



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 22ND 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.100314 OF 2023 (PAR/POS)

BETWEEN:

1. BASAPPA CHANNAPPA HULAKOPPA
AGE. 75 YEARS, OCC. AGRICULTURE,
R/O. TARIHAL, TAL. HUBLI-580026.
2. REVANEPPA BASAPPA HULAKOPPA
AGE. 39 YEARS, OCC. AGRICULTURE,
R/O. TARIHAL, TAL. HUBLI-580026.
3. SHRIKANT BASAPPA HULAKOPPA
AGE. 34 YEARS, OCC. AGRICULTURE,
R/O. TARIHAL, TAL. HUBLI-580026.
4. NAGAPPA CHANNAPPA HULAKOPPA
AGE. 72 YEARS, OCC. AGRICULTURE,
R/O. TARIHAL, TAL. HUBLI-580026.

- APPELLANTS

(BY SRI. S.C. JAINAR, ADVOCATE)

AND:

1. ULLAVVA W/O. KALLANAGOUDA PATIL
AGE. 69 YEARS, R/O. TARIHAL (OLD),
H.NO 8, ASHRAYA PLOT, TQ.HUBLI-580026.
2. IRAVVA W/O. VEERABHADRAPPA KERIMANI
AGE. 62 YEARS, R/O. AT POST MAREWADA,
TQ AND DIST. DHARWAD-580001.
3. GIRIJAVVA D/O. CHANNAPPA HULAKOPPA
AGE. 67 YEARS, R/O. TARIHAL (OLD),
H.NO 8, ASHRAYA PLOT, TQ.HUBLI-580026.

- RESPONDENTS

(BY SRI. SHIVAKUMAR S. BADAWADAGI, ADVOCATE FOR R1 TO R3)

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Karnataka, Dharwad Bench
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THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF CPC., 1908, PRAYING TO, ALLOW THIS APPEAL BY SETTING ASIDE THE JUDGMENT AND DECREE PASSED BY THE PRINCIPAL SENIOR CIVIL JUDGE HUBBALLI IN O.S NO.176/2014 DATED 07.06.2019 MAY KINDLY BE DISMISSED WITH COST IN THE INTEREST OF JUSTICE AND EQUITY.

THIS REGULAR FIRST APPEAL, COMING ON FOR ADMISSION, 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)

Defendant nos.1 to 4 in O.S. No. 176/2014 on the file of Prl. Sr. Civil Judge, Hubballi have preferred this appeal questioning the correctness of the judgment and decree dated 07.06.2019.

2. The plaintiff is the sister of defendants 1, 4, 5 and 6, all being children of Channappa Hulukoppa. Defendants 2 and 3 are the sons of the first defendant. The plaintiff



brought the suit for partition and separate possession of her 1/4th share in suit properties consisting of two pieces of agricultural lands measuring 5 acres in sy. No. 158 and 4 acres in sy. No. 161 of Tarihal village, taluk Hubballi, a house property bearing block no. 142 measuring 404.83 sq.mts. and a non agricultural property bearing sy. No. 82, plot no. 5 measuring 3 guntas 15 annas both situated at Tarihal village, Hubballi. According to the plaintiff the land in Sy. No. 158 was granted to the individual name of her father and the other land in sy. No. 161 was her father's self acquisition. After the demise of the father and mother all the children succeeded to the suit properties and she has 1/5th share in them. Defendants 1 to 4 contended in the written statement that the plaintiff cannot claim any share in view of the fact that their sisters including the plaintiff gave a varadi to Tahasildar, Hubballi requesting him to delete their names from the record of rights and accordingly their names were deleted vide mutation entry no. 1330. Thereafter they obtained loan from the bank. A subsequent partition also took place in between



defendants 1 to 4. The plaintiff being aware of all these facts instituted a false and frivolous suit and hence the suit is to be dismissed.

3. The trial court framed the following issues:

1. *Whether the plaintiff proves that the suit schedule properties are the joint family properties of parties to the suit?*
2. *Whether the plaintiff is entitled to any share in the suit properties? If so, what is her share?*
3. *Whether the plaintiff is entitled to mesne profits? If so, at what rate and from what date?*
4. *To what reliefs the plaintiff is entitled to?*
5. *What order or decree?*

4. Upon appreciation of evidence the trial court decreed the suit holding that the plaintiff is entitled to 1/5th share out of 1/3rd share of her father and aggrieved by the same the present appeal has been filed.

