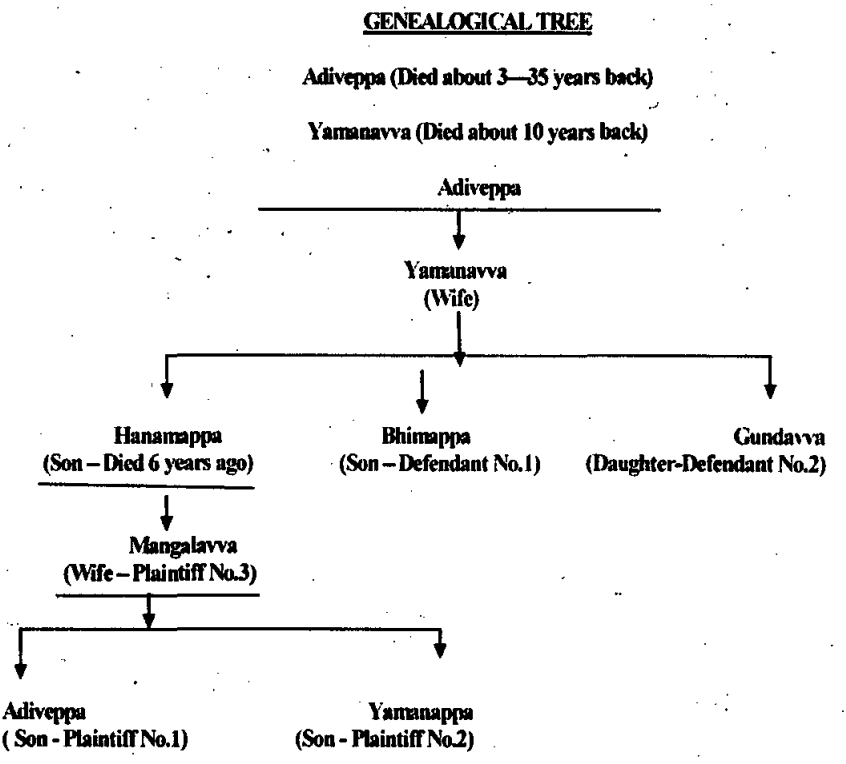
2. This appeal is filed by the plaintiffs against the final judgment and order dated 22.08.2011 passed by the High Court of Karnataka Circuit Bench at Dharwad, in RFA No. 1793 of 2006 whereby the High Court dismissed the appeal and affirmed the judgment and decree passed by the Court of Principal Civil Judge (Senior Division). Bagalkot in O.S. No.85 of 2001.

3. In order to appreciate the short controversy involved in this appeal, it is necessary to state the relevant facts.

4. The appellants are the plaintiffs whereas the respondents are the defendants in a civil suit out of which this appeal arises.

5. The dispute is between the members of one family, i.e., uncle, aunt and nephews. It pertains to ownership and partition of agricultural lands.

6. In order to understand the dispute between the parties, family tree of the parties needs to be mentioned hereinbelow:



7. As would be clear from the family tree, Adiveppa was the head of the family. He married to Yamanavva. Out of the wedlock, two sons and one daughter were born, namely, Hanamappa, Bhimappa and Gundavva. Hanamappa had two sons, namely, Adiveppa and Yamanappa.

8. Adiveppa - the head of family owned several acres of agricultural land. He died intestate. The dispute started between the two sons of Hanamappa and their uncle-Bhimappa and Aunt-Gundavva after the death of Adiveppa and Hanamappa. The disputes were regarding ownership and extent of the shares held by each of them in the agricultural lands.

9. Adiveppa and Yamanappa (appellants herein) filed a suit (O. S. No.85 of 2001) against - Bhimappa and Gundavva (respondents herein) and sought declaration and partition in relation to the suit properties described in Schedule 'B', 'C', and 'D'.

10. The declaration was sought in relation to the suit properties in Schedule 'B' and 'C' that these properties be declared as plaintiffs' self-acquired properties.

11. So far as the properties specified in Schedule 'D' were concerned, it was alleged that these properties were ancestral and hence the plaintiffs have 4/9th share in them as members of the family. It was alleged that since so far partition has not taken place by meets and bound amongst the family members, the suit to seek for partition. A

12. The respondents (defendants) denied the plaintiffs' claim and averred *inter alia* that the entire suit properties comprising in Schedule 'B', 'C' and 'D' were ancestral properties. It was alleged that during the lifetime of Hanamappa, oral partition had taken place amongst the family members on 28.10.1993 in relation to the entire suit properties (Schedule 'B', 'C' and 'D'), pursuant to which all family members were placed in possession of their respective shares. It was alleged that the partition was acted upon by all the family members including the plaintiffs' father (Hanamappa) without any objection from any member. It is on these averments, the respondents contended that the plaintiffs' claim was misconceived. B C

