



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 14TH DAY OF OCTOBER, 2024

PRESENT

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

AND

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

REGULAR FIRST APPEAL NO. 100117 OF 2015 (PAR)

BETWEEN:

1. SRI REVANGOUDA MARIGOUDA PATIL,
AGE: 53 YEARS,
OCC: AGRICULTURE,
R/O: RAMANKOPPA,
TQ: KUNDGOL, DIST: DHARWAD.
2. KUMAR MANJUNATH REVANGOUDA PATIL,
AGE: 19 YEARS,
OCC: AGRICULTURE,
R/O: RAMANKOPPA,
TQ: KUNDAGOL,
DIST: DHARWAD-580 018.
3. SMT.KAMALAVVA,
W/O. BISTAPPA DEVASHETTRA,
AGE: 53 YEARS,
OCC: HOUSEHOLD WORK,
R/O: SAMANALLI, TQ: SORAB,
DIST: SHIVAMOGGA.
4. SMT.SANGAVVA HANUMANTAGOUDA PATIL,
AGE: 49 YEARS,
OCC: HOUSEHOLD WORK,
R/O: MADDINAKOPPA,
TQ: SHIGGAON,
DIST: HAVARI.



5. SMT.VINODA,
W/O. HANAMANTGOUDA PATIL,
AGE: 43 YEARS,
OCC: AGRICULTURE,
R/O: MADDINAKOPPA,
TQ: SHIGGAON, DIST: HAVARI.
6. SMT.JAYAMMA W/O REVANGOUDA PATIL,
AGE: 38 YEARS,
OCC: HOUSEHOLD WORK,
R/O: RAMAKOPPA,
TQ: KUNDAGOL,
DIST: DHARWAD.

...APPELLANTS

(BY SRI S.M.KALWAD, ADVOCATE)

AND:

1. SMT.BASAVVA,
W/O. MALLIKARJUN RAGATI,
SINCE DECEASED REPRESENTED BY HER LRS.
- 1(A) SRI. ASHOK,
S/O. MALLIKARJUN RAGATI,
AGE: 57 YEARS, OCC: BSF/ARMY,
R/O. AT POST HAGANURU,
TQ: HUVINA HADAGALI,
DIST: BALLARI-583218.
- 1(B) SRI. SHIVAKUMAR,
S/O. MALLIKARJUN RAGATI,
AGE: 53 YEARS, OCC: AGRICULTURE,
R/O. AT POST HAGANURU,
TQ: HUVINA HADAGALI,
DIST: BALLARI-583218.
- 1(C) SMT.MANJULA ,
W/O. JAGADISH KAMADI,
AGE: 53 YEARS,
OCC: AGRICULTURE,
R/O: ANJNEYA NAGAR



BEHIND APMC,
RAMDURGA-591123.

2. SMT.INDIRA,
W/O. BASAVARAJ SHIRAKOL,
AGE: 63 YEARS, OCC: AGRICULTURE,
R/O: MUTTALLI, TQ: SHIGGAON,
DIST: HAVARI.
3. TEMBAVVA W/O. VIRUPANAGOUDA PATIL
DECEASED REPRESENTED BY HER LRS
- 3(A) SRI. DEVANGOUDA,
S/O. VIRUPANGOUDA PATIL,
AGE: 60 YEARS,
OCC: AGRICULTURE,
R/O: SHIGGAON, DIST: HAVERI,
PINCODE 582105.
- 3(B) SMT.YASHODHA,
W/O. JAYADEVAGOUDA, POLICE PATIL,
AGE: 55 YEARS,
OCC. HOUSEHOLD,
R/O: RAMANAKOPPA VILLAGE,
TQ: SHIGGAON,
DIST: DHARWAD-581113.

...RESPONDENTS

(BY SRI VIJAYKUMAR B.HORATTI, ADVOCATE FOR R2;
NOTICE TO R1(A) TO R1 (C) SERVED;
R3(A) HELD SUFFICIENT; NOTICE TO R3(B) SERVED)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF CPC R/W. ORDER 41 RULE 9 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED: 22.01.2015 PASSED IN O.S.NO.11/2012, ON THE FILE OF III ADDITIONAL SENIOR CIVIL JUDGE, HUBBALLI, PARTLY DECREERING THE SUIT FILED FOR PARTITION AND SEPARATE POSSESSION.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, 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 T. G. SHIVASHANKARE GOWDA)

In this appeal, defendant Nos.2, 3 and 5 to 8 have challenged the judgment and decree dated 22.01.2015 passed in O.S.No.11/20212 by the III Addl.Senior Civil Judge, Hubballi (for short, 'Trial Court').

