



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 6TH 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.100173 OF 2018 (PAR/POS)

BETWEEN:

KAREPPA S/O DYAVAPPA GASTI, AGE: 30 YEARS,
OCC: COOLIE, R/O: MANTUR, TQ: MUDHOL,
DIST: BAGALKOT-587 121.

- APPELLANT

(BY MS. RANJITA REDDY ALAGAWADI, ADVOCATE FOR
SRI. S.B. HEBBALLI, ADVOCATE)

AND:

1. TULASAWWA W/O SABAPPA KANAMACHANAL,
AGE: 54 YEARS, OCC: HOUSEHOLD WORK,
R/O: MANTUR, TQ: MUDHOL, DIST: BAGALKOT-587 121.

2. VITTAPPA S/O DYAVAPPA GASTI,
AGE: 56 YEARS, OCC: COOLIE,
R/O: MANTUR, TQ: MUDHOL,
DIST: BAGALKOT-587 121.

- RESPONDENTS

(BY SMT. DEEPA DODDATTI, ADVOCATE FOR
SRI. PAVAN B. DODDATTI, ADVOCATE FOR R1;
R2-ABATED)



THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF CPC., PRAYING TO, SET ASIDE THE IMPUGNED JUDGMENT AND DECREE DATED 27.01.2018 MADE IN O.S. NO. 91/2014 PASSED BY THE PRINCIPAL SENIOR CIVIL JUDGE AND JMFC, MUDHOL & ETC.,

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 SREENIVAS HARISH KUMAR)

The third defendant has preferred this appeal questioning the correctness of the judgment in O.S. No. 91/2014 on the file of Prl. Sr. Civil Judge, Mudhol.

2. The plaintiff is the sister of defendants 1 and 2, all being children of Dyavappa Gasti. Plaintiff filed a suit for partition claiming 1/3rd share in agricultural land bearing Sy. No. 184/8 measuring 4 acres 29 guntas situate at Mantoor village, Mudhol Taluk. The plaintiff stated that the property belonged to her father and after his demise, she succeeded to the property along with defendants 1 and 2. But defendant no. 3 asserted right over portion of the property on the strength of a sale deed said to have been executed by the first defendant. Her enquiry revealed that the first defendant had executed a registered sale deed in favour of Dyappa Neelappa Gasti, the father of defendant no. 3 in the year 1983 for Rs.8,000/- in respect of 2 acres out of entire extent of land in Sy. No.



184/8. Alleging that defendant no.1 was not competent to sell half share in the property, she claimed partition.

3. Only defendant no.3 contested the suit. He admitted that the property earlier belonged to plaintiff's father but stated that after demise of plaintiff's father only defendants 1 and 2 succeeded to the property as joint owners. First defendant had half share in the property and he sold his half share to the father of defendant no.3 to meet his legal necessities and thus the sale deed dated 10.10.93 came into existence. The plaintiff was aware of these transactions and therefore she cannot claim share.

4. Out of seven issues framed by the trial court, the deciding issues are issues 1 and 2. Answering these in affirmative and taking note of death of defendant no.1 during pendency of the suit, the trial court decreed the suit granting $\frac{1}{2}$ share in the suit property to the plaintiff. Defendant no.3, the purchaser from the first defendant has felt aggrieved.



5. The appellant/ defendant no.3 has filed an application under Order 41 Rule 27 CPC as per I.A. 1/2024 to produce the original sale deed by way of additional evidence.

6. We have heard the arguments of Ms. Ranjita Reddy Alagawadi for the appellant and Mrs. Deepa Doddatti for respondent no.1.

7. It is the argument of Ranjita Reddy Alagawadi that defendant no.3 was a bonafide purchaser from defendant no.1. Only defendant no.1 and defendant no.2 succeeded to the suit property after their father died intestate. What the first defendant sold was his half share. He had every right to alienate his undivided share. The trial court's conclusion not to recognize the sale made by the first defendant in favour of the third defendant was for the reason that the third defendant did not produce the sale deed. He could not produce it because he did not have the sale deed at that time. In order to produce the sale deed defendant no.3 has filed an application under Order



41 Rule 27 of CPC and produced the original sale deed. Therefore by allowing the application, the judgment of the trial court requires to be modified, thus she argued for allowing the appeal.

