



RFA No. 100215 of 2015

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 30TH DAY OF JUNE, 2022

PRESENT

THE HON'BLE MRS JUSTICE K.S.MUDAGAL

AND

THE HON'BLE MR JUSTICE M.G.S. KAMAL

REGULAR FIRST APPEAL NO. 100215 OF 2015 (PAR/POS-)

BETWEEN:

1. PARAMESHWARAPPA S/O BASAVANNEPPA
DANAPPANAVAR,
AGE:50 YEARS, OCC:AGRL
R/O:PYATI ONI,
NEAR BASAVANNA TEMPLE, MISHRIKOTI
TQ:KALAGHATAGI,
DIST:DHARWAD.
2. SHIVANAND S/O BASAVANNEPPA DANAPANAVAR
AGE:47 YEARS
OCC:AGRICUTURE,
R/O:PYATI ONI
NEAR BASAVANNA TEMPLE, MISHRIKOTI
TQ:KALAGHATAGI
DIST:DHARWAD
3. MAMATA W/O MANJUNATH VAHVAL
AGE:33 YEARS
OCC:HOUSEHOLD WORK
R/O:PYATI ONI,
NEAR BASAVANNA TEMPLE, MISHRIKOTI
TQ:KALAGHATAGI,
DIST:DHARWAD.



... APPELLANTS

(BY SRI. J.S. SHETTY, ADVOCATE)



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AND:

1. KUMARI NANDINI D/O PARAMESHWARAPPA
DANAPPANAVAR
AGE 21 YEARS, OCC STUDENT
R/O MISHRIKOTI
TQ KALAGAHATAGI
DIST DHARWAD
NOW R/O KONNUR,
TQ NARAGUND
DIST GADAG
2. KUMARI ASHWINI D/O PARAMESHWARAPPA
DANAPPANAVAR
AGE:19 YEARS, OCC:STUDENT
R/O:MISHRIKOTI
TQ:KALAGAHATAGI
DIST:DHARWAD
NOW R/O:KONNUR,
TQ:NARAGUND
DIST:GADAG
3. KUMARI TANUSHREEI D/O PARAMESHWARAPPA
DANAPPANAVAR
AGE:8 YEARS, OCC:NIL
R/O:MISHRIKOTI
TQ:KALAGAHATAGI
DIST:DHARWAD
NOW R/O:KONNUR,
TQ:NARAGUND
DIST:GADAG
4. SHRI JAYASHREE NANDINI W/O BASAVANNEPPA
DANAPPANAV
AGE:41 YEARS
OCC:HOUSEHOLD WORK
R/O:MISHRIKOTI
TQ:KALAGAHATAGI
DIST:DHARWAD, NOW R/O:KONNUR,
TQ:NARAGUND, DIST:GADAG

SINCE THE APPELLANT NO.3 IS THE MINOR, REP BY



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HER NATURAL MOTHER, GUARDIAN THE
RESPONDENT NO.4. THE RESPONDENT NO.1 AND 2
ARE ATTAINED MAJORITY BEFORE THE TRIAL
COURT, NECESSARY APPLICATION FILED BY THE
RESPONDENTS BEFORE TRIAL COURT, IN
DISCHARGING MINOR GUARDIANSHIP

5. SMT.PADMAVATHI W/O BASAPPA GANIGER
AGE:60 YEARS, OCC:HOUSEHOLD WORK
R/O:SHIROL, TQ:KALAGHATAGI
DIST:DHARWAD
6. SMT.JAYAKKA W/O SIDDARAMAPPA KAMTAR
AGE:57 YEARS, OCC:HOUSEHOLD WORK
R/O:MISHRIKOTI, TQ:KALAGHATAGI
DIST:DHARWAD
7. SMT.MEENAKSHI W/O CHANNAPPA MUDENNUR
AGE:53 YEARS, OCC:HOUSEHOLD WORK
R/O:VIDYAGIRI, TQ:DHARWAD
DIST:DHARWAD
8. SMT.SAROJA W/O RAJU BIKKANNAVAR
AGE:51 YEARS, OCC:HOUSEHOLD WORK
R/O:KITTUR, TQ:RAMADURGA
DIST:BELAGAVI

