

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26<sup>TH</sup> DAY OF AUGUST 2022

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

**REGULAR SECOND APPEAL NO.2111 OF 2017 (PAR)**

BETWEEN:

RAVICHANDRA  
S/O GANGANNA  
AGED ABOUT 30 YEARS,  
R/AT NO.89/18,  
1ST CROSS, HEROHALLI ROAD,  
MARKET ROAD,  
ANJANA NAGAR  
BENGALURU-560091

... APPELLANT

(BY SRI.B.N.MAHESH CHANDRA, ADVOCATE FOR  
BHARATH.K, ADVOCATE)

AND

1. SRI GANGANNA  
S/O LATE GANGAIAH  
AGED ABOUT 65 YEARS,  
RESIDING AT B.E.L. MAIN ROAD,  
KRISHNAPPA LAYOUT  
MAGADI ROAD,  
ANJANA NAGAR  
BENGALURU -560091
2. SMT NINGAMMA  
W/O GANGANNA  
AGED ABOUT 56 YEARS,

RESIDING AT B.E.L. MAIN ROAD,  
KRISHNAPPA LAYOUT  
MAGADI ROAD,  
ANJANA NAGAR  
BENGALURU-560091

3. SMT SARASWATHI  
D/O GANGANNA  
AGED ABOUT 33 YEARS,  
R/AT NO.109/2, 1ST CROSS  
APPANAPPA LAYOUT  
THUNGA NAGAR MAIN ROAD,  
BENGALURU-560091
4. SMT BHAVYA  
D/O GANGANNA  
AGED ABOUT 25 YEARS,  
R/AT NO.3, THUNGA NAGAR EAST SIDE,  
5TH CROSS, HOSAHALLI MAIN ROAD,  
THUNGA NAGAR,  
BENGALURU-560091
5. SRI KALEGOWDA @ GUNDAPPA  
S/O LATE GANGAIAH,  
AGED ABOUT 69 YEARS,  
RESIDING AT UKKADA VILLAGE,  
GUDDAHALLI DHAKLE  
MAGADI TALUK  
RAMANAGARA DISTRICT

...RESPONDENTS

THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 OF CPC, AGAINST THE JUDGMENT AND DECREE DTD22.07.2017 PASSED IN RA.NO.6/2013 ON THE FILE OF THE PRL. DISTRICT AND SESSIONS JUDGE, RAMANAGARA, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DTD 15.01.2013 PASSED IN OS.NO.276/2006 ON THE FILE OF THE ADDL. SENIOR CIVIL JUDGE, RAMANAGARA.

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

**JUDGMENT**

The captioned Second Appeal is filed by the unsuccessful plaintiff who is questioning the concurrent findings of the Courts below in dismissing the suit for partition.

2. For the sake of convenience, the parties are referred to as per their rank before the Trial Court.

3. Plaintiff has instituted a suit against his parents and two siblings who are arrayed as defendant Nos.3 and 4 as well as defendant No.5 who has succeeded in a suit for specific performance of contract filed against defendant Nos.1 and 2. Plaintiff claims that the suit schedule properties are joint family ancestral properties and plaintiff is entitled for his legitimate share in the suit schedule properties. Plaintiff alleged that agreement to sell executed by defendant Nos.1 and 2 in favour of defendant No.5 was

not for family necessity and therefore, the decree passed in specific performance suit in O.S.No.158/1997 is not binding on the plaintiff.

4. Defendant No.5 on receipt of summons, contested the proceedings and stoutly denied the entire averments made in the plaint. Defendant No.5 claimed that there was a partition between defendant No.1 and his brothers and in the said partition, the suit schedule properties were allotted to the share of defendant No.1 who in turn agreed to sell the suit schedule properties in favour of defendant No.5 and accordingly, executed an agreement to sell. Defendant No.5 further alleged that on account of price escalation, defendant Nos.1 and 2 made an attempt to retract from the agreement and this compelled defendant No.5 to file a suit for specific performance of contract. Defendant No.5 contended that on merit, suit was decreed and he deposited the balance sale consideration in the Court. Defendant No.5 also contended that present suit is

filed only to over come the decree passed in specific performance suit.

