



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JANUARY, 2023

BEFORE

THE HON'BLE MR JUSTICE H.P.SANDESH

REGULAR SECOND APPEAL NO.1438 OF 2018 (PAR)

BETWEEN:

1. SRI S. SATHYANARAYANA
S/O LATE G. SHIVARAM
AGED ABOUT 69 YEARS
R/AT M/s. SRIDEVI ENTERPRISES
SRIRAMPURA
MYSORE – 570 008

PRESENTLY R/AT NO.139,
PARASATHNA HUNDI,
SRIRAMPURA POST,
H.D. KOTE ROAD,
MYSORE – 570 008

2. SMT. T. SAROJA
W/O THIRUNAVAKARASU
AGED ABOUT 62 YEARS
R/AT NO.24, 25, 26,
C.V.ROAD, II CROSS
TILAK NAGAR
MYSORE – 570 021

PRESENTLY R/AT NO.195/6,
BHAGYALAKSHMI ILLAM
AMMAN NAGARA
(BALUSWAMY NAGARA)
SOLAR PUDDUR, ERODU,
TAMIL NADU STATE – 638 002

...APPELLANTS

(BY SRI. R.D.PANCHAM, ADVOCATE)

Digitally signed
by SHARANYA T
Location: HIGH
COURT OF
KARNATAKA



AND:

1. SRI S. RANGARAJU
S/O LATE G. SHIVARAM
AGED ABOUT 49 YEARS
R/AT D.NO.37/B, II STAGE
INDUSTRIAL SUBURB
VISHWESHWARA NAGAR
MYSORE- 570 008

2. SMT. A. NANJAMMA
W/O LATE G. SHIVARAM
AGED ABOUT 87 YEARS
R/AT D NO 37/B, II STAGE
INDUSTRIAL SUBURB
VISHWESHWARA NAGAR
MYSORE- 570 008

RESPONDENT No.2 DIED ON 04.12.2022
AND THE LEGAL HEIRS ARE ALREADY ON RECORD
VIZ., APPELLANTS, RESPONDENT NoS.1, 3 & 7 TO 11

(AMENDED VIDE COURT ORDER DATED 16.01.2023)

3. SMT. S. CHANDRAKALA
W/O M.V. CHANDRAN AND
D/O LATE G. SHIVARAMA,
AGED ABOUT 54 YEARS
R/AT MADURYA APARTMENTS,
MANIMALA ROAD,
EDAPALLI ERNAKULAMMA
KERALA – 682 024

4. THE MYSORE CITY CORPORATION
NEW SAYYAJI RAO ROAD
MYSORE - 570001
REP. BY ITS COMMISSIONER

5. THE REVENUE OFFICER
MYSORE CITY CORPORATION
MYSORE – 570 004



6. M/S. R.R.DEVELOPERS
A PARTNERSHIP FIRM
HAVING ITS OFFICE AT
NO.5953, 'C' BLOCK,
AECS LAYOUT, KUNDANHALLI,
BANGALORE – 560 007
REP BY ITS EXECUTIVE
MANAGING PARTNER
DR. VASUNDARADEVI

SMT. LATHA
SINCE DEAD BY LRS

7. SRI R.S. KUMAR
AGED ABOUT 66 YEARS
HUSBAND OF DECEASED
LATHA

8. KUM. HARSHITHA
AGED ABOUT 24 YEARS
D/O DECEASED
LATHA

9. KUM. AMRUTHAVALLI
AGED ABOUT 22 YEARS
D/O DECEASED
LATHA

RESPONDENTS NO.7 TO 9 ARE
R/AT D.NO.201, BVSS APARTMENT
DODDANA KUNDI, MARATHAHALLI,
BANGALORE – 560 037

10. SRI S. VENUGOPAL
S/O LATE G. SHIVARAM
AGED ABOUT 54 YEARS
R/AT M/S. SRIDEVI ENTERPRISES
SRIRAMPURA, MYSORE – 570 008

11. SMT. SARASWATHI
W/O GOVINDARAJA
AGED ABOUT 62 YEARS



R/AT NO.24, 25, 26, C.V.ROAD,
II CROSS, TILAK NAGAR
MYSORE – 570 008

...RESPONDENTS

(BY SRI. K.R. SREENIVASA PATAVARDHAN, ADV., FOR R1 &
R2; SMT.GEETHA DEVI M.P., ADV., FOR R4;
R3 & R5 TO R11 ARE SERVED & UNREPRESENTED)