...RESPONDENTS

(BY SRI. S.B.DODDAGOUDRA ADV. FOR
SMT. SUMANGALA A.CHAKALABBI ADV. FOR R2 & R4,
R3 IS MINOR R/BY R4
SRI. NARAYAN V.YAJI, ADV. FOR R6 TO R8
R1 NOTICE SERVED, NOTICE TO R5 HELD SUFFICIENT V/O/D/
11.10.2019)

RFA FILED UNDER ORDER 41 RULE 1 R/W SEC. 96 OF
CPC., AGAINST THE JUDGMENT AND DECREE DTD.03.07.2015
PASSED IN O.S.NO.85/2010 ON THE FILE OF THE III
ADDITIONAL SENIOR CIVIL JUDGE, HUBBALLI, (ITINARY
COURT AT KALGHATAGI), DECREETING THE SUIT FILED FOR
PARTITION AND SEPARATE POSSESSION.



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THIS APPEAL COMING ON FOR FURTHER HEARING AND THE SAME HAVING BEEN HEARD AND RESERVED FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, **K.S.MUDAGAL J.**, DELIVERED THE FOLLOWING.

JUDGMENT

Aggrieved by the judgment and decree passed against them, defendant Nos.1 to 3 in OS No.85/2010 on the file of Civil Judge (Senior Division) Kalghatagi, have preferred this appeal.

2. Respondent Nos.1 to 4 were the plaintiffs. Appellants were defendant Nos.1 to 3 and respondent Nos.5 to 7 were Defendant Nos.4 to 7 in the said suit. For the purpose of convenience, the parties will be referred to henceforth according to their ranks before the trial Court.

3. Plaintiff Nos.1 to 3 are the daughters and plaintiff No.4 is the wife of defendant No.1. Defendant No.2 is the younger brother and defendant Nos.4 to 7 are the sisters of defendant No.1. Defendant No.3 is the purchaser of 3 acre 8 guntas out of suit schedule A(1) namely, land bearing Survey No.38 of Kamadhenu village. Suit schedule 'A' properties were land bearing Sy.No.38, 53/1A, 53/1B, 53/1C of Kamadhenu



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village and Schedule B was house property bearing VPC No.529/3 of Mishrikoti village.

4. Plaintiffs filed OS No.85/2010 initially against Defendant Nos.1 to 3 seeking partition and separate possession of their 1/4th share each in the suit schedule properties and for declaration that the sale deed dated 07.04.2005 executed by defendant No.1 in favour of defendant No.3 does not bind their share etc. Later, defendant Nos.4 to 7, the sisters were impleaded in the suit.

5. The case of the plaintiffs is as follows:-

Defendant Nos.1, 2 and one Ravindra are the sons of one Basavanneppa and Mugadavva. Ravindra was given in adoption and therefore, he was separated from the family. The suit schedule properties were the ancestral properties of defendant Nos.1 and 2 and the plaintiffs. On the death of Basavanneppa and Mugadavva, the plaintiffs and defendant Nos.1 and 2 have inherited the same and they are in joint possession and enjoyment of the same. Due to some differences between plaintiff No.4 and defendant No.1, he deserted the plaintiffs. Therefore, they have taken shelter in



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the parental house of plaintiff No.4 and pursuing the proceedings under Section 125 Cr.P.C. To defeat the rights of the plaintiffs, defendant Nos.1 and 2 have concocted a documents of partition and are trying to alienate the suit schedule properties. Defendant No.1 has already sold 3 acres 8 guntas in plaint Schedule A item No.1 property to defendant No.3. The said sale does not bind the plaintiffs. Despite the plaintiffs' demand defendant 1 and 2 are not effecting the partition in the suit schedule properties and giving their shares to the plaintiffs. Hence, the suit.

