



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 11TH 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. 100359 OF 2018 (PAR/POS)

BETWEEN:

1. SANGAPPA
S/O. MALLAPPA KALLIGUDDA
AGE: 51 YEARS,
OCC: AGRICULTURE,
R/O: ADIHAL, TQ: HUNGUND,
DIST: BAGALKOT-587313.
2. MALLAVVA RAYAPPA NAGABUSI
SINCE DECEASED BY HER LRS.,
- 2A) SRI. RAYAPPA
S/O. BHEEMAPPA NAGABHUSHI,
AGE: 71 YEARS,
OCC: AGRICULTURE,
- 2B) SMT. ERAMMA W/O. PARUSHURAM,
AGE: 37 YEARS,
OCC: HOUSEHOLD WORK,
- 2C) SMT. BHARATI W/O. NAGARABETTA,
AGE: 34 YEARS,
OCC: HOUSEHOLD WORK,
- 2D) SRI. AMARESH S/O. RAYAPPA NAGABUSHI,
AGE: 38 YEARS,
OCC: HOUSEHOLD WORK,



ALL ARE R/O: NALATWAD,
KHANABAVI STREET,
DIST : VIJAYAPUR-586124.

...APPELLANTS

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

AND:

1. HANAMAGOUDA S/O. BANGINAGOUDA PATIL
AGE: 46 YEARS, OCC: AGRICULTURE,
R/O: CHITAGINAKOPPA, TQ: BAGALKOT,
DIST: BAGALKOT, PIN: 587101.
2. KARIYAPPA S/O. HOLIYAPPA NAGABUSI,
AGE: 61 YEARS, OCC: AGRICULTURE,
R/O: NALATAWAD, TQ: MUDDEBIHAL,
DIST: VIJAYAPURA-589124.

...RESPONDENTS

(BY SRI PRAKSH N. HOSAMANE, ADVOCATE FOR R1;
SRI VIJAYKUMAR B.HORATTI, ADVOCATE FOR R2)

THIS RFA IS FILED UNDER SEC. 96 OF C.P.C., 1908, AGAINST
THE JUDGMENT AND DECREE DATED 25.07.2018 PASSED IN
O.S.NO.42/2016 ON THE FILE OF THE SENIOR CIVIL JUDGE,
HUNGUND, PARTLY DECREETING 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, the defendants No.1 and 2 have challenged the judgment dated 25.07.2018 passed in O.S.No.42/2016 by the Senior Civil Judge, Hungund (for short, 'Trial Court') decreeing the suit of the plaintiff for partition and separate possession.

2. The parties will be referred to as per their status before the Trial Court for the sake of convenience.

3. Briefly stated, the plaintiff's case is that, one Mallappa is the propositus, he had two wives by name Mallavva and Siddavva. Mallavva had a daughter by name Dyamavva who died leaving behind the plaintiff. Siddavva had two children by name Sangappa and Mallavva who are defendants No.1 and 2. The plaint schedule 'B' properties are the ancestral properties of propositus and he died intestate. After his death, his children succeeded to the said property. The defendant No.3 is no way connected to the family of the propositus, but in order to siphon to the



share of the plaintiff in the suit properties, he colluded with defendant No.1 and mutated his name in the revenue record. As the 'B' schedule property was going to be acquired by the Government, the intention of the defendant No.1 was to swallow the entire compensation. The plaintiffs demanded defendant No.1 to effect partition and allot their legitimate share, since it was refused, the plaintiffs filed the instant suit.

4. The defendant No.1 filed the written statement and same was adopted by the defendant No.2 whereas defendant No.3 did not file his written statement. The defence is total denial. It is contended that Item No.1 to 3 of the 'B' schedule properties were acquired and compensation was awarded whereas Item No.4, 5 and 7 were granted in favour of the defendant No.1 and there is no joint family in existence and sought for dismissal of the suit.

