



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 20TH 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. 100424 OF 2018 (PAR/POS)

BETWEEN:

1. K. SRINIVAS
S/O. LATE KAMMA SANNA HANUMANTHAPPA
AGE: 51 YEARS, OCC: AGRICULTURE,
R/O: 26/175, OLD MADER ROAD,
NEAR KOTTUR SWAMY MATH,
HOSAPETE, DIST: VIJAYANAGAR-583203.
SINCE DIED ON 27.04.2021
REPRESENTED BY HIS LRS.

1A) MR. SUJIT K.S. S/O. K. SRINIVAS
AGE: 23 YEARS, OCC: AGRICULTURE,
R/O: 26/175, OLD MADER ROAD,
NEAR KOTTUR SWAMY MATH,
HOSAPETE, DIST: VIJAYANAGAR-583203.

2. SMT. TRIVENI W/O. KRISHNA MURTHY,
AGED: 55 YEARS, OCC: HOUSEWIFE,
R/O: 26/175, OLD MADER ROAD,
NEAR KOTTUR SWAMY MATH,
HOSAPETE, DIST: VIJAYANAGAR-583203..

- APPELLANTS

(BY SRI. R.H. ANGADI, ADVOCATE)

AND:

1. SRI. K. PRAHLLADA
S/O LATE KAMMA SANNA HANUMANTHAPPA,
AGE: 57 YEARS, OCC: ADVOCATE,
R/O: 26/175, OLD MADER ROAD,



NEAR KOTTUR SWAMY MATH,
HOSAPETE, DIST: VIJAYANAGAR-583203.

- 2 . SMT. K. ANITA W/O. LATE K. RANGANATH
AGED: 38 YEARS, OCC: HOUSEHOLD
- 3 . SRI. K. VINAY KUMAR S/O. LATE K. RANGANATH
AGED: 19 YEARS, OCC: STUDENT

RESPONDENT NO. 2 AND 3 ARE
R/O: 26/175, OLD MADER ROAD,
NEAR KOTTUR SWAMY MATH,
HOSAPETE, DIST: BALLARI-583203.

- 4 . SMT. C. SHAILA W/O. PURUSHOTHAM NAIDU
AGE: 43 YEARS, OCC: HOUSEWIFE,
R/O: RAMAIAH NAGAR, KUKATAPALLI,
HYDERABAD-500072.
- 5 MR. K. VAMSHI KRISHNA S/O K. PRAHALAD
AGE: 22 YEARS, OCC: STUDENT,
R/O: HOUSE NO.26/175 OLD MADDER ROAD,
NEAR KOTTUR SWAMY MATH, HOSPAPETE,
DIST: VIJAYANAGAR-583203.

- RESPONDENTS

(BY SRI S.A.SANDUR, ADVOCATE FOR SRI K.L.PATIL, ADVOCATE
FOR R1, R2 AND R5;
NOTICE TO R3 AND R4 SERVED)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF
CPC., PRAYING TO, SET ASIDE THE IMPUGNED JUDGMENT AND
DECREE PASSED IN O.S.NO.28/2009, DATED 17.07.2018 PASSED BY
THE LEARNED PRINCIPAL SENIOR CIVIL JUDGE AND JMFC,
HOSAPETE AND CONSEQUENTLY DECREE THE SUIT FILED BY THE
PLAINTIFFS AND GRANT ANY OTHER ORDER ORDERS RELIEFS
WHICH ARE DEEMED FIT IN THE FACTS AND CIRCUMSTANCES BE
AWARDED IN FAVOUR OF APPELLANTS TO MEET IN THE ENDS OF
JUSTICE.



THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 10.12.2024 COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, **T.G.SHIVASHANKARE GOWDA J.**, PRONOUNCED THE FOLLOWING:

CORAM: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA)

In this appeal, plaintiff Nos.2 and 3 have challenged the judgment and decree dated 17.07.2018 passed in O.S.No.28/2009 on the file of the Principal Senior Civil Judge & J.M.F.C., Hosapete (for short, 'Trial Court') dismissing the suit of the plaintiff for partition and separate possession of their share in suit schedule properties.

