

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 31ST DAY OF JULY 2015

BEFORE

THE HON'BLE MRS. JUSTICE S. SUJATHA

R.S.A.NO.6051/2010

BETWEEN:

SHRI BHIMARAYAPPA S/O VENKAPPA LENDI,
AGE: 48 YEARS, OCC: AGRICULTURE,
R/O HOSUR, TQ. JAMKHANDI,
DIST. BAGALKOT.

.. APPELLANT

(BY SRI V G BHAT, ADVOCATE.)

AND:

1. SRI VENKAPPA S/O BHIMAPPA LENDI,
SINCE DECEASED, BY HIS LRS,

1(A) SMT. AKKATAI W/O RAMANAGOUDA
POLICE PATIL,
AGE: 52 YEARS, OCC: AGRICULTURE,
R/O MIRJI, TQ. MUDHOL, DIST. BAGALKOT.

2. SRI RAMAPPA S/O VENKAPPA LENDI,
SINCE DECEASED, BY HIS LRS

2(A) SMT. SHASHIKALA W/O BHIMAPPA BATAKURKI,
AGE: 38 YEARS, OCC: HOUSEHOLD WORK,
R/O VIJJARAMATTI, TQ. MUDHOL,
DIST. BAGALKOT.

2(B) SRI KISTAPPA S/O RAMAPPA LENDI,
AGE: 32 YEARS, OCC: AGRICULTURE,

R/O HOSUR, TQ. JAMKHANDI,
DIST. BAGALKOT.

- 2(C) SRI. HANUMANTA S/O RAMAPPA LENDI,
AGE: 30 YEARS, OCC: AGRICULTURE,
R/O HOSUR, TQ. JAMKHANDI,
DIST. BAGALKOT.
- 2(D) SRI. BASAPPA S/O RAMAPPA LENDI,
AGE: 27 YEARS,
R/O HOSUR, TQ. JAMKHANDI,
DIST. BAGALKOT.
3. SRI. SADASHIV S/O KRISHNAPPA LENDI,
AGE: 67 YEARS, OCC: AGRICULTURE,
R/O HOSUR, TQ. JAMKHANDI,
DIST. BAGALKOT.
4. NIRMALA W/O DUNDAPPA KAKAMARI,
SINCE DECEASED, BY HER LRS,
- 4(A) DUNDAPPA S/O MALLESHAPPA KAKAMARI,
AGE: 59 YEARS, OCC: AGRICULTURE,
R/O HONNUR, TQ. JAMKHANDI,
DIST. BAGALKOT.
- 4(B) UMESH S/O DUNDAPPA KAKAMARI,
AGE: 28 YEARS, OCC: AGRICULTURE,
R/O HONNUR, TQ. JAMKHANDI,
DIST. BAGALKOT.
- 4(C) MEENAXI W/O SHANKAR YADAWAD,
AGE: 26 YEARS, OCC: HOUSEHOLD WORK,
R/O HONNUR, TQ. JAMKHANDI,
DIST. BAGALKOT.
- 4(D) GURALINGA S/O DUNDAPPA KAKAMARI,
AGE: 24 YEARS, OCC: AGRICULTURE,
R/O HONNUR, TQ. JAMKHANDI,
DIST. BAGALKOT.
- 4(E) DEEPA D/O DUNDAPPA KAKAMARI,
AGE: MINOR, OCC: NIL,
REP. BY COURT GUARDIAN

U.S. SIDENUR, ADVOCATE, JAMKHANDI,
DIST. BAGALKOT.

.. RESPONDENTS
(BY SRI SHRIKANT T PATIL, ADVOCATE, FOR R.3,
R.1A, R.2A, R.4A TO R.4E – NOTICE SERVED,
R.2B TO R.2(D) – NOTICE HELD SUFFICIENT.)

THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 OF CPC, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 22.7.2008 PASSED BY THE PRL. CIVIL JUDGE (SR.DN.), JAMAKHANDI, O.S.NO.75/1994 AND THE JUDGMENT AND DECREE DATED 24.8.2010, PASSED BY THE FAST TRACK COURT, JAMAKHANDI, IN R.A.NO.107/2008, ETC.,.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is directed against the judgment and decree of the lower appellate Court confirming the judgment and decree of the trial Court.

