



IN THE HIGH COURT OF KARNATAKA,

DHARWAD BENCH

DATED THIS THE 18TH DAY OF DECEMBER, 2024

PRESENT

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

AND

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

REGULAR FIRST APPEAL NO. 100458 OF 2022 (PAR/POS)

BETWEEN:

SMT. SWATI DATTARAM GAWADE
AGE.63 YEARS, OCC.HOUSEHOLD WORK,
R/O.HOUSE NO.2421, KACHERI GALLI,
SHAHAPUR, BELAGAVI-590 001.

- APPELLANT

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

AND:

BALACHANDRA SACHIDANAND GINDE
SINCE DECEASED BY HIS LR'S

- 1 . PRAMILA W/O. BALACHANDRA GINDE
AGE.78 YEARS, OCC.HOUSEHOLD WORK,
R/O.DEVAKI KRISHNA APARTMENT,
KAMAL ESTATE GURUDEV MANDIR ROAD,
DOMBIVALI EAST THANE-480 028
MAHARASHTRA STATE.
- 2 . SMT. DEEPTI W/O. ABHISHEK MATHUR
AGE.53 YEARS, OCC.HOUSEHOLD WORK,
R/O.DEVAKI KRISHNA APARTMENT,
KAMAL ESTATE GURUDEV MANDIR ROAD,
DOMBIVALI EAST THANE-400 028
(MAHARASHTRA STATE)
- 3 . SMT. DEVAKI BALACHANDRA GINDE
AGE.58 YEARS, OCC.HOUSEHOLD WORK,



R/O.DEVAKI KRISHNA APARTMENT,
KAMAL ESTATE GURUDEV MANDIR ROAD,
DOMBIVALI EAST THANE-400 028
(MAHARASHTRA STATE)

- 4 . SMT. USHA MAHADEV INAMDAR
AGE.80 YEARS, OCC.HOUSEHOLD WORK,
R/O.PLOT NO.20, KRISHNARPAN,
HINDWADI, BELAGAVI-590 011.
- 5 . MRS.SUNITA DWARAKANATH ARVANDEKAR
AGE.73 YEARS, OCC.HOUSEHOLD WORK,
R/O.STATE BANK COLONY,
KESHAVPUR, HUBBALLI-580 023
DIST.DHARWAD.
- 6 . SHRI. DNYANESH KESHAV GINDE
AGE.60 YEARS, OCC.BUSINESS,
R/O.H.NO.9, STATE BANK COLONY,
RANI CHANNAMMA NAGAR,
BELAGAVI , DIST.BELAGAVI-590 006.
- 7 . SMT. PRADNYA PRADEEP JAPTIWALE
AGE.67 YEARS, OCC.BUSINESS,
HOUSEHOLD WORK,
R/O.MANGIRISH PLOT 14,
NEAR FOLOURING MALLI, GOVT COLONY,
VISHRAMBAG SALGALI-416 415

- RESPONDENTS

(BY SRI. SANGRAM S. KULKARNI, ADVOCATE FOR R6;
NOTICE TO R1, R2, R3, R4, R5, R7 SERVED)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF CPC., PRAYING TO, SET ASIDE THE IMPUGNED JUDGMENT AND DECREE DATED 14.03.2022 PASSED BY THE IV ADDL. SENIOR CIVIL JUDGE AND JMFC BELAGAVI, IN O.S.NO.364/2014 AND TO DECREE THE SUIT O.S.NO. 364/2014 AWARDING LEGITIMATE SHARE TO THE PLAINTIFF IN ALL THE SUBJECT MATTERS OF THE SUIT BY ALLOWING THIS R.F.A WITH COSTS IN THE INTEREST OF JUSTICE.



THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 20.11.2024 COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, T.G.SHIVASHANKARE GOWDA J., PRONOUNCED THE FOLLOWING:

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

CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA)

In this appeal, the plaintiff has challenged the judgment and decree dated 14.03.2022 passed in O.S.No.364/2014 by IV Addl. Senior Civil Judge and JMFC, Belagavi (for short, 'Trial Court').

