



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF AUGUST, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE UMESH M ADIGA

REGULAR FIRST APPEAL NO. 517 OF 2018 (PAR/POS)

BETWEEN:

SUNIL SHROFF
SON OF SHRI. A. N. SHROFF,
AGED ABOUT 54 YEARS,
RESIDING AT VILLA NO.271,
ADARSH PALM RETREAT,
PHASE 2 , LANE 2,
OUTER RING ROAD,
BELLANDUR,
BENGALURU - 560 103.

...APPELLANT

(BY SRI. S. AJESH KUMAR., ADVOCATE)

AND:

1. SMT. GOWRAMMA B.M.,
D/O. LATE B.M. MADDAPPA,
W/O B. CHINNASWAMY,
AGED 59 YEARS
RESIDING AT NEAR SAHANA CLINIC,
HOMMADEVANAHALLI VILLAGE,
BEGUR HOBLI,
BENGALURU SOUTH TALUK,
BENGALURU DISTRICT- 560 068.
2. SMT. PADMAMMA B M.,
D/O. LATE B. M. MADDAPPA,
W/O CHINNAPPA,
AGED 55 YEARS,



RESIDING AT NO.133,
5TH CROSS,
SYNDICATE BANK COLONY,
B.G.ROAD,
BENGALURU- 560 078.

3. SMT. SHANTHAMMA B.M.,
D/O. LATE B.M. MADDAPPA,
W/O SATHYANARAYANA,
AGED 50 YEARS,
RESIDING AT NO.74,
3RD CROSS, 11TH MAIN,
SHREYAS COLONY,
J.P.NAGAR 7TH PHASE
BENGALURU- 560 078.
4. SMT. MANJULA
D/O LATE B.M. MADDAPPA,
W/O MUNIYAPPA
AGED 48 YEARS,
RESIDING AT NO.EO,
SAMYUKTHA PRICE WOOD,
6TH MAIN, G.M.PALYA,
NEW THIPPASANDRA POST,
BENGALURU- 560 075.
5. SMT. LAKSHMAMMA
WIFE OF LATE B.M. MADDAPPA,
AGED 78 YEARS.
6. SMT. B.M.KRISHNAPPA
S/O LATE B.M. MADDAPPA,
AGED 71 YEARS
7. SMT. B.M. VENKATESH
S/O LATE B.M. MADDAPPA,
AGED 65 YEARS
8. SRI.B.K. PRAVEEN KUMAR
S/O B.M.KRISHNAPPA,
AGED 37 YEARS



(RESPONDENT NOS.5 TO 8 ARE
RESIDING AT
BASAVANAPURA VILLAGE,
BEGUR HOBLI,
BENGALURU SOUTH TALUK,
BENGALURU DISTRICT – 560 068.)

...RESPONDENTS

(R1 TO R6 AND R8-SERVED AND UNREPRESENTED,
VIDE ORDER DATED 28/03/2024 NOTICE TO R7
IS DISPENSED WITH.)

THIS RFA IS FILED UNDER SEC.96 OF CPC.,1908
AGAINST THE JUDGMENT AND DECREE DATED 01.07.2017
PASSED IN OS.NO.945/2015 ON THE FILE OF THE PRINCIPAL
SENIOR CIVIL JUDGE, BENGALURU DISTRICT BENGALURU,
PARTLY DECREETING THE SUIT FOR PARTITION,DECLARATION
AND PERMANENT INJUNCTION.

THIS APPEAL, COMING ON FOR HEARING, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

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

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR)

This appeal is filed by Sunil Shroff, who was not a party in
the suit in O.S.No.945/2015 filed by respondent Nos.1 to 4
against respondent Nos.5 to 8 for partition in landed property
in survey No.71/1 measuring 3 acres 17 guntas situated at
Kammanahalli Village, Begur Hobli, Bengaluru south taluk.



2. The parties are referred with respect to their ranks in the suit, for the sake of convenience.

3. The plaintiffs and defendant Nos.2 and 3 are the children of B.M. Maddappa and Smt. Lakshmamma, the first defendant. The plaintiffs stated that the suit property was purchased by their father and mother jointly under sale deed dated 26.11.1986, the source being joint family nucleus. Sri. B.M. Maddappa died on 24.05.2013. After his death, defendant No.1 was managing the joint family, and the plaintiffs and defendants were in joint possession. The plaintiffs learnt that defendant No.1 had illegally executed a registered gift deed on 09.09.2014 in favour of defendant No.4, her grandson. According to plaintiffs, this gift deed was sham and collusive, as such, defendant No.1 had no right to execute gift deed. Their demand for partition was refused and therefore, they brought suit for partition and separate possession claiming $1/6^{\text{th}}$ share each.

