

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF SEPTEMBER, 2019

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

R.F.A.No.1056/2009

BETWEEN:

SRI V.R. RAMASANJEEVA,
S/O LATE SRI V.S. RAMALINGA SETTY,
AGED ABOUT 59 YEARS,
JEWELLER,
RESIDING AT No.54,
RANGA RAO ROAD,
SHANKARAPURAM,
BANGALORE – 560 004.

... APPELLANT

(BY SRI PUTTIGE R. RAMESH, ADVOCATE)

AND:

1. SRI V.R. MANJUNATH,
S/O LATE V.S. RAMALINGASETTY,
AGED 52 YEARS,
No.424, 7TH 'B' MAIN,
30TH CROSS, 4TH BLOCK,
JAYANAGAR, BANGALORE – 560 011.

2. SRI K.G. BADARINATH,
S/O K.R. GOVINDARAJULU,
AGED 51 YEARS,
RESIDING AT No.145,
SRIRAMA ROAD,
THYAGARAJANAGAR,
BANGALORE – 560 028.

... RESPONDENTS

(BY SRI R. RAVI, ADVOCATE FOR R-1,
NOTICE TO R-2 IS DISPENSED WITH VIDE ORDER DATED
20.3.2015)

THIS REGULAR FIRST APPEAL IS FILED UNDER ORDER XLI RULE 1 OF CPC AGAINST THE JUDGMENT AND DECREE DATED 21.8.2009 PASSED IN O.S.NO.4994/1991 ON THE FILE OF THE XXII ADDL. CITY CIVIL JUDGE, BANGALORE PARTLY DECREERING THE SUIT FOR PARTITION AND SEPARATE POSSESSION.

THIS REGULAR FIRST APPEAL COMING ON FOR HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:

J U D G M E N T

This appeal is filed by the appellant – plaintiff questioning the judgment and decree dated 21.8.2009 passed in O.S.No.4994/1991 on the file of the XXII Additional City Civil Judge, Bengaluru.

2. The parties are referred to as per their original rankings in the Court below in order to avoid the confusion for the convenience of the Court.

Brief facts of the case:

3. The plaintiff filed the suit before the Trial Court seeking the relief of partition of half share in schedule properties except 'B' schedule property and for 2/3rd share in 'B' schedule property and for cost contending that one V. Seetharamiah Setty is the propositus. His second son is late V.S. Ramalinga Setty, under whom the plaintiff and defendant No.1 are making a claim. Defendant No.2 is the brother-in-law of the defendant No.1. The

said Ramalinga Setty wedded Shanthalakshmmamma and she died on 27.9.1987 and Ramalinga Setty died on 25.7.1991. The said couple are bestowed with children namely, plaintiff – Ramasanjeeva, late Vijayalakshmi, who died issueless in 1973, late Satyanarayana and defendant No.1 – Manjunath. The joint family of propositus had a partition under registered partition deed dated 14.12.1964 of the pristine family properties in which Ramalinga Setty got property Nos.75/29, 76/28, 77/27 at Chowdeswari Temple Street, Bangalore and also property Nos.117 and 119, now described as 'C' and 'D' schedule properties with other two property numbers, along with other movables. Later, Ramalinga Setty continued the joint family with his wife and children and carried on the business of the family, which is jewellery business and was managing the business as well as the family.

4. It is alleged that the plaintiff has studied upto 10th standard, while the defendant No.1 is an Engineer in Electronics and they helped in the business of their father. There was a family partition between father Ramalinga Setty and the plaintiff and defendant No.1 under registered partition deed dated 1.10.1973, which is marked as Ex.P.1, in which Ramalinga Setty

got property Nos.117 and 119 and also shops bearing Nos.136 and 138, which are described as 'C' and 'D' schedule properties in the plaint schedule. The property Nos.136 and 138 were obtained by Ramalinga Setty from his mother Sakamma under a registered settlement deed dated 25.1.1978. However, it is contended that these two properties were also treated as joint family properties by Ramalinga Setty. It is further contended that all the properties subjected to partition on 1.10.1973 were treated as joint family properties. The said Ramalinga Setty had even shown the said properties as joint family properties in the income tax returns and therefore, the said properties were thrown to common hotchpotch. The plaintiff and the defendant No.1's mother – Shanthalakshamma obtained suit 'A' schedule property in No.154 under registered gift deed dated 2.6.1966 from her father and she had purchased 'B' schedule property, a residential building bearing No.54 under the registered sale deed dated 3.1.1973 and she died intestate on 27.9.1987, resulting the plaintiff, defendant No.1 and their father inheriting the same. Therefore, these three persons were entitled to 1/3rd share each. Ramalinga Setty executed a registered settlement deed as per Ex.P.2 on 17.7.1989 in favour of the plaintiff and as a result, in