2. Ranks of the parties will be referred to as per their status before the Trial Court.

3. Brief facts pleaded in the plaint are, the plaintiff and the defendants are the members of Ginde family of Belagavi. Plaintiff is the daughter of defendant No.1. Defendant Nos.5 and 6 are the brothers of the plaintiff. Defendant No.2/Balachandra Sachiddanand Ginde is the brother of defendant No.1. Defendant No.3 Usha and



defendant No.4 Sunita are the sister of defendant No1. During the pendency of the suit, defendant No.2 was reported to be dead and his wife and daughters were brought on record as defendants No.2A, 2B and 2C. According to plaintiff, Ginde family owns immovable properties in R.S.No.53 measuring 5 acres 19, R.S.No.137 measuring 1 acre 34 guntas, R.S.No.140 measuring 2 acres 32 guntas. These are the ancestral joint family properties of Ginde family. Plaintiff is a coparcener and is in joint possession and enjoyment of these properties along with defendant Nos.1 to 6. Between the brothers of the plaintiff's father, there was a suit for partition filed and on the basis of decree passed, Final Decree was drawn in FDP No.27/1995 on the file of I Addl. Civil Judge (Sr.Dn.), Belagavi wherein properties were demarcated and portions were allotted to the sharers. On the basis of the said decree, a registered partition deed was entered into on 26.11.2005 and as per the final decree, suit properties were allotted to defendant No.1 in which the plaintiff is entitled to 1/4th share. Defendant Nos.1, 5 and 6 are in



joint possession and enjoyment of the shares allotted to their father. There was no actual division of the same. The share allotted in FDP No.27/1997 which was registered in partition deed dated 26.11.2005 was final, any documents effected subsequently had no sanctity and binding on the plaintiff. The plaintiff demanded her father for her share, as he went on postponing to effect partition, she brought a suit for partition.

4. The defendant Nos.1 and 5 filed their separate written statements. Defendant Nos.3, 4 and 6 have supported the case of defendant Nos.1 and 5 admitting their claim and also supported the second partition deed dated 22.02.2007. The defendant Nos.1 and 5 in their separate statement admit origin of the suit scheduled properties, effecting of partition in FDP No.27/1995 and allotment of shares to defendant Nos.1 to 4 after passing of final decree. After the said allotment, properties allotted to the share of defendant No.1 became separate property. Being karta, he has taken the appropriate



decision and entered into another partition deed dated 22.02.2007 for the benefit and convenience of all. Defendant Nos.2, 3 and 4 consented for the same. Plaintiff is very well aware of the second partition deed dated 22.02.2007 on the basis of the decree passed in FDP No.27/1995 which is not final. Defendant No.1 was representing defendant No.2 as GPA holder of defendant No.2 at the time of execution of partition deed dated 26.11.2005. Defendant No.2 was residing at Bombay and he was not physically present. When defendant No.2 returned from Bombay to Belagavi, after coming to know about the partition deed dated 26.11.2005 and allotment of property to each sharer, he was not happy and expressed dissatisfaction for the share allotted to him. Hence a new partition deed came into existence on 22.02.2007. It is also contended that the land in RS No.53/2 was slightly on the backside, since there was a proposed 100 feet road going through RS No.53/2 which will be great benefit in the long run, exchanged share mutually by defendant Nos.1 and 2. As karta, defendant



No.1 effected partition in Sy.No.53/2, allotted 1/4th share to the plaintiff. Feeling aggrieved by allotment of share, plaintiff got issued a false notice which was suitably replied and plaintiff filed the present suit which is not maintainable.