THIS RSA IS FILED U/S.100 OF CPC., AGAINST THE
JUDGMENT & DECREE DTD: 03.03.2018 PASSED IN
R.A.NO.186/2013 ON THE FILE OF THE IV ADDITIONAL
DISTRICT JUDGE, MYSURU, DISMISSING THE APPEAL AND
CONFIRMING THE JUDGEMENT AND DECREE DTD 08.03.2013
PASSED IN OS.NO.62/2009 ON THE FILE OF THE II
ADDITIONAL SENIOR CIVIL JUDGE, MYSURU.

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

JUDGMENT

This matter is listed for admission
today. Heard the learned counsel appearing for the appellants
and the learned counsel appearing for the respondents.

2. This appeal is filed challenging the judgment and
decree dated 03.03.2018 passed in R.A.No.186/2013 on the file
of the IV Additional District Judge, Mysuru.

3. The factual matrix of the case of the plaintiffs
before the Trial Court is that the suit schedule property is the
part and parcel of the entire Industrial site bearing No.37/B,



measuring 200 x 245 feet. The same was allotted by CITB., in favour of the father of the plaintiffs and defendant Nos.1 and 3 and husband of defendant No.2 in the year 1979-80.

4. It is the contention of the plaintiffs in the suit that the suit schedule property is the joint family property of the plaintiffs and defendant Nos.1 to 3 and they are in joint possession of the same. Hence, they are entitled for 1/5th share each over the suit schedule property and also sought for the relief of permanent injunction against defendant Nos.4 and 5.

5. In pursuance of the notice issued by the Trial Court in the original suit, the defendants have contended that after the death of father G.Shivarama, the entire industrial site bearing No.37/B subjected to oral partition and subsequently reduced into writing on 13.12.1993. It is also the contention of the defendants that in terms of the said partition, plaintiff Nos.1 to 3 have sold their share in favour of Smt.Gowri R. Patel under a Registered Sale Deed dated 13.10.1996 for valuable consideration and it is also contended that after the partition plaintiff Nos.4 and 5 have also sold their share in favour of Shri



H.M.Patel under a Registered Sale Deed dated 13.10.1996 for valuable consideration. It is the defense that the suit schedule property exclusively fallen to the share of defendant Nos.1 and 2. It is also the contention of the first defendant that the second defendant has relinquished her share over the suit schedule property in his favour through a Registered Release Deed dated 09.04.2003. Hence, when there was already a partition, the question of granting share does not arise and the suit is not maintainable.

6. The Trial Court based on the pleadings of the plaintiffs and the defendants framed the issues and also given an opportunity to both the parties to lead their evidence.

7. The plaintiffs in order to substantiate their contention, the first plaintiff examined himself as P.W.1 and got marked the documents as Exs.P1 to P38. The second plaintiff examined himself as P.W.2 and also examined one witness as P.W.3 and the fourth plaintiff herself examined as P.W.4. On the other hand, the first defendant examined himself as D.W.1 and also examined two witnesses as D.W.2 and D.W.3 and got marked the documents as Exs.D1 to D50.



