



IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 31ST DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MR. JUSTICE E.S.INDIRESH

REGULAR SECOND APPEAL NO. 7295 OF 2009 (DEC/INJ)

BETWEEN:

HANMANTHRAO S/O BASAVARAJ PATIL,
Age: 38 YEARS, OCC: AGRI,
R/O:REVOOR(B), TQ:AFZALPUR,
DIST:GULBARGA.

...APPELLANT

(BY SRI. S.B. HANGARKI, ADVOCATE)

AND:

Digitally signed
by
LUCYGRACE
Location: HIGH
COURT OF
KARNATAKA

- 1 SANGAMESHWAR S/O BASAVARAJ PATIL,
AGE: 43 YEARS, OCC: AGRI.,
SINCE DECEASED BY HIS LRS
- A) LAXMIBAI W/O UMESH PATIL,
AGE: 35 YEARS, OCC: HOMEMAKER,
R/O SADALAPUR VILLAGE,
TQ: AKALKOT, DIST: SOLAPUR.
2. MAHESH S/O SANGAMESHWAR PATIL,
AGE: 25 YEARS, OCC: AGRI,
3. RAMESH S/O SANGAMESHWARJ PATIL,
AGE: 23 YEARS, OCC: AGRI.,



ALL R/O:REVOOR(B),
TQ:AFZALPUR,
DIST:GULBARGA.

4. BASAVARAJ S/O SHIVSHARNAPPA PATIL,
SINCE DECEASED BY HIS LRS
 - A) SHAILAJA W/O BHEEMRAO PATIL,
(MADIYAL), AGE: YEARS,
OCC:HOUSEHOLD,R/O:SHASTRI NAGAR,
H.NO.1-889/18/A,NEAR OLD INDIAN OIL DEPOT,
OLD JEWARGI ROAD,GULBARGA.
 - B) PADMAJA W/O ARVIND PATIL,
AGE: YEARS, OCC:HOUSEHOLD,
R/O:WAGDHARI, TQ:AKKALKOT,
DIST:SOLAPUR(MAHARASHTRA).
SINCE DECEASED BY HER LRS
 - I) SMT.AMBIKA D/O ARVIND PATIL,
AGE: 42 YEARS,OCC: PRIVATE JOB, R/O P2/6, BLOCK
NO.7, SECTOR NO.17,
NEW PANVEL, DIST-RAIGAD, MAHARASTRA.
 - II) SARIKA D/O ARVIND PATIL,
AGE: 38 YEARS, OCC: AGRI.,
R/O NODA GALLI, NEAR OLD WATER TANK,
SEDAM.
 - III) MAHADEV S/O ARVIND PATIL,
AGE: 35 YEARS., OCC: AGRI.,
R/O AKKALKOT, DIST: SOLAPUR,
MAHARASTRA.
 - IV) VITHAL S/O ARVIND PATIL,
AGE: 33 YEARS, OCC: AGRI.,
R/O WAGDARI, TQ: AKKALKOT,
DIST: SOLAPUR, MAHARASTRA.



R/O:RAGHAVENDRA NAGAR,SAIFFL STOP,
BLOCK NO.126/1 BIJAPUR ROAD,
SOLAPUR(MAHARASHTRA).

...RESPONDENTS

(BY SRI.ANILKUMAR D.CHAVAN, ADVOCATE FOR R-1; NOTICE
TO R-4(B)(I) AND R-4(B)(III), R-4(B)(IV),R-4(C) SERVED BUT
UN-REPRESENTED)

THIS RSA IS FILED UNDER SECTION 100 OF CPC,
PRAYING TO SET ASIDE THE JUDGEMENT AND DECREE
PASSED ON 21.08.2009 IN R.A.NO.60/06 BY THE COURT OF
THE IVTH ADDL. DISTRICT JUDGE, GULBARGA, CONFIRMING
THE JUDGMENT IN O.S.NO.279/00 DATED 03.04.2006 PASSED
BY THE COURT OF THE PRL. CIVIL JUDGE (SR.DN.) GULBARGA.

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

JUDGMENT

1. This appeal is preferred by the plaintiff challenging the judgment and Decree dated 21.08.2009 in R.A. No.60/2006 on the file of IV ADDL. Dist. Judge at Gulbarga, confirming the Judgment and Decree dated 03.04.2006 in O.S. No.279/2000



on the file of Prl. Civil Judge (Sr. Dn.) at Gulbarga, dismissing the suit of the plaintiff.

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

3. It is the case of the plaintiff that plaintiff and defendant No.1 are the children of defendant No.4. Defendant Nos. 2 and 3 are the children of defendant No.1. It is the case of the plaintiff that the suit schedule property is the joint family property of the plaintiff and defendants and there was a nominal partition on 21.08.1974 and thereafter as the plaintiff and defendant No.1 were the minors, another partition was effected on 29.08.1983 and pursuant to the same, the house property was allotted to defendant No.4. It is further stated in the plaint that, as the defendant No.1 was not satisfied with the partition held during 1983, another partition took place during 1997 and based on the same, the plaintiff sought for relief of declaration in respect of the house property mentioned in the suit schedule property.



4. After service of notice the defendant Nos.1 to 3 entered appearance and defendant No.4 was placed ex-parte. It is the specific contention of defendant Nos.1 to 3 that the house property was not divided between the parties and as such, denied the plaint averments.