2. The parties shall be referred to as per the status before the Trial Court.

3. Brief facts of the case are, one Marigouda Patil is the husband of defendant No.1-Sharavva. Plaintiffs No.1, 2, defendants No.4, 5, 6 and 7 are their daughters and defendant No.2 is their son. Defendant No.8 is the wife and defendant No.3 is the son of defendant No.2. Suit properties are agricultural properties which fell to the share of Marigouda Patil in a partition effected between him and his brothers. They are the ancestral property of the plaintiffs and defendants. Defendants No.2, 3 and 8 created a false relinquishment deed in M.E.No.28/2008-09 that Marigouda Patil had gifted the suit



properties in favour of defendant No.3 and they obtained mutation illegally. Plaintiff No.2 was married in the year 1991. As per amendment of Hindu Succession Act, the plaintiffs became the coparceners. Defendant No.1 died on 10.02.2014. They being coparceners are entitled to equal share in the suit properties. The bogus, false and created relinquishment deed is not binding on the share of the plaintiffs and other defendants. The plaintiffs are before the Court seeking partition and separate possession of their shares.

4. Defendant No.2 opposed the suit by filing written statement. The defendants No.3 and 8 adopted it. Defendants No.6 and 7 filed their written statement and defendant No.5 adopted it. They denied the case of the plaintiffs. The defence is that Marigouda Patil purchased the suit scheduled property on 19.02.1956. It is his self-acquired property. Due to love and affection, Marigouda Patil executed the relinquishment deed in favour of his grandson i.e. defendant No.3. The plaintiffs have no authority to challenge the relinquishment deed. The defendant No.2 was born on 01.06.1949, defendant No.4 was born on 18.04.1948, defendant No.5 was born on 01.06.1953, the marriages of the defendants were performed prior to 1991



and they are not the members of joint family nor they are coparceners. They sought for dismissal of the suit that the defendant No.3 has acquired the title over the property by virtue of relinquishment deed executed by Marigouda Patil in respect of his self-acquired properties.

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

1. *Whether the plaintiffs prove that they and the defendants are the members of an undivided joint Hindu family and suit schedule properties are their ancestral/joint family properties?*
2. *Whether the plaintiffs prove that the relinquishment deed and ME No.28/2008-09 are illegal, null and void ab-initio and not binding on their share?*
3. *Whether the plaintiffs are entitled for partition and separate possession of their 2/8th share in the suit schedule properties by metes and bounds?*
4. *Whether the defendant No.2 proves that deceased Marigouda was the absolute owner of suit 'A' schedule property and executed the relinquishment deed in favour of the defendant No.3 on 3-7-2007?*
5. *Whether the defendant No.2 proves that the plaintiff No.1 defendant No.4 and 5 are born prior to 1956 and therefore they are not entitled for any share in the suit schedule properties?*



6. *What order or decree?*

6. In order to prove the issues cast against the plaintiffs as well as defendants, on behalf of the plaintiffs, plaintiff No.2 examined herself as PW1 and got marked 5 documents as Exs.P1 to P5. On behalf of defendants, 2nd defendant examined as DW1 and 10 and got marked the documents Exs.D1 to D10.

7. The Trial Court after hearing the parties and on appreciating the pleadings and evidence answered Issue no.1 in the affirmative, Issue Nos.2 and 4 in the negative, Issue Nos.3 and 5 partly in affirmative. By answering Issue No.6 decreed the suit declaring that 1st plaintiff is having 1/48th share, plaintiff No.2 is having 9/48th share in the suit schedule properties and also they are entitled for accounts. Aggrieved by the same, defendants No.2, 3, 5, 6, 7 and 8 are before this Court on various grounds. During pendency of the appeal, plaintiff No.1 and defendant No.4 were reported to be dead and their legal representatives were brought on record.

8. Heard arguments of Sri S.M.Kalwad, learned counsel for the appellants/defendants No.2, 3, 5, 6, 7 and 8



and Sri Vijaykumar B.Horatti, learned counsel for plaintiff No.2/respondent No.2.

9. Sri S.M.Kalwad, learned counsel, attacking the impugned judgment has contended that plaintiffs have not produced any document to prove that the suit schedule properties are the ancestral properties of the plaintiffs and the defendants. The Trial Court merely on the basis of partition between Marigouda Patil and his brothers came to the wrong conclusion that the suit schedule property is the ancestral properties. Plaintiffs were born prior to 1956, they cannot be the coparceners. There was a partition between the parties and the revenue records have been changed in the name of the present defendants even prior to the institution of the suit. Hence, the suit ought to have been dismissed.

