



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF OCTOBER, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE UMESH M ADIGA

MISCELLANEOUS FIRST APPEAL NO. 78 OF 2018 (LAC)

BETWEEN:

1. SRI. NANJUNDAPPA,
S/O LATE NANJAPPA,
SINCE DIED BY HIS LR'S
- 1(a) SRI. BASAVARAJ@ BASAPPA,
S/O LATE NANJUNDAPPA,
SINCE DIED BY HIS LR'S
 - 1(a)(i) SMT. NANJAMMA,
W/O LATE BASAVARAJA @ BASAPPA,
AGED ABOUT 47 YEARS,
 - 1(a)(ii) SRI.SHIVARAJ,
S/O LATE BASAVARAJA@BASAPPA
AGED ABOUT 32 YEARS,
 - 1(a)(iii) SMT.BHARATHI,
D/O LATE BASAVARAJA@BASAPPA,
AGED ABOUT 35 YEARS,
 - 1(a)(iv) SMT. MALA,
D/O LATE BASAVARAJA@BASAPPA,
AGED ABOUT 30 YEARS,

ALL ARE RESIDING AT GOTTAGERIPALYA,
SOMAPURA DHAKLE, KENGERI HOBLI,
BENGALURU SOUTH TALUK.



2. SRI. ARASAPPA,
S/O LATE NANJAPPA,
AGED ABOUT 74 YEARS,
RESIDING AT GOTTAGERIPALYA,
SOMPURA DHAKLE,
KENGARI HOBLI,
BENGALURU SOUTH TALUK.

...APPELLANTS

(BY SRI. N.R. NAIK, ADVOCATE)

AND:

- 1 . THE COMMISSIONER,
BENGALURU DEVELOPMENT AUTHORITY,
BENGALURU-560 020.
- 2 . THE SPECIAL LAND ACQUISITION
OFFICER, B.D.A,
BENGALURU-560 020.
- 3 . SMT. NAGAMMA,
W/O LATE MALLAIAH,
AGED ABOUT 79 YEARS,
- 4 . SRI. NANJAPPA,
S/O LATE MALLAIAH,
SINCE DIED BY HIS LR'S
- 5 . SMT. MANGALAMMA,
D/O LATE NANJAPPA,
AGED ABOUT 42 YEARS,
- 6 . SRI. SHIVAKUMAR,
S/O LATE NANJAPPA,
AGED 40 YEARS,
- 7 . SMT. AMRUTHA,
D/O LATE NANJAPPA,
AGED ABOUT 38 YEARS,



- 8 . SMT. MUNIYAMMA,
W/O NARASAPPA,
D/O LATE MALLAIAH,
AGED ABOUT 49 YEARS,
- 9 . SRI. SRINIVASA,
S/O LATE MALLAIAH,
AGED ABOUT 52 YEARS,
- 10 . SRI. RAMESH
S/O LATE MALLAIAH
AGED ABOUT 51 YEARS,
- 11 . SRI. LOKESH
S/O LATE MALLAIAH,
AGED ABOUT 48 YEARS,

RESPONDENT NO.3 TO 11 ARE
RESIDING AT DINNEPALYA,
KAGGALIPURA,
UTTARAHALLI, BENGALURU.

- 12 . SMT. NANJAMMA,
D/O ARASAPPA,
AGED ABOUT 55 YEARS,
RESIDING AT GOTTAGERIPALYA,
SOMPURA DHAKLE,
Kengeri Hobli,
BENGALURU SOUTH TALUK.
- 13 . SMT. NARASAMMA,
W/O LATE MUNIYAPPA,
AGED ABOUT 58 YERS,
- 14 . SMT.MANJULA,
D/O LATE MUNIYAPPA,
AGED ABOUT 39 YEARS,
- 15 . SMT. KAVITHA
D/O LATE MUNIYAPPA,
AGED ABOUT 36 YEARS,



16 . SRI. GALI SWAMY
S/O LATE MUNIYAPPA
AGED ABOUT 35 YEARS,

RESPONDENT NO.13 TO 16 ARE
RESIDING AT GOTTAGERIPALYA,
SOMPURA DHAKLE,
KENGARI HOBLI,
BENGALURU SOUTH TALUK.