'B' schedule property the plaintiff has 2/3rd share. Ramalinga Setty lived with the plaintiff till 18.8.1990 and allegedly was forcibly taken away by the defendant No.1. Ramalinga Setty had illness and was taking medical treatment for a long period and was even treated at NIMHANS. He was under medication since 1960. The defendant No.1 administered high dosage of medicine to Ramalinga Setty and got a complaint filed against the plaintiff on 28.8.1990 in Crime No.99/90 and Ramalinga Setty died under mysterious circumstances due to burn injuries.

5. It is also the case of the plaintiff that the plaintiff and defendant No.1 were carrying on the jewellery business at Avenue Road jointly. Defendant No.2 has been making a claim over 'C' and 'D' schedule properties and therefore, he has been arrayed as a party to the suit. The plaintiff allegedly made a demand for partition of all the properties and it was not honoured and therefore, he filed the suit.

6. Both the defendants in the suit were represented by their advocates and filed separate written statements. The defendants have made a general denial of the averments made in the plaint. The defendant No.1 admits the relationship pleaded

by the plaintiff and also admits that 'A' and 'B' schedule properties were self-acquisition of their mother and that subsequent to her death as intestate, they have succeeded equally to 'A' and 'B' schedule properties. So far as 'C' and 'D' schedule properties are concerned, it is contended that the said properties were separate properties of Ramalinga Setty, who had sold the same under registered sale deed dated 3.11.1990 in favour of defendant No.2 – K.G. Badrinath and possession was delivered and therefore Badrinath has become the owner in possession of 'C' and 'D' schedule properties over which the plaintiff has no right of partition. It is also alleged that Ramalinga Setty, under sale deed dated 29.5.1991 sold his 1/3rd right in 'A' schedule property and therefore defendant No.1 is the owner of 2/3rd right in 'A' schedule property. It is contended that release deed, executed in favour of plaintiff, by his father is invalid, as there is no surrender and that there was undue influence and force applied on Ramalinga Setty by the plaintiff and therefore, the said document was not out of free will. Besides, it is alleged that the transfer was without consideration and therefore invalid and also the plaintiff has not maintained Ramalinga Setty and driven him out of the house much against

the terms of the registered release deed and therefore, the said bequest is invalid and inoperative. The defendant No.1 has categorically admitted the right of the plaintiff over 1/3rd share in 'A' schedule property and half share in 'B' schedule property and has no objection to decree the suit. So far as 'E' schedule property is concerned, the existence of the same is denied and contended that Ramalinga Setty, by way of a Will on 6.9.1990, has delivered all his jewellery and other movables to the grand daughter Divya, daughter of defendant No.1. Hence, it is contended that the suit of the plaintiff is liable to be dismissed.

7. It is also contended that the plaintiff is not in possession of 'C' and 'D' schedule properties and therefore liable to pay court fee on the market value. The further allegation is that property Nos.138 and 139 were separate properties of Ramalinga Setty and they were never treated as joint family properties and there is no joint family since 1.10.1973 and he had carried on the business separately and therefore, it was prayed to dismiss the suit.

8. The defendant No.1 has also further contended that the business in 'Ramalinga Setty & Sons' at 'A' schedule property

was converted into a partnership under the name 'Veeraganti Jewellers' and subsequently, it has been re-constituted by admitting wife of defendant No.1 on 1.4.1989 and again Ramalinga Setty retired from the said firm on 31.5.1989 and also that one T.R. Sathyanarayana Setty was inducted to the said firm and they are carrying the business under the name and style 'M/s. Gayathri Jewellers'. According to the defendant No.1, there is no cause of action for the suit and he has prayed for dismissal of the suit.

