



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 2ND 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.100413 OF 2019 (PAR/POS)

BETWEEN:

1. SMT. PUSHPA W/O PRABHAKAR KULKARNI
AGE: 79 YEARS, OCC: HOUSEHOLD WORK,
R/O: KULKARNI KODI, RAJEEV NAGAR,
CHIKODI, TQ: CHIKODI, DIST: BELAGAVI.

SHRI PRADEEP S/O PRABHAKAR KULKARNI
SINCE DECEASED BY HIS LR'S

- 2A. SMT. POOJA W/O PRADEEP KULKARNI
AGE: 53 YEARS, OCC: HOUSEWIFE,
R/O: 15/7, 15TH GALLI, JAYASINGPUR,
DIST: KOLHAPUR-416101.
- 2B SHRI PRASHANT S/O PRADEEP KULKARNI
AGE: 30 YEARS, OCC: SERVICE,
R/O: 15/7, 15TH GALLI, JAYASINGPUR,
DIST: KOLHAPUR-416101.
3. SHRI MAHESH S/O PRABHAKAR KULKARNI
AGE: 56 YEARS, OCC: SERVICE,
R/O: STAR ABHIYANA, SHAHU PARK,
MANGALA BANGLOW, NEAR BIRD SCHOOL,
KOLHAPUR, MAHARASHTRA STATE.
4. SHRI PRAVEEN S/O PRABHAKAR KULKARNI
AGE: 41 YEARS, OCC: AGRICULTURE,
R/O: KULKARNI KODI, NEAR RAJEEV NAGAR,
CHIKODI, TQ: CHIKODI, DIST: BELAGAVI.
5. SOU. MANESHA W/O MADUKAR LAKAPURE
AGE: 62 YEARS, OCC: HOUSEHOLD WORK,
R/O S.P.PARSHWANATH PLAZA,
FLAT NO.B-4, 2ND GALLI, JAYASINGAPUR,
MAHARASHTRA STATE.



6. SOU. MANJUSHA W/O SRINIWAS JARANDIKAR
AGE: 50 YEARS, OCC: SERVICE,
R/O: BHAGAWANT RESIDENCY,
1ST FLOOR, RUN ZUNJAR CHOWK,
SANGALI, MAHARASHTRA STATE.

...APPELLANTS

(BY SRI RAMESH I. ZIRALI, ADVOCATE AND
SRI HARSHAWARDHANA M. PATIL, ADVOCATE)

AND:

1. SMT. ANITA W/O AVINASH KULKARNI
AGE: 76 YEARS, OCC: HOUSEHOLD WORK,
R/O: ATHAARVA PLAZA, DESHPANDE GALLI,
KOLHAPUR, MAHARASHTRA.
2. SOU. RUTUJA W/O VENKATESH JOSHI
AGE: 38 YEARS, OCC: HOUSEHOLD WORK,
R/O: MANGAL NAGAR, NORTH PUNE-41,
MAHARASHTRA.
3. SOU. ARCHANA W/O HARISH MURNAL
AGE: 46 YEARS, OCC: HOUSEHOLD WORK,
R/O: BARODA GUJARAT STATE.
4. SOU. APARANA W/O ABHAY DESHPANDE
AGE: 44 YEARS, OCC: HOUSEHOLD WORK,
R/O: KOLHAPUR, MAHARASHTRA STATE.

...RESPONDENTS

(BY SRI SABEEL AHMED, ADV. FOR
SRI A.S. PATIL, ADV. FOR RESPONDENT NOS.1 TO 4)

THIS REGULAR FIRST APPEAL IS FILED UNDER ORDER XLI
RULE 1 AND 2 R/W SEC.96 OF CPC., AGAINST THE JUDGMENT AND
DECREE DATED 20.03.2019 PASSED IN O.S.NO.204/2013 ON THE
FILE OF THE SENIOR CIVIL JUDGE, CHIKODI, 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, defendant nos.1 to 6 have challenged the judgment dated 20.03.2019 passed in O.S.No.204/2013 on the file of Senior Civil Judge, Chikkodi (in short 'the Trial Court').

2. Rank of the parties shall be referred to as per their status before the Trial Court.

3. Brief facts of the case are, the plaintiffs have filed a suit seeking partition and separate possession of their shares by metes and bounds on the ground that the plaintiffs and the defendants are the members of the undivided joint family, suit properties are their joint family properties and they are having share in the properties. The defendants have opposed the suit contending that there was an earlier partition by virtue of the compromise recorded in O.S.No.74/1996 on the file of the Senior Civil Judge, Chikkodi dated 28.06.1996 and 24.01.1997 and suit is not maintainable.

