



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF NOVEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

REGULAR FIRST APPEAL NO. 1727 OF 2021 (PAR)

BETWEEN:

SRI. HARSHAKUMAR. N
S/O. LATE B. S. NIRANJANAMURTHY,
AGED ABOUT 33 YEARS,
NO. 1124, RAILWAY STATION PARALLEL ROAD,
2ND A MAIN, KENGERI UPANAGARA,
BENGALURU-560 060,

NOW AT: G-5, 407,
PROVIDENT WELWORTH CITY APARTMENT,
SH-9, DODDABALLAPURA ROAD,
MARASANDRA AMANIKERE,
NEAR TOLL, YELAHANKA,
BANGALORE-561 203.

...APPELLANT

(BY SRI.R.B. SADASIVAPPA.,ADVOCATE)

AND:

1. SRI. M. CHANDRASHEKAR
S/O. LATE S. MAHADEVAIAH,
AGED ABOUT 55 YEARS,
RESIDING AT NO. 1691,
MAHADEVAPPA BUILDING,
B.M. ROAD, IJOOR, WARD NO. 28/1,
RAMANAGARA-562 159.
2. SMT. M. SHALINI
D/O. LATE S. MAHADEVAIAH,
W/O. JAYAKUMAR,
AGED ABOUT 41 YEARS,
RESIDING AT NO. 1691,
MAHADEVAPPA BUILDING,
B.M. ROAD, IJOOR, WARD NO. 28/1,
RAMANAGARA-562 159.

Digitally
signed by
VANDANA S
Location:
HIGH
COURT OF
KARNATAKA



NOW AT: GF-01, NO.128, 4TH CROSS,
DEGINAL NEST, VIDYAGIRI LAYOUT,
NAGARABHAVI,
BANGALORE-560 072.

...RESPONDENTS

(BY SRI. SOMASHEKHARAIHA R P.,ADVOCATE FOR R-1

SRI. VISHWANATH K.N., ADVOCATE FOR R-2)

THIS RFA IS FILED UNDER SECTION 96 OF CPC AGAINST THE JUDGMENT AND DECREE DATED 19.06.2018 PASSED ON I.A IN OS.No.447/2013 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND CJM, RAMANAGARA, ALLOWING THE I.A. FILED UNDER ORDER 7 RULE 11 R/W SEC.151 OF CPC, FOR REJECTION OF PLAINT.

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

JUDGMENT

This appeal is directed against the impugned order dated 19.06.2018 passed in O.S.No.447/2013 by the Principal Senior Civil Judge and CJM, Ramanagara, whereby the plaint filed by the appellant – plaintiff was rejected under Order 7 Rule 11 of CPC, consequent upon which the suit of the appellant – plaintiff came to be dismissed by the plaintiff.

2. Heard learned counsel for the appellant and learned counsel for the respondents and perused the material on record. Perusal of the material on record will indicate that the appellant – plaintiff instituted the aforesaid suit against the respondents – defendants for partition and separate possession of



their alleged share in the suit schedule properties and for other reliefs.

3. In the said suit, in addition to filing of their written statement, defendants filed an application seeking rejection of the plaint in the light of the judgment of the Apex Court in the case of **2016(2) SCC 36 Prakash and other v/s Phulavati and others.**

4. Accepting the said contention of the respondents – defendants and in the light of the judgment of the Apex Court in *Phulavati's case* supra, the Trial Court proceeded to pass the impugned order rejecting the plaint consequently dismissing the suit by passing the impugned judgment and decree which is assailed in the present appeal.

5. A perusal of the impugned order passed by the Trial Court will indicate that the sole ground on which the plaint was rejected was that the suit was barred in the light of the judgment of the Apex Court in *Phulavati's case* supra.

6. However, in view of the undisputed fact, the said judgment in *Phulavati's case* supra has been subsequently overruled by the Larger Bench of the Apex Court in **AIR 2020 SCC 3717 Vineeta Sharma v/s Rakesh Sharma and others.**



7. I am of the considered opinion that the impugned order passed by the Trial Court deserves to be set aside and the matter is remitted back to the Trial Court for reconsideration afresh in accordance with law, bearing in mind the judgment of the Apex Court rendered in *Vineeta Sharma's case, supra*.

8. In the result, I pass the following orders:

- i) The appeal is hereby allowed
- ii) Impugned order is set aside
- iii) Matter is remitted back to the Trial Court for reconsideration afresh bearing in mind the judgment of the Apex Court rendered in *Vineeta Sharma's case, supra*.
- iv) All rival contentions on all aspects of the matter are kept open and no opinion is expressed on the same.
- v) Parties undertake to appear before the Trial Court on 20.12.2023 without awaiting any further notice.
- vi) The Trial Court is directed to dispose of the suit on all issues within a period of **nine months** from the date of receipt of a copy of this order.
- vii) Liberty is reserved in favour of the parties to file additional pleadings and adduce oral and documentary evidence in support of their respective claims.

Sd/-
JUDGE