NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.7089 OF 2010

Nanjegowda @ Gowda (D)
by LRs. & Anr. ....Appellant(s)

VERSUS

Ramegowda ...Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1) This appeal is filed by the defendants against the final judgment and order dated 18.07.2006 passed by the High Court of Karnataka at Bangalore in Regular Second Appeal No.498 of 2001 whereby the Single Judge of the High Court while exercising jurisdiction under Section 100 of the Code of Civil Procedure, 1908, allowed the appeal filed by the plaintiff (respondent herein), reversed the order of the First Appellate Court and confirmed the

judgment and decree passed by the Trial Court holding that the respondent was entitled to a decree of title to the suit land.

2) The facts of the case lie in a narrow compass. Even the issue arising in the appeal is a short one. It would be clear from the facts mentioned hereinbelow.

3) The appellant Nos.1(a) to (d) are the legal representatives of defendant No.1 - Shri Nanjegowda - who died during the pendency of this litigation, appellant No.2 is defendant No.2 whereas the respondent is the plaintiff in the suit.

4) The dispute relates to an agricultural land bearing Sy.No. 44/14 B measuring 0.09 Guntas and Sy. No.44/14-D measuring 0.06 Guntas as detailed in schedule to the plaint (hereinafter referred to as "suit land") situated at village Thondahalli, Bellur Hubali (Karnataka).

5) The defendants (appellants) and the plaintiff (respondent) are the members of one family. They

are first cousins from their father's side. The family owned ancestral properties which included the suit land in question and other properties also.

6) In the year 1991, the plaintiff (respondent) filed a suit being O. S. No. 204 of 1991 in the Court of the Munsif at Nagamangala against the defendants (appellants). The suit was for a declaration that the plaintiff (respondent) be declared as owner of the suit land and for permanent injunction restraining the defendants (appellants) from interfering in his possession over the suit land.

7) According to the plaintiff, there had been an oral partition effected as far back in the year 1935 among the respective fathers of the plaintiff, the predecessor-in-title of defendant No.1 and their real uncles and pursuant thereto the suit land fell into the share of the plaintiff's father and on his death, it was inherited by him.

8) It was alleged that all the family members including the plaintiff, defendants and their ancestors got their names recorded in the Revenue Records in relation to their respective shares. It was alleged that the said partition was fully acted upon for the last many decades with no interference by anyone among all the members of the family. It was alleged that the defendants started asserting their right, title and possession over the suit land to the detriment of the interest of the plaintiff without there being any basis whatsoever and hence the plaintiff was compelled to file a suit to seek declaration and injunction against the defendants in relation to the suit land.

9) The defendants filed their written statement. The defendants (appellants), in clear terms, admitted the relationship between the defendants (appellants) and the plaintiff (respondent) including their ancestors as alleged by the plaintiff in the plaint. The defendants also admitted the existence

and factum of oral partition effected among the family members as alleged by the plaintiff. The defendants, however, set up one Release Deed executed by their grandfather in 1940 and claimed share in the suit land on that basis. They also relied on some mutation entries to claim share in the suit land and also set up a plea of adverse possession over the suit land and claimed that they have become the owner of the suit land by virtue of adverse possession on account of their long, peaceful and continuous possession.

10) The Trial Court framed the issues. Parties adduced their evidence. The Trial Court, by judgment/decree dated 17.03.1997, decreed the plaintiff's suit. The Trial Court held that, the plaintiff (respondent) is the owner of the suit land, he is in possession of the suit land, he is entitled to claim permanent injunction against the defendants restraining them from interfering in his peaceful possession, the defendants failed to prove their

adverse possession over the suit land and also they were not able to prove their right, title and interest and possession over the suit land, the alleged Release-Deed did not relate to the suit land but it pertained to other property of the family and lastly, mutation entries, in the absence of any documentary title over the suit land, were of no use.