13. The Trial Court framed the issues and parties adduced their evidence. By judgment/decree dated 15.07.2006, the Trial Court dismissed the suit. It was held that the plaintiffs failed to prove the suit properties specified in Schedule 'B' and 'C' to be their self-acquired properties. It was also held that so far as the properties specified in schedule 'D' are concerned, though they were ancestral but were partitioned long back pursuant to which, the plaintiffs through their father-Hanamappa got their respective shares including other members. D E

14. The plaintiffs felt aggrieved and filed first appeal before the High Court. By impugned judgment, the High Court dismissed the appeal and affirmed the judgment/decree of the Trial Court giving rise to filing of this appeal by way of special leave before this Court by the plaintiffs. F

15. Heard Ms. Kiran Suri, learned senior counsel, for the appellants and Mr. Anand Sanjay M. Nuli and Mr. R.S. Jena, learned counsel for the respondents.

16. Having heard the learned counsel for the parties and on perusal of the record of the case including the written submissions filed by the learned counsel for the appellants, we find no merit in this appeal. G

17. Here is a case where two Courts below, on appreciating the entire evidence, have come to a conclusion that the plaintiffs failed to H

A prove their case in relation to both the suit properties. The concurrent findings of facts recorded by the two Courts, which do not involve any question of law much less substantial question of law, are binding on this Court.

18. It is more so when these findings are neither against the B pleadings nor against the evidence and nor contrary to any provision of law. They are also not perverse to the extent that no such findings could ever be recorded by any judicial person. In other words, unless the findings of facts, though concurrent, are found to be extremely perverse so as to affect the judicial conscious of a judge, they would be binding on the C Appellate Court.

19. It is a settled principle of law that the initial burden is always on the plaintiff to prove his case by proper pleading and adequate evidence (oral and documentary) in support thereof. The plaintiffs in this case could not prove with any documentary evidence that the suit properties described in Schedule 'B' and 'C' were their self-acquired properties D and that the partition did not take place in respect of Schedule 'D' properties and it continued to remain ancestral in the hands of family members. On the other hand, the defendants were able to prove that the partition took place and was acted upon.

20. In order to prove that the suit properties described in Schedule E 'B' and 'C' were their self-acquired properties, the plaintiffs could have adduced the best evidence in the form of a sale-deed showing their names as purchasers of the said properties and also could have adduced evidence of payment of sale consideration made by them to the vendee. It was, however, not done.

F 21. Not only that, the plaintiffs also failed to adduce any other kind of documentary evidence to prove their self-acquisition of the Schedule 'B' and 'C' properties nor they were able to prove the source of its acquisition.

22. It is a settled principle of Hindu law that there lies a legal G presumption that every Hindu family is joint in food, worship and estate and in the absence of any proof of division, such legal presumption continues to operate in the family. The burden, therefore, lies upon the member who after admitting the existence of jointness in the family properties asserts his claim that some properties out of entire lot of ancestral properties are his self-acquired property. (**See-Mulla - Hindu** H

Law, 22nd Edition Article 23 "Presumption as to co-parcenary and self acquired property"- pages 346 and 347).

23. In our considered opinion, the legal presumption of the suit properties comprising in Schedule 'B' and 'C' to be also the part and parcel of the ancestral one (Schedule 'D') could easily be drawn for want of any evidence of such properties being self-acquired properties of the plaintiffs. It was also for the reason that the plaintiffs themselves had based their case by admitting the existence of joint family nucleolus in respect of schedule 'D' properties and had sought partition by demanding 4/9th share.

24. In our considered opinion, it was, therefore, obligatory upon the plaintiffs to have proved that despite existence of jointness in the family, properties described in Schedule 'B' and 'C' was not part of ancestral properties but were their self-acquired properties. As held above, the plaintiffs failed to prove this material fact for want of any evidence.

25. We have, therefore, no hesitation in upholding the concurrent findings of the two Courts, which in our opinion, are based on proper appreciation of oral evidence.

26. Learned counsel for the appellants took us through the evidence. We are afraid we cannot appreciate the evidence at this state in the light of what we have held above. It is not permissible.

27. It was also her submission that the Trial Court has recorded some findings against the defendants in relation to their rights in the suit properties and the same having been upheld by the High Court, the appellants are entitled to get its benefit in the context of these findings.

28. We have considered this submission but find no merit in the light of what we have held above. At the cost of repetition, we may observe that if the plaintiffs failed to prove their main case set up in the plaint and thereby failed to discharge the burden, we cannot accept their any alternative submission which also has no substance.

29. In the result, we find no merit in the appeal. It fails and is accordingly dismissed.

Divya Pandey

Appeal dismissed.