9. The defendant No.2 denied the case of the plaintiff analogous to defendant No.1 and contended that he is not a necessary party to the suit. He pleads about the alienation of 'C' and 'D' schedule properties by Ramalinga Setty under sale deed dated 3.11.1990 and also contended that he had gifted a portion of 'C' and 'D' schedule properties to Vidya, daughter of defendant No.1 and she has sold the balance of the area to the tenants in the said 'C' and 'D' schedule properties. He has also contended that the suit is barred by time and therefore, prayed for dismissal of the suit.

10. The Court below having considered the pleading of both the plaintiff and defendant Nos.1 and 2 framed the following issues and additional issues:

1. *Whether the plaintiff proves that the family was joint after 1.10.1973?*
- 2(a) *Does he prove that plaint 'C' and 'D' properties are joint family properties?*
- 2(b) *Whether the 1st defendant proves that 'C' and 'D' schedule properties were separate properties of his father?*
3. *Whether the plaintiff proves that his 1/3rd share over plaint 'B' schedule property was settled in his favour by his father under the document dated 17.7.1989?*
4. *Whether the plaintiff proves that he was doing business jointly with 1st defendant in plaint 'A' schedule property?*
5. *Whether the 1st defendant proves that his father has sold 'C' and 'D' schedule properties in favour of 2nd defendant?*
6. *Does he further prove that he has purchased 1/3rd share of his father in plaint 'A' schedule under the sale deed dated 29.5.1991?*
7. *Whether the 1st defendant proves that his father has bequeathed all his movables in favour of his (1st defendant's) daughter Divya by executing a Will dated 6.9.1990?*

8. *Whether the plaintiff proves that his father had left cash of Rs.2 lakhs?*
9. *Whether the plaintiff is entitled for the reliefs as prayed?*
10. *What decree or order?*

Addl. Issues:

1. *Does the 2nd defendant prove that he had purchased plaint 'C' and 'D' schedule properties from Ramalinga Setty, the father of the plaintiff prior to the suit without notice of the alleged right of the plaintiff and acquired possession?*
2. *Does the 2nd defendant prove that he had gifted a portion of 'C' and 'D' schedule in favour of Smt. Vidya Manjunath, who in turn sold the same to tenants?*
3. *Does the 2nd defendant prove that he had sold the remaining portion in 'C' and 'D' to the other tenants who were in occupation?*
4. *Does the 2nd defendant prove that he is not at all a necessary party to the suit?*
5. *Whether the suit is barred by limitation as against 2nd defendant?*

11. The plaintiff in order to prove his case examined himself as P.W.1 and got marked the documents at Ex.P.1 to 13. The defendant No.1 got examined himself as D.W.1 and no documents were marked on his behalf. The defendant No.2 did not choose to lead evidence.

12. The Court below after hearing the arguments of both the respective counsel, decreed the suit partly. It is held that the plaintiff is entitled for partition and separate possession of 1/3rd right in 'A' schedule property and 2/3rd right in respect of 'B' schedule property only. The suit in respect of 'C' to 'E' schedule properties were dismissed. Being aggrieved by the judgment of the Court below, the appellant – plaintiff has filed this appeal.

13. The main ground urged in the appeal is that the Court below erroneously accepted the defence of the defendant No.1 in respect of 'A' schedule property and the very approach of the Court below accepting the contention of the defendant No.1 is erroneous. The Court ought to have granted equal share i.e., half of the share between the plaintiff and the defendant No.1 in respect of 'A' schedule property, since the defendant No.1 did not produce the sale deed, which he contends that there was a sale in favour of him from his father.

14. The other contention of the appellant is that insofar as 'C' and 'D' schedule properties are concerned, the Court below has committed an error in accepting the defence of defendant No.2 in coming to the conclusion that there was a sale in favour

of defendant No.2 and the very approach of the Court below is erroneous.