11) The defendants (appellants) felt aggrieved and filed an appeal being R.A. No. 46 of 1998 before the Additional Civil Judge (Senior Division). By judgment/decree dated 07.04.2001, the First Appellate Court allowed the appeal, set aside the judgment/decree of the Trial Court and dismissed the plaintiff's suit.

12) The plaintiff (respondent) felt aggrieved and filed Second Appeal being R.S.A. No.498 of 2001. By impugned judgment, the Single Judge allowed the appeal and while setting aside of the judgment/decree of the First Appellate Court restored the judgment/decree of the Trial Court

and, in consequence, decreed the suit as was done by the Trial Court.

13) The defendants (appellants) felt aggrieved and have filed this appeal by way of special leave against the impugned judgment of the High Court before this Court.

14) Heard Mr. K.V. Mohan, learned counsel for the appellants and Mr. Karunakar Mahalik, learned counsel for the respondent.

15) Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in the appeal.

16) In our considered opinion, the Trial Court as also the High Court were justified in decreeing the respondent's suit and we find no good ground to interfere in any of the findings of fact recorded by the two Courts below for the following reasons.

17) It is not in dispute that the defendants (appellants) admitted the relationship between the parties. It is also not in dispute, as was admitted by

the defendants (appellants), that the parties through their ancestors had effected oral partition as far back in 1935 and that the defendants' ancestors were also parties to such partition and the same was implemented in letter and spirit by allotting to each of the members of the family their respective share and also by getting the names of owners in Revenue Records.

18) Once the defendants admitted these two material facts pleaded by the plaintiff then it was for the defendants to prove by leading cogent evidence as to how and on what basis they could claim to be the owner of the suit land. They failed to prove their ownership with the aid of any evidence.

19) In our opinion, the stand taken by the defendants was wholly inconsistent. They first set up a plea of adverse possession but it was rightly held not proved. The defendants, however, did not challenge this finding in the second appeal, which became final. Even otherwise, the plea of adverse

possession was wholly misconceived and untenable. It is a settled law that there can be no adverse possession among the members of one family for want of any animus among them over the land belonging to their family.

20) The defendants then claimed that they became owner on the strength of one Release Deed of 1940 but again it was held rightly that such Deed did not relate to the suit land but relate to some other land. The defendants then relied on some entries of Revenue Records. It was again held rightly that firstly, they were challenged in Revenue Courts and secondly, no documentary evidence was adduced to prove the title to the suit land independent to such disputed entries.

21) In our considered opinion, the High Court, therefore, was right in reversing the findings of the lower Appellate Court, which were wholly perverse and legally unsustainable as compared to the findings of the Trial Court on all the material issues.

22) We find that the appeal does not involve any law point. What is involved is pure question of fact and hence the finding recorded by the High Court warrants no interference by this Court. Even otherwise, on examining the case of the defendants (appellants) independently, we have found that they have no case at all.

23) In our opinion, it is a clear case where the plaintiff and the defendants being members of the family got their share in the family properties through an oral partition effected among their ancestral members of family and on their deaths to the surviving members by inheritance, i.e., the plaintiff and defendants. So far as the suit land is concerned, it fell into the share of plaintiff's ancestors, which was evidenced by an oral partition duly acted upon for a long time back in 1935 and then on the plaintiff.

24) Learned counsel for the appellants (defendants), however, took us through pleadings

and the evidence adduced by the parties with a view to show that the findings of facts are not legally sustainable.

25) In our view, we cannot entertain any of the submissions of the learned counsel for the appellants(defendants) in an appeal under Article 136 of the Constitution and nor can we appreciate any oral evidence *de novo* in this appeal as all his submissions were on facts/evidence. It is not permissible in law to probe the evidence at this stage. Moreover, in the light of what we have held above, these submissions have no merit.

26) In view of foregoing discussion, we find no merit in the appeal. It is accordingly dismissed.

.....J.
[ABHAY MANOHAR SAPRE]

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.....J.
[NAVIN SINHA]

New Delhi;
December 04, 2017