5. Trial Court has framed the following issues:



- i. Whether the plaintiff proves that the suit schedule properties are ancestral properties of himself and defendant No.1 and 2?*
- ii. Whether the plaintiff is entitled to the relief sought for?*
- iii. What order or decree?*

6. On behalf of the plaintiffs, the 1st plaintiff and two witnesses were examined as PWs.1 to 3 and documents Exs.P1 to P20 were marked. On behalf of defendants, the 1st defendant and one witness were examined as DWs1 and 2 and Exs.D1 to D8 were marked.

7. After hearing both the parties, the Trial Court recorded Issue Nos.1 and 2 partly in affirmative and while answering Issue No.3 decreed the suit in part granting 1/6th share in Item No.4 to 7 of 'B' schedule properties to the plaintiff so also to the defendant No.1 and 2 and dismissed the suit in respect of Item No.1 to 3 of the 'B' schedule properties. Aggrieved by the same, defendants No.1 and 2 are before this Court on various grounds.



8. During pendency of the appeal, the defendant No.2 who is the appellant No.2 died and his legal representatives were brought on record.

9. Heard arguments of Sri S.B.Hebballi, learned counsel for the appellants/defendants No.1 and 2, Sri Prakash N.Hosamane, learned counsel for respondent No.1 and Sri Vijaykumar B.Horatti, learned counsel for respondent No.2.

10. Sri S.B.Hebballi has argued that as on 01.03.1974, Dyamavva-the daughter of Mallappa was not cultivating the suit properties. Siddavva and Sangappa were cultivating the lands. No right vests with Dyamavva on the suit schedule properties. Sangappa filed the Form No.7 before Land Tribunal and land was granted in his name. Only on the ground that the defendants did not produce the Form No.10, the Trial Court has held the issues against the defendants. Item No.4, 5 and 7 of the suit schedule properties are exclusive properties of the defendants No.1 and 2. Entire case was decided on



mutation and even if the evidence is accepted holding the entire properties belonging to the joint family, share needs to be recalculated. Mutation effected on 03.08.1972 was as Varsa, Sy.No.29/3 was not included in it. The Trial Court has committed error in holding that the said property is also joint family without any basis.

11. The appellants have filed I.A.No.3/2018 under Order 41 Rule 27 of C.P.C. for production of order sheet of the Land Tribunal. Learned counsel for the respondent No.1 has no objection for perusal of the order sheet of the Land Tribunal. But his contention is that after the death of Mallappa, Siddavva performed the marriage of Dyamavva as her guardian. Joint entry is made in the revenue records in the name of Dyamavva and defendants No.1 and 2. It is not disputed that the suit properties are the properties belonging to Mallappa, but Dyamavva has a share in the said properties. Even if the notional partition is applied there are five sharers including Mallappa. Since Mallappa is no more, his share has to be divided among



the remaining children. Then each of the members will get $1/4^{\text{th}}$ share whereas the Trial Court has granted only $1/6^{\text{th}}$ share which needs modification. Since the Item No.1 to 3 have already submerged to the Almatti Dam and compensation was received by the defendant No.1, plaintiff is not pressing their claim over the said properties.

12. We have given our anxious consideration to the arguments addressed by the learned counsel on both the sides and perused the material available on record.

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

- i. Whether the plaintiff has any right over the suit schedule properties?
- ii. Whether the apportionment of share by the Trial Court is proper?

Regarding Point No.(i):-

14. We have carefully perused the pleadings as well as the evidence of both the parties. Since the plaintiff is not claiming any right over the Item No.1 to 3 of the



suit schedule properties as it was submerged to the Almatti Dam and compensation was already paid to the defendant No.1, now we are constrained to deal with the Item No.4 to 7 of the suit schedule properties.