2. For the sake of convenience, the parties shall be referred to as per their status before the Trial Court.

3. Brief facts of the case as pleaded in the plaint are, one Kamma Sanna Hanumanthappa is the Propositus of the joint family of the original plaintiff/C.Shaila and the



defendants. His wife predeceased him. Propositus died leaving behind his children, the plaintiff and the defendants. They constitute joint Hindu undivided family. The suit properties are self-acquired properties of the Propositus. The plaintiffs are having share in the suit properties. Defendant No.1 without the knowledge and consent of the plaintiff and other defendants, misrepresented himself before the authorities to obtain mutation and the same was refused. The propositus during his life time assured the plaintiff to give share in the suit properties as she was looking after him during his last days. Defendant No.1 being an advocate alienated the properties to third parties. Hence, the plaintiff filed the suit seeking her 1/5th share in the suit schedule properties.

4. Defendant No.1 and 3 contested the suit by filing written statement. Defendant Nos. 2 and 4 by filing their written statement consented for decree of the suit as prayed by the plaintiff. Subsequently, defendant Nos.2



and 4 transposed themselves as plaintiff Nos.2 and 3. During the pendency of the suit, defendant No.3 died and his legal representatives were brought on record. They also filed their written statement.

5. Defendant Nos.1 and 3 have taken indetical contentions in their written statement denying the claim of the plaintiff about the existence of joint family, joint family properties and right of the plaintiff to claim partition in the suit properties. According to them propositus died on 22.10.2002. It is their defence that their grand-father Kamma Gurappa owned self-acquired properties i.e., land in Sy.No.229/B to an extent of 1.96 acres which is described as Sl.No.4 of item No.3 of the suit schedule. Kamma Gurappa executed a Will on 16.10.1981 bequeathing the said land in favour of defendant Nos.1 to 3 being his male grand children. Plaintiff has no right over the suit property as the said property was not belonging to the propositus.



5.1 Land in Sy.No.114/27 measuring 2.50 acres of land, which is described as Sl.No.6 in item No.3 did not belong to the propositus or his family. The propositus also bequeathed all his self-acquired properties as per the wish of his pre-deceased wife as per Will dated 02.04.2004. Under the said Will, item No.1 of the suit property was given to defendant No.4/Triveni (transposed as plaintiff No.3). As per her wish, since the plaintiff was residing at Hyderabad, propositus gave cash of Rs.2 lakhs and gold worth Rs.50,000/- by borrowing loan from K.Ningappa by executing a registered sale agreement in respect of land in Sy.No.122/B2/A to an extent of 75 guntas of land described as Sl.No.5 of item No.3. None of the daughters of the propositus has any right over the suit properties and the propositus bequeathed rest of his properties in favour of his grand sons with the knowledge of the plaintiff and defendant No.4. The land in Sl.No.5 of item No.3 was bequeathed in favour of defendant No.1 authorising him to redeem the land as per the oral agreement by clearing the debts and continue in possession of the property, thereby



the propositus was left with no properties. Plaintiff is not entitled for any partition and sought for dismissal of the suit.

6. Defendant Nos.2 and 4 have admitted the entire case of the plaintiff regarding relationship of the parties, nature of the suit properties as joint family properties and entitlement of the plaintiff to have the share in suit properties. According to them defendant No.1 never lived with the propositus nor did he look after his welfare and he started living separately with his wife and children. The propositus himself performed the marriage of the plaintiff and defendant No.1 with the assistance of defendant Nos.2 and 4, who only bear the marriage expenses. It is the plaintiff, defendant No.2 and 4, who incurred the funeral expenses of the propositus. After the death of the propositus, defendant No.1 was trying to grab the suit properties at the instigation of his wife and children without allotting any share to the plaintiff and other defendants. The plaintiff and the



defendants have never given possession of the joint family properties. Kamma Gurappa, the grandfather was a blind person, he did not execute any document in favour of their father or in favour of the defendants. The propositus died intestate. The plaintiff has not included a house bearing no.594, situated Kurubara Oni which was purchased by defendant No.1 out of the joint family earnings in the name of his wife Varalakshmi and they sought for decree of the suit as prayed by the plaintiff.

