



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH 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. 1893 OF 2017 (PAR)

Between:

Sri G.R.Basavaraju
Aged about 56 years,
S/o Late G.S.Rudranna
R/at Lakshmi Nivas
2nd cross, S.S.Puram
Tumakuru-572102.

...Appellant

(By Sri K.K.Vasanth, Advocate)

And:

Smt. Pratiba
Aged about 61 years,
W/o R.Manohar
R/at Shruthi Nilaya, 5th A cross,
Maruthinagar, Tumakuru.
And presently
R/at No.Ozus, 3rd cross
Chaitanya Layout,
Near Mukthamba Paramashivaiah
Kalyana Mantapa,
Geddalahalli Main Road
Tumakuru-572102.

...Respondent

(By Sri Chandrashekar L, Advocate)

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



This RFA is filed under section 96 read with Order XLI Rule 1 of CPC, against the judgment and decree dated 23.08.2017 passed in OS.No.6/2013 on the file of the II Additional Senior Civil Judge and JMFC, Tumakuru, partly decreeing the suit for partition and mesne profits.

This RFA, coming on for orders, 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 the defendant in O.S.No.6/2013 on the file of the II Additional Senior Civil Judge, Tumakuru challenging the judgment and decree dated 23.08.2017.

2. Heard Sri K.K.Vasanth, learned counsel for the appellant and Sri L.Chandrashekar, learned counsel for the respondent.

3. The respondent was the plaintiff in the suit. She brought a suit for partition in respect of two properties bearing Municipal Katha old



No.2/1879, 2/1880 new No.342/399 measuring 100+85/2 x 80 feet and 62 x 30 feet situated at 2nd Cross, Someshwarapuram, Tumakuru and an industrial building constructed on Plot No.20C of Antharasanahalli Industrial Area, Tumakuru. Subsequently the plaintiff deleted item No.2 i.e., industrial building from the suit claiming that it was her self-acquired about which there was no dispute. Therefore the suit continued only in relation to first item of the plaint schedule.

4. It is stated that first item of the plaint schedule belonged to one Rudranna as he had purchased it under a registered sale deed dated 18.11.1959. He died on 04.10.1993 leaving behind a widow, 6 daughters and a son. Therefore it is quite obvious that all the heirs had 1/8th share each.

5. It appears that two daughters, namely, Shanthala and Uma released their respective



shares in favour of their mother and thereby the share of the mother i.e., widow of Rudranna enlarged to $3/8^{\text{th}}$ share.

6. Thereafter as evidenced by Ex.D.2 three sisters, namely, Siddagangamma, N.Neelambike @ Neela and Sidhamani @ Sudha received gold jewellery weighing 400 grams and cash of Rs.2,00,000/- (Two Lakhs only) and relinquished their rights in respect of other properties in favour of their brother. About this partition there is no dispute. There remained the share of the plaintiff. Therefore she brought a suit for partition.

7. The trial court after holding trial decreed the suit declaring that the plaintiff was entitled to $1/7^{\text{th}}$ share plus $1/6^{\text{th}}$ share in $3/7^{\text{th}}$ share of Gangamma i.e., mother. The defendant has disputed this allotment of shares made by the trial court.



8. Sri K.K.Vasanth, learned counsel for the appellant submits that after the death of Rudranna, his widow and children each became entitled to $1/8^{\text{th}}$ share. Because of release made by two daughters in favour of widow, the latter's share enlarged to $3/8^{\text{th}}$ share. After the death of the widow, her children became entitled to $1/7^{\text{th}}$ share each in $3/8^{\text{th}}$ share of Gangamma. Thereby the plaintiff would become entitled to her original share i.e., $1/8^{\text{th}}$ share plus $1/7^{\text{th}}$ share in $3/8^{\text{th}}$ share of Gangamma i.e., totally $3/56^{\text{th}}$ share ($1/7 + 3/8$) which works out to $5/28$ after further simplification. That means the plaintiff gets $5/28^{\text{th}}$ share in item No.1 of plaint schedule.

9. Learned counsel for the respondent accepts the calculation of shares made by Sri K.K.Vasanth.

10. Since the property was the self acquisition of Rudranna, we find that the



calculation thus made by Sri K.K.Vasanth, learned counsel for the appellant is correct. Our calculation would also show that the plaintiff's actual share is 5/28. Therefore to this extent, decree of the trial court is modified and it is held that the plaintiff will take 5/28th share in item No.1 of the plaint schedule. The appeal stands ***disposed of*** accordingly.

11. Preliminary decree shall be drawn to this effect. Rest of the judgment of the trial court is confirmed. There is no order as to costs.

12. Pending applications, if any, shall stand disposed of in view of disposal of the main appeal.

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

**Sd/-
(UMESH M ADIGA)
JUDGE**

KMV
List No.: 1 Sl No.: 7