

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 27<sup>th</sup> DAY OF JULY, 2009

BEFORE:

THE HON'BLE MR. JUSTICE ANAND BYRAREDDY

REGULAR FIRST APPEAL No.972 OF 2000(PAR) C/W  
REGULAR FIRST APPEAL CROSS OBJECTION NO.2/2001

R.F.A.No.972/2000

BETWEEN:

R.Narasimha Murthy,  
S/o.V.Ramaiah,  
Aged about 45 years,  
R/a.EWS, 1770 III Stage,  
20<sup>th</sup> 'B' Cross,  
Yelahanka New Town,  
Bangalore-64.

...APPELLANT

(By Shri.K.Narasimha Murthy, Advocate)

AND:

1. Smt.Sharadamma,  
Since deceased by her L.R.s.,

1 a) Narasimhaiah,  
Husband of Sharadamma  
S/o. Madappa,  
Aged about 67 years.

b) Manjunatha,  
S/o.Sharadamma,  
Aged about 44 years,

c) Smt.Jayamma,  
D/o. Sharadamma,  
Age Major.

All are Residing at  
R/o.Chikkabanavara,  
Yeswanthapura Hobli,  
Bangalore North Taluk.

2) Smt. Ammayamma,  
W/O. Krishnappa,  
Major, R/o Gubbalal Village,  
Subramamanyapura Post,  
Varthur Hobli,  
Bangalore South Taluk.

3) Smt.Gangamma.  
W/o. Narayanappa,  
Major,  
R/o.Chikkabanavara,  
Yeswanthapura Hobli,  
Bangalore North Taluk.

4) Smt.Lakshmamma,  
W/o. Hanumanthaiah,  
Major,  
R/o. Thadasighatta Village,  
Dobbabele Post,  
Thyamagondlu Hobli,

Nelamangala Taluk,

- 5) Smt.Munithyamma,  
W/o. Late Krishnappa, Major,  
R/o.Chikkabanavara,  
Yeswanthapura Hobli,  
Bangalore North Taluk.
- 6) Smt.R.Shobavathi,  
W/o. Channe Gowda,  
Major,  
R/o. 4<sup>th</sup> Block,  
Police Quarters,  
Jogupalya, Ulsoor,  
Bangalore-8.
- 7) V.Ramaiah,  
S/o. Late Venkatappa,  
Aged 75 years,  
R/o. Alur Village, Banavadi Post,  
Magadi Taluk,  
Bangalore Rural District.
- 8) Smt.Gangamma,  
W/o. M.Hanumantharayappa  
Aged about 60 years,  
R/a. Rangaiahnapalya,  
Kambthanahalli Post,  
Gulur Hobli, Tumkur District.

..RESPONDENTS

(By.Shri.Y.R.Sadashiva Reddy, Advocate for R-1 (A-C)  
and R-2 to 5.

Sri. M.Erappa Reddy, Advocate for Respondent no.6.

Sri. Venkatesh C for proposed respondents 7 and 8

Sri.M.N.Madhusudhan, Advocate for Respondent no.7

This Regular First Appeal is filed under Order XLI Rule 1 read with Section 96 of Civil Procedure Code, 1908, against the Judgement and decree dated 19-8-2000 passed in O.S.No.5930/90 by the XXII Additional City Civil and Sessions Judge, Bangalore dismissing the suit for partition separate possession mesne profits and for costs and etc.,

RFA CROSS OBJECTION NO.2/2001  
IN RFA No.972/2000

BETWEEN:

1. Smt.Sharadamma,  
W/o. Narasimhaiah,  
Age Major,  
R/o.Chikkabanavara,  
Yeswanthapura Hobli,  
Bangalore North Taluk.
2. Smt. Ammayamma,  
W/O. Krishnappa,  
Major, R/o Gubbalal Village,  
Subramamanyapura Post,  
Varthur Hobli,  
Bangalore South Taluk.
3. Smt.Gangamma,  
W/o. Narayanappa,  
Major,  
R/o.Chikkabanavara,  
Yeswanthapura Hobli,  
Bangalore North Taluk.
4. Smt.Lakshamma,

W/o. Hanumanthaiah,  
Major,  
R/o. Thadasighatta Village,  
Dobbabele Post,  
Thyamagondlu Hobli,  
Nelamangala Taluk,

