



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF SEPTEMBER, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE UMESH M ADIGA

REGULAR FIRST APPEAL NO. 1 OF 2018 (PAR)

Between:

M/s. DS & JAKS Constructions
A Partnership Firm,
Having principal place of business,
At Plot No.201, 2nd Floor,
Green Glen Layout,
Outer Ring Road,
Bellandur, Bengaluru-560 103,
Represented by its Managing Partner,
Sri. D. Srinivas

Presently having its Office at
No.92, Dar Al Salamm,
3rd Floor, Green Glen Layout,
Bellandur, Bengaluru-560 103.

(By Sri. C.M.Nagabushana, Advocate)

...Appellant

And:

1. Smt. Vanitha
Aged about 33 years,
D/o. H.Chandrappa,
W/o. N.Muniyappa Reddy,
R/at Chikkatoguru Village,
Electronic City Post,
Bengaluru-560 100.

Digitally signed by
VEERENDRA
KUMAR K M
Location: HIGH
COURT OF
KARNATAKA



2. Smt. C. Kavya
Aged about 30 years,
D/o. H.Chandrappa,
W/o. Mohan Kumar,
R/at No.190, Himagiri Villas,
G Cross, At and Post Gottigere,
Bannerghatta Road,
Bengaluru-560 083.
3. Kum. K.C.Neetha
Aged about 26 years,
D/o. H.Chandrappa,
R/at Srinidhi Enclave,
A Block PH-3,
Kammanahalli Main Road,
SOS Post, Bengaluru-560 076.
4. H. Chandrappa
Aged about 61 years,
S/o. Honnappa,
R/at Srinidhi Enclave,
A Block PH-3,
Kammanahalli Main Road,
SOS Post, Bengaluru-560 076.

...Respondents

(By Sri. S.Nagaraja, Advocate for R1 to R3;
Sri. H.V.Praveen Gowda, Advocate for R4)

This RFA is filed under section 96 of CPC filed against the judgment and decree dated 23.09.2017 passed in O.S.No.2901/2016 on the file of the LXIII Additional City Civil and Sessions Judge (CCH-64) at Bengaluru, partly decreeing the suit for partition and separate possession.

This RFA, coming on for final 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 preferred against the preliminary decree dated 23.09.2017 passed in O.S. 2901/2016 on the file of Additional City Civil and Sessions Judge (CCH-64), Bengaluru.

2. The plaintiffs are all the daughters of one H.Chandrappa who is defendant No.1 in the suit. In the plaint it is stated that on 05.08.1965 there took place a partition among Venkatappa, Honnappa, Gullappa and Narayanappa. Honappa, Gulappa and Narayanappa are sons of Venkatappa. Thereafter on 15.12.1999 there was a partition among Honappa and his three sons. All the plaint schedule properties fell to the share of Chandrappa, i.e., the first defendant. By virtue of Karnataka Amendment to the Hindu Succession Act coming into effect from July 30, 1994, they became co-parceners and



thus they were entitled to a share. The allegation is that Honnappa and his sons entered into a joint development agreement with second defendant on 08.08.2013 in respect of item No.5 of the plaint schedule without the knowledge of the plaintiffs and therefore they stated that since they were co-parceners by that time, joint development agreement did not bind their interest. On this premise they sought partition in the plaint schedule properties and also a declaration that the joint development agreement dated 08.08.2013 was void and did not bind their interest.

3. The defendants did not appear before the trial court and therefore the trial court based on the materials placed by the plaintiffs partly decreed the suit by holding that the plaintiffs were entitled to 1/4th share in the plaint schedule properties and the joint development agreement dated 08.08.2013 did not bind their interest. A decree of permanent injunction was issued against defendant No.2 restraining it from acting on the joint development



agreement dated 08.08.2013 in respect of item No.5 of the plaint schedule property. Aggrieved by the judgment, defendant No.2 has preferred this appeal.

4. We have heard the arguments of Sri C.M.Nagabushana, learned counsel for the appellant/defendant No.2 and Sri S.Nagaraja, learned counsel for respondents 1 to 3. Sri Praveen Gowda, learned counsel for respondent No.4, submits that he has returned the brief to his client. But respondent No.4 has not engaged any another counsel.

5. It is the argument of Sri C.M.Nagabushana that summons was not served on the second defendant and that was the reason for second defendant being not able to appear before the trial court and contest the suit. In this view, defendant No.2 is to be given an opportunity to contest the suit. He further submits that though defendant No.2 has no grievance for allotting 1/4th share in the plaint schedule properties except item No.5, so far as item No.5 is concerned, based on a joint development



agreement executed by first defendant, his brothers and father, it has developed item No.5 of the plaint schedule and now there has come up an apartment. It is alleged that the first defendant was defrauded by his brothers. In that view, the brothers of the first defendant should have been made parties to the suit. In their absence suit cannot be decided and therefore the suit is bad for non-joinder of necessary parties. With these contentions he prays for allowing the appeal.

6. It is the submission of Sri S.Nagaraja that the second defendant has constructed extra 10,000 square feet in the guise of having purchased TDR and it is the intention of the defendants to exclude the plaintiffs from claiming share in the construction that has come up in the extra 10,000 square feet area.

7. Having considered the arguments, we are of the opinion that the actual dispute lies in sharing the additional construction that has come up in 10,000 square feet by making use of TDR said to have been purchased by



the second respondent. Any how we find that the second respondent did not appear before the trial court and contest because according to the second defendant summons was not served. The first defendant also did not contest the suit. In this view, we are of the opinion that the defendants are to be given an opportunity to contest the suit. Therefore the following :

ORDER

- (i) Appeal is allowed.
- (ii) The judgment dated 23.09.2017 passed in O.S. 2901/2016 on the file of Additional City Civil and Sessions Judge (CCH-64), Bengaluru, is set aside.
- (iii) The matter is remanded to the trial court for decision in accordance with law.
- (iv) The parties shall appear before the trial court on 01.10.2024. Defendants No.1 and 2 are given an opportunity to file written statement on 01.10.2024 itself.



(v) The second defendant shall pay costs of Rs.5,000/- to the plaintiffs.

The trial court shall expedite the disposal of the suit and the parties are directed to cooperate with the court for disposal of the suit at the earliest point of time.

Registry of this court is directed to send back the records to the trial court forthwith along with a copy of this judgment.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(UMESH M ADIGA)
JUDGE