



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 15TH 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.100224 OF 2019 (DEC/PAR)

BETWEEN:

K. THIPPE SWAMY

S/O. LATE K. MARENNA, SINCE DEAD BY LRS:

1. SMT. K. SUJATHA W/O LATE SRI. K. THIPPE SWAMY,
AGED ABOUT 46 YEARS,
2. KUM. K. MANJU CHARITHA,
D/O. LATE SRI. K. THIPPE SWAMY,
AGED ABOUT 30 YEARS,
3. K. MANJU SUMAN S/O. LATE SRI. K. THIPPE SWAMY,
AGED ABOUT 29 YEARS,

ALL ARE R/O DOOR NO.1/666, KOVURU NAGAR,
ANANTHAPURAM, ANDRA PRADESH 510001.

- APPELLANTS

(BY SRIYUTHS K.L. PATIL AND S.A. SONDUR, ADVOCATES)

AND:

SMT. K. DURGAMMA, W/O. LATE K. MUSTHANNA
SINCE DECEASED BY HER LRS

1. SMT. K. RAMA LAKSHMI D/O. LATE SRI. K. MUSTHANNA,
W/O. DR. SRI. K. THARASALAPPA,
AGE: 64 YEARS, OCC: HOUSEWIFE,
R/O. DOOR NO.C-18, BEHIND DATTA SCHOOL,
RAGHAVENDRA COLONY, 2ND STAGE, BALLARI-583101.
2. K. GURU PRASAD S/O. LATE SRI. K. MUSTHANNA,
AGED ABOUT 56 YEARS, WORKING AS A BUS
CONDUCTOR IN APSRTC, R/O DOOR NO.6/1/585,
BESIDE NAGALAKATTA, LAKSHMI NAGAR,
ANANTHAPURAM-510001, ANDRA PRADESH.



3. K. NAGENDRA KUMAR S/O. LATE SRI K. MUSTHANNA,
AGE: 53 YEARS, OCC: BUSINESSMAN,
R/O DOOR NO.6/1/585, BESIDE NAGALAKATTA,
LAKSHMI NAGAR, ANANTHAPURAM 510001,
ANDRA PRADESH.
4. K. RAJA SHEKAR S/O LATE SRI. K. MUSTHANNA,
AGE: 53 YEARS, OCC: BUSINESS,
R/O DOOR NO.6/1/585,
BESIDE NAGALAKATTA, LAKSHMI NAGAR,
ANANTHAPURAM-510001, ANDRA PRADESH.
5. SMT. K. SAROJAMMA D/O. LATE SRI. K. MARENNA,
W/O. K. KONDAIAH, AGE: 60 YEARS,
R/O SRI NEELAM SANJEEVA REDDY BUILDING,
BESIDES CVR MEMORIAL NEW SCHOOL,
KOVURU NAGAR, ANANTHAPURAM-510001
ANDRA PRADESH.
6. THE LAND ACQUISITION OFFICER
CUM ASSISTANT COMMISSIONER,
BALLARI REVENUE SUB-DIVISION,
D.C. OFFICE COMPLEX, BALLARI 583101.
7. THE COMMISSIONER,
BALLARI URBAN DEVELOPMENT AUTHORITY (BUDA),
BALLARI 583101.
8. K. MARENNA S/O. LATE K. MUSTHANNA,
AGE: 68 YEARS, OCC: RETIRED,
R/O DOOR NO.6/1/584,
BESIDE NAGALAKATTA, LAKSHMI NAGAR,
ANANTHAPURAM-510001, ANDRA PRADESH.

- RESPONDENTS

(BY SMT. V. VIDYA, ADVOCATE FOR R1-R4;
SRI. JAIRAM SIDDI, HCGP FOR R6;
SRI. GIRISH S. HULMANI, ADVOCATE FOR R7;
SRI. S.G. NANDOOR, ADVOCATE FOR R8,
NOTICE TO R5 IS SERVED)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF
CPC PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED
25.09.2018 PASSED BY 1ST ADDL. SENIOR CIVIL JUDGE, BALLARI IN
O.S. NO.195/2013 BY ALLOWING THE APPEAL IN THE INTEREST OF
JUSTICE AND EQUITY & ETC.