17 . SMT. GIRIYAMMA,
D/O LATE NANJAPPA,
AGED ABOUT 40 YEARS,
RESIDING AT
SALUHUNSE VILLAGE,
UTTARAHALLI HOBLI,
BENGALURU SOUTH TALUK,

...RESPONDENTS

(BY SRI. ASHWIN HALADY, ADVOCATE FOR R1 AND R2,
SRI. M. VENKATAPPA, ADVOCATE FOR
R4 (A&C), R7, R10-13,
SRI. K.S. LOKESH KUMAR, ADVOCATE FOR R6 AND R9,
R4(B), R5, R8, R14 - SERVED AND UNREPRESENTED,
R3 DEAD AND R4(A-C) AND R5-8 ARE LRS OF R3)

THIS MFA IS FILED U/S 54(1) OF THE LAND
ACQUISITION ACT, AGAINST THE JUDGMENT AND AWARD
DT.30.11.2017 PASSED ON LAC NO.107/2002 ON THE FILE OF
THE 2ND ADDITIONAL CITY CIVIL SESSIONS JUDGE,
BENGLAURU, (CCH NO.17), PARTLY ALLOWING THE
REFERENCE PETITION FOR COMPENSATION AND SEEKING
ENHANCEMENT OF COMPENSATION.

THIS APPEAL, HAVING BEEN RESERVED FOR
JUDGEMENT, COMING ON FOR PRONOUNCEMENT THIS DAY,
UMESH M. ADIGA, J., PRONOUNCED THE FOLLOWING:



CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR JUSTICE UMESH M ADIGA

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE UMESH M ADIGA)

This appeal is by the claimant Nos.1 and 2 of Land Acquisition Case No.107/2002, on the file of learned II Addl.City Civil and Sessions judge, Bengaluru (for short 'trial Court'), challenging judgment and order passed by the said Court dated 30.11.2017.

2. Brief facts of the case for disposal of this appeal are that; One Nanjappa was the owner of the land bearing Survey No.26, totally measuring 6 acres 18 guntas, and house property situated in Survey No.27/59 situated at Sompura village, Kengeri Hobli, Bengaluru South Taluk, including the phot kharab (for short 'acquired property'). Smt. Munihanumakka was wife of Nanjappa. They had four sons by name Mallaiah, Muniyappa, Nanjundappa and Arasappa and a daughter by name Giryamma. Nanjappa died intestate leaving behind



him above said legal heirs to succeed to the said property. Claimant No.1 is son of Nanjappa. He died during pending of this case and his LR's are brought on record as P1(a)(1) to (a)(iv). Another son of Nanjappa is claimant No.2. Claimant No.9 is his daughter. It appears other two sons of Nanjappa i.e. eldest son Mallaiah and another son Muniyappa were dead prior to reference petition. Claimant Nos.3 to 8 are Legal heirs of Mallaiah and Claimant No.10 to 13 are LR's of Muniyappa. Claimant No.14 is daughter of Nanjappa.

3. Munihanumakaa - wife of Nanjappa along with her children sold above said property for Rs.500/- to one Muddanna, son of Channappa, by executing a registered sale deed dated 08.03.1950, which was registered on 10.03.1950. Claimant Nos.1 and 2 namely, Nanjudappa and Arasappa, who are children of late Nanjappa and Munihanumakka and brothers of Mallaiah and Muniyappa, purchased said land by registered sale deed dated 22.09.1959, to an extent of 4 acres 28 guntas along with



house property referred above, from Muddanna by paying sale consideration of Rs.400/-.

4. The Bengaluru Development Authority (for short 'BDA') acquired some of the lands including Survey No.26/1 and Survey No.27/59 of Sompura village, Kengeri Hobli, Bengaluru South Taluk, belonging to claimants for formation of Banashankari 6th Stage Layout at Bengaluru. Accordingly, preliminary as well as final notifications were issued and published. The special Land Acquisition Officer (SLAO) awarded compensation by his award dated 30.11.2001 under the provisions of Land Acquisition Act, 1894 (for short, 'L.A.Act'), in LAC.No.223/2001-02. All the four sons of Nanjappa filed objections to the said award claiming that they were also entitled for share in the said compensation amount. In view of the dispute raised by sons of Nanjappa, the SLAO referred the dispute to Civil Court under Sections 30 and 31(2) of L.A.Act, that was registered in LAC.No.107/2002 before the trial Court.



