



**IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH**

**DATED THIS THE 8<sup>TH</sup> DAY OF NOVEMBER, 2024**

**PRESENT**

**THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR**

**AND**

**THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA**

REGULAR FIRST APPEAL NO.100095 OF 2019 (PAR/POS)

**BETWEEN:**

1. PADMARAJ S/O TAVANAPPA PATIL,  
AGE: 54 YEARS, OCC: BUSINESS,  
R/O: H.NO.380, TANAJI GALLI ANGOL,  
BELAGAVI-590007, DIST: BELAGAVI.
2. RAVI S/O TAVANAPPA PATIL,  
AGE: 54 YEARS, OCC: BUSINESS,  
R/O: H.NO.380, TANAJI GALLI ANGOL,  
BELAGAVI-590007, DIST: BELAGAVI.

- APPELLANTS

(BY SRI. DINESH M. KULKARNI, ADVOCATE)

**AND:**

SMT. SHANTABI W/O NARAYAN SOMANACHE  
SINCE DECEASED BY HER LRS,

1. ANAND S/O NARAYAN SOMANACHE,  
AGE: 63 YEARS, OCC: AGRIL.,  
R/O: H.NO.155, JERI GALLI, ANGOL,  
BELAGAVI-590007, DIST: BELAGAVI.
2. FAKIRA S/O NARAYAN SOMNACHE  
AGE: 59 YEARS, OCC: AGRIL.,  
R/O: H.NO.212, JERI GALLI, ANGOL,  
BELAGAVI-590007, DIST: BELAGAVI.
3. MONAPPA S/O NARAYAN SOMANACHE  
AGE: 57 YEARS, OCC: AGRICULTURE & SERVICE,  
R/O: H.NO.161, JERI GALLI, ANGOL,  
BELAGAVI-590007, DIST: BELAGAVI.
4. REVANI S/O NARAYAN SOMANACHE  
AGE: 55 YEARS, OCC: AGRICULTURE & SERVICE,



R/O: H.NO.161, JERI GALLI, ANGOL,  
BELAGAVI-590007, DIST: BELAGAVI.

5. PRABHAKAR S/O NARAYAN SOMANACHE  
AGE: 42 YEARS, OCC: AGRICULTURE & SERVICE,  
R/O: H.NO.161, JERI GALLI, ANGOL,  
BELAGAVI-590007, DIST: BELAGAVI.

NARAYAN S/O HANAMANT SOMNACHE  
SINCE DECEASED BY HIS LRS,

6. SMT. LAXMI W/O NINGANI HANAMANTACHE,  
AGE: 45 YEARS, OCC: HOUSEHOLD,  
R/O: LAXMI GALLI, HALAGA,  
TQ & DIST: BELAGAVI-590002.
7. SMT. INDU W/O JOTIBA MANGALE  
AGE: 37 YEARS, OCC: HOUSEHOLD,  
R/O: NEAR 1<sup>ST</sup> GATE, TILAKWADI,  
BELAGAVI-590003, DIST: BELAGAVI.
8. SMT. TULASA W/O VASANT HUDDAR  
AGE: 47 YEARS, OCC: HOUSEHOLD,  
R/O: GAURI BUILDING, SAI DHABA,  
JALAGAON FATHA, SATARA, DIST. SATARA,  
STATE: MAHARASHTRA-415001.

- RESPONDENTS

(NOTICE TO R1, R2, R3 & R8 - HELD SUFFICIENT;  
NOTICE TO R4, R5, R6 & R7 - SERVED & UNREPRESENTED)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96  
READ WITH ORDER XLI RULE 1 OF CPC., PRAYING TO SET ASIDE  
THE JUDGMENT AND DECREE DATED 03.01.2019 PASSED BY THE 4<sup>TH</sup>  
ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, BELAGAVI, AT  
BELAGAVI IN OS.196/2012 AS NULL AND VOID & ETC.,

THIS REGULAR FIRST APPEAL, COMING ON FOR FINAL  
HEARING, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR  
AND  
THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA



**ORAL JUDGMENT**

(PER: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR)

This appeal is preferred by defendants 5 and 6 who were purchasers of part of suit property measuring 1 acre 31 guntas in sy. No. 592/2 situate at Angol, Taluka and District Belgaum. The trial court decreed the suit of the plaintiffs holding that the plaintiffs and the defendants were entitled to their legitimate shares in the suit property. Defendants 5 and 6 are aggrieved by this verdict.