5. Smt.Munithyamma,  
W/o. Late Krishnappa, Major,  
R/o.Chikkabanavara,  
Yeswanthapura Hobli,  
Bangalore North Taluk. ... CROSS-OBJECTORS

(By.Sri.Y.R.Sadashiva Reddy , Advocate)

AND:

1. Sri.R.Narasimaha Murthy,  
S/o. V.Ramaiah,  
Aged about 39 years,  
R/o.EWS, 1770, 3 rd Stage,  
20<sup>th</sup> "B" Cross, Yelahanka,  
New Town, Bangalore-84.
2. Smt.R.Shobhavathi,  
W/o. Channegowda,  
Age Major,  
R/o. 4<sup>th</sup> Block, Police Quarters,  
Jogupalya, Ulsoor Bangalore

..RESPONDENTS

(By.Sri.K.Narasimha Murthy, Advocate)

RFA Cross Objections are filed Under Order XLI Rule 22 (1) of the Code of Civil Procedure, 1908, against the Judgement and Decree dated 19-8-200 passed in O.S.No.5938/90 on the file of the XII Additional City Civil and Sessions Judge, Bangalore dismissing the suit for partition and separate possession, mesne profits and for costs.

This Regular First Appeal and RFA Cross-Objections having been heard and reserved on 22.6.2009 and coming on for pronouncement of judgment this day, the Court delivered the following:-

### J U D G M E N T

This is an appeal by the plaintiff before the trial court.

The parties are referred to by their rank before the trial court for the sake of convenience.

2. The facts as contended by the plaintiff are as follows :

The plaintiff's mother Ganganarasamma and defendants 1 to 5 are the daughters of Muniyappa and Rangamma and they were the only legal heirs entitled to succeed to the estate of their parents. Ganganarasamma was the eldest daughter. She was married to V.Ramaiah. She died in the year 1968, leaving behind

the plaintiff and his sister Shobavathi. Muniyappa and

\* Rangamma

(Gangamma) had a son by the name of Hanumantharayappa @

\* Corrected  
vide court order  
dated 25-5-2010

Hanumaiah. He is said to have died issueless after his marriage

\* Gangamma

with one (Rangamma). It was claimed that the whereabouts of the

\* Gangamma

said (Rangamma) were not known at the time of filing the suit.

The plaintiff claimed that the properties described in the suit

schedule were the self-acquired properties of Muniyappa and

Rangamma. The properties described in Schedule B to the plaint

are said to be in the name of Muniyappa, the maternal grand-

father of the plaintiff. The properties mentioned in Schedule-A to

the plaint are said to have been purchased by Muniyappa in the

name of his wife Rangamma. Muniyappa is said to have died

intestate. The properties stood in the name of Rangamma.

Rangamma also died intestate in the year 1990.

It is claimed that Rangamma, the plaintiff's grand-mother was taking care of the plaintiff and his sister and she had permitted them to enjoy the usufructs of the lands. It is the

complaint of the plaintiff that after the death of Rangamma, the defendants are preventing the plaintiff from entering upon the suit properties and enjoying the usufructs of the same. It is claimed that item no.1 of A Schedule property measures 3 acres and 10 guntas and there are standing casurina trees which were planted by Rangamma and were ready for harvest at the time of filing of the suit. In item no.3 of the A Schedule, Rangamma had constructed three houses and are occupied by defendants no.1,3 and 6, respectively, with their family members. In other items of the Schedule properties, various crops are grown. It is the plaintiff's claim that he has an equal share in the suit properties, namely, one-sixth being the share of his mother. The plaintiff has demanded partition.

The defendants having refused and seeking to alienate the standing trees afore-mentioned, and seeking to deny the benefits of other crops grown, the suit was filed.

Defendants no.1 to 5, resisted the suit contending that the plaintiff's mother was not one of the daughters of Muniyappa and



Rangamma. It was also denied that the plaintiff's mother was married to Ramaiah. It was also denied that <sup>\* Ganganarasamma</sup> Ganganarasaiah left

behind the plaintiff and his sister. It was claimed that Muniyappa and Rangamma had only five daughters, namely, the defendants.

A son by the name of Hanumantharayappa had married one <sup>\* Rangamma</sup> Rangamma who left him immediately after his marriage and her

whereabouts were not known. Hanumantharayappa died issueless. Schedule B properties were the properties of deceased

Muniyappa. Muniyappa and Hanumantharayappa were the members of a joint hindu family.