5. The contentions of claimant Nos.1 and 2 before the trial Court were that acquired property was their self-acquired property. They purchased the said property from Muddanna under registered sale deed dated 22.09.1959 and they had been in possession and enjoyment of the said land till the date of its acquisition. Therefore, they alone are entitled for the compensation.

6. The contention of claimant Nos.3 to 8 and 10 to 13 are that the said property was belonging to Nanjappa. After his death, his wife Smt.Munihanumakka and their four sons succeeded to the said property. They had been in peaceful enjoyment of the said property. Munihanumakka had obtained a loan of Rs.500/- from Muddanna, son of Channappa and as security to the said loan, she executed nominal sale deed dated 08.03.1950, that was registered on 10.03.1950. At the time of execution of the sale deed, claimant Nos.1 and 2 were minors. In spite of execution of the document, possession of the said land as well as the house property continued



with Munihanumakka and her sons. Munihanumakka and her sons were residing in the said house. Munihanumakka paid the said amount of loan to Muddanna and asked claimant Nos.1 and 2 to get executed the reconveyance sale deed in the name of herself and her four sons, since at that time, her sons Mallaiah and Muniyappa were busy and were unable to be present before the office of the Sub-Registrar to get executed the registered sale deed. Claimant Nos.1 and 2 played fraud on their mother as well as their elder brothers, got executed the registered sale deed in their names behind the back of Munihanumakka as well as Mallaiah and Muniyappa. Said Mallaiah, Muniyappa and Munihanumakka were unaware about these facts. The acquired properties were not self-acquired property of claimant Nos.1 and 2, but co-ownership property of all the sons of Munihanumakka. Hence, all the claimants are entitled for share in the said amount of compensation.

7. They have also contended that in the year 1968, partition was effected in respect of said property and in



the said oral partition, $1/5^{\text{th}}$ share was allotted to Munihanumakka and her four sons named above. After the death of Munihanumakka, the property given to her share was again shared by all the four sons of Munihanumakka. Thus each son was having $1/4^{\text{th}}$ share in the said property. Accordingly, each son is entitled for $1/4^{\text{th}}$ share in the compensation amount awarded by SLAO.

8. Claimant No.9 is daughter of claimant No.2 Arasappa and according to her contention, she is entitled for half share in the share to be allotted to her father Arasappa. Claimant No.14 is the daughter of late Nanjappa and she contends that as a legal heir of late Nanjappa, she is entitled for share in the said compensation amount.

9. The trial Court held enquiry. The claimants have examined PWs.1 to 6 and got marked Exs.P-1 to P-28. The respondent SLAO did not examine any witnesses on its behalf.



10. The trial Court after hearing both the parties and appreciating the pleadings and evidence available on record, partly allowed the reference application filed under Sections 30 and 31(2) of L.A.Act. The trial Court awarded 1/4th share in the compensation amount to each sons of late Nanjappa.

11. The trial Court has not granted relief to claimant Nos.9 and 14, however, they did not challenge the impugned judgment.

12. We have heard the arguments of learned counsel for both the parties and perused the materials placed on record.

13. The following question arises for our determination :

Whether the petition property is self-acquired property of claimant Nos.1 and 2 and they alone are entitled for compensation?



14. Our answer to the above question is in the negative for the following reasons :

Most of the facts stated above are not in dispute. The dispute of claimant Nos.1 and 2 is that they are the absolute owners of acquired property and others have no right and they are not entitled for share in the compensation.