15. The learned counsel for the appellant in his argument has also reiterated the grounds urged in the appeal memorandum and further contended that even though the defendant No.1 has not produced any sale deed before the Court to substantiate his claim that there was a sale in his favour, the Court below has committed an error in only granting 1/3rd share in respect of 'A' schedule property. The Court below ought to have granted equal share among the plaintiff and defendant No.1. The counsel further submits that the Court below has also not properly appreciated the material available on record insofar as 'C' and 'D' schedule properties are concerned. Hence, the counsel would contend that it requires the interference of this Court to modify the judgment granting equal share among the plaintiff and the defendant No.1 in respect of 'A' schedule property and so also to set aside the findings in respect of 'C' and 'D' schedule properties.

16. On the other hand, learned counsel for the respondent No.1 vehemently contended that the plaintiff himself has

admitted the sale made in favour of the defendant No.1 in his affidavit and the Court below has considered the same and answered issue No.6 to arrive at a conclusion that he is entitled to 1/3rd share and not equal share. The counsel also would contend that in respect of 'C' and 'D' schedule properties also there was an admission on the part of P.W.1 and hence there are no grounds to interfere with the order of the Trial Court.

17. Having considered the contentions of both the appellant's counsel and the first respondent's counsel, there is no dispute with regard to 'B' schedule property. 'B' schedule property was allotted in favour of the plaintiff to the extent of 2/3rd and the same has not been challenged by the respondents. Insofar as 'E' schedule property is concerned, the property was not in existence while considering the suit and the said finding is also not seriously disputed in this appeal by the appellant.

18. Having heard the arguments of the respective counsel and also on perusal of both oral and documentary evidence, the points that arise for the consideration of this Court are:

- (i) Whether the Court below has committed an error in decreeing the suit partly in granting 1/3rd share in favour of the plaintiff instead of half share?
- (ii) Whether the Court below has committed an error in dismissing the suit in respect of 'C' and 'D' schedule properties and it requires interference of this Court?
- (iii) What order?

Points (i) to (iii)

19. Now the question before this Court is with regard to 'A', 'C' and 'D' schedule properties. First this Court would like to take up the contention of both the parties in respect of 'A' schedule property. It is the contention of the plaintiff before the Court that he is entitled to half share in respect of 'A' schedule property. The defendant No.1 in the written statement contended that his father had executed a sale deed in his favour in respect of 1/3rd share. The plaintiff disputed the same. The defendant No.1 also did not choose to produce the sale deed before the Court. But the Trial Court taking into consideration the admission made in the affidavit filed by the plaintiff that there was a sale deed in favour of the defendant No.1, has decreed the suit. On perusal of the affidavit, the plaintiff

contends that the sale deed was obtained fraudulently by the defendant No.1. Though he contends that the said sale deed came into existence in a fraudulent circumstance, the same has not been challenged. But he admits the very execution of sale deed in favour of defendant No.1 in respect of the share of his father. When there is an admission before the Court that too, by filing an affidavit, proving of the execution of the sale deed does not arise. The admitted fact need not be proved under Section 58 of the Evidence Act, 1872. The plaintiff himself made easy the role of the defendant No.1. Where there was an admission with regard to the execution of the sale deed by his father in favour of defendant No.1 in respect of his 1/3rd share, the question of interfering with the order of the Trial Court does not arise. The contention of the learned counsel for the appellant cannot be accepted regarding 'A' schedule property for his claim of half share. Hence, this Court do not find any reason to interfere with the order of the Trial Court in respect of 'A' schedule property.

20. The other contention of the learned counsel for the appellant is in respect of 'C' and 'D' schedule properties. In

respect of 'C' and 'D' schedule properties, in the cross examination of P.W.1, an answer was elicited that there was a sale deed in favour of defendant No.2. When there is admission by the plaintiff in the cross examination that there was a sale deed in favour of defendant No.2, in respect of 'C' and 'D' schedule properties, I do not find any fault committed by the Trial Court in considering the admission and rejecting the claim of the plaintiff in respect of 'C' and 'D' schedule properties also.

21. Having considered the material available on record and also keeping in view the contentions urged by learned counsel for both the parties and also the relevant admissions in the affidavit and also in the cross-examination of P.W.1, there is no merit to interfere with the order of the Trial Court.

22. In view of the discussions made above, I pass the following:

ORDER

The appeal is dismissed.

**Sd/-
JUDGE**

MD/ST