6. Defendant No.1 filed his written statement and defendant No.2 adopted the same. Their defence is as follows:-

The allegation in the plaint, the description of the properties and joint possession of the plaintiffs were denied. The allegation that defendant No.1 has deserted the plaintiffs was disputed. Till the filing of the suit, the plaintiffs were residing with defendant No.1. After the death of Basavanneppa, there was an oral partition between defendant Nos.1 and 2. In that partition, in all the properties half share



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was allotted to defendant Nos.1 and 2 each. Based on such partition, the revenue entries to the properties were effected on 21.03.2005 under ME No.39/04-05. Defendant No.1 was suffering from cancer. To meet his medical expenses and family necessities, he sold 3 acres 8 guntas out of his share of 3 acres 16 guntas in Sy.No.38/2 to defendant No.3. Plaintiff No.4 is a signatory to the said sale deed as a consenting party. Therefore, the said sale binds the plaintiffs. The suit as framed is not maintainable. Valuation of the suit and Court fee paid are improper. Hence, the suit shall be dismissed.

7. Defendant No.3 filed her independent written statement. In the said written statement she reiterated the defence of defendant No.1. She further claimed that plaintiff No.4 on behalf of plaintiff Nos.1 to 3 the minor children joined in execution of the sale deed dated 07.04.2005 for consideration of Rs.1,60,000/-. She contended that she is a bonafide purchaser for valuable consideration and since the date of purchase she is in exclusive possession of the property purchased by her. She contended that if at all the Court finds that the suit has to be decreed the property purchased by her



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shall be allotted to the share of defendant No.1 and equitable partition be effected.

8. Defendant Nos.4 to 7 were impleaded in the suit on their application. They filed written statement with the counter claim. Though they denied the claim of the plaintiffs, they contended that there was no partition in the family. They further contended that being the daughters of Basavanneppa along with defendant Nos.1 and 2, they were entitled to equal share in the properties. They claimed that defendant Nos.1 and 2 behind their back got the revenue entries effected to project a partition. They further claim that defendant No.1 has sold the properties to defendant No.3 for his medical expenses for performing the marriage of plaintiff No.1 and education of plaintiff Nos.2 and 3. They sought decree for partition and separate possession of their $1/6^{\text{th}}$ share each in the suit schedule properties.

9. On the basis of such pleadings, the trial Court framed the following issues and additional issues:-



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ISSUES

1. Whether the genealogy described is fine and correct?
2. Whether the descriptions of the suit properties are fine and correct?
3. Whether the plaintiffs prove that the suit properties are in possession of plaintiffs and defendants No.1 and 2?
4. Whether the plaintiffs prove to be entitled for 1/4th share in the suit schedule properties?
5. Whether the sale deed dated 07.04.2002 is not binding on the share of plaintiffs?
6. Whether plaintiffs are entitled to the relief of declaration to that effect?
7. Whether defendant No.1 proves the partition as contended in W.S.?
8. Whether defendant No.3 proves to be bonafide purchaser?
9. Whether the valuation of the suit property for purpose of jurisdiction and Court fee is proper and correct?
10. What order or decree?



Additional issues:

1. Whether defendant Nos.4 to 7 prove that property described in schedule 'A' and 'B' of the counter claim are also the joint family properties?
2. Whether defendant Nos.4 to 7 proves that they are having $1/6^{\text{th}}$ share in 'A' and 'B' of counter claim properties?
3. Whether defendants No.4 to 7 are entitled for the reliefs claimed in the counter claim?