15. The first question to be considered is whether sale deed dated 10.03.1950 was nominal sale deed or genuine sale deed. The recitals of said sale deed do not indicate that it was nominal sale deed. Therefore, on the basis of other circumstances and oral evidence, it has to be determined. Claimants have not examined said Muddanna, who was the purchaser of the suit property or the witnesses to the said sale deed. They were the best witnesses to clarify the same. In the cross-examination of PW-1, as rightly observed by the learned trial Judge, he admits that house property was sold to Muddanna, but they continued in possession of the property till the date of



his evidence. He also admits that after execution of the sale deed, revenue records were not mutated in the name of Muddanna, but it continued in the name of his mother. It was repeated suggestion of claimant Nos.3 to 8 that possession of acquired property remained with Munihanumakka and her four sons inspite of execution of registered sale deed dated 10.03.1950. It is admitted by PW-1. If Munihanumakka and her sons executed genuine sale deed, then Muddanna should have insisted for delivery of possession of property. No prudent man would purchase property by paying consideration without possession of the same. Claimant Nos.1 and 2 have also not explained the circumstances under which Munihanumakka continued possession of the property , even after selling the same. The admission of PW-1 regarding continuous possession of the house even after execution of sale deed clearly shows that it was not a genuine sale deed, but it was executed as a security document and contentions of claimant Nos.3 to 8 are probable.



16. Claimant Nos.1 and 2 have not produced RTC from 1950 to 1959 to show that after execution of the sale deed, name of Muddanna was entered in the revenue records. On the contrary, PW-1 himself admits that revenue records were not mutated in the name of Muddanna.

This circumstance also support the contention of claimant Nos.3 to 8 that sale deed dated 10.03.1950 was not genuine document, but nominal sale deed executed as document of security for the loan obtained by Munihanumakka. In the year 1950, the said property was sold to Muddanna for Rs.500/-. The very same property was resold to claimant Nos.1 and 2 for sale consideration of Rs.400/-. Normally there would be increase in the price of the land due to inflation. However in this case, the very same property was sold to claimant Nos.1 and 2 by Muddanna after nine years from its purchase for lesser price than the price for which Muddanna purchased the said property. This circumstance also shows that sale deed



dated 10.03.1950 was a nominal sale deed executed in the name of Muddanna and hence, said Muddanna was not the absolute owner of the property or in possession of the acquired property.

17. The next question is whether the sale consideration paid to Muddanna while repurchasing the land was paid by claimant Nos.1 and 2 out of their self earnings is another moot question. To prove the said fact, it was the duty of claimant Nos.1 and 2 to show that they had independent source of income at that point of time and they could save Rs.400/- for payment of the sale consideration to Muddanna. PW-1 in his evidence stated that he and his brother were doing coolie work and from the said income, they purchased the property. He also stated that he and his brother Nanjudappa were doing coolie work in the house of Muddanna. His mother asked them to work as a coolie in the house of Muddanna till repayment of debt. The wages payable to both of them were saved with Muddanna and from the said income,



they could pay the amount of sale consideration. But in the cross-examination, PW-1 says that he does not know how much amount he could save with Muddanna prior to execution of the sale deed. He also stated that his brothers i.e., Mallaiah and Muniyappa were residing in their in-laws' house after their marriage. He and Nanjundappa were doing coolie work. From the year 1952 to 1959 and both worked in the house of Muddanna. To corroborate his evidence, he should have examined said Muddanna. He was competent person to corroborate the evidence of PW-1, however, the said important witness was not examined by PW-1.

18. It is pertinent to note that as on the date of execution of the sale deed dated 10.03.1950, both claimants 1 and 2 were minors and their age was mentioned as 11 and 8 years respectively. This fact is not disputed by claimant Nos.1 and 2. They further contend that at that age, they worked in the house of Muddanna. The evidence given by PW-1 in this regard is highly



improbable and not believable. At that age, what kind of work they were doing in the house of Muddanna is not explained by them.

19. To prove their income, claimant Nos.1 and 2 have examined PW-5. He stated that both claimant Nos.1 and 2 were working as a coolie in the house of Muddanna. Rs.100/- was paid to Nanjudappa and Rs.50/- was paid to Arasappa, per year as wages. Both of them were saving the said wages with Muddanna. In the year 1959, Muddanna sold the property in favour of claimant Nos.1 and 2 adjusting the wages saved by them with him. PW-1 himself has not stated regarding the wages paid by Muddanna to him as well as his brother Nanjudappa. According to PW-1, from the date of sale deed dated 10.03.1950 till 1959, he worked along with Nanjudappa. If evidence of PW-5 is taken into consideration, then to earn Rs.400/- working for three years was sufficient to pay sale consideration and it was not necessary for them to work for a period of nine years in the house of Muddanna



to pay the sale consideration. The contention of the claimants that out of their self earnings, they paid consideration is not probable. On the contrary, the contention of claimant Nos.3 to 8 that Munihanumakka paid amount of loan to Muddanna is probable.