2. The facts in brief are that the plaintiff filed O.S.No.75/1994 before the trial Court for the relief of declaration, partition and for permanent injunction. The plaintiff claimed 1/5th share in the suit property on the ground that the suit property is a joint family property. The suit was

resisted by the defendants contending that the suit is not maintainable in view of the compromise decree made in O.S.No.98/1993 between defendant no.1 and defendant no.3. After appreciating the evidence on record the trial Court dismissed the suit. Aggrieved by the said judgment and decree appeal was preferred before the lower appellate Court by the plaintiff and the same came to be dismissed. The appellant is before this Court challenging the concurrent findings of the Courts below.

3. The learned counsel for the appellant contended that the defendant no.3 was adopted by the wife of Krishnappa Lendi in the year 1947, defendant no.3 by giving a wardi before the revenue authorities in M.E.No.3595 marked at Ex.P.1 has relinquished his rights over the suit property, by virtue of which, the suit property was fallen to the share of defendant no.1. In the year

1967, a family arrangement was effected between the branch of Venkappa, Venkappa has appointed defendant no.3 as the minor guardian of minor son Ramappa and his wife (mother of minor son) as the minor guardian of minor son Bhimarayappa, the plaintiff herein. In the wardi given by the defendant no.1 as per M.E.No.3641 the properties of the joint family belonging to Venkappa's branch was partitioned, as such the wardi given by defendant no.3 in the year 1966 at Ex.P.1 was acted upon and it was within the knowledge of defendant no.3, being the minor guardian of defendant no.2. Both the Courts below have not considered this material evidence and mainly relying on the compromise decree entered into between defendants 1 and 3 in O.S.No.98/1993, dismissed the suit.

4. On the contrary, the learned counsel for the respondents contended that respondent no.3

being the adoptive son of Krishnappa Lendi succeeded to the suit property which was fallen to the share of Krishnappa lendi in the partition that effected between the family members of Bhimappa in the year 1949. The defendant no.3 though gave wardi before the revenue authorities in M.E.No.3595 relinquishing his rights over the suit properties in the year 1966, the same was not acted upon. The wardi given by Venkappa i.e., defendant no. 1 in M.E.No.3641 is not binding on the defendant no.3. However the defendant no.1 himself has filed the written statement in the present suit and admitted the compromise decree entered into between the defendant no.3 and himself. The Courts below after appreciating all these evidence rightly dismissed the suit, which does not call for any interference by this Court.

5. After hearing the parties and perusing the records it is noticed that Ex.P.1, M.E.No.3595/1967 is a wardi given by defendant

no.3 in the year 1966 relinquishing his rights in favour of his father and the family members. The said defendant no.3 has filed O.S.No.98/1993 before the Court for a declaration that the mutation entry M.E.No.3595/1967 is not binding on him and to declare him as owner of the suit property. In the said O.S.No.98/1993 filed against the defendant no.1, compromise decree was drawn. In the said compromise decree the defendant no.1 admitted that M.E.No.3595 is not at all acted upon and he has no objection to declare defendant no.3 as the full and absolute owner of the suit property. The plaintiff is claiming 1/5th share in the suit property basing his right on the same as joint family property belonging to the branch of Venkappa in view of the wardi given by defendant no.3 in 1966, further acted upon by the defendant no.1 and 3 in the year 1967, giving a wardi in M.E.No.3641.

6. It is pertinent to notice that the defendant no.1 who has given wardi in the year 1967 himself has admitted that the defendant no.3 is the absolute owner of suit property, in the compromise decree entered into between the defendant no.3 in O.S.No.98/1993, in the circumstances, the plaintiff has no right in whatever manner to claim his right over the suit property as the property belongs to Venkappa. The Courts below after considering all these material evidence available on record and analyzing the same in depth have dismissed the suit. I do not find any merit in the arguments advanced by the learned counsel for the appellant to interfere with the concurrent findings of the Courts below. No substantial question of law arises for consideration in this second appeal. Accordingly, the appeal stands dismissed.

Sd/-
JUDGE

Mrk/-