15. Land in R.S.No.27 measuring 19 acres 32 guntas, R.S.No.7 measuring 6 acre 38 guntas, R.S.No.33/1 measuring 14 guntas of Adihal village, originally belonged to Basappa who died leaving behind his son Mallappa the propositus. Mallappa had two wives by name 1st wife Mallavva and 2nd wife Siddavva. Dyamavva is the sole daughter of the Mallappa through his 1st wife. Plaintiff-Hanumagouda is the son of the Dyamavva. Whereas the defendants No.1 and 2 are the son and daughters of Siddavva. These properties being the ancestral properties, plaintiff and defendants No.1 and 2 are entitled to claim share in the said properties, which the Trial Court has rightly recorded in its finding.

16. The issue is only with respect to the land in Sy.No.29/3 to an extent of 6 acres which is claimed by the



defendant No.1 that it was granted to him and it is his exclusive property. His evidence point out that in the year 1980, the land was granted to him and therefore it is his self-acquired property. The plaintiff claims that in respect of the said land the name of Basappa came to be mutated in the revenue records and for this reason Form No.7 was filed by defendant No.1 and accordingly grant was made on behalf of the family. Before the Trial Court though evidence is placed, the manner of grant before the Land Tribunal was not placed.

17. Now I.A.No.3/2018 is filed along with order sheet of the Land Tribunal. The plaintiff has no objection to consider the said document. On careful perusal of the order sheet, it is pertinent to note that before the Land Tribunal, Hungund in case No.KLR-2-SR-4921, one Sangappa Mallappa Kalligudda is shown as the applicant who is none other than the 1st defendant. One Mallavva Mallappa Kalligudda and Dyamavva Mallappa Kalligudda is shown as respondents. This Mallavva and Dyamavva are



none other than the mother of the plaintiff and the defendant No.2. Being minors they have been represented by Siddavva, the mother of the defendant No.1. The proceedings before the Land Tribunal point out that when the Form No.7 was filed, defendant No.1 was minor and he was represented by one Kariyappa Holiyappa Nagabusi and not by his natural mother Siddavva.

18. The proceedings before the Land Tribunal clearly point out that owner of the property was Uttaradhimath, and the tenancy right was claimed through the ancestors. And for this reason tenancy was confirmed in favour of defendant No.1. This goes to show that when the proceeding was pending before the Land Tribunal, there was a specific claim to the property belonging to Uttaradimath by the ancestors of the plaintiff and the defendants. The plaintiff and the defendants were minors and they were represented by their guardian before the Land Tribunal. For the reason the property was being cultivated by their ancestors land was granted in the name



of the defendant No.1. This demonstrates the grant enured benefit of the family. It is pertinent to note that Dyamavva was the daughter of the 1st wife of Mallappa and the defendants No.1 and 2 are the children of 2nd wife Siddavva. They are having a share in the granted property in the name of the defendant No.1. Accordingly point No.(i) is answered.

Regarding Point No.(ii):-

19. The plaintiff has sought 1/3rd share in the suit properties. On careful perusal of the impugned judgment, the Trial Court has awarded 1/6th share. The allotment of share has to be made by applying the notional partition as there are five sharers to the property such as Mallappa, Dyamavva, Siddavva, Sangappa and Mallavva. Each will get equal share i.e. 1/5th. As Mallappa is no more, his share has to be divided among his surviving wife and children. 1/5th share of Mallappa, if divided among these four members it comes to 1/20th share. Then each surviving members of the family is entitled to 1/5th +



$1/20^{\text{th}} = 1/4^{\text{th}}$ share. This aspect is lost sight of by the Trial Court, which needs rectification. Accordingly we answer Point No.(ii).

20. In view of our discussion on Points No.(i) and (ii), allowing modification in the extent of shares that the parties are entitled to as discussed supra, appeal is devoid of merits in other aspects. In the result, the following:

ORDER

Appeal is allowed in part;

Impugned judgment and decree in allotting $1/7^{\text{th}}$ share each to the plaintiff No.2 and defendants is hereby modified as supra.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

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