10. In support of the case of the plaintiffs, plaintiff No.4 was examined as PW.1 and plaintiff No.2 was examined as PW2 and Exs.P.1 to 11 were marked. Defendant No.7 was examined as DW1, defendant No.1 was examined as DW2 and defendant No.3 was examined as DW3. No documents were marked on their behalf. The trial Court on hearing the parties by the impugned judgment and decree, decreed the suit granting $1/24^{\text{th}}$ share to plaintiff Nos.1 to 3 each and allowed the counter claim of defendant Nos.4 to 7 granting $1/6^{\text{th}}$ share to each of them on the following grounds:-



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- i) The partition claimed by defendant Nos.1 and 2 was not proved.
- ii) By virtue of amendment to Section 6 of the Hindu Succession Act, defendant Nos.4 to 7 were entitled to equal share with the sons in the suit schedule properties, therefore, the said partition does not bind them.
- iii) Defendant Nos.1 to 3 have not proved the family necessity alleged by them.
- iv) Defendant No.3 has failed to prove that before purchasing the property she enquired with defendant Nos.4 to 7. She has failed to prove that she is a bonafide purchaser. Therefore, the sale does not bind plaintiff Nos.1 to 3 and defendant Nos.4 to 7.

Submissions of Sri. J.S.Shetty, learned counsel for the appellants

When the plaintiffs contended that the suit schedule properties were the ancestral properties, the burden was on them to prove the same. But they did not adduce any



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evidence to show that the said properties devolved on Basavanneppa from his ancestors to assume the nature of coparcenary property. Therefore, in the hands of defendant Nos.1 and 2, the said properties become the self acquired properties. In such event, having regard to Section 8 of the Hindu Succession Act, the plaintiffs cannot maintain suit for partition during the life time of defendant No.1. Even assuming that they were the ancestral properties, defendant No.1 as the manager of the family is entitled to alienate the properties for the family necessities. Ex.P7 the sale deed itself says that the sale was for family necessity and plaintiff No.4 acknowledged the same being the signatory to the said document. Therefore, the challenge to the sale in favour of defendant No.3 was not maintainable. The suit was filed after five years of the sale. Since the plaintiffs were also parties to the sale deed, they should have filed suit seeking declaration of nullity of the sale deed within three years from the date of sale. Therefore, the suit was not maintainable and barred by time. The trial Court failed to appreciate the evidence and position of law in proper perspective.



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11. In support of his submission, he relies on the following judgments:-

- i) *Uttam Vs. Saubhag Sings and others*¹**
- ii) *Sunil Kumar and Another vs. Ram Prakash and Others*²**

Submission of Sri. S.B.Doddagoudra for respondent Nos.2 to 4, Sri Narayan V.Yaji for respondent Nos.6 to 8.

Defendant Nos.1 to 3, and 4 to 7 in their written statements did not deny that the properties were the ancestral properties. Therefore, the question of the plaintiffs producing the documents to show that they were the ancestral properties of defendant Nos.1 and 2 does not arise. The burden of proving the legal necessities was on defendant Nos. 1 to 3, but, they did not produce any document to show that defendant No.1 was suffering from cancer. The signature of plaintiff No.4 in the sale deed Ex.P7 was taken by fraud. Since the minors interest in the property was sold without the permission of the Court the said sale was bad in law. The trial Court appreciating

¹ (2016) 4 SCC 68

² (1988) 2 SCC 77



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all such facts has rightly decreed the suit. Therefore, the same does not call for any interference of the Court.

Analysis

12. In an appeal preferred under Order 41 Rule 1, Order 41 Rule 31 requires First Appellate Court to reappreciate the pleadings and evidence of parties formulate the points for determination, analyse the evidence and applicable law and decide whether the impugned judgment and decree is sustainable.

13. Having regard to the rival submissions and the material on record the points that arise for determination of this Court are:

- i) Whether the suit schedule properties were the ancestral joint family properties of the plaintiffs and defendant Nos.1 and 4 to 7?
- ii) Whether Ex.P7 the sale deed dated 07.04.2005 executed by defendant No.1 in favour of defendant No.3 bind the plaintiffs and defendant Nos.4 to 7?