10. *Per contra*, Sri Vijaykumar B.Horatti, learned counsel for plaintiff No.2/respondent No.2 has contended that acquisition of properties by Marigouda Patil on 19.02.1956 was prior to the partition between Marigouda Patil and his brothers in the year 1960. Prior to partition, there was a joint family in existence, the properties acquired in the name of Marigouda



Patil was on behalf of joint family. In the year 1960, the suit properties were allotted to the share of Marigouda Patil. If the properties were self-acquired properties of Marigouda Patil, there was no question of Marigouda Patil consenting for partition and allotment of the said properties towards share. Marigouda Patil died on 23.10.2010. By virtue of amendment to Section 6-A of the Hindu Succession Act, the partition opened after the death of Marigouda Patil. The plaintiffs and defendants are the children of Marigouda Patil along with 1st defendant-Sharavva, they become the members of the joint family. They being coparceners are entitled to claim share in the suit schedule properties.

10.1 It is further contended that, there is no legal force in the alleged relinquishment deed. The Trial Court has rightly appreciated that the relinquishment deed requires compulsory registration and the relinquishment deed is not proved by defendants No.2, 3 and 8. The Trial Court has rightly decreed the suit in favour of the plaintiffs.

10.2 It is also contended that the Trial Court has followed the principles of law laid down in **Pushpalatha N.V. v.**



V.Padma and others¹. But in view of latest dictum of the Hon'ble Apex Court in **Vineeta Sharma v. Rakesh Sharma and others²**, the plaintiffs, defendants No.2, 4, 5, 6 and 7 become members of the coparcener. Since defendant No.1 died subsequently, the share that is to be allotted to her has enlarged to the other coparceners and thereby the plaintiffs, defendants No.2, 4, 5, 6 and 7 each entitled to 1/7th share. Principles of notional partition is not applicable and sought for modification of the shares.

11. We have given our anxious consideration to the arguments of both sides and perused the material on record.

12. The points that arise for our consideration are as under:

- i. Whether suit schedule properties are ancestral joint family properties of Marigouda Patil?
- ii. Whether the 3rd defendant acquired legal right by virtue of the relinquishment deed?

¹ 2010(2) KCCR 1249

² ILR 2020 (9) SCC 1



- iii. Whether the plaintiffs are entitled share in the suit scheduled properties?
- iv. Whether the impugned judgment and decree passed by the Trial Court requires modification?

Regarding Point No.(i):-

13. It is the specific case of the plaintiffs that suit schedule properties are joint family and ancestral properties of the plaintiffs and the defendants. The materials on record clearly point out that there was joint family consisting of Marigouda Patil, his brothers and his father. The suit properties were acquired in the name of Marigouda Patil through a registered sale deed dated 09.12.1956 when the joint family was in subsistence. Subsequently in the year 1960, there was a partition between Marigouda Patil and his brothers, wherein suit schedule properties have been allotted to the share of Marigouda Patil.

13.1 If Marigouda Patil acquired the suit properties, there was no question of his sharing suit properties in the year 09.04.1960. But Ex.P5 is the mutation entry which stands in support of the contention of the plaintiffs that on 09.04.1960, Marigouda Patil and his three brothers got divided the joint



family properties and suit schedule properties were allotted to the share of Marigouda Patil. This explains that the acquisition of suit properties in the name of Marigouda Patil in the year 1956 was for the joint family. Thereby contention of defendant No.2 that the suit schedule properties are self-acquired properties of his father by virtue of sale deed dated 09.12.1956 is thereby answered. Marigouda Patil died in the year 2010 leaving behind his wife, son and daughters. There was no partition during his lifetime or after his death. Thereby the properties became the joint family properties of wife and children of Marigouda Patil. Accordingly, we answer Point No.(i).

Regarding Point No.(ii):-

14. It is the specific case of defendant No.2 that his father had executed a relinquishment deed in favour of his son, the 3rd defendant, and by virtue of the same, the 3rd defendant acquired the title over the suit schedule properties. On 10.07.2008, as per Ex.D3-Application, the mutation was passed in favour of 3rd defendant, the propounder of the relinquishment deed or the attester to the said document are not examined. The suit schedule properties were worth more



than Rs.100/- in the year 2008. Section 17 of the Registration Act mandates compulsory registration. If the document is unregistered, it is not admissible in evidence in view of bar under Section 49 of the Registration Act.