After the death of Muniyappa, the properties devolved on Hanumantharayappa by survivorship. After Hanumantharayappa's death his mother Rangamma succeeded to the properties.

Rangamma had executed a registered will dated 27.3.1984 bequeathing Schedule B properties in favour of defendants 1 to 5.

She died on 22.9.1990. The properties have thus devolved on the defendants. They are in possession and enjoyment of the same.

\* Corrected  
vide Court  
order dated  
25-5-2010

D.  
Addl. PS To  
Hon'ble ABJ

It is denied that Muniyappa had purchased the properties described in Schedule A in the name of his wife. Rangamma was the absolute owner. It is denied that Rangamma was the grandmother of the plaintiff. The plaintiff has no right over the properties. He is a stranger to the family and therefore, the claim for a share in the properties is not maintainable. It is also claimed that the deceased Rangamma had executed a will dated 14.8.1990, bequeathing Schedule A properties in favour of the defendants and therefore, had contended that the suit be dismissed.

The sixth defendant who has impleaded herself as the sixth defendant and had filed her written statement had stated that the schedule properties are the self-acquired properties of Muniyappa and Rangamma and are bequeathed in favour of defendants 1 to 5 under a registered will dated 27.3.1984 and that Rangamma had executed a will dated 5.9.1990, while cancelling the will dated 14.8.1990, under which, A Schedule properties have been bequeathed to herself and defendants 1 to 5. The said defendant

has admitted all the other averments in the plaint and claims that she is entitled to a share alongwith the plaintiff.

On the above pleadings, the trial court cast the burden on the plaintiff to prove that his mother Ganganarasamma was indeed the eldest daughter of Muniyappa and Rangamma and whether he proved that he was entitled to a share on partition of the suit properties. The trial court cast the burden on the defendants to prove that Rangamma had executed a registered will dated 27.4.1984 in their favour in respect of B schedule properties and further, whether she had also executed a will dated 14.8.1990 in respect of A Schedule property. The trial court cast the burden on the sixth defendant to prove whether Rangamma had executed a further will dated 5.9.1990, after cancelling the will dated 14.8.1990, and whether, she was entitled to a one-sixth share in the Suit A Schedule properties. The trial court held that the plaintiff had proved that he was the son of Ganganarasamma. The trial court has also held that defendants 1 to 5 had proved the

execution of the will dated 27.3.1984, by Rangamma in respect of B Schedule properties in their favour. It was also held that defendants 1 to 5 had proved the will dated 14.8.1990, executed by Rangamma, bequeathing A Schedule properties in their favour and it was held that defendant no.6 had failed to prove the execution of the will dated 5.9.1990, by Rangamma and accordingly dismissed the suit of the plaintiff. It is this which is under challenge.

3. The Counsel for the appellant seeks to contend that it was the case of the plaintiffs that Suit Schedule A properties, though it stood in the name of Rangamma, it was in fact purchased by Muniyappa in her name, but for his benefit. And assuming that the registered will dated 27.4.1984 was true and was proved, the significant question whether Rangamma had any right to the property described in B Schedule so as to bind the share of the plaintiff and defendant no.6, has not been considered by the trial court and no issue has been framed in this regard. It

is contended that on the death of Muniyappa in the year 1967, succession to his estate opened and therefore, his widow and all the six daughters succeeded to his estate and the mother of the plaintiff therefore became the owner of the undivided one-seventh share in the suit property and on the death of the plaintiff's mother, the plaintiff and defendant no.6 succeeded to the share of their mother and hence, Rangamma could not have bequeathed the suit Schedule B properties to the exclusion of the plaintiff and his sister to defendant 1 to 5. It is further contended that insofar as the will dated 27.4.1984 is concerned, it is shrouded in suspicious circumstances and the same could not have been held to be proved and it could not have been accepted in support of the case of the defendants. While the trial court has found that Ganganarasamma, the mother of the plaintiff was the daughter of Rangamma. The trial court has not examined as to the possible reason that she could have been excluded under the will dated 27.4.1984. It is to be seen that the daughter-in-law, who had left

the deceased son of Rangamma. Hanumantharayappa has also been excluded under the will.

