



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 23RD 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.100277 OF 2018 (DEC/INJ)

BETWEEN:

1. SHRI SANTOSH PARASHURAM
@ PARASAPPA SARIKAR
AGE: 33 YEARS, OCC: AGRICULTURE,
R/O: HARUGERI, TA: RAIBAG,
DIST: BELAGAVI-591220.
2. SHRI SHANKAR PARASHURAM
@ PARASAPPA SARIKAR
AGE: 27 YEARS, OCC: AGRICULTURE,
R/O: HARUGERI, TA: RAIBAG,
DIST: BELAGAVI-591220.
3. SMT SUJATA RAMA MANG,
AGE: 24 YEARS,
OCC: HOUSEHOLD WORK AND AGRICULTURE,
R/O: BYAKUD, TAL: RAIBAG,
DIST: BELAGAVI-591317.

...APPELLANTS

(BY SRI SANGRAM S KULKARNI, ADVOCATE)

AND:

1. SMT. SUMITRA W/O PARASHURAM
@ PARASAPPA SARIKAR
AGE: 56 YEARS,
OCC: HOUSEHOLD WORK AND AGRICULTURE,
R/O HARUGERI, TAL:RAIBAG,
DIST: BELAGAVI-591220.
2. SHRI IRAPPA GIREPPA MUDASHI
AGE: 45 YEARS, OCC: AGRICULTURE,



R/O:HARUGERI, TAL:RAIBAG,
DIST: BELAGAVI-591220.

3. SHRI BASAPPA GIREPPA MUDASHI
AGE: 40 YEARS, OCC: AGRICULTURE,
R/O: HARUGERI, TAL:RAIBAG,
DIST: BELAGAVI-591220.
4. SMT. BASAVVA MUTTEPPA HANAGANDI
AGE: 43 YEARS,
OCC: HOUSEHOLD AND AGRICULTURE,
R/O:HARUGERI, TAL:RAIBAG,
DIST: BELAGAVI-591220.
5. THE SPECIAL LAND ACQUISITION OFFICER
AND ASSISTANCE COMMISSIONER,
SUB-DIV, CHIKODI-591201,
CHIKODI, DIST: BELAGAVI.
6. THE STATE OF KARNATAKA
R/BY DEPUTY COMMISSIONER,
BELAGAVI-590001.

...RESPONDENTS

(BY SRI H M DHARIGOND, ADV. FOR R2 TO R4;
SMT. GIRIJA HIREMATH, HCGP FOR R5 & R6,
NOTICE TO R1 IS SERVED)

THIS REGULAR FIRST APPEAL IS FILED UNDER ORDER XLI
RULE 1 AND 2 R/W SECTION 96 OF CPC., PRAYING TO, SET ASIDE
THE JUDGMENT AND DECREE PASSED BY THE SENIOR CIVIL JUDGE
AND JMFC, RAIBAG IN OS NO.226/2016 DATED 17.04.2018 BY
ALLOWING THE PRESENT APPEAL AND DISMISS THE SUIT IN THE
INTEREST OF JUSTICE AND EQUITY.

THIS REGULAR FIRST 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)

This appeal is directed against the judgment dated 17.04.2018 in O.S.No.226/2016 on the file of Senior Civil Judge & JMFC, Raibag.

2. The plaintiffs are the appellants. Their suit is for declaration, injunction, partition and separate possession of the properties in Sy.No.501/3A measuring 35 guntas and Sy.No.502/3B measuring 18 guntas situated at Harugeri village of Raibag taluk, Belagavi District ("suit properties" for short). The plaintiffs claimed that suit properties were ancestral and that Smt.Yallavva and her son Parashuram @ Parasappa sold them to defendant no.2 to 4 under a sale deed dated 23.10.1997. Alleging that sale was not for legal necessities as plaintiffs' father Parashuram @ Parasappa was victim of vices, they challenged the sale deed and also sought partition and separate possession of their share.

3. Defendant nos.2 to 4 appeared and filed written statement stating that they were bonafide purchasers.



4. The Trial Court having framed four issues recorded examination-in-chief of PW.1. But PW.1 did not appear for cross-examination. Defendant no.4 adduced evidence as DW.1 and he was not cross-examined by the plaintiffs. Answering the issues against the plaintiffs, the Trial Court dismissed the suit.

5. We have heard Sri Sangram S.Kulkarni, learned counsel for the appellants, Sri H.M.Dharigond, learned counsel for respondent Nos.2 to 4 and Smt.Girija Hiremath, learned High Court Government Pleader for respondent nos.5 and 6.

6. The argument of Sri Sangram Kulkarni is that the suit properties actually belonged to Smt.Yallavva, the grandmother of plaintiffs. Plaintiffs' father Parashuram @ Parasappa was addicted to liquor. Both Smt.Yallavva and Parashuram sold the suit properties without there being legal necessity for the family. In this view, the alienation effected by them did not bind interest of the plaintiffs. Though the 1st plaintiff adduced evidence as PW.1, for some reason he could not tender himself for cross-examination and the plaintiffs could not cross-examine DW.1. The lands were acquired subsequently and the compensation amount is still available in deposit. It has not been withdrawn by defendant nos.2 to 4.



The plaintiffs have got a legitimate share in the compensation amount. If an opportunity is given PW.1, he will appear for cross-examination and therefore the appeal is to be allowed and the matter is to be remanded to the Trial court.

7. Sri H.M.Dharigond submits that properties belonged to Smt.Yallavva, one of the plaintiffs was not born on the day when she and her son sold the suit properties to defendant nos.2 to 4. Absolutely the plaintiffs have no right in the suit properties. Realizing that compensation amount is still available, they filed a frivolous suit in order to claim share in the compensation. He also submitted that PW.1 did not appear for cross-examination and thereby there is no evidence from the plaintiffs' side. Having regard to all these aspects, the Trial Court dismissed the suit. There is no infirmity in it.

8. Smt.Girija Heremath learned High Court Government Pleader supports the impugned judgment.

9. It is not for the reason that PW.1 did not tender himself for the cross-examination, a plain reading of the plaint indicates that the property absolutely belonged to Smt.Yallavva. Therefore she had every right to alienate the suit properties. Merely for the reason that her son Parashuram



joined with her in executing the sale deed in favour of defendant nos.2 to 4 on 23.10.1997, it cannot be said that the suit properties were ancestral so that the plaintiffs could lay a claim for share in the suit properties. From the plaint averments itself we notice that the suit properties belonged to Smt.Yallavva absolutely and she had every right to deal with it in any way she liked.

10. Secondly the sale deed came into existence on 23.10.1997 and the suit was filed in the year 2016. By that time the suit property was acquired by the Government and compensation was awarded. Probably with a view to claiming share in the compensation, plaintiffs might have filed the suit which is not at all maintainable in the eye of law. This being the factual aspect, even if the case is remanded, it serves no purpose. Appeal is devoid of merits and therefore it is dismissed.

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

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