5. On the basis of the pleadings, the Trial Court has framed the following issues;

1. *Whether the plaintiff proves that she is member of Hindu Undivided joint Family and suit properties are available for partition and separate possession?*
2. *Whether the defendants prove that already share of plaintiff is given to her as contended in their W.S?*
3. *Whether the plaintiff is entitled for partition and separate possession?*
4. *What order or decree?*

6. On behalf of plaintiff, she got examined herself as PW-1 and marked 13 documents as Exs.P-1 to P-13. Defendant No.5 examined himself as DW-1 and got marked 59 documents as Exs.D-1 to D-59. Other



defendants did not lead any evidence. The Trial Court after considering the evidence and on hearing the parties, answered issues No.1 and 3 partly in the affirmative, issue No.2 in the negative and while answering issue No.4 decreed the suit granting 1/12th share to the plaintiff in R.S.No.53/2 and in the house property bearing CTS Nos.361 and 358 and dismissed the suit for remaining suit properties. Aggrieved by the same, the plaintiff is before this Court on various grounds.

7. Heard the arguments of Sri B.S. Kamate, learned counsel for plaintiff and Sri Sangram S. Kulkarni, learned counsel for defendant No.5. Defendant Nos.2(a) to 2(c), 3, 4, 5 and 7 served and absent.

8. It is contended by the learned counsel for plaintiff that the suit schedule properties are the ancestral properties belonging to Ginde family. One Sachidanand Ginde was the propositus and he had four children i.e., defendants No.1 to 4. The lands in R.S.Nos.53/2, 53/4, 137/1, 137/2, 137/3 and 140/2 were put in partition in



O.S.No.185/1995. After contest, the suit was decreed. The decree was put into execution in FDP No.27/1995. In the said proceedings, shares were demarcated to each sharers wherein 1 acre 10 guntas in RS No.53/2, 6 guntas in RS No.137/2, 2 acres 32 guntas in RS No.142/2 which are the subject matter of this present suit was allotted to the father of the plaintiff who was the defendant No.1 in the said suit. 4 acres 8 guntas of land in RS No.53/2 was allotted to Balachandra Sachidanand Ginde who is defendant No.2. 34 guntas in RS No.137/1 was allotted to defendant No.3 and 34 guntas in RS No.137/2 was allotted to defendant No.4. Accordingly shares were demarcated to the respective sharers. Without the consent and permission of the plaintiff and others, defendant No.1 entered into partition on 22.02.2007 and the share allotted to him was exchanged with defendant No.2 which was not acceptable as the share allotted in FDP No.27/1997 became final and parties are bound by it. The plaintiff is seeking her share in the property allotted to her father in FDP No.27/1995 and registered partition deed



dated 26.11.2005 only. The Trial Court without considering these aspects and without appreciating the evidence, ignored the claim of the plaintiff and partly decreed the suit in granting only 1/12th share in the land allotted to the share of defendant No.2, which is erroneous.

9. *Per contra*, learned counsel for defendant No.5 has contended that in FDP No.27/1995 defendant No.2 was not physically represented, he had executed GPA in favour of defendant No.1 who, representing the defendant No.2 as GPA holder, had taken the share in the properties on his behalf. Before taking the said share, there was no consent obtained from the defendant No.2 and for this reason, even though partition deed was registered on 26.11.2005 on the basis of the share allotted in FDP No.27/1995, shares allotted to the defendant Nos.1 and 2 came to be exchanged. When defendant No.2 questioned the allotment of Sy.No.53/2 to an extent of 4 acres 8 guntas, defendant No.1 offered property allotted to his share to the defendant No.2. Accordingly exchange was



