



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO.563 OF 2018(DEC)

BETWEEN:

M NAGARAJU
S/O DEVARAJEGOWDA,
AGED ABOUT 60 YEARS
R/O: MALANAHALLI VILLAGE,
KONANUR HOBLI,
ARAKALGUD TALUK
DISTRICT: HASSAN

...APPELLANT

(BY SRI RAJENDRA.S FOR
SRI NARAYAN V YAJI, ADVOCATES)

AND:

1. PUTTAMMA
W/O DEVARAJEGOWDA,
SINCE DEAD, THE RESPONDENT
NO.2 IS TREATED AS LEGAL REPRESENTATIVE OF
RESPONDENT NO.1
2. ROOPA
W/O M.DEVAPPA,
AGED ABOUT 35 YEARS
3. ARUNKUMAR
S/O M.DEVAPPA,
AGED ABOUT 10 YEARS
4. CHANDAN
S/O M.DEVAPPA,

Digitally
signed by
MALATESH
K C
Location:
HIGH
COURT OF
KARNATAKA



RESPONDENTS NO.3 AND 4 ARE MINORS
REPRESENTED BY THEIR NATURAL GUARDIAN
MOTHER ROOPA,
ALL ARE RESIDING AT MALANAHALLI VILLAGE,
KONANUR HOBLI,
ARAKALGUD TALUK,
DISTRICT:HASSAN, PIN CODE
NOW RESIDING AT GARIGHATTA VILLAGE,
KASABA HOBLI,
HASSAN TALUK,
DISTRICT:HASSAN

...RESPONDENTS

(BY SRI YASHWANTH NETHAJI.N.T FOR SRI K.V.NARASIMHAN,
ADVOCATE FOR R1 TO C/R2;

VIDE ORDER DATED 15.09.2025, R2 IS TREATED AS LR OF
DECEASED R1)

THIS RSA IS FILED UNDER SECTION 100 OF CIVIL
PROCEDURE CODE, AGAINST JUDGMENT AND DECREE DATED
18.01.2018 PASSED IN RA.NO.34/2014 ON THE FILE OF THE II
ADDITIONAL DISTRICT AND SESSIONS JUDGE, HASSAN,
DISMISSING THE APPEAL FILED AGAINST THE JUDGMENT AND
DECREE DATED 08.01.2014 PASSED IN O.S.NO.18/2011 ON
THE FILE OF THE SENIOR CIVIL JUDGE, ARKALGUD.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA



ORAL JUDGMENT

Heard Sri Rajendra S., learned counsel appearing on behalf of Sri Yaji Narayan Vishnu, counsel for the appellant and Sri Yaswanth Nethaji N.T., learned counsel appearing on behalf of Sri K.V. Narasimhan, counsel for the respondent Nos.1 and 2.

2. Second defendant is the appellant in the present second appeal challenging the decreeing of the suit in part in O.S.No.18/2011, dated 08.01.2014, on the file of Senior Civil Judge, Arkalgud, confirmed in R.A.No.34/2014, dated 18.01.2018, on the file of II Additional district and Sessions Judge, Hassan.

3. Parties are referred as plaintiffs and defendants as per their original ranking before the Trial Court.

4. Facts which are utmost necessary for disposal of the present second appeal are as under:

5. A suit for declaration filed by the plaintiffs declaring that the gift deed executed by first defendant in favour of the second defendant is void and not binding on the plaintiffs and restrain defendant No.2 from claiming ownership over the suit



property by way of permanent injunction and such other consequential reliefs.

6. Plaintiffs contended that first plaintiff is the wife of first defendant, second defendant and deceased M. Devappa are the sons of first plaintiff and first defendant. Plaintiff Nos.3 and 4 are the children of deceased M. Devappa.

7. It is further contended that suit properties are joint family properties of plaintiffs and defendants and first plaintiff is the only daughter of her parents. First plaintiff was married to first defendant and because of first