



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA

REGULAR SECOND APPEAL NO. 1513 OF 2015 (PAR)

BETWEEN:

1. SRI M.V. RAMEGOWDA
(SINCE DEAD BY HIS LRS)

1(a) SMT.VIJAYAMMA
W/O LATE M.V.RAMEGOWDA
AGED ABOUT 48 YEARS

1(b) SMT.PALLAVI
D/O LATE M.V.RAMEGOWDA
AGED ABOUT 35 YEARS

1(c) SMT.VEENAKUMARI
W/O LATE M.V.RAMEGOWDA
AGED ABOUT 35 YEARS

1(d) SRI.JAYAPRAKASH M.R.
S/O LATE M.V.RAMEGOWDA
AGED ABOUT 35 YEARS

1(e) SRI.DIVYA PRATHAP M.R.
S/O LATE M.V.RAMEGOWDA
AGED ABOUT 30 YEARS

ALL ARE R/AT MAGONDI VILLAGE
BANGARAPETE TALUK
KOLAR DIST. 563 114

2. SRI VENKATCHALAPATHI NAIDU
S/O PILLAPPA
AGED ABOUT 66 YEARS
R/AT MAGONDI VILLAGE
KASABA HOBLI
BANGARPET TALUK
KOLAR DISTRICT 563 114

...APPELLANTS

(BY SRI. A G NAGARAJA., ADV.)

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MALA K N

Location: HIGH COURT
OF KARNATAKA



AND:

1. SRI J. CHANDRASHEKAR
S/O M K JAYARAMAIAH
AGED ABOUT 52 YEARS
MAGONDI VILLAGE
KASABA HOBLI
BANGARPET TALUK
KOLAR DISTRICT 563 114
ALSO R/AT DOOR NO.1946
C/O RAGHAVENDRA
S/O ARUMUGAUM
VIJAYANAGAR, BANGARPET
2. SRI M K JAYARAMAIAH
S/O B KRISHNAPPA
AGED ABOUT 77 YEARS
MAGONDI VILLAGE & POST
KASABA HOBLI
BANGARPET TALUK
KOLAR DISTRICT 563 114
3. SRI J DEVARAJAIAH
S/O M K JAYARAMAIAH
AGED ABOUT 49 YEARS
MAGONDI VILLAGE & POST
KASABA HOBLI
BANGARPET TALUK
KOLAR DISTRICT 563 114
4. SMT VIJAYAMMA
W/O VENKATESH
AGED ABOUT 45 YEARS
THOTAMALAM VILLAGE
GUDIYATHAM TALUK - 632 602
VELLORE DISTRICT (T.N.)
5. SMT MANJULA
W/O BABU
AGED ABOUT 43 YEARS
MAGONDI VILLAGE & POST
KASABA HOBLI
BANGARPET TALUK
KOLAR DISTRICT-563 114
6. SMT SUJATHA
W/O DEVENDARA



AGED ABOUT 41 YEARS
R/AT: RAJEEV GANDHI STREET
CHOWDESWARI NAGAR
LAGGERI, BENGALURU - 560 058

7. SMT LALITHA
W/O SRI RAVINDRA
AGED ABOUT 39 YEARS
R/AT: PUNGANUR TOWN - 517 247
PUNGANUR CHITOOR DIST.
ANDHRA PRADESH
8. SMT KALAVATHY
W/O VIJAYA NAIDU
AGED ABOUT 37 YEARS
KANNUR VILLAGE
KYASAMBALLI HOBLI
BANGARPET TALUK
KOLAR DISTRICT-563 114
9. SMT GEETHA
W/O RAJESH
AGED ABOUT 29 YEARS
R/AT BAGUR VILLAGE
HOSAKOTE TALUK-562 114
BENGALURU RURAL DISTRICT
10. SMT M JAYALAKSHMAMMA
W/O MUNIDAS
AGED ABOUT 55 YEARS
LALBAGH DASARAHALLI VILLAGE
HOSAKOTE TALUK
BENGALURU RURAL DIST- -562 114
11. SRI G JAGADISH
S/O GOVINDARAJ
AGED ABOUT 42 YEARS
KOTE STREET, VARTHUR
VILLAGE & POST
BENGALORE-560 087
12. SRI G CHANDRASHEKAR
S/O GOVINDARAJ
AGED ABOUT 35 YEARS
KOTE STREET, VARTHUR
VILLAGE & POST
BENGALORE-560 087