7. The Trial Court framed the following issues:

- 1. Whether the plaintiff proves that the suit schedule properties are joint family properties of herself and the defendants and are available for partition?*
- 2. Whether plaintiff further proves that she is entitled to get 1/6th share in the suit schedule properties?*
- 3. Whether defendants prove that Kamma Gurappa executed will deed dated 16.10.1981 bequeathing land Sy.No.229/B measuring 1.96 Acres of Mudlapur village in favour of defendant No.1 to 3?*
- 4. Whether defendants further prove that, Kamma Sanna Hanumanthappa executed will deed dated 02.04.2004 in respect of the suit schedule properties?*



5. *Whether plaintiff entitled to the relief of partition and separate possession as sought for?*

6. *What order orders decree?*

Additional Issue framed on 14.12.2011:

1. Whether the defendant No.2 and 4 are entitled to get 1/5th share in the suit schedule properties?

8. On behalf of the plaintiffs, plaintiff Nos.1 and 3 were examined as PWs-1 and 2, 11 documents came to be marked as Exs.P1 to P11. On behalf of the defendants, DWs-1 to 11 were examined and Exs.D1 to D25 came to be marked.

9. After hearing both the parties and considering the material on record, the Trial Court answered Issue Nos.1, 2, 5 and 6 and additional issue in the negative, issue Nos.3 and 4 in the affirmative and ultimately dismissed the suit of the plaintiffs with costs. Aggrieved by the same, plaintiff Nos.2 and 3 who are the defendant Nos. 2 and 4 have filed this appeal on various grounds.



10. Heard the argument of Sri R.H.Angadi, learned counsel for the appellants and Sri S.A.Sondur, learned counsel appearing for Sri K.L.Patil, learned counsel for respondents No.1, 2 and 5. Respondents No.3 and 4 are served absent.

11. It is contended by the learned counsel for the appellants that though defendant No.1 claimed that the suit properties are his self-acquired properties, he did not make any efforts to get his name entered in the record of rights on the strength of the Will dated 16.10.1981 or Will dated 02.04.2014. The said two Wills are bogus, not genuine and suspicious prepared by the defendants No.1 and 2 and henchmen to grab the suit properties. Both the Wills do not speak as to why the other family members have been excluded. Father of the plaintiff has no absolute right to execute any Will in favour of any person excluding particular member of the family. Ex.D14 points out that the bond paper was purchased on 23.02.2002, but the Will bears the date 02.04.2004. Ex.D1 shows that the stamp



paper was purchased on 15.10.1961 and Will bears the dated 16.10.1981. This clearly goes to demonstrate that something had happened behind the screen as the Wills have been concocted and cooked up by defendant No.1. All the suit schedule properties are the joint family properties of the plaintiff and defendants, plaintiff being the member of the joint family is entitled to equal share with their brothers and sisters. Trial Court erroneously disbelieved the version of the plaintiff in dismissing the suit and sought for interference.

12. Per contra, learned counsel for respondents No.1, 2 and 5 submitted that there is no dispute as to the relationship between the parties. It is the specific case of the defendants that except land in Sy.No.229/B and 114/27, rest of the suit properties are the self-acquired properties of Sanna Hanumantappa. Sy.No.229/B was the self-acquired properties of Kamma Gurappa, the grandfather who has bequeathed the said land under the Will under Ex.D1 and the said Will confirms life interest in



favour of Kamma Sanna Hanumantappa and after his death, the said property has gone to the hands of his male grand children. Sy.No.114/27 is not belonging to the family. Propositus executed a Will under Ex.D14 bequeathing all self-acquired property, the plaintiff has no legal right to claim any share. There is no joint family in existence and plaintiff can never be a member of the family. Trial Court has rightly appreciated the evidence and dismissed the suit with costs and he argued in support of the impugned judgment.

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

14. The points that arise for our consideration are:

- i. Whether the suit properties are the joint family properties of the plaintiffs and defendants?
- ii. Whether the finding of the Trial Court on Issue No.3 is correct?