taken place resulting in second registered partition deed on 22.02.2007 which was accepted and acted upon by the parties. Plaintiff has no legal right to question such act of defendant Nos.1 and 2 as the defendant No.2 was represented by defendant No.1 as GPA holder. After second partition deed, land in RS No.53/4 to the extent of 1 acre 10 guntas, 2 acres 32 guntas in RS No.140/2, 6 guntas in RS No.137/3 were allotted to the share of defendant No.2 whereas defendant No.1 has taken 4 acres 8 guntas in RS No.53/2. Defendant No.1 being the karta of the family has effected partition through gift deed as per Ex.D-58 and allotted a share to the plaintiff. When the things stood thus, defendant No.5 purchased the share allotted to the defendant No.2, got release of share allotted to defendants No.1 and 6 as per Ex.D-59. He has developed the land in RS No.140/2. Some plots were sold. Because of the development made by defendant No.5 in Sy.No.140/2, plaintiff has filed this false and frivolous suit. The Trial Court after considering the entire evidence rightly decreed the suit allotting the share to the plaintiff



in RS No.53/2 and also in the house properties belonging to defendant No.1. Hence, there is no error or illegality in the order passed by the Trial Court and he has argued in support of the impugned judgment.

10. We have given our anxious consideration to the arguments addressed by the learned counsel for plaintiff and defendant No.5 and perused the material on record.

11. The points that arise for our consideration are:

- (i) What is the effect of second partition deed dated 22.02.2007 on the right of the plaintiff?
- (ii) Whether the impugned judgment of the Trial Court is perverse, illegal and call for interference?

Regarding Point No.(i) :

12. The undisputed facts that could be culled out from the pleadings as well as evidence are that after the registration of partition deed dated 26.11.2005 in compliance of the decree passed in FDP No.27/1995, there



was exchange of share between the defendant Nos.1 and 2. The plaintiff questioned that her father had no legal right to effect subsequent partition for exchanging the share with his uncle defendant No.2. According to her, partition so effected by virtue of decree passed in FDP No.27/1995 and the first registered partition deed dated 26.11.2005 one final, conclusive one and binding on both the parties. The sum and substance of the claim of the plaintiff is that the partition deed dated 22.02.2007 in exchanging the share between defendant Nos.1 and 2 is not binding on her and she wants allotment of her share in the share allotted to her father under partition deed dated 26.11.2005.

13. In this regard, both the parties have led the evidence and in the course of chief examination though plaintiff pleaded the averments made in the plaint, during the course of her cross-examination it has been demonstrated that she was unaware of the share allotted to her father either in the first partition deed dated



26.11.2005 or in the second partition deed dated 22.02.2007. She has no personal knowledge about the averments made in the plaint and also the dispute in the suit. She was commanding very good relationship with her father and uncle. She also admits that in the partition deed dated 26.11.2005, the share was allotted to her father was his personal property though such an admission cannot be appreciated. Cross-examination clearly goes to demonstrate that the plaintiff is unaware of the partition deed dated 26.11.2005 and admits the allotment of Sy.Nos.53/4, 140/2, 137/3 to the share of her father and denies the allotment of R.S.No.53/2 to the share of second defendant.

14. It is pertinent to note that in O.S.No.185/1991 which culminated in FDP No.27/1995, defendant No.2 did not appear either personally or through his Advocate. In fact, the evidence on record demonstrates that the defendant No.2 was resident of Mumbai and had executed power of attorney in favour of his brother defendant No.1.



Defendant No.1 was represented through defendant No.2 as power of attorney holder. When the decree was passed in FDP No.27/1995, defendant No.2 was represented by defendant No.1 as his power of attorney holder and in the partition deed dated 26.11.2005 also second defendant was represented by the defendant No.1 as power of attorney holder.

15. This clearly goes to show that in effecting partition, allotment of share defendant No.2 has no role and major role has been played by the defendant No.1. For this reason, an extent of 1 acre 10½ guntas in RS No.53/4, an extent of 2 acres 32 guntas in RS No.140/2, an extent of 6 guntas in RS No.137/3 was allotted to the share of defendant No.1, an extent of 4 acres 8 guntas in RS No.53/2 was allotted to defendant No.2 and 34 guntas each was allotted to the defendants No.3 and 4 in RS Nos.137/1 and 137/2. If the claim of the plaintiff is to be appreciated that there was inequitable partition and partition is not binding on her, then the share allotted to



the defendant Nos.3 and 4 to the extent of 34 guntas each will also become inequitable as her father and uncle were allotted 4 acres 08 guntas each and there was not equitable partition between the brothers and sisters.