8. The argument of Smt. Deepa Doddatti is that plaintiff being the daughter is entitled to equal share in the property as it was her father's self acquisition. The defendant no.3 could not have sold exceeding his share. Nothing prevented the third defendant from producing the original sale deed. The application for production of additional evidence does not contain reasons within the parameters of the said provision and therefore the application deserves to be dismissed. She also submitted that defendant no.1 died during pendency of the suit, and defendant no.2 also died. In view of their deaths plaintiff alone succeeds to the entire property and hence the decree requires to be modified in this way.

9. The questions that arise for discussion are:



- (i) *Whether the application for production of additional evidence can be considered?*
- (ii) *Whether the decree requires modification?*

10. Point No.1: The finding of the trial court that the defendant no.3 should have produced original sale deed is incorrect in as much as in the plaint itself it is clearly stated that the first defendant executed a registered sale deed in favour of father of defendant no.3 in the year 1983, and in para 10 of the plaint there is another statement that neither defendant no.3 nor his deceased father acquired right and possession over the suit property under sale deed dated 10.10.1983. That means the plaintiff does not dispute the sale, but what she asserts is that the first defendant could not have executed the sale deed affecting her share. Third defendant states in the written statement that the first defendant was to repay loan he had obtained from the State Bank of India and therefore he sold his half share to third defendant's father. That means, sale transaction is not disputed. Where the trial court has erred is in not noticing the undisputed



transaction. Therefore even without production of original sale deed or its copy, the trial court could have examined the validity of the sale deed. Production of sale deed was not at all necessary in this factual background. Now the third defendant seeks to produce the original sale deed, and for this purpose he has filed an application. We are of the opinion since the sale transaction is an admitted fact, there is no need to grant the application. The said application deserves to be dismissed. Hence point no.1 is answered in the negative.

11. Point No.2: The main reason for allotting half share to plaintiff is non production of sale deed. It is to be noted here that the plaintiff's prayer in the suit for her 1/3 share.

12. It is not in dispute that property belonged to the father of the plaintiff and defendants 1 and 2, and he died intestate. That means each of them would succeed to 1/3 share.



13. So far as sale made by the first defendant, it is to be noted that he had every right to alienate his undefined share but not exceeding what he would succeed to. He sold half share ignoring the entitlement of the plaintiff, at best he could have sold his $\frac{1}{3}$ share. Therefore the sale deed dated 10.10.1983 is bad to the extent of more than his $\frac{1}{3}$ share.

14. Another development is that during pendency of the appeal second defendant died, his death has been noted in the order sheet dated 19.10.2022. During arguments it was brought to our notice that defendant no.2 died issueless. Taking note of this position the shares are to be modified. At any rate, the finding of the trial court that the plaintiff was entitled to half share is incorrect, at the time of decree, she was entitled to $\frac{1}{3}$ share only.

15. The sale deed dated 10.10.1983 is saved to the extent of first defendant's $\frac{1}{3}$ share only. Third defendant can not lay claim on half share. Now in view of death of second defendant, his $\frac{1}{3}$ share devolves on the plaintiff



and thereby she gets 2/3 share in the suit property. Point no.2 is thus answered.

16. In the light of above discussion, now the following:

ORDER

Appeal is partly allowed;

Judgment and decree dated 27.01.2018 in O.S. No. 91/2014 on the file of Principal Senior Civil Judge & JMFC, Mudhol, is modified;

Plaintiff is held to be entitled to 2/3 share in the suit property;

Sale deed dated 10.10.1983 executed by the first defendant in favour of father of the third defendant is saved to the extent of 1/3 share of the first defendant;

Preliminary decree shall be drawn to this effect;

There is no order as to costs.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

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