8. The Trial Court after considering both oral and documentary evidence available on record answered each of the issues independently except issue Nos.1, 2 and 5. Considering the material available on record and extracting the evidence of P.W.1, that the admissions are given with regard to the earlier partition is concerned while answering issues in detail discussed and passed the judgment by dismissing the suit and came to the conclusion that already there was a partition and the parties have already acted upon in terms of the partition particularly plaintiff Nos.1 to 3 and plaintiff Nos.4 and 5 have sold their shares on the same day in favour of the prospective purchasers and answered issue No.1 as negative and issue Nos.2 to 7 as affirmative and other issues are also as negative. Hence, an appeal is filed by the plaintiffs in RA No.186/2013 before the First Appellate Court.

9. The main contention of the learned counsel appearing for the appellants/plaintiffs in the present appeal is that the document - Ex.D1 came to be executed due to financial distress in their joint family and also contended that Ex.D1 is not admissible in evidence and the same is an unregistered and unstamped Partition Deed and the Trial Court



also committed an error in not appreciating both oral and documentary evidence and particularly the answers elicited from the mouth of defendants and the admissions were also not taken note of. Hence, the First Appellate Court formulated the points with regard to these aspects and answered point Nos.1 and 2 as negative and point No.3 as affirmative in coming to the conclusion that the Trial Court was justified in dismissing the suit of the plaintiffs considering both oral and documentary evidence placed on record and also considered the documents of Sale Deed dated 13.10.1996, which has been marked as Exs.D7 and D8, wherein, the recitals are also made that in terms of the Partition, the properties are fallen to their share and dismissed the appeal. Hence, the present second appeal is filed by the plaintiffs before this Court.

10. The learned counsel appearing for the appellants/plaintiffs would vehemently contend that both the Courts have failed to take note of the document-Ex.D1, which came into existence under what circumstances and a specific pleading is also made to that effect. The learned counsel also would submit that due to ULC Act, the parties have sold the property in favour of the prospective purchasers and there was



no any Partition at all. The learned counsel also would vehemently contend that the unregistered and unstamped partition document is also not admissible in the eye of law. In spite of it the Trial Court has given consideration to the said document. Only the Trial Court and the First Appellate Court considered both oral and documentary evidence in isolation with the evidence of P.W.1 and not considered the material on record in a proper perspective. Hence, this Court has to frame the substantial question of law by admitting this appeal.

11. Per contra, learned counsel appearing for the respondents/defendants would vehemently contend that the specific defense was taken in the written statement that there was already a partition and the parties have acted upon and the Sale Deeds were also made in favour of the prospective purchasers on the same day by plaintiff Nos.1 to 3 and also plaintiff Nos.4 and 5. The sale consideration was also received. Though document discloses lesser sale consideration, it is emerged in the evidence that they have received an amount of Rs.7,25,000/- as sale consideration. The learned counsel also would submit that the Trial Court had taken note of the contention of the plaintiffs in paragraph No.21 of the Trial Court



judgment that only on account of ULC Act, the same was forced the parties to execute the Sale Deeds separately. The said contention was overturned by the Trial Court in coming to the conclusion that no pleading to that effect. Hence, the Trial Court having gone through both oral and documentary evidence and the admissions are also extracted in the judgment. The learned counsel also would submit that in the appeal also, the First Appellate Court having considered the grounds urged in the appeal memo and the material available on record, discussed in detail in paragraph Nos.34 to 38, taken note of particularly recitals of the documents-Exs.D7 and D8-Sale Deeds, which have been executed by the plaintiff Nos.1 to 3 as well as plaintiff Nos.4 and 5. Apart from that, the Release Deed executed by defendant No.2 in favour of defendant No.1, clearly establishes the fact that already there was a partition and the property which was allotted to the second defendant was released in favour of defendant No.1. These are all the materials were taken note of by the First Appellate Court and not committed any error. Hence, no question of admitting this appeal and there is no substantial question of law.