DW-6, an attesting witness has stated that he does not know the other attesting witness. The inconsistency as to the person who drafted the will being an advocate as stated by DW-6 and DW-1 referring to the same person not as an advocate, but as an old man, are glaring instances of further suspicion. It is only to disinherit the plaintiff and defendant no.6, that the will has been set-up. The fact that the will dated 27.4.1984 was a registered will and the will dated 14.8.1990 said to have executed by Rangamma in respect of Suit A Schedule properties being an unregistered document is shrouded in suspicious circumstances. It is also to be seen that in the first instance, defendants no.1 to 5 did not refer to any will of late Rangamma in the written statement. It is only by way of an amendment and as an after-thought, that the same has been set-up.

4. The Cross-objections are filed by defendants 1 to 5, challenging the finding of the trial court on issue no.1, whereby the trial court has held that the plaintiff has proved that his mother was the eldest daughter of Muniyappa and Rangamma alongwith defendants 1 to 4. It is contended by the counsel for the Cross-objectors that the evidence of the plaintiff was sought to be supported by that of his father, who was examined as PW-2 and a close friend of the plaintiff who was examined as PW-3. There were no material documents produced to show that Ganganarasamma was the eldest daughter of Rangamma and Muniyappa. Exhibits P-1, P-2 and P-3 were the documents that were admittedly brought into existence after the institution of the suit and hence, could not have been relied upon by the trial court on the footing that they were documents issued by a public servant. There was no independent material to establish that Ganganarasamma was the daughter of Muniyappa and Rangamma.

5. On a consideration of these contentions and from a close examination of the record, insofar as the finding of the trial court that the plaintiff was the son of Ganganarasamma and that she was the daughter of Rangamma and Muniyappa is concerned, the reasoning of the trial court that the evidence produced by the plaintiff was adequate to hold issue no.1 as regards Ganganarasamma being the daughter of Muniyappa and Rangamma and the plaintiff, in turn being her son, cannot be faulted. The defendants have not produced any material to establish to the contrary except the vehement denial by the defendants. Insofar as the claim of the plaintiff is concerned, the assertion of the plaintiff that the suit schedule 'A' properties belonged to Muniyappa and they were only purchased in the name of Rangamma, is the basis. It was for the plaintiff to have established this premise. The ground sought to be raised in the appeal, that an issue has not been framed by the trial court in this regard did not preclude the plaintiff from seeking incorporation of such an issue and more significantly, the plaintiff in his evidence



has not made such a statement. The plaintiff vaguely has stated that the suit properties belonged to his grand-parents. When the plaintiff has not chosen to adduce evidence to establish that the properties in fact belonged to Muniyappa, when the properties in fact stood in the name of Rangamma, the presumption could only be that the same were the absolute properties of Rangamma.

6. The next question that would arise is whether Rangamma had bequeathed the properties as claimed by the defendants under the wills that were set up. Insofar as the will of the year 1984 is concerned, the same is admittedly a registered document. The same has been proved by the defendants to have been validly executed in their favour in respect of B Schedule properties. Insofar as the will dated 14.8.1990 is concerned, the same has been accepted by the trial court as having been validly executed and proved. The trial court has, however, rejected the will set up by the sixth defendant dated 5.9.1990. The sixth defendant has not chosen to file an independent appeal insofar as the same is concerned. As the plaintiff has failed to establish that the

properties belonged to his grand-father, and therefore, the share in the same which devolved on his mother could not have been disposed of by his grand-mother to the exclusion of the plaintiff and his sister who have succeeded to the estate of his mother, it is not available for the plaintiff to claim a share therein. In that, in the eye of law, the grand-mother of the plaintiff being the absolute owner, has bequeathed the same under a registered will in favour of defendants 1 to 5. Even if the mother of the plaintiff has been excluded, it is not open for the plaintiff to question the same. And insofar as A Schedule properties are concerned, by the same token of reasoning, even though the will dated 14.8.1990 is an unregistered one, the reasoning of the trial court as to its genuineness and proof of execution, cannot be found fault with.

For the above reasons, it cannot be said that the circumstances pleaded are such that the execution of the will ought to be suspected. The wills have stood the scrutiny of the

court below and the reasoning in accepting the same cannot be challenged with reference to the alleged suspicious circumstances. Therefore, the appeal fails and is hereby dismissed. Insofar as the Cross-objections are concerned, the same is also dismissed for reasons stated above. No order as to costs.

Sd/-  
JUDGE