- iii. Whether the finding of the Trial Court on Issue No.4 is correct?
- iv. Whether the impugned judgment is perverse, illegal and calls for interference?

Reg.Point No.(i)

15. It is the specific case of the original plaintiff that the suit properties are the joint family properties of the plaintiff and defendants. The defendants No.2 and 4 are sailing with the original plaintiff and later they transposed themselves as plaintiffs No.2 and 3. It means to say that two daughters and one son of propositus have claimed that the suit properties are the joint family properties whereas the two sons claiming that self acquired properties of the propositus.

16. In order to explain that the suit properties are the joint family properties, the plaintiff has relied upon her testimony as PW 1 and also the testimony of plaintiff No.3 as PW-2. Both of them in the course of evidence though



asserted that the suit properties belong to joint family, but in their cross-examination defendants' asserted that land in Sl.No.6 in item No.3 of the plaint schedule is not belonging to their family. The plaintiffs placed reliance on the RTC extracts as per Ex.P-8 for the year 2008- 2009 where column No.9 and 12 indicate the name of K. Sanna Hanumanthappa with an endorsement DR No.399/80-81. The defendants contend that this property belonged to the Sosala Sanna Bharamappa. To explain this apart from their evidence the defendants have placed reliance on the RTC extracts as per Ex.D-8. On perusal of RTC for the year 2009-2010 it refers to the name of Sosala Sanna Bharamappa in column No.9. Ex.D-11 is the mutation extract bearing No. MR 59/2008 dated 15.06.2009. There is a reference of this MR in Ex.D-8 RTC. It goes to show that in the year 2009-2010 the name of K. Sannahanumanthappa was changed to Sosala Sanna Bharamappa. This change of entry is not challenged by any of the parties to the suit. The defendants admit such entry. From the evidence we can infer that this Sosala



Sanna Bharamappa is not the family member of propositus. The evidence on record probablises that Sosala Sanna Bharamappa is the owner of land in Sy.No.114/27 measuring 2 acre 50 cents and said land is not belonging to family of plaintiffs and defendants. Hence, we are persuaded to accept the defence that the claim of the plaintiff has no support of legal evidence in respect of said land.

17. Item No.1 of the plaint schedule is the house property bearing door No.443, assessment No.443 situated within the CMC limits of Hospete. It is a house property measuring 20x18. Demand Ledger extract in Ex.P-1 stands in the name of propositus. Item No.2 of the plaint schedule is property in door No.432, assessment No.451 situated at Ward No.1 Hospete. Ex.P-2, the demand register extract stands in the name of the propositus. It is undisputed fact that in item No.1 the plaintiff No.3 Triveni and her family is residing which was



given to her by her father during his lifetime as per the wishes of her mother.

18. Item No.3 of the plaint schedule consists of 6 items in Sl.Nos.1 to 6. We have already discussed that Sl.No.6 property does not belong to the family of the plaintiffs and defendants. The plaintiff as well as defendants admit that land in Sy.No.227/A2 measuring 22 cents is shown in Ex.P-3 RTC stands in the name of propositus. Land in Sy.No.226/B measuring 61 cents as per Ex.P-4 RTC and land in Sy.No.230/B measuring 1 acre 35 cents stand in the name of the propositus. Ex.P6 is the RTC pertaining to Sy.No.229/3 measuring 1 acre 96 cents; entries therein stand in the name of Government in column No.9. In column No.12 Government and K.S.Hanumanthappa is shown. This is the property claimed by the defendants as the self-acquired property of their grandfather Kamma Gurappa and the said land was granted to him by the Land Tribunal. This is not disputed by the parties. Land in Sy.No.122/B/A 75 cents stands in



the name of propositus as per the Ex.P-7 RTC. From the above documents it is thus clear that the item Nos.1 and 2, Sl.No.1 to 5 in item No.3 properties belong to the family of the plaintiff and defendants.