13. SMT G BHAGYAMMA
D/O GOVINDARAJ
W/O B NAGARAJ
AGED ABOUT 32 YEARS
KOTE STREET
VARTHUR VILLAGE & POST
BENGALORE-560 087

...RESPONDENTS

(BY SRI.G.S.SRINIVAS, ADV. FOR R1;
R2, R4, R5, R8, R9 TO R13 ARE SERVED
& UNREPRESENTED;
VIDE ORDER DT.28.03.2016
NOTICE TO R3 IS HELD SUFFICIENT;
VIDE ORDER DT.04.04.2019
NOTICE TO R6 AND R7 HELD SUFFICIENT)

THIS RSA IS FILED UNDER SECTION 100 OF CPC, AGAINST
THE JUDGMENT AND DECREE DATED 14.11.2013 PASSED IN
R.A.NO.133/2012 ON THE FILE OF THE PRESIDING OFFICER FAST
TRACK COURT K.G.F, DISMISSING THE APPEAL AND CONFIRMING
THE JUDGMENT AND DECREE DATED 18.10.2012 PASSED IN
O.S.NO.29/2008 ON THE FILE OF THE ADDITIONAL SENIOR CIVIL
JUDGE K.G.F.

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

CORAM: HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA

ORAL JUDGMENT

In this appeal, defendant Nos.1 and 2 are challenging
the judgment and decree dated 14.11.2013 passed in
R.A.No.133/2012 by the Fast Track Judge, K.G.F., dismissing
the appeal filed by the present appellants confirming the
judgment and decree dated 18.10.2012 passed in
O.S.No.29/2008 by the Additional Senior Civil Judge, K.G.F.



granting partition and separate possession of 1/9th share in favour of the plaintiff holding that the sale deeds dated 02.07.2008 and 07.08.2008 executed by defendant Nos.1 to 8 is not binding on the plaintiff to the extent of his share.

2. For the sake of convenience, parties shall be referred as per their status before the Trial Court.

3. There is no dispute regarding the relationship between the plaintiff and defendant Nos.1 to 8. Defendant Nos.10 to 14 are the purchasers of some of the portions of the properties. Plaintiff filed the suit against defendant Nos.1 to 14 seeking grant of 1/9th share in the suit schedule properties claiming that he is not a party to the sale and such sale deeds are not binding on him.

4. Defendant Nos.1 to 8 have filed their written statement before the Trial Court contending that there was an oral partition and share was already allotted to the plaintiff and mutation has been effected. In this regard, the Trial Court has framed the following issues including the issue regarding oral partition:



1. *Whether the plaintiff proves that the suit schedule properties are ancestral properties of him and defendant No.1 to 8?*
2. *Whether the Plaintiff proves that the registered sale deed dated 2.7.2008 and 7.8.2008 executed by the defendants No.1 to 8 are null and void and not binding on him?*
3. *Whether the Plaintiff is entitled to mesne profit?*
4. *Whether the defendant No.1 to 8 prove that there was a oral partition effected among themselves and Plaintiff?*
5. *Whether Plaintiff is entitled to 1/9th share and separate possession over the suit property?*
6. *What order or decree?*

5. Before the Trial Court on behalf of the plaintiff, PWs-1 and 2 were examined and 25 documents came to be marked as per Exs.P1 to P25. On behalf of the defendants, DWs-1 to 3 were examined and Exs.D1 to D22 came to be marked. The Trial Court after hearing both parties answered the issues in favour of the plaintiff and recorded negative finding in respect of oral partition and ultimately granted the decree of partition allotting 1/9th share in the suit schedule properties and further held that sale deeds dated 02.07.2008 and 07.08.2008 executed by defendant Nos.1 to 8 are not binding to the extent of share of the plaintiff. Questioning



the same, defendant Nos.13 and 14 have preferred an appeal in R.A.No.133/2012. Vide order dated 14.11.2013, the Appellate Court after hearing both parties formulated the following points for consideration:

- 1) *Whether the judgment and decree passed by the lower court is arbitrary, capricious and perverse?*
- 2) *Whether the lower court has properly appreciated the oral and documentary evidence?*
- 3) *Whether the interference of this court is necessary?*
- 4) *What order?*

6. The Appellate Court has answered point Nos.1 and 3 in the negative and point No.2 in the affirmative and dismissed the appeal, confirming the judgment and decree passed by the Trial Court. Aggrieved by the same, defendant Nos.13 and 14 are before this Court.

7. Heard the arguments of Sri.A.G.Nagaraja, learned Counsel for legal representatives of defendant No.13 and defendant No.14 and perused the material on record.

8. It is contended by the learned counsel for defendant Nos.13 and 14 that they are the *bonafide*



purchasers. The plaintiff under oral partition has already taken share in the joint family and mutation is effected, RTC entries are made in the name of the plaintiff and he has raised loan and acting independently and there is no joint family in existence. Defendant Nos.1 to 8 being the remaining members of the joint family have executed a sale deed in favour of defendant Nos.13 and 14 under two different sale deeds and sold the respective properties described therein. When the plaintiff has taken the share, there cannot be any existence of joint family to grant share in favour of the plaintiff and to hold that the sale deeds executed by defendant Nos.1 to 8 are not binding on the share of the plaintiff. The Trial Court as well as the Appellate Court have not properly framed issues and not appreciated the records in proof of the oral partition. Hence, the appeal requires to be admitted.

9. Learned counsel for the plaintiff is present.

10. On careful perusal of the Trial Court Records, which are made available, pleadings, issues and also the evidence, it is pertinent to note that it is the specific case of



defendant Nos.1 to 8 that there was an oral partition among the members of the joint family. The share of the plaintiff was allotted and he is no more in the joint family and plaintiff is not entitled to any share. Similar is the stand taken by defendant Nos.13 and 14. There is a specific issue framed by the Trial Court regarding previous oral partition. The main evidence relied upon by defendant Nos.13 and 14 to establish the oral evidence is Exs.P2, 3 and 20. Defendant Nos.1 to 8 after filing the written statement did not enter the witness box and have not discharged the burden of proving the oral partition. Under such circumstances, burden of proof is upon the defendant Nos.13 and 14 to establish the oral partition to dislodge the plaintiff from claiming partition.

11. On perusal of the oral evidence conjoint with Exs.P2, 3 and 20, it is pertinent to note that the khata in favour of the plaintiff was effected on the basis of enjoyment, not on the basis of oral partition. If this is read together, there is no iota of evidence, which could be able to



support the contention of the defendants regarding oral partition.

12. It is interesting to note that the total extent of land that is available to the family is 19 acres; there are 9 sharers in the family. If share is allotted to them, each will get 2 acre 10 guntas wherein Exs.P2 and P3 indicate an extent of 1 acre 21 guntas in Sy.No.10/1 and 1 acre 22 guntas in Sy.No.10/2 and an extent of 3 acres 3 guntas was shown in the name of plaintiff. Even if the plea of oral partition is accepted, there is no equitable partition, as the RTC extract shows 33 guntas of land in excess of the share of the plaintiff in the event of partition by metes and bounds.

13. The Trial Court as well as the Appellate Court have elaborately discussed the evidence on record that the defendants have failed to prove the oral partition, held existence of joint family, the plaintiff as an elder son of the propositus is entitled to 1/9th share by metes and bounds. Hence, there is no error apparent either in the judgment of the Trial Court or in the Appellate Court and there are no grounds to admit the appeal. Remedy available to defendant



Nos.13 and 14 is to approach the Final Decree Court seeking for equity by requesting that the property purchased by them shall be allotted to the share of defendant Nos.1 to 8 and be re-adjusted to their share. Hence, there are no grounds to admit the appeal. In the result, the following:

ORDER

The appeal is dismissed.

SD/-
(T.G. SHIVASHANKARE GOWDA)
JUDGE

KNM

List No.: 1 SI No.: 48