16. In this background, if the evidence of both the parties is appreciated, it is pertinent to note that in the division of the properties between parties in the FDP No.27/1995, the defendant No.1/father of the plaintiff had played a major role. Only when defendant No.2 returned to Belagavi, he came to know about the allotment of shares. No evidence is placed on record to show that defendant No.2 had consented for allotment of 4 acres 8 guntas in RS No.53/2. The defendant No.2 raised objection to the share allotted to him in RS No.53/2 was not acceptable to him. Since father of the plaintiff acted as the power of attorney holder of his brother, he offered him his share in exchange for the share given to defendant No.2. Accordingly shares were exchanged and second partition deed dated 22.02.2007 came to be registered.



17. The evidence on record clearly goes to show that there was partition effected by the defendant No.1 among his children wherein he allotted $1/4^{\text{th}}$ share in RS No.53/2 in favour of the plaintiff, $1/4^{\text{th}}$ share in favour of her brother defendant No.5 and also $1/4^{\text{th}}$ share allotted to her sister. During the course of cross-examination, it was suggested to her that in the gift deed executed by the defendant No.1, he allotted $1/4^{\text{th}}$ share each to the plaintiff, defendant Nos.5 and 6. Though she did not accept this suggestion, the fact remains that the defendant No.1 effected *inter se* partition between himself and his children in RS No.53/2 and also two CTS properties in CTS Nos.361 and 358.

18. We are not persuaded to accept the reasons assigned by the Trial Court that the gift is not proved by the defendants. The gift deed executed by defendant No.1 allotting the share to his children is acted upon by defendant Nos. 1, 5 and 6. Whether the exchange of share between the defendant Nos.1 and 2 is against the interest



of the plaintiff and it is not binding on her is the question that needs consideration.

19. Plaintiff admits in the cross-examination that her father represented her uncle defendant No.2 in Final Decree Proceedings and also in the registration of partition deed dated 26.11.2005 as GPA holder. When the father of the plaintiff was acting as GPA holder of her uncle, it is the duty on the part of the defendant No.1 to protect the interest of defendant No.2 i.e., his brother. For this reason in second partition deed share allotted to two sisters i.e., defendant Nos.3 and 4 to the extent of 34 guntas each was not altered. Only the exchange of property between defendant Nos.1 and 2 took place.

20. Ex.D-58 is the gift deed wherein the defendant No1 effected the partition of the land in RS No.53/2 to the extent of 4 acres 8 guntas and 8 anas and house property in CTS No.361 and 358 between himself and his children on 30.01.2014. Perusal of this document goes to show that defendant No.1 partitioned these properties into 4



divisions. The recitals show that there was no partition of these 3 properties between the defendant No.1 and his 3 children and for this reason he effected division into 4 portions. The defendant No.6 being the daughter consented to transfer her share of property along with her father to her brother defendant No.5. Remaining 1/4th share was kept intact for the plaintiff being another daughter. Ex.D-59 is the release deed executed by the defendant Nos.1 and 6 in favour of defendant No.5 releasing their rights in the above 3 properties on the very same day. Thereby in the above 3 properties, 3/4th share was given to 5th defendant with effect from 30.01.2014 and remaining 1/4th share was kept intact for the plaintiff.