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- iii) Whether the impugned judgment and decree is sustainable in law?

Reg: Point No.1

14. In para 4 of the plaint, the plaintiffs contended that the suit schedule properties are the ancestral properties and plaintiffs and defendant Nos.1 and 2 inherited the same through their ancestors. As per Order VIII Rule 3 of CPC, it shall not be sufficient for the defendant in his written statement to deny generally the grounds alleged by the plaintiff, but he must deal specifically with each allegation of fact which he does not admit the truth.

15. In the written statement of defendant Nos.1 to 3 except the general denial of the contents of para 3 of the plaint, there was no specific denial nor there was an assertion that the said properties were the absolute properties of Basavanneppa and therefore, in the hands of defendant Nos.1 and 2 they become their self acquired properties. There was no foundation in the pleading that the plaintiffs cannot seek partition during the life time of defendant No.1 or the suit was hit by Section 8 of the Hindu Succession Act.



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16. Even defendant Nos.4 to 7 in their written statement did not specifically controvert the statement that the suit schedule properties were the ancestral properties. As against that in para 2 of their counter claim, they contend that the properties were the ancestral properties of Basavanneppa. Both the parties claimed that Ravindra another son of Basavanneppa was given in adoption to one Chennappa, therefore, he was not entitled to inherit the properties.

17. In the evidence of PWs.1 and 2 there was no suggestion that the suit schedule properties were the absolute properties of Basavanneppa despite they claiming that they were the ancestral properties. DW1/defendant No.7 in her chief examination claimed that the suit schedule properties were the ancestral properties. The same was not controverted by defendant Nos.1 to 3. As against that, in the cross examination, defendants suggested to her that the extent of ancestral lands was 18 acres and they were the fertile lands yielding good income.

18. Further the very contention of defendant Nos.1 to 3 that as a manager of the family defendant No.1 was



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entitled to alienate the properties itself indicates that he admitted the nature of the properties. The other contention was that after the death of Basavanneppa, there was an oral partition between defendant Nos.1 and 2. Therefore, neither there is joint family nor the joint family properties.

19. They claimed that in the said oral partition, defendant Nos.1 and 2 got equal half share in the suit schedule properties and the said partition was evidenced by MR No.39/2004-05 dated 21.03.2005, whereas the plaintiffs and defendant Nos.4 to 7 claim that such mutation entries were concocted behind their back to defeat their share in the properties.

20. Except the bare statement of defendant Nos.1 to 3, there was no proof of partition of the year 2005. Even otherwise, it is not the case of defendant Nos.1 to 3 that Basavanneppa died before 1956. Therefore, by virtue of amendment to Section 6 of the Hindu Succession Act, the daughters also become coparceners and along with the sons they are entitled to equal share in the said properties. Therefore, there could not have been any partition in the suit



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schedule properties excluding the sisters and the alleged partition set up by defendant Nos.1 to 3 is invalid in the eyes of law.

21. In the light of the aforesaid facts and circumstances it can be concluded that the suit schedule properties were the ancestral joint family properties. Therefore, the judgment in ***Uttam's*** case referred to supra is not applicable.

Reg: Point No.2

22. Admittedly, under Ex.P7 defendant No.1 sold 3 acres 8 guntas out of 6 acres 32 guntas in plaint schedule 'A' item No.1 property. The plaintiffs claimed that the said sale does not bind them. Defendant Nos.1 to 3 claim that the said sale was effected to meet the medical expenses of defendant No.1 namely for treatment of his cancer ailment and for other family necessities. That the trial Court rejected that contention on the ground that defendant Nos.1 to 3 did not adduce any evidence to prove the ailment of defendant No.1 or the family necessities.