5. Plaintiff in support of his contention examined himself as P.W.1 and one independent witness as P.W.2 and produced documentary evidence vide Exs.P.1 to 6, while defendant No.5 to counter the claim of plaintiff let in rebuttal evidence by examining himself as D.W.1 and also produced documentary evidence vide Exs.D.1 to D.12.

6. The Trial Court having examined the evidence on record and also the statement made by the sisters of plaintiff who are examined as D.Ws.2 and 3 has come to conclusion that present suit is filed by the plaintiff only to over come the transaction. Though plaintiff during the trial tried to make out a case that P.W.2 is his guardian and he is residing with P.W.2, however, on examination of evidence of D.Ws.2 and 3, the Trial Court found that sisters have admitted in unequivocal terms that plaintiff and defendant Nos.1 to 4 are all residing together. The

Trial Court also found that defendant No.1 owns several other properties and the present suit is filed only in respect of those properties which were subject matter of agreement to sell.

7. On these set of reasonings, the Trial Court has partly decreed the suit and consequently, relief sought for partition and separate possession is rejected. However, plaintiff was granted 1/5th share in the amount deposited by defendant No.5 in O.S.158/1997.

8. The plaintiff feeling aggrieved by the judgment and decree of the Trial Court preferred an appeal before the Appellate Court in R.A.No.6/2013. The Appellate Court having independently assessed oral and documentary evidence has concurred with the findings and conclusions arrived at by the Trial Court. While re-appreciating evidence on record, the appellate Court was also of the view that defendant Nos.1 and 2 in collusion have set up plaintiff only to over come the decree passed in

O.S.No.158/1997 and has consequently, dismissed the appeal.

9. Heard learned counsel appearing for the plaintiff. Perused the concurrent finding of the Courts below.

10. Plaintiff has filed the present suit by contending that defendant Nos.1 and 2 are acting adversely to his interest and taking advantage of his minority have meddled with joint family ancestral properties and therefore, plaintiff claims that the agreement to sell executed by defendant Nos.1 and 2 and consequently, decree passed in specific performance suit in O.S.No.158/1997 do not bind on his legitimate share and therefore, has sought for relief of partition. The evidence on record clearly indicates that the present suit is a collusive suit. Both the Courts after having examined the material on record have come to conclusion that the claim of plaintiff that he is residing along with P.W.2 was not accepted by both the Courts. His contention that P.W.2 is his guardian was also found to be untrue.

Referring to the evidence of D.Ws.2 and 3, both the Courts have concurrently held that the present suit is filed only to negate the decree passed in specific performance suit in O.S.No.158/1997. Both the Courts have concurrently held that the present suit is filed at the instance of defendant Nos.1 and 2. The same can be gathered from the written statement filed by defendant Nos.1 and 2. It is strange, where serious allegations were made against defendant Nos.1 and 2. Defendant Nos.1 and 2 have accepted the allegations made by plaintiff. In the written statement they have submitted in unequivocal terms that the allegations made by the plaintiff are absolutely true. This is nothing, but an collusive act at the instance of defendant Nos.1 and 2 who have suffered a decree in O.S.No.158/1997.

11. Having suffered a decree in a suit for specific performance, defendant Nos.1 and 2 are indirectly trying to nullify the decree by setting up their own son by alleging that he is residing with P.W.2 and the agreement to sell was without taking note of minors interest. The



concurrent finding recorded by the Courts below is based on rebuttal evidence let in by defendant No.5.

Therefore, no substantial question of law would arise for consideration. Accordingly, the regular second appeal is **dismissed.**

In view of disposal of second appeal, I.A.No.1/2018 stands rejected.

**Sd/-  
JUDGE**

HDK