2. The necessary pleaded facts are as below:

The first plaintiff, now deceased was the wife of the first defendant, now deceased. Plaintiffs 2 to 6 are the sons and defendants 2 to 4 are the daughters of the first plaintiff and the first defendant. The plaintiffs stated that the first defendant's father was an agriculturist and cultivating the suit land. After the death of the father of the first defendant, they and the defendants 1 to 4 held the suit property in their joint possession as it was the property of the joint family. When there were some disputes between the first defendant and his brothers, there took place partition and the suit property was allotted to the first defendant and therefore, the suit property



was the joint family property. In spite of the fact that they all had right over the same, the first defendant tried to alienate it to deprive them of their legitimate share. First defendant did not heed to their request that the property should not be alienated. Defendants 5 and 6 tried to assert their right, title and interest over portion of the suit property on the basis of a document styled as a sale deed dated 02.04.2012. The first defendant had no right to execute the sale deed and even if he had executed, it did not bind their interest and therefore they brought suit for partition claiming 6/10<sup>th</sup> share in suit property.

3. The first defendant specifically contended that the suit property was the self acquisition of his father who during his lifetime executed a will bequeathing the suit property to him. Therefore he got his name mutated in the revenue records. He claimed to be the absolute owner of the suit property and stated further that the plaintiffs neglected to look after him. Though all of them were residing in the same house, he was compelled to make his own arrangements for his food. As he grew old, he had to avail loan for his maintenance and therefore owing to financial difficulty, he had to sell portion of suit property measuring 21 guntas to defendants 5 and 6 by



executing a registered sale deed 02.04.2012. Asserting that the suit property was his personal property, and that the plaintiffs and defendants 2 to 4 had no right to claim share, he prayed for dismissal of suit.

4. Defendants 5 and 6 took the same contentions as pleaded by the first defendant. Defendant no. 4 filed written statement supporting the plaintiffs. Defendants 2 and 3 adopted the written statement of defendant no.4.

5. To decree the suit in favour of the plaintiffs, the trial court has arrived at conclusions that suit property was the joint family property to which Mithakshara School of Hindu Law was applicable. Devolution would take place according to Sec.6 of the Hindu Succession Act. As regards the will stated by the first defendant, the trial court is of the opinion that there was no proof of execution of the will in accordance with law. For these reasons the plaintiffs as also defendants 2 to 4 would become entitled to their legitimate shares.

6. We have heard the argument of Sri Dinesh M. Kulkarni, learned counsel for the appellants. In spite of service of notice on the respondents, none of them entered appearance.



7. It is the argument of Sri Dinesh Kulkarni that the suit property was granted to the father of the first defendant. The father executed a will in respect of suit property in favour of the first defendant. In the same will he made arrangements for allotment of properties to his other sons. Since the property belonged to first defendant's father, even in the absence of the will, first defendant would succeed to the suit property under Sec. 8 of the Hindu Succession Act. Therefore during lifetime of the first defendant, the plaintiffs had no right to bring the suit for partition. Secondly the father had every right to execute the will because the suit property was granted to him exclusively. Not only the first defendant but his brothers were also legatees in respect of the ancestral properties under the same will. There was a dispute between two brothers of the first defendant before the revenue authorities and in that proceeding there is a reference to execution of will by the father. In this view, there was no need to prove the execution of the will. Defendants 5 and 6 are the purchasers of 21 guntas of land out of the entire extent of the suit property. The right of the first defendant to execute sale deed cannot be questioned by the plaintiffs. The trial court has lost sight of



this legal aspect. Therefore the judgment of the trial court suffers from infirmities.