5. The main findings of the trial court are that right, title and interest cannot be transferred merely by giving varadi, and in the absence of registered relinquishment deed, there cannot be a transfer in relation to immovable



property whose value is more than Rs.100/-. The first defendant has given an admission that land in S. No. 161 of Tarihal was the self acquired property and properties at serial numbers 3 and 4 were ancestral. And there is another admission that defendants 1 and 2 colluded with revenue officers. Therefore mere appearance of the names of defendants 1 to 4 in the record of rights does not take away the rights of plaintiffs and in this view plaintiff is entitled to $1/5^{\text{th}}$ share out of $1/3^{\text{rd}}$ share of her father.

6. Sri S.C. Jainar, learned counsel for the appellant submits that the trial court should not have decreed the suit and held that the plaintiff was entitled to $1/5^{\text{th}}$ share out of $1/3^{\text{rd}}$ share of her father in as much as stated by the plaintiff one of the suit properties was granted to plaintiff's father and in view of the decisions of this Court in ***Nimbavva & Ors. Vs. Channaveeraiah & Ors. [(2015) 1 KCCR 205 (DB)] and Kamala & Ors. Vs. Lingamma Hengsu & Ors. [(2002) 2 KLJ 456]***, a married daughter



is not a member of the family and therefore she cannot claim partition in a land granted under Karnataka Land Reforms Act. He also argued that the first defendant gifted 5 acres 26 guntas of land in Sy. No. 158/2 to his two sons, i.e., defendant nos.2 and 3 under a registered gift deed 03.06.2011. This gift being acted upon the plaintiff cannot lay claim for share. He has filed an application under Order 41 Rule 27 CPC for production of original gift deed and RTC extract. Therefore he argued that the findings of the trial court are erroneous.

7. Sri Shivakumar S. Badawadagi for respondents 1 to 3 argued that the trial court has rightly appreciated the evidence. Relinquishment of right in an immovable property by giving varadi is not permitted under law. The defence is based on this varadi which the trial court has rightly held to be invalid. In this view, share has been granted to the plaintiff and her two sisters. Therefore appeal deserves to be dismissed.



8. There is no dispute with regard to relationship of the parties. The plaintiff is the sister of defendants 1, 4, 5 and 6 all being children of Channappa Hulukoppa who died intestate on 19.05.1981. The land in Sy. No. 158 was granted to Channappa and another land in Sy. No. 161 was his self acquisition. The defence is that the plaintiff and her sisters gave a varadi to the revenue authority to delete their names from the revenue records as they had relinquished their right. The trial court has rightly held that a varadi does not evidence relinquishment of right, title and interest and relinquishment can be made only by a registered instrument. The two decisions cited by Sri S.C.Jainar are not applicable to the facts because it is not the case of the plaintiff that one of the properties was regranted to her father under Karnataka Land Reforms Act and it is not the case of the defendants also. Though the plaintiff has stated that one property was granted to her father, it cannot be said that it was a grant made under Land Reforms Act. If the grant had been made under Karnataka Land Reforms Act, nothing prevented the



contesting defendants from pleading to that effect and producing the order of grant of occupancy rights under Karnataka Land Reforms Act. In the absence of materials to this effect, the ground now taken up for the first time cannot be accepted.

9. The trial court has not committed error in granting share to the plaintiff and the other parties. The trial court has applied the principle in ***Prakash & Ors Vs. Phulavathi & Ors. [(2010) 8 SCC 383]*** to allot share in the notional share of the propositus, namely, Channappa Hulukoppa. This was probably due to death of the propositus on 19.05.1981. In our opinion, the trial court ought to have followed the judgment in ***Vineeta Sharma Vs. Rakesh Sharma and Others [ILR 2020 KAR 4370]***. But Sri Shivakumar S. Badawadagi submits that in the final decree proceedings the trial court has applied ratio in ***Vineeta Sharma*** (supra) and granted equal share. Therefore, the mistake is set right. In view of this,



we find that there is no merit in this appeal and hence it is dismissed. There is no order as to costs.

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

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

BVV
LIST NO.: 1 SL NO.: 16