5. Based on the pleadings on record, issues were framed by the Trial Court.

6. In order to establish his case, the plaintiff has examined two witnesses as P.W.1 and P.W.2 and marked 12 documents as Exhibits P1 to P12. Defendant No.1 was examined as D.W.1 and got marked 33 documents as Exhibits D1 to D33. The Trial Court after considering the material on record, by its Judgment and Decree dated 03.04.2006, dismissed the suit and feeling aggrieved by the same, the plaintiff filed R.A. No.60/2006 before the First Appellate Court and the appeal was resisted by the defendants. The First Appellate Court by its Judgment and Decree dated 21.08.2009, dismissed the appeal and as such confirmed the Judgment and Decree in O.S. No.279/2000 and feeling aggrieved by the same, the plaintiff has preferred this second appeal.



7. This Court, vide order dated 13.06.2016 framed the following substantial question of law:

“ Whether the material evidence on record, according to the counsel for the appellant, being sufficient to establish a partition as between the parties, whether it was open for the Court below to re-open such a partition and adjudicate afresh as to the rights of the parties? ”

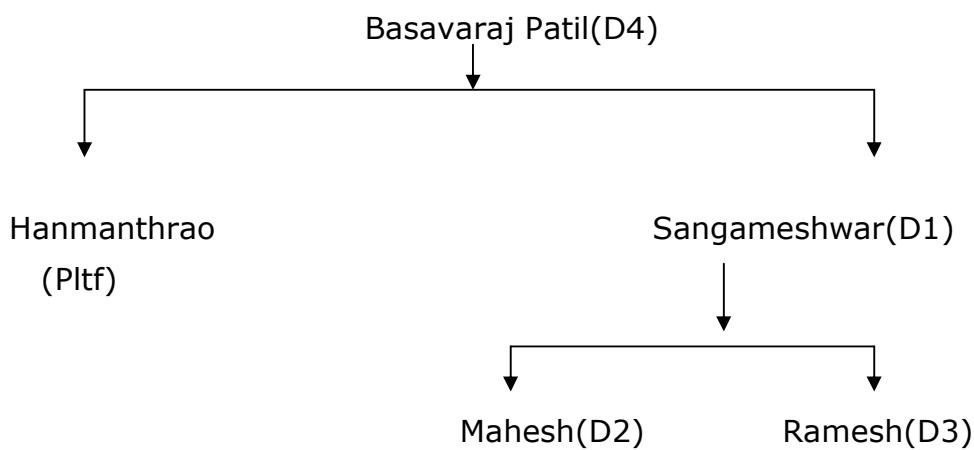
8. I have heard Sri. S.B. Hangarki, learned counsel appearing for the appellant, Sri. Anilkumar D. Chavan, learned counsel appearing for the respondent No.1. I

9. Sri. S.B. Hangarki, learned counsel appearing for the appellant argued that, there was a partition during 1997 and in the said partition, the house property was allotted to the share of the plaintiff and the said aspect has been admitted by D.W.1 deposing about the schedule property and despite the same, both the Courts below erred in dismissing the suit of the plaintiff and accordingly, sought for interference of this Court.



10. Per contra, Sri. Anilkumar D. Chavan, learned counsel appearing for the defendants sought to justify the Judgment and Decree passed by the Courts below and sought for dismissal of the appeal.

11. In the light of the submissions made by the learned counsel appearing for the parties, there is no dispute with regard to relationship between the parties. The genealogical tree of the parties reads as under:



12. Perusal of the finding recorded by both the Courts below as well as the contentions raised by the plaintiff would indicate that the defendant No.4 being Karta of the joint family of the parties, in order to avoid ceiling limits during 1974, has made partition between the parties on 21.08.1974, however the said



partition was not effected and the said partition has not been proved before the Courts below. Nextly, in so far as the partition that took place on 29.08.1983, though it is urged in the Memorandum of Appeal, however, the said partition was not proved before the courts below as the burden is on the plaintiff to establish and to prove the factum of partition. Even if it is assumed that the said partition is a oral partition, however, the said partition has not been acted upon and no acceptable evidence has been adduced before the courts below. In so far as the partition effected during 1997, as alleged by the plaintiff, perusal of Ex.P1 would indicate that certain property has been exchanged between the plaintiff and the defendant No.4, and it is well established principle that the revenue entries do not confer title in respect of the property and in that view of the matter, as the plaintiff has filed a suit for declaration to declare that the house property is belonging to him, not being proved the partition in the family as alleged in the plaint, it is relevant to deduce the law declared by this Court in the case of **SRI ARALAPPA Vs. SRI JAGANNATH AND OTHERS** reported in **ILR 2007 KAR 339**. It is to be noted that partition is not a transfer, and by partition nobody



acquires title to any property. The partition deed only recognises an existing right that each party to the deed has and no right springs from deed of partition. Since the partition is not a transfer and there is not a conveyance and further the plaintiff claiming declaration based on the aforementioned deed / oral partition effected between the parties and same is not proved before the Courts below, I am of the view that the finding recorded by both the Courts below is based on the material on record and accordingly, the substantial question of law framed above favours the defendants.

13. In the result, the appeal fails and accordingly, dismissed.

Sd/-
JUDGE

sac
List No.: 1 SI No.: 34