8. We have perused the records and considered the grounds urged by Sri Dinesh M. Kulkarni. The point that arises for discussion is:

*Whether the trial court has rightly held that suit property was the ancestral property of the first defendant and thus the plaintiffs and defendants 2 to 4 could claim partition?*

9. In the plaint, the plaintiffs state that the suit property belonged to the joint family and it was allotted to the first defendant in a partition that took place between the first defendant and his brothers. The first defendant asserted that the suit property was the self acquisition of his father. Ex.D.6 is the certified copy of the order passed by the Land Tribunal, Belgaum taluk. This is an undisputed document and it shows that first defendant's father Hanamant Mayanna Sommanache applied for grant of occupancy rights in respect of lands in Sy. Nos. 593/2/1, 401 and 592/2. The Land Tribunal granted occupancy rights to him.

10. It is not the case of the plaintiff that the suit property was being cultivated by the ancestors of father of the first



defendant and therefore the grant was to the joint family. Ex.D.6 shows exclusive grant in favour of first defendant's father. Merely for the reason that a joint family was in existence, it does not mean that the grant made in favour of first defendant's father should be treated as joint family or ancestral property in which the other members had equal right. More than this PW1 who is none other than plaintiff no.4 has clearly admitted that the suit land was his grandfather's self acquired property. Defendant no.2 who sailed with the plaintiffs and adduced evidence as DW2 was suggested that suit property was the self acquisition of her grandfather who had executed a will in favour of her father. Instead of giving a definite answer, she gave evasive answers which reflect on her demeanor. However she admitted the suggestion that her father's name was entered in the revenue records on the basis of will executed by her grandfather. Therefore in view of clear admission by PW1, the suit property was exclusive property of first defendant's father. If he executed a will, the plaintiffs cannot question it. Moreover on the basis of will, a mutation had taken place. Ex.D.4 shows some proceedings having taken place before the Assistant Commissioner. The first defendant's



brother Viraji was the appellant and his another brother Yallari was the respondent. There was a reference to the will executed by one Hanamant who was the father of the first defendant. In these circumstances, as has been held by the trial court there was no need to prove the will. In fact, execution of will did not become an issue in the suit. The plaintiffs stated that suit property was ancestral joint family property, but the clear admission given by PW1 dislodges their specific plea.

11. Even if the will is ignored, as it is clear that the suit property was the self acquisition of the first defendant's father, the property devolved on the first defendant in accordance with Sec.8 of the Hindu Succession Act. Therefore the suit property also became the exclusive property of the first defendant. For this reason the plaintiffs had no right to file a suit for partition during his lifetime. Of course the first defendant died during the pendency of the suit. But during his lifetime he had sold 21 guntas of land out of the suit property to defendants 5 and 6. He gave reasons which necessitated him to sell. As the suit property belonged to him exclusively, he had right to sell and thus defendants 5 and 6 became the absolute owners of 21



guntas of land. Neither the plaintiffs nor defendants 2 to 4 could question the sale. In this view, the interest of defendants 5 and 6 is really affected by the impugned judgment.

13. If the impugned judgment is read, it becomes very clear that the trial court has dealt with theoretical aspects of succession and proof of execution of will. The trial court has not applied its mind to the evidence on record to give proper answers to the issues framed by it. Therefore we find a clear case for interference in this appeal. Hence the following order.

ORDER

Appeal is allowed with costs.

The judgment dated 03.01.2019 in O.S. No.196/2012 passed by the IV Addl. Sr. Civil Judge & JMFC, Belagavi, is set aside.

Suit is dismissed.

**Sd/-**  
**(SREENIVAS HARISH KUMAR)**  
**JUDGE**

**Sd/-**  
**(T. G. SHIVASHANKARE GOWDA)**  
**JUDGE**

BVV  
LIST NO.: 1 SL NO.: 23