4. The defendants failed to contest the suit by filing written statement. Thereafter, the trial Court proceeded to decree the suit allotting $1/7^{\text{th}}$ share each to the plaintiffs



holding that gift deed dated 09.09.2014 executed by defendant No.1 in favour of defendant No.4 was not binding on the plaintiffs.

5. The appellant was not a party to the suit and he has filed an application I.A.No.1/2018 along with appeal memo seeking leave to prefer this appeal. The record shows that this appeal was admitted on 29.10.2022. However, this application for leave has remained undisposed of. Since it is the case of the appellant that he is a purchaser of the suit property under the sale deed dated 11.12.1990 and states that his interest is directly involved in the suit property, I.A 1/2018 can be allowed.

6. Along with the appeal memo, the appellant has filed an application under Order XLI Rule 27 of CPC seeking leave to produce 14 documents by way of additional evidence. We need not consider all these documents except document No.1 i.e. sale deed dated 11.12.1990. A perusal of the sale deed shows that B.M. Maddaiah, Smt. Lakshamma-defendant No.1, B.M. Krishnappa -defendant No.2 and B.M. Venkatesh - defendant No.3, sold the property to the appellant on 11.12.1990, that



means before the execution of gift deed on 09.09.2014, as has been stated in paragraph No.6 of the plaint, the suit property had been sold in favour of the appellant. If this being the state of affairs, the question obviously arises as to how first defendant could execute the gift deed in favour of fourth respondent. It is true that plaintiffs have not referred to the sale deed. However, in paragraph No.9 of the plaint, it is stated that defendant No.4 was making hectic attempts to create third party interest. Moreover, defendant Nos.2 and 3 being parties to the sale deed did not contest the suit, from this their conduct can be very much gathered.

7. Sri. S. Ajesh Kumar, learned counsel for the appellant submits that the appellant and a company called Casa Grande Private Limited filed suit in O.S.No.377/2015 against all the defendants as also B.M. Madaiah seeking declaration that gift deed dated 09.09.2014 is null and void and for permanent injunction. As per the submission made by learned counsel for the appellant, this suit is still pending. It also appears that pursuant to the impugned decree, the plaintiffs have initiated final decree proceedings in F.D.P.No.34/2017 and in the said



proceedings, it appears that the appellant wanted to come on record.

8. If all the above aspects are taken into consideration, we find that appellant has direct interest in the subject matter of the suit. If the plaintiffs were aware that their brothers had already sold the properties to the appellant, they should have made the appellant a party to the suit. Moreover, the said property appears to have been sold by defendant Nos.1, 2, 3 and B.M. Madaiah in the year 1990 itself and therefore the validity and the legality of the gift arises for consideration. In addition, the appellant filed the suit on 23.02.2015, and the present suit was filed on 25.05.2015. In the suit filed by appellant, defendant Nos.2 to 4 are the parties. Therefore, for all these reasons, we find that the impugned judgment requires to be set aside in order to give an opportunity to the appellant to participate in the suit and to put forth his contentions.

9. The application filed by the appellant under Order XLI Rule 27 of CPC obviously requires to be allowed and all the



documents are to be received as he relies upon those documents.

10. Here is a case for remand. The appellant has to file written statement; consequently, the trial court may have to frame additional issues, record evidence thereon and give fresh findings. Therefore, the case clearly falls within the scope of Order XLI Rule 23(A) of CPC. In this view, we proceed to pass the following:

ORDER

- i The appeal is ***allowed***.
- ii. The judgment dated 01.07.2017 in O.S.No.945/2015 on the file of Principal Senior Civil Judge, Bengaluru Rural District, Bengaluru is set aside.
- iii. The case is remanded to the trial Court for fresh disposal. The trial Court shall permit the appellant to come on record and file his written statement. The trial Court thereafter shall frame additional issues and record evidence on behalf of the appellant as also other parties, if necessary.



- iv. The appellant is permitted to produce all the documents produced along with application under Order XLI Rule 27 of CPC before this Court, and such other relevant documents that he may produce.
- (v) If the suit O.S.377/2015 is still pending, it shall be clubbed with O.S 945/2015 and both the suit shall be decided together.
- (vi) The appellant shall appear before the trial court on 23/09/2024. To meet the end of justice, the trial court shall secure the presence of other parties by issuing court notices.

Pending applications, if any, stand disposed of.

Registry is directed to send back the trial Court records forthwith.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(UMESH M ADIGA)
JUDGE