19. We have carefully perused the evidence of PW-1 and 2 as well as defendants that item No.1 and 2 are the self-acquired properties of propositus. It is also elicited from PW-1 that Sl.No.1 to 3 and 5 in item No.3 are self acquired properties of her father. Evidence also shows that Sy.No.229/3 measuring 1 acre 96 cents which is described as Sl.No.4 in item No.3 is the self acquired property of Kamma Gurappa, father of propositus and grandfather of the plaintiff. To explain this Ex.P-9 is the application in form No.1 filed by the propositus. This goes to show that the land was originally belonging to Gurappa. Cross-examination of PW-1 demonstrated that this land is the self acquired property of her grandfather. This demonstrates that Sl.No.4 in item No.3 of the plaint schedule is self acquired property of her grandfather. The



plaintiff admits that her father was having life interest in the said property as it was self acquired property of grandfather as it was granted to him by the Land Tribunal. In view of the same, it is thus clear that the item No.1, 2, Sl.No.1 to 3 and 5 in item No.3 are the self acquired properties of the propositus and Sl.No.4 in item No.3 is the self acquired properties of Kamma Gurappa the grandfather of the plaintiff and defendants.

20. The plaintiff contends that they are joint family properties but the defendants contend that they are the self acquired properties of their grandfather and the father. In view of our discussion made supra, it is thus clear the said properties are the self acquired properties. The evidence also suggests that when the propositus acquired the property, his children were minors and he lost his wife in the year 1992, as she died due to cancer. Propositus performed the marriage of all his children, he commands equal love and affection towards them. He made several properties and all are by self earnings. PW-1



admits that as per the desire of her mother, her father had given item No.1 to plaintiff No.3/PW2 and she is residing there along with her family plaintiff also admits that after her marriage she resides in her matrimonial home, she only visits her father during the festivals. The evidence clearly points out that there is no joint family properties as by the time the properties acquired by Kamma Gurappa the plaintiffs and defendants were not born and the properties described in the plaint schedule item No.1, 2, serial No.1 to 3 and 5 are the self acquired properties of propositus. Hence, the existence of joint family between the plaintiff and defendants is not explained. Accordingly, we answer point No.(i).

Re. point No.(ii):

21. The defendants propound the Will under Ex.D-1 said to have been executed by their grandfather Kamma Gurappa. First defendant examined himself as DW1 has tendered the document. In proof of the Will in compliance of Section 68 of the Evidence Act, he examined DW-10.



We have carefully securitized the evidence of DW-10 who has spoken about the execution of Ex.D1 by Kamma Gurappa on 16.10.1981. In his presence, he attested and his attestation has witnessed by Kamma Gurappa. The cross- examination of DW-10 did not demonstrate anything which would cast a cloud of doubt about the capacity of Kamma Gurappa to execute the Will. The execution of Ex.D-1 is fortified by the admission of the plaintiff No.1/PW-1 in her cross-examination that her father having only life interest in land bequeathed. We have also noticed that the recitals found in Ex.D1 stand in support of the admission made by the PW-1 that the life interest was created in favour of the propositus by his father under the said document. We have also carefully perused Ex.D1 which clearly points out that after the death of propositus, the said land shall go to his male grandchildren. As we have discussed, the plaintiff No.1, defendant No.1 and deceased defendant No.2-K Ranganathan are three male grandchildren of Kamma Gurappa. Hence, we are persuaded to accept that Will



under Ex.D-1, we do not find any reason to doubt the capacity of Sanna Gurappa in executing the Will. The intention of the testator is clearly forthcoming in the document that he intended to put the property in the hands of his grand sons after the death of his son the propositus. Trial Court has rightly considered the factual matrix of the case pleaded by the parties based on the evidence and recorded its finding that Sl.No.4 in item No.3-Sy.No.229/3 measuring 1 acre 96 cents being the self acquired properties of Kamma Gurappa was bequeathed under Ex.D-1 creating life interest in favour of propositus Kamma Sanna Hanumanthappa and after his demise, it shall go to the hands of plaintiff No.2, defendant No.1 and deceased defendant No.2-K Ranganath. We do not find any error in the finding recorded by the Trial Court on Issue No.3. Accordingly, we answer point No.(ii).