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)

The legal representatives of the plaintiff in O.S. No. 195/2023 on the file of the I Addl. Senior Civil Judge, Ballari, has preferred this appeal questioning the correctness of the judgment dated 25.09.2018.

2. Durgamma was the plaintiff. She brought the suit for partition and separate possession of her half share in 5.58 acres of land bearing Sy. No. 883/2 situated in Anantapur Road, Ballari, which is now called 'Raghavendra Colony Second Stage'. She also sought a direction to defendant nos.3 and 4 to pay 50% of the compensation amount to her in relation to acquisition of the said land.

3. Plaint averments show that plaintiff's father Chintakunta Ramaiah purchased 8.58 acres of land in Sy. No. 883/2 under a sale deed dated 24.02.1997. Chintakunta Ramaiah died intestate about 40 years ago prior to institution of the suit



leaving behind the plaintiff and his son K. Mareenna. Defendant no.2 is the first defendant's sister. In the course of time, the plaintiff and defendant nos.1 and 2 sold three acres of land out of 8.58 acres to one Mundalur Govardhan. Thereafter the remaining land measuring 5.58 acres was given a separate survey number as Sy. No. 883/2 and it was acquired by the Assistant Commissioner, Ballari Revenue Sub Division, for formation of a residential layout called Raghavendra Colony Second Stage. It appears that the first defendant's father K. Mareenna received a sum of Rs.2,89,053/- towards compensation in relation to acquisition of land and he sought reference to the civil Court u/S 18 of the Land Acquisition Act seeking enhancement of the compensation. K. Mareenna died on 27.02.2001. In L.A.C. No. 5/2011, the Prl. Sr. Civil Judge passed an award enhancing the compensation. It appears that the first defendant represented before the Reference Court stating that he was the only heir entitled to receive compensation on the basis of Will dated 08.11.2000 executed in his favour by K. Mareenna, his father. The plaintiff stated that K. Mareenna had no exclusive right to bequeath the entire suit property in favour of defendant no.1 as he was only entitled to



half share in the suit property and therefore the will dated 18.11.2000 did not take away her right to claim share in the compensation amount. Alleging that defendant no.1, taking undue advantage of the situation, made an attempt to withdraw the compensation amount, she brought the suit for the above reliefs.

4. The first defendant, in his written statement admitted the plaintiff to be his aunt and contended that she could not lay claim on the compensation as it was awarded to his parental side. He stated that the right of the plaintiff was that of reversioner while she was a Class-2 heir and does not get any preference over him and his sister, i.e., defendant no.2, who are Class-1 heirs. He also stated that plaintiff cannot comment on the will executed by his father and she also failed to challenge the will during the lifetime of his father K. Marennna. He contended that the suit was time barred because of her failure to take action within time after gaining knowledge in the year 1998.



5. Defendant no.2 stated in her written statement that she was the daughter of K. Marennna. In view of Sec. 6 of the Hindu Succession Act the plaintiff was not entitled to any share in the properties of her father, i.e., Chintakunta Ramaiah, or the properties belonging to K. Marennna. She also disputed the will set up by the first defendant by stating that first defendant alone was not at all entitled to entire estate left by her father. She stated that her father had no exclusive right to will away ancestral properties. She sought for dividing the properties by metes and bounds and to allot share in the compensation.

6. Defendant no.5 is the son of the plaintiff and stated that since there was no division of properties between his mother Durgamma and the first defendant, he too is entitled to equal share in the share of his mother.

7. The Trial Court framed five issues and three additional issues and then partly decreed the suit declaring that the legal representatives of the plaintiff were entitled to $\frac{1}{2}$ share in the compensation amount awarded in L.A.C. No. 5/2011 in respect of the acquired land.



8. We have heard arguments of Sri S.A. Sondur, learned counsel for the appellants and Smt. V. Vidya, learned counsel for respondent nos.1 to 4.

