



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 26TH 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.100390 OF 2018 (PAR/POS)

BETWEEN:

1. SMT. DEVAKKA @ SHANKRAVVA
W/O VIRUPAKSHAPPA HUGAR
AGE: 60 YEARS, OCC: HOUSEHOLD WORK,
R/O: CHIKKOPPA, TQ: DIST: GADAG-581117.
2. SMT. JAYASHREE W/O FAKEERESH HUGAR
AGE: 37 YEARS, OCC: HOUSEHOLD WORK,
R/O: KUMBAR ONI, SHIRAHATTI,
TQ: SHIRAHATTI, DIST: GADAG-582120.
3. BASAVARAJ S/O FAKEERESH HUGAR
AGE: 16 YEARS, OCC: STUDENT,
R/O: KUMBAR ONI, SHIRAHATTI,
TQ: SHIRAHATTI, DIST: GADAG-582120.
4. RADHIKA D/O FAKEERESH HUGAR
AGE: 14 YEARS, OCC: STUDENT,
R/O: KUMBAR ONI, SHIRAHATTI,
TQ: SHIRAHATTI, DIST: GADAG-582120.

THE APPELLANT NO.3 & 4 ARE MINORS
SINCE R/BY THEIR NATURAL MOTHER GUARDIAN
I.E. APPELLANT NO.2.

- APPELLANTS

(BY SRI. D.V. PATTAR, ADVOCATE)

AND:

1. RATNAWWA W/O LAKSHMAN HUGAR,
AGE: 55 YEARS, OCC: ATTENDER,
R/O: V.D.S.T.C. SCHOOL,
NEAR ABDUL KALAM KALYAN MANTAP, RING ROAD,
GADAG, TQ: DIST: GADAG-581117.

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Location: High Court
of Karnataka,
Dharwad Bench
Date: 2024.12.05
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2. SMT. MAHADEVI W/O VEERABHADRAPPA BALIGER,
AGE: 53 YEARS, OCC: HOUSEHOLD WORK,
R/O: NEAR BUS STAND, ABBIGERI, TQ: RON,
DIST: GADAG-582209.
3. SRI. BETTAPPA @ BETADAPPA S/O ANDAPPA HUGAR,
AGE: 55 YEARS, OCC: AGRICULTURE,
R/O: BADIGER ONI, SHIRAHATTI,
TQ: SHIRAHATTI, DIST: GADAG-582120.
4. SRI. ROHIT S/O BETTAPPA @ BETADAPPA HUGAR,
AGE: 22 YEARS, OCC: PRIVATE JOB,
R/O: BADIGER ONI, SHIRAHATTI,
TQ: SHIRAHATTI, DIST: GADAG-582120.
5. SMT. MAHALAKSHMI,
D/O BETTAPPA @ BETADAPPA HUGAR,
AGE: 16 YEARS, OCC: STUDENT,
R/O: BADIGER ONI, SHIRAHATTI,
TQ: SHIRAHATTI, DIST: GADAG-582120.
6. SMT. SHANTAWWA @ MUTTAWWA,
W/O BHARAMAPPA HUGAR,
AGE: 44 YEARS, OCC: HOUSEHOLD,
R/O: SHIDDESHWAR EXTENSION, GADANKERI,
TQ: DIST: BAGALKOT-587101,

SINCE THE RESPONDENT NO.5 IS A MINOR
R/BY HER NATURAL FATHER GUARDIAN, I.E.
RESPONDENTS NO.3.

- RESPONDENTS

(BY SRI. SHARAT B. NYAMAGOUDAR, ADVOCATE FOR
SRI. C.S. SHETTAR, ADVOATE)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF
CPC PRAYING TO SET ASIDE THE JUDGMENT AND DECREE IN O.S.
NO. 84/2017 (OLD NO.153/2016) DATED 08.08.2018 PASSED BY
THE SENIOR CIVIL JUDGE AND JMFC LAXMESHWAR & ETC.

THIS APPEAL, COMING ON FOR HEARING ON INTERLOCUTORY
APPLICATION, 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 filed by the defendants 1 to 4 in O.S. No. 153/2016 on the file of Senior Civil Judge, Laxmeshwar. Suit was instituted by respondents 1 to 6.

