



2019 INSC 971

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 5134 OF 2013

KOTTANGADA B. MOTIAH ...APPELLANT(S)

VERSUS

MACHIMADA BELLIPPA AND OTHERS ...RESPONDENT(S)

JUDGMENT

NAVIN SINHA, J.

The appellant, who was defendant no.13 in the partition suit filed by respondent nos.1 to 7, is aggrieved by the dismissal of his Regular First Appeal, affirming the decree in the suit declining to allot any share to the appellant.

2. The plaintiffs and the appellant are different branches of the same family. In the suit filed for partition, it was averred that the appellant was in possession of 10 acres of the suit lands as an encroacher, seeking his eviction. The appellant filed his written statement claiming that he was an absolute owner and in possession along with defendants nos. 1 to 7 of the wet lands bearing survey nos. 180, 183, 179/1, 179/2 situated at Ballyamandoor village. He therefore had a share in the “bane”

suit lands also. The suit was decreed in favour of the plaintiff holding that the appellant had failed to establish that he was in possession of any wet lands, so as to entitle him to any share in the suit “bane” lands, apparent from his own evidence. The High Court declined to interfere with this finding of fact upon consideration of the evidence in the Regular First Appeal preferred by the appellant.

3. Learned counsel for the appellant submitted that “bane” lands could not be partitioned. The suit itself was therefore not maintainable. Reliance was placed on ***Nandinaravanda Medappa vs. Nandinaravanda Ganapathy***, (1979) 2 Kant LJ 22. A “bane” tenure only constitutes certain privileges to be enjoyed by agriculturists holding attached wet lands. There is no concept of ownership of “bane” lands so as to make it susceptible to partition. The plaintiff should have taken recourse to Section 79(2) of the Coorg Land and Revenue Regulation, 1899 before the Revenue Authorities as they are basically lands granted by the State Government for limited enjoyment. Reliance was placed on a decision of the Karnaraka High Court in ***B.R. Sharathchandra (D) by LRs. Vs. K.D.Poovaiah and others***, RSA No. 258 of 1999. It was fairly stated that these grounds

were not raised in the suit or in the Regular First Appeal. But being a pure question of law, they could well be considered in the present appeal.

4. It was next submitted that the Trial Court has erred in appreciation of the appellant's evidence and misconstrued the same to hold that there was an admission by the appellant that he did not hold wet lands in Ballyamandoor village. The appellant in fact in his evidence had clearly intended to the contrary.

5. Learned Counsel for respondent nos.1-7 contended that the suit was maintainable in view of Section 79(2) of the Karnataka Land Revenue Act, 1964 as ruled by a full bench of the Karnataka High Court in ***Machettira Machaiah and Others vs. Machettira kariappa and Another***, AIR 1994 Karnataka 52, and which overruled ***Nandinaravanda*** (supra).

6. It was next submitted that the claim of the appellant to be in possession of wet lands in survey nos. 180, 183, 179(1), 179(2) in Ballyamandoor village did not find favour with the Civil Judge who has held that defendant nos. 1 to 6 are in possession of survey no. 180, defendant No. 7 was in possession of survey nos.

179(1), 179(2), survey no. 183 was in the possession of defendant Nos. 5 to 7. The appellant having failed to establish possession of any wet lands in Ballyamandoor village, he has rightly been held not to be entitled to any share in the “bane” suit lands. The appellant was residing at Harihara Village where he owned lands.

7. We have considered the submissions on behalf of the parties and have also been taken through the relevant pleadings and evidence. “Bane” lands are defined in the Coorg Revenue Manual, 1954 (Appendix III) as lands adjacent to private lands. They are assigned to owners of such private lands, free of revenue, for the beneficial enjoyment of the private wet lands by grant of rights to collect fire wood, green leaves, manure, timber and use the same for grazing of cattle. The private lands are called “warga” lands. The issue with regard to the maintainability of the suit need not detain us in view of the Full Bench decision of the Karnataka High Court in **Machettira Machaiah** (supra) holding that the suit was maintainable.

8. The “bane” lands in survey no.190/1 constituted the schedule lands. It was attached to the “warga” lands in survey nos. 175, 184/2, 183/3, 184/4, 180, 181, 182, 183, 121/4, 179/1 and 179/2 at Ballyamandoor village. The plaint

specifically averred that the appellant was in wrongful occupation of 10 acres of the schedule lands as trespasser, liable for eviction. The appellant denied that he was an encroacher contending that he was the absolute owner in possession of wet lands bearing survey nos. 180,183,179/1 and 179/2 in Ballyamandoor village staking his claim for proportionate share in the adjacent “bane” lands. But in his cross-examination, the appellant admitted that he was residing at Harihara village and that in the family mazar he was allotted lands in Harihara village. It was also admitted that he was not in possession of any attached wet land to the schedule “bane” lands in the suit. The Civil Judge on appreciation of evidence held that the appellant was not in possession of any private lands in Ballyamandoor village. The survey numbers in which he claimed possession were in fact in possession of other defendants. The High Court further noticed that unlike some of the other defendants, the appellant had not even claimed ownership on basis of perfecting title by adverse possession.

9. The submission on behalf of the appellant that there has been erroneous appreciation of his evidence or that the same has been wrongly construed does not appeal to us as we find that his

statements are very specific and clear without any ambiguity. Though he claimed that he had 3 “batties” of wet lands in Ballyamandoor village, and mentioned certain survey numbers in his written statement, but in his deposition he stated that he did not know the survey numbers of the wet lands in his possession in Ballyamandoor village.

10. We find no reason to interfere with the concurrent finding of fact by two courts based on appreciation of the appellant’s evidence itself that he had been allotted lands in Harihara village pursuant to a family partition and that he had completely failed to lead any evidence with regard to his being in possession of any wet lands in Ballyamandoor village so as to entitle him to a proportionate share in the schedule “bane” lands. The appeal therefore lacks merit and is dismissed.

.....**J.**
[NAVIN SINHA]

.....**J.**
[INDIRA BANERJEE]

NEW DELHI
AUGUST 28, 2019.