9. It is the argument of Sri S.A. Sondur that the first defendant was entitled to claim entire compensation as his father had executed a will in his favour in respect of entire suit property. There is no dispute that the property was purchased by Chintakunta Ramaiah, the grandfather of the first defendant. It is submitted that the said Chintakunta Ramaiah had died 40 years ago as on the date of institution of the suit and since then plaintiff never claimed her share in the property and therefore she became disentitled to claim share in the compensation. First defendant being the son of K. Marennna is entitled to claim entire property on the basis of the will executed by Marennna who alone succeeded to entire property of his father. The Trial Court did not frame any issue on the will, without this issue if the Trial Court holds that the will in respect of entire property could not have been executed by Marennna, it only shows improper way of appreciation of evidence. Therefore the Trial Court could not have held that



the legal representatives of the plaintiff were entitled to half share in the compensation amount.

10. Per contra, Smt. V. Vidya, learned counsel for respondent nos.1 to 4 submits that the plaintiff and K. Marennna were the two children of Chintakunta Ramaiah. Since the property was self acquisition of Chintakunta Ramaiah, the plaintiff and K. Marennna were entitled to equal shares. K. Marennna could not have executed the will in respect of entire property, at best he could have executed the will to the extent of his 50% share. The right of Durgamma did not vanish just because she did not claim partition soon after death of her father. She also submits that when three acres out of 8.58 acres was sold, she was a party to the sale deed along with defendant nos.1 and 2 and therefore this itself shows that she had a right to claim 50% share in the compensation amount. In this view, the Trial Court judgment is correct and hence the appeal deserves to be dismissed.



11. In reply, Sri S.A. Sondur submits that property was self acquisition of Chintakunta Ramaiah having purchased it before 1956, the plaintiff could not claim any right over the property.

12. In the light of the arguments submitted, the points that arise for discussion are as follows:

- (1) Whether the plaintiff lost her right because of her birth before 1956?
- (2) Whether K. Mareenna could have executed a will in respect of the entire property in favour of the first defendant?

13. These two points are discussed together for the sake of convenience. It is not in dispute that the entire land measuring 8.58 acres in Sy. No. 883 was the self-acquisition of Chintakunta Ramaiah and in fact defendant no.1 had admitted in the cross examination that the property was the self acquisition of his grandfather. If the property was self acquisition, irrespective of the date of birth of the plaintiff, she became entitled to succeed to the property of her father's self acquisition. It is not a coparcenary property to state that she was not entitled to a share. This being the position of law, the



argument of Sri S.A. Sondur that plaintiff did not have right to claim partition, cannot be accepted. Since it was the self acquisition of Chintakunta Ramaiah and he died intestate, his two children, i.e., the plaintiff and K. Maremma, succeeded to the property and they had equal share. Just because the plaintiff did not claim share it does not mean that she forwent her share in the property. Defendant no.1 did not take plea of ouster in the written statement. The second aspect of the matter is that when part of 8.58 acres was sold in favour of one Mundalur Govardhan under a sale deed dated 15.03.1989, Durgamma was a consenting witness to the sale deed. That means, the first defendant admitted that she had a right over the property. In this view of the matter, she never lost her right.

14. After the suit property was acquired by the Government she too became entitled to claim 50% share in the compensation amount. Noticing this aspect of the matter, if the trial Court has decreed the suit holding that the plaintiff's legal representatives are entitled to 50% of the compensation amount, we do not find any infirmity in the judgment.



15. In regard to will said to have been executed in favour of the first defendant by his father, as rightly argued by Smt. Vidya, the first defendant's father did not have right over entire property to execute a will, at best will may survive to the extent of his half share. Sri Sondur argued that Trial Court ought to have framed an issue with regard to validity of the will. This argument cannot be accepted, for the will does not take away the right of the plaintiff, and its execution is not in issue here.

16. Advocate Sri S.G. Nandoor appearing for respondent no.8 / defendant no.5 submits that respondent no. 8 is entitled to 1/5th share out of 50% share allotted to the legal representatives. It is a fact that defendant no.5 is one of the sons of Durgamma, the plaintiff. Had Durgamma been alive, defendant no.5 could not have claimed any share. Now that she died during the pendency of the suit, he is entitled to claim a share in the compensation amount. Defendant no.5 has paid Court fee on his written statement as he has sought allotment of his share in the compensation. Since defendant no.5 is one



of the sons of the plaintiff, he can claim share in the compensation amount.

The above discussion takes us to conclude that appeal is devoid of merits. Therefore 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.: 15