14.1 Except 2nd defendant, there are no other witnesses examined in support of Ex.D4. Ex.D4 is not creating or confirming any right in favour of the 3rd defendant. Under such circumstances, no legal weight can be attached to Ex.D4. It is undisputed that revenue entries will not confirm any title unless the title is pleaded and proved. The evidence on record points out that defendants No.2, 3 or 8 are unable to prove Ex.D4/ relinquishment deed, which requires compulsory registration. It has no evidentiary value and thereby the said relinquishment deed does not affect the right of wife and children of Marigouda Patil in their ancestral property. Accordingly, we answer Point No.(ii).

Regarding Point No.(iii):-

15. The Trial Court has relied on the judgment of ***Pushpalatha*** (supra) on the ground that plaintiffs were born prior to 1956 and marriage was taken place prior to 1991 and



applied the notional partition. Law has seen tremendous change in view of judgment of Hon'ble Apex Court in **Vineeta Sharma** (supra). By virtue of Karnataka Amendment from 09.09.2005 till date, daughter is a coparcener under the Hindu Succession (Amendment) Act, 2005. Section 6-A of the Hindu Succession Act contemplates equal right to the daughter in a coparcener property. The daughters are also entitled equal share on par with the sons in view of Section 3 of the Hindu Succession Act. At Para No.66 of **Vineeta Sharma** (supra), the Hon'ble Apex Court held as follows:

"66. As per the Mitakshara law, no coparcener has any fixed share. It keeps on fluctuating by birth or by death. It is the said principle of administration of Mitakshara coparcenary carried forward in statutory provisions of Section 6. Even if a coparcener had left behind female heir of Class I or a male claiming through such female Class I heir, there is no disruption of coparcenary by statutory fiction of partition. Fiction is only for ascertaining the share of a deceased coparcener, which would be allotted to him as and when actual partition takes place. The deemed fiction of partition is for that limited purpose. The classic Shastric Hindu law excluded the daughter from being coparcener, which injustice has now been done away with by amending the provisions in consonance with the spirit of the Constitution."

In view of law being laid down, daughters become coparceners subsequent to amendment to the Hindu Succession Act.



15.1 In view of answer to Point No.(ii), the relinquishment deed cannot be accepted as a proof of transfer of title in favour of 3rd defendant by Marigouda Patil. The suit properties being ancestral properties, children of Marigouda Patil become the coparceners by virtue of amendment to Section 6-A of the Hindu Succession Act with effect from 09.09.2005. The succession opens in favour of the plaintiffs after the death of their father. There is no dispute that Marigouda Patil died on 23.10.2010. Wife is though not a coparcener, in Bombay Karnataka area wife gets equal share of that of her husband during partition. Thereby wife and children of Marigouda Patil are entitled equal share in the joint family properties. Accordingly, we answer Point No.(iii).

Regarding Point No.(iv):-

16. On careful perusal of the impugned judgment, the Trial Court has thread bear discussed that the suit properties are ancestral properties of Marigouda Patil; the alleged relinquishment deed is not a document of transfer of title; children of Marigouda Patil are the coparceners entitled to claim share in the properties. The Trial Court relying on the ***Pushpalata*** case (supra), applied the principles of notional



partition. Marigouda Patil died on 23.10.2010 and now subsequent to the decree of the suit, defendant No.1 died in the year 2014. Marigouda Patil and his wife have six daughters and a son, each being entitled to equal share in the joint family properties in view of law laid down by the Hon'ble Apex Court in ***Vineeta Sharma*** (supra). The principles of notional partition is not applicable. Hence, the order of the Trial Court in granting 1/48th share in favour of plaintiff No.1, 9/48th share in favour of plaintiff No.2 requires modification declaring that all the daughters and son of Marigouda Patil and Sharavva are equally entitled share in the suit schedule properties. Accordingly we answer Point No.(iv).

17. In view of our discussion on Points No.(i to iv), appeal is devoid of merits insofar as the specific defence and merits consideration in respect of allotment of shares. Hence the following:

ORDER

Appeal is allowed in part;

The impugned judgment and decree of the Trial Court is modified declaring that the plaintiffs, defendants No.2, 4, 5, 6 and 7 are each entitled



1/7th share in the suit schedule properties by metes and bounds;

Rest of the judgment and decree of the Trial Court is kept intact;

Decree shall be drawn accordingly.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

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

CLK
LIST NO.: 1 SL NO.: 31