20. The property was purchased in the year 1959 by claimant Nos.1 and 2. But the names of all the four brothers were continued in the revenue records till 1990-1991, which is not in dispute. It appears, because of the same, Munihanumakka and other brothers of claimant Nos.1 and 2 could not know that sale deed was executed in the name of claimant Nos.1 and 2. The claimants have produced the revenue records at Exs.P-13 and P-14 for the years 1979-82 to 1988-89. The property continuously stands in the joint name of all the four sons of Munihanumakka. Claimant Nos.1 and 2 did not explain as to why they made no attempts to mutate their names in the revenue records after purchase of the said property.



21. PWs.2 to 4 were examined on behalf of claimants Nos.3 to 8, 9 and 14. PW-2 did not offer for cross-examination. PWs.3 and 4 were not competent to depose regarding the said sale deeds. At that point of time, PW-3 and PW-4 might not have been born. Therefore, their evidence or cross-examination will not help the Court to decide the dispute.

22. From the above said evidence, it is proved that sale deed 10.03.1950 was a nominal sale deed executed as security for the loan obtained by late Munihanumakka. Munihanumakka paid the said outstanding loan amount to said Muddanna. Thereafter Muddanna executed registered sale deed dated 22.09.1959 (Ex.P-1) in the name of claimant Nos.1 and 2. Both claimant Nos.1 and 2 instead of getting executed sale deed in the name of Munihanumakka and her two more sons, got executed in their name. Hence, it was joint family property. On the contrary, claimant Nos.1 and 2 utterly failed to establish that out of their self earnings, they paid the sale



consideration amount and it was their self-acquired property.

23. Nanjappa had four sons and one daughter. The acquired property appears to be self-acquired property of Nanjappa. After his death, all his sons and daughter and wife would get share in the property, under Section 8 of Hindu Succession Act. The mutation entry states about partition. It appears, excluding claimant No.14, they have partitioned and hence it was not a valid partition. Claimant No.14 being daughter of Nanjappa had share in the acquired property, that cannot be taken away by her brothers. The learned trial Judge failed to award her share of compensation amount. It is true that claimant No.14 did not challenge the impugned judgment and award. When the learned trial Judge erroneously not awarded the legal share of claimant No.14, this Court to do complete justice, by acting under Order XLI Rule 33 of C.P.C., can grant the relief.



24. Further the claimant No.1 succeed to the property under Section 8 of Hindu Succession Act and hence during his life time, claimant No.9 is not entitled for share in the compensation amount payable to claimant No.1.

25. For above said reasons LR's of deceased Claimant No.1 i.e. 1(a)(i) to 1(a)(iv) together entitled for 1/5th share; claimant No.2 entitled for 1/5th share, claimant Nos.3 to 8 together entitled for 1/5th share and claimant Nos.10 to 13 together entitled for 1/5th share and claimant No.14 is entitled for 1/5th share in the amount of compensation.

26. Though the learned trial Judge has meticulously considered the oral and documentary evidence produced by the claimants and arrived at a right conclusion, he erred in not awarding share to claimant No.14; to that extent the impugned judgment needs modification. In respect of other facts, it does not call for interference by



this Court. The grounds of appeal are not tenable. Appeal is devoid of merits.

27. For the aforesaid discussion, we pass the following:

ORDER

The Appeal is ***disposed of.***

Both parties shall bear their own cost.

The judgment and decree dated 30.11.2017, passed by the learned II Addl. City Civil and Sessions Judge, Bengaluru, in LAC.No.107/2002, is modified.

Claimant No.1(a)(i) to 1(a)(iv) together is entitled for 1/5th share, claimant No.2 entitled for 1/5th share, claimant Nos.3 to 8 together entitled for 1/5th share and claimant Nos.10 to 13 together entitled for 1/5th share and claimant No.14 is entitled for 1/5th share in the amount of compensation.



Registry shall transmit the records along with copy of this judgment to the concerned trial Court without delay.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(UMESH M ADIGA)
JUDGE

BK
List No.: 19 Sl No.: 9