2. The plaintiffs 1, 2, 6 and defendant no.1 are the sisters of one Fakiresh who is the husband of defendant no.2; Kotrappa and Parvathavva are the parents of plaintiffs 1, 2, 6 and Fakiresh. Being the daughters of Kotrappa, plaintiffs brought the suit for partition in respect of three properties described in the plaint schedule. It was the contention of the defendants that the propositus Kotrappa had effected oral partition and in that partition, second defendant's husband Fakiresh was given all the suit properties. They stated that Kotrappa sold away one agricultural land to perform marriages of his daughters and therefore did not give any share to the daughters in the oral partition. Thus they contended that plaintiffs were not entitled to claim any partition.



3. The trial court framed the following issues:

- "1. Whether the plaintiffs prove that, the suit schedule properties are ancestral and joint family properties of themselves and defendants and are available for partition?*
- 2. Whether the defendant No.1 and 2 prove that, there is all ready oral partition taken place in between plaintiffs and defendants, money and gold ornaments are taken by the plaintiffs?*
- 3. Whether the plaintiffs are entitled to relief of as sought for?*
- 4. What Order or Decree?"*

4. After assessing the evidence of the witnesses, PW1 and DW1 and the documentary evidence as per Exs.P.1 to P.7 and D.1 to D.4, the trial court held that defendants 1 and 2 were not able to prove oral partition and in that view, plaintiffs would become entitled to 1/6th share. Answering issues 1 and 3 affirmatively and issue no.2 negatively, the trial court decreed the suit declaring that the plaintiffs 1, 2, 6 and defendant no.1 were each entitled to 1/6th share and plaintiffs 3 to 5 were entitled to 1/6th share collectively, and the defendants 2 to 4 were collectively entitled to 1/6th share.



5. We have heard arguments of Sri Sabeel Ahmed, learned counsel for the appellant and Sri Sharat Dyamgoud, learned counsel for respondents.

6. It is the argument of appellants' counsel that the finding of the trial court on issue no.2 is erroneous in as much as, propositus Kotrappa effected oral partition in which husband of defendant no.2 was given all the suit properties. This was because of the reason that Kotrappa performed marriages of his daughters by selling a land belonging to him in Sy. No. 192/5. This is not disputed by defendant no.1 and infact she supported the contention taken by defendants 2 to 4. In this view the trial court should have accepted the fact that there was oral partition in the family and therefore the suit should not have been decreed. He also argued that plaintiffs should have included the purchaser of the land in Sy. No. 192/5 as one of the defendants in the suit because that property also belonged to the joint family. The plaintiffs should have sought partition in that property also.



7. On the other hand, learned counsel for the respondents submits that second defendant is none other than the daughter of the first defendant and it is quite natural that the first defendant would support her daughter. Actually there was no oral partition at all. No evidence was placed before the court by the defendants. All the defendants are coparceners in view of amendment brought to Sec. 6 of the Hindu Succession Act. There is nothing wrong in allotting equal shares. Therefore he prayed for dismissing the appeal.

8. We have assessed the entire evidence once again. We find that the relationship is not disputed. It is found from the evidence that propositus Kotrappa owned and possessed land measuring 7 acres 27 guntas in R.S. No. 9/1 and 8 acres 28 guntas in R.S. No. 192/5 of Varavi village and, a house property bearing VPC No. 3/40 and vacant plot bearing TPC No. 3/112 at Majjigeyavar land, Shirahatti. Ex.D.1 shows that Kotrappa sold 8 acres 28 guntas in Sy. No. 192/1 on 28.04.1994 to one Vinodkumar



Maheshappa Kappatanavar. It is to be stated that if Kotrappa took a decision to sell his one land in the year 1994 itself, argument of the appellants' counsel that the sold property should have been included in the suit, cannot be accepted because the sale was not challenged by anybody. After selling that property if Kotrappa died intestate obviously all his children would take equal share in the remaining property. But it is the contention of defendants 1 and 2 that there was an oral partition. The burden was on them to prove that oral partition had taken place. The evidence shows that they failed to provide any piece of evidence in support of their contention.

9. The trial court has come to conclusion that because of failure on the part of defendants 1 and 2 to establish their specific contention of oral partition, the plaintiffs would become entitled to claim share in view of amendment brought to Sec.6 of the Hindu Succession Act. We do not find any infirmity in this finding. Therefore we do not find good ground to interfere with the well reasoned



judgment of the trial court. In this view the appeal 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.: 17