12. Having heard the respective counsel and also on perusal of the material available on record, it is not in dispute that the property, which is the subject matter of the suit, which was allotted by CITB in favour of plaintiffs' father and defendant Nos.1 to 3. But the very contention of the plaintiffs before the Trial Court is that there was no any partition and the same is the joint family property of plaintiffs and defendants No.1 to 3 and they are in joint possession of the same. On the other hand, it is the contention of the defendants that already there was a partition and in terms of the partition, the parties have acted upon and executed the Sale Deed.

13. Having considered the grounds urged in the appeal memo only the contention of the learned counsel appearing for the appellants is that both the Courts failed to take note of the documents which came into existence and also under what circumstances the documents are came into existence. It is the contention of the learned counsel appearing for the plaintiffs/appellants that no partition at all but the fact is that after the partition plaintiff Nos.1 to 3 have sold the property and plaintiff Nos.4 and 5 have also sold the property on the



very same day. These two documents – Exs.D7 and D8 reveals that there were recitals in the documents that they had got the property through partition, particularly, referring the Partition Deed dated 13.12.1993. Apart from that, the parties have acted upon and the Khathas are also transferred in the name of the parties. It is the case of the defendants that the property which was released in favour of defendant No.1 was allotted in favour of defendant No.2 and she has also executed the Release Deed in favour of defendant No.1.

14. Learned counsel appearing for the respondents/defendants would contend that the plaintiffs have suppressed the earlier partition and also the Sale Deeds-Exs.D7 and D8 executed by plaintiff Nos.1 to 3 and plaintiff Nos.4 and 5. No such pleadings in the plaint also with regard to the earlier partition as well as the same made by the plaintiffs and no explanation on the part of the plaintiffs also with regard to those two documents and there is a force in the contention of the learned counsel for the respondents.

15. On perusal of the judgment of the Trial Court, the Trial Court while answering issue Nos.2 to 7 as 'affirmative',



extracted the admission given by P.W.1 regarding earlier partition and also allotment of share in favour of the members of the joint family in terms of the Partition Deed dated 13.12.1993. It is also the contention of the defendants that it was only an oral partition and subsequently the same is reduced into writing. When such being the material available on record, the question of very contention of the learned counsel appearing for the appellants that the document is unstamped and unregistered cannot be accepted. The Court has to take note of the evidence available in toto, both the Courts have taken note of the recitals of the documentary evidence available on record and the documentary evidence precedes over the oral evidence. In the oral evidence also, P.W.1, has given a categorical admission with regard to the earlier partition and allotment of share in favour of family members and also admitted the sale consideration of Rs.7,25,000/- stating that herself and other family members viz., Venugopal, Saraswathi, have received the amount of Rs.7,25,000/- and so also Saroja, Latha and Chandrakala have also collected the amount of sale consideration. Further admits that there was no



loan amount due as on the date of selling of those two properties.

16. Having taken note of all these materials available on record, both the Trial Court as well as the First Appellate Court came to the conclusion that already there was a partition and the parties have acted upon. Hence, I do not find any force in the contention of the learned counsel appearing for the appellants that there was no any partition and the document – Ex.D1 came into existence under the circumstances. But, the Trial Court while answering with regard to the contention of the ULC Act was applicable and hence the sale deed is executed and to that contention came to the conclusion that there was no any pleading to that effect in the plaint and all the grounds which have been urged by the plaintiffs before the Trial Court had been answered by the Trial Court by giving reasons. Both the Courts have applied their mind and given anxious consideration to both oral and documentary evidence placed on record and came to the conclusion that already there was a partition and the parties have also acted upon and taken the share in respect of the properties which have been sold. Hence, I do not find any force in the contention of the learned



counsel appearing for the appellants to admit the appeal and invoke Section 100 of CPC., to frame any substantial question of law. Only this Court can frame substantial question of law if both the Courts have committed an error in passing the judgment ignoring the material evidence available on record, which resulted in perversity. No such circumstances are found in the appeal to invoke Section 100 of CPC.

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

ORDER

The appeal is dismissed.

**Sd/-
JUDGE**

CP
List No.: 1 Sl No.: 31