4. On the basis of the pleadings the Trial Court has framed the following issues:



1. *Whether the plaintiffs prove that suit schedule properties are ancestral joint family properties and in joint possession of plaintiffs and the defendants?*
2. *Whether the suit suffers from non-joinder of necessary parties and non-inclusive of all the joint family properties at Kolhapur?*
3. *Whether the defendants prove that deceased Avinash father of the plaintiffs No.2 to 4 and husband of the plaintiff No.1 was collecting income from the agriculture lands and house properties during the jointness of the family and out of said income the properties are purchased at Kolhapur?*
4. *Whether the defendants No.1 to 6 prove that, there was a partition suit by metes and bounds between the plaintiffs and defendants and other members of the joint family by filing a suit in O.S.No.74/1996, in the court of the Civil Judge, Sr.Dn. Chikodi, and accordingly, there is a partition between the defendants and the plaintiffs as per the compromise decree is drawn on 28.06.1996 and on 24.01.1997?*
5. *Whether the defendants No.1 to 6 prove that, deceased Avinash Maratand Kulkarni having accepted Rs.66,000/ has given up his ½ share in all the agricultural properties?*
6. *Whether the plaintiffs prove that they have got legitimate share of ½ share in the suit schedule properties?*



7. *Whether the suit is barred by limitation in view of compromise decree in O.S.No.74/1996 dated 24.01.1997?*

8. *What order or decree?*

5. On behalf of the plaintiffs, the first plaintiff and one witness were examined as PWs.1 and 2; 12 documents came to be marked as Exs.P.1 to 12. On behalf of defendants no evidence was adduced.

6. The Trial Court answered issue nos.1 and 6 in the affirmative, issue nos.2 to 5 and 7 in the negative. While answering issue no.8, decreed the suit granting 1/8th share each to plaintiff nos.1 to 4 and 1/12th share each to defendant nos.1 to 6 in 'A' and 'B' schedule properties. Aggrieved by the same, the defendants are before this Court on various grounds.

7. Appellants have also filed I.A.No.2/2023 under Order XLI Rule 27 read with Section 151 of CPC seeking permission for production of compromise petition filed under Order XXIII Rule 3 of CPC between the parties in O.S.No.74/1996 dated 28.06.1996 before the Principal Civil Judge, Chikkodi as an additional evidence.



8. We have heard the argument of Sri Ramesh I Zirali learned counsel appearing for appellants and Sri A.S.Patil, learned counsel for the respondents.

9. It is contended by learned counsel for the defendants that before the Trial Court, the defendants were not able to lead evidence to establish the previous partition. He seeks permission to the defendants to place evidence to demonstrate the previous partition, for which I.A.No.2/2023 along with the records are produced to demonstrate the previous compromise and partition in O.S.No.74/1996. His argument is for remand of the matter for opportunity to prove the defence.

10. *Per contra*, learned counsel for the plaintiffs has contended that the defendants were given ample opportunity to place evidence before the Trial Court. Since they have not produced any evidence, the Trial Court has rightly recorded that the defendants have not proved the previous partition and rightly decreed the suit by granting partition and he supported the impugned judgment.



11. We have given our anxious consideration to the arguments addressed by both parties and perused the records.

12. It is the specific contention of the plaintiffs that the suit schedule properties are the joint family properties of the plaintiffs and defendants, and they are entitled to the share in the said properties. Whereas the defendants contended that there was a partition, which recorded in O.S.No.74/1996 in the earlier round of litigation. As noticed, the defendants were not able to place evidence before the Trial Court in proof of their defence leading to the decree of the suit.

13. We have perused the affidavit filed in support of I.A.No.2/2023 and the documents produced. It is pertinent to note that there was an earlier suit between the parties before the Principal Civil Judge, Chikkodi in O.S.74/1996. The parties to the said suit have filed the compromise petition under Order XXIII Rule 3 of CPC and the said suit came to be decreed in terms of the compromise. It is the specific case of the defendants that such a compromise had earlier acted upon and the suit of the plaintiffs is not maintainable and they are



seeking permission to lead evidence in discharging of their burden casted by way of issue no.4.

14. As we notice that on behalf of the defendants no evidence has been led, the defendants cannot substantiate their defence without any proof. In view of the additional evidence placed before the Court, the defendants are required to be given an opportunity to demonstrate the earlier compromise recorded in O.S.No.74/1996. In the absence of any evidence on behalf of the defendants, any amount of argument will not serve the purpose and the defendants cannot be driven out of Court without giving reasonable opportunity.

15. In view of I.A.No.2/2023 is filed by the defendants and placing the additional evidence in proof of issue no.4, it is proper to remand the matter to the Trial Court instead of disposing the appeal on technicality. The Trial Court has to give a finding on issue no.4 regarding previous partition as contended by the defendants. Such a request of the defendants falls under Order XLI Rule 23(a) of CPC. Since the defendants have not placed any evidence before the Trial Court, now they have come up with an application to produce additional



evidence, they cannot be permitted blanket to seek the remand without compensating the plaintiffs, for their lapses. Hence, without touching the merits of the case, by compensating the plaintiffs, it is proper to remand the matter to the Trial Court with a request to afford an opportunity to the defendants to lead evidence and then to consider the matter afresh on all the issues to do substantial justice.

16. In view of the above, appeal deserves consideration. In the result, the following:

ORDER

- i. Appeal is allowed.
- ii. The judgment and decree dated 20.03.2019 passed in O.S.No.204/2013 by the Senior Civil Judge, Chikkodi, is hereby set aside.
- iii. The matter is remanded back to the Trial Court to the stage of evidence of defendants. The Trial Court is requested to afford opportunity to the defendants and also the plaintiffs to place their rebuttal evidence and then to decide the case on merits in accordance with law.
- iv. The appellants/defendants shall pay cost of Rs.1,50,000/- to the respondents/plaintiffs.



- v. All the parties shall appear before the Trial Court on 07.01.2025 without any further notice.
- vi. Defendants shall not seek unnecessary adjournment and they shall assist the Court for expeditious disposal of the suit.
- vii. Contentions of both the parties are kept open.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

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

EM
List no.: 1 sl no.: 33