21. Now the conduct of plaintiff assumes importance. She is unaware of the proceedings that has taken place in FDP No.27/1995, subsequent partition deed dated 26.11.2005 and thereafter second partition deed dated 22.02.2007, exchange of shares between her father and her uncle. Subsequent to the second partition deed,



on 30.01.2014 Exs.D-58 and 59 came to be executed between defendant Nos.1, 5 and 6 wherein share of the plaintiff is kept intact. The plaintiff without knowing all these facts and even without knowing the pleadings, she simply comes before the Court, innocently gives the answer that she is unaware of these facts. This clearly goes to show that she is not aware of any of the facts and the reason for the exchange. It is for the plaintiff to place evidence by pleading illegality that occurred in effecting partition dated 22.02.2007. The conduct of the plaintiff and her testimony in the evidence box clearly demonstrate that she is not the person who prosecuted the suit but someone else is prosecuting the suit in her name and she is the innocent of the allegations made in the plaint. Hence, we do not find any illegality committed by defendant No.1 in accepting the demand of his brother/ defendant No.2 for *inter se* exchange of shares.

22. Interesting to note here that even in the first partition, the extent of land allotted to the father of



plaintiff was 4 acres 8 guntas. Even after second partition, extent of land allotted to him was 4 acres 8 guntas. There is no inequality in the partition. In fact, the real aggrieved persons are defendant Nos.3 and 4, the sisters of defendant Nos.1 and 2 who have not questioned the partition. This clearly goes to show that the second partition effected by the defendant Nos.1 and 2 is not illegal, such exchange is permitted as it was equitable and did not affect the right of the defendant No.1 and consequently the right of the plaintiff as well.

23. We noticed in Exs.D-58 and 59, the defendant No.1, father of the plaintiff effected partition of the land in RS No.53/2 and also 2 house properties in CTS No.361 and 358. The father effected the partition of the two properties other than what has been acquired under the partition. Hence, we do not find any ground in the claim of the plaintiff that the second partition has affected her right to claim equitable share in the properties belonging to her father. Hence, we answer point No.(i) accordingly.



Regarding Point No.(ii) :

24. The argument on behalf of the plaintiff is that the second partition deed dated 22.02.2007 is not binding on her, that her right is protected under 6 of the Hindu Succession Act and that she has not been given legitimate share apart from 4 acres 8 guntas obtained by her father in the first partition. This argument has no support of evidence, conversely two more properties were added by her father and further partition was effected by him in the nature of gift deed under Ex.P-58 allotting 1/4th share. We have noticed that, Trial Court has granted only 1/12th share. We do not find any justification in the claim of the plaintiff that her father has no right to execute second partition deed in exchanging the share already allotted to him and final decree was drawn in FDP No.27/1995. Subsequent act of defendant No.1 post second partition deed did not prejudice the right of plaintiff. As we have noticed from the evidence of plaintiff, the partition deed dated 26.11.2005 gives the right only to an extent of 1/4th



share in total 4 acres 8 guntas allotted to her father and gift deed by her father provided share to the plaintiff in CTS Nos.361 and 358 also. Rather plaintiff is more benefited than the property that was acquired by her father in the first partition. We do not find any reason to ratify the claim of the plaintiff that her 1/4th share in the property is not protected by her father.

25. We have carefully perused the impugned judgment. The Trial Court has recorded that once the partition took place and the property allotted to the father of the plaintiff, it becomes his self acquired property. This finding cannot be accepted. The Trial Court granted only 1/12th share in favour of the plaintiff in RS No.53/2 and CTS No.361/ and 358, instead she is entitled to claim 1/4th share as a member of the family of her father. Therefore defendant No.6 shall also to be allotted 1/4th share in all the properties. We do not find any reason to hold that the discussion of the Trial Court is illegal and perverse but it requires modification in respect of share. The plaintiff is



entitled to 1/4th share, accordingly, we answer point No.(ii).

26. In view of findings on point Nos.(i) and (ii), we pass the following:

ORDER

- (i) Appeal is allowed in part;
- (ii) The judgment and decree passed by the Trial Court is modified to the extent that the plaintiff is entitled to 1/4th share in RS No.53/2 measuring 4 acres 8 guntas 8 anas and also in CTS properties Nos.361 and 358 by metes and bounds;
- (iii) Rest of the judgment of the Trial Court is confirmed.

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

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

NAA
Ct-cmu
List No.: 1 Sl No.: 4