Reg.Point No.(iii)

22. The defendants No.1 and 2 propound the Will under Ex.D14 said to have been executed by the



propositus bequeathing his self-acquired properties. The plaintiffs No.1 to 3 deny the execution of the said Will claiming that the properties are amenable for partition between the children of the propositus. Ex.D14 is the Will said to have been executed by the propositus. In order to prove the execution of the Will, the plaintiff has examined five witnesses in the form of DWs.2, 6, 7, 8 and 9. We have carefully scrutinized the evidence of these witnesses.

23. DW6-K.H.Vedamurthy is the scribe of the Ex.D14, whose testimony speaks in respect of preparation of the Will at the instructions of propositus. DW2-S.Shankar Rao, DW7-Y.Oblesh, DW8-A.Nagabhushan and DW9-K.Tippeswamy are the attesting witnesses to the Ex.D14. Their testimony clearly goes to explain the execution of Will by the propositus in their presence and propositus witnessed them while attesting the Will. The cross-examination of DWs.2, 6, 7, 8 and 9 on behalf of plaintiffs do not demonstrate anything to doubt the execution of the Will and also the mental and physical



condition of the propositus and his capacity to take a decision.

24. Contrary we find from the evidence of the plaintiff No.1/PW1 that she admits in the cross-examination that her father was commanding sound state of mind, he was well versed in his action and business. He has equal love and affection towards all his children. He performed the marriage of his children and he had studied up to 6th standard and putting his signature. Her father was very firm, he was taking decision only making proper assessment as head of the family. He was not listening the words of any one and he was taking firm decisions. This goes to demonstrate that at the time of execution of Ex.D14, the propositus was commanding sound state of mind, he was very firm in taking the decision and no one could influence him to change his decisions. This clearly goes to demonstrate the manner in which Ex.D14 came into existence. Hence there is compliance of Section 68 of the Evidence Act. We can easily sit in arm chair of the



propositus and make an assessment. The plaintiff herself admits that there was a wish by her mother and for this reason item No.1 of plaint schedule was given to PW2 and she is enjoying the same. The recitals of Ex.D14 clearly point out that item No.1 of the plaint schedule was bequeathed in favour of the plaintiff No.3/PW2 and the rest of the suit schedule properties were bequeathed among his children. In view of crystal clear evidence, plaintiff is unable to demonstrate anything which can cast a cloud in execution of Ex.D14 and capacity of the propositus in bequeathing his self acquired properties to his children.

25. Only point is why the plaintiff No.1/PW1 was excluded from allotting any property. We find answer for this from her evidence which shows that after her marriage, she went to her matrimonial home and she was only visiting the house during festivals. She has a well established family and there is no reason to doubt the decision of the propositus in excluding her. Infact plaintiff



No.1 has not questioned the finding of the Trial Court, it is the plaintiffs No.2 and 3 who have questioned the same. As we reappreciated the evidence on record, we are in conformity with Trial Court findings on Issue No.4. Accordingly, we answer Point No.(iii).

Reg.Point No.(iv)

26. We have carefully scrutinized the judgment of the Trial Court. The Trial Court has recorded sound reasoning that Item No.1 and 2, Sl.No.1 to 3 and 5 in Item No.3 are the self-acquired properties of the propositus, Sl.No.4 in Item No.3 are self-acquired properties of Kamma Gurappa and propositus. Both have bequeathed their properties under the Will in view of our finding on Point No.(i) and (ii).

27. When the suit properties are self-acquired properties of Kamma Gurappa and propositus they have all right to bequeath under the Will. After such bequeath, there is no property available to constitute a joint family between plaintiffs and defendants. Trial Court has rightly



held that Sl.No.6 of Item No.3 is not belonging to the family. We do not find any error or illegality committed by the Trial Court in recording order of dismissal of the suit. Hence Point No.(iv) is answered accordingly.

28. In view of our finding on Points No.(i) to (iv) supra, we pass, the following:

ORDER

Appeal is dismissed.

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

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

KNM/CLK/NAA
List No.: 2 Sl No.: 1