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23. Admittedly, plaintiff No.4 who has filed the suit as a guardian of plaintiff Nos.1 to 3 the minors, is a signatory to sale deed Ex.P7. Ex.P7 contains a recital that the property is being sold for the family necessities and to repay the loans. For the first time in the evidence, an attempt was made to claim that her signature was taken on the said document fraudulently. PW1 in her cross examination dated 16.01.2015 says that she came to know about the fraud in the year 2010 and then she filed the suit. But in the plaint there is no whisper about any fraud. Order VI Rule 4 mandates that in all cases where a party relies on any misrepresentation, fraud, undue influence or breach of trust to plead the particulars of the same. In the case on hand, let alone the particulars of the fraud, misrepresentation, undue influence or breach of trust, there was no such allegation at all with regard to the execution of Ex.P7. Therefore, such contention of the plaintiffs with regard to the execution and contents of Ex.P7 deserves no merit.

24. Further, defendant Nos.4 to 7 in para 6 of their counter claim specifically pleaded that defendant No.1 sold the property under Ex.P7 for his medical expenses and the



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expenses of marriage of plaintiff No.1 and education of plaintiff Nos.2 and 3. Such admission in the pleading enure to the benefit of defendant Nos.1 to 3. Having regard to such admissions of defendant Nos.4 to 7 in the pleading and plaintiff No.4 joining in execution of Ex.P7 as a consenting party, the statement in the said document that the sale was effected for family necessity has to be accepted.

25. The Hon'ble Supreme Court in the judgment ***Sunil Kumar's*** case referred to supra has held that in a joint Hindu mitakshara family, the father by reason of his paternal relationship and his position as a head of the family and manager is entitled to alienate the joint family property for family necessity and meeting the antecedent debts so as to bind the interest of both adult and minor coparceners. Admittedly, defendant No.1 was the senior male member of the family and by the year 2005, the daughters of Basavanneppa were all married and living in their matrimonial families. The plaintiffs' own document Exs.P1 to P4 the record of rights show that defendant Nos.1 and 2 had borrowed loan from the banks creating charge over the lands shown therein. Therefore, it becomes clear that the sale was for family necessity and to



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discharge the debts as stated in Ex.P7. Therefore, that binds the plaintiffs and defendant Nos.4 to 7.

REG: Point No.3

26. The trial Court decreed the suit for partition in all the properties with the observation that defendant No.3 can ask to adjust the share of defendant No.1 in other properties. That means she has to seek for equitable partition. In view of the fact that the sale of 3 acres 8 guntas in plaint schedule 'A' item No.1 property was for family necessity, the trial Court was not justified in granting such relief.

27. So far as the other properties in view of Section 6 of the Hindu Succession Act, defendant Nos.4 to 7 were entitled to equal share along with the sons, defendant Nos.1 and 2. The plaintiffs were entitled to a share only in the share of defendant No.1. Therefore, defendant Nos.1, 2 and 4 to 7 are entitled to $\frac{1}{6}^{\text{th}}$ share each. Out of the share of defendant No.1 plaintiff Nos.1 to 3 get equal share with him which comes to $\frac{1}{24}^{\text{th}}$ share each. Therefore following:



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ORDER

The appeal is partly allowed. The impugned judgment and decree is modified as follows:-

The suit of the plaintiffs and counter claim of defendant Nos.4 to 7 are partly decreed.

The prayer of the plaintiffs for declaration that the sale deed 07.04.2005 between defendant Nos.1 and 3 does not bind their share and the prayer of the defendant Nos.4 to 7 in the counter claim to allot 1/6th share in the property sold under the sale deed dated 07.04.2005 are hereby dismissed.

The suit of plaintiff Nos.1 to 3 is decreed awarding 1/24th share each in the plaint schedule 'A' and 'B' properties except the property sold to defendant No.3 under the sale deed dated 07.04.2005.

The counter claim of defendant Nos.4 to 7 is decreed awarding 1/6th share each in plaint schedule 'A' and 'B' properties except the property sold to defendant No.3 under the sale deed dated 07.04.2005.



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Having regard to relationship between the parties, no order as to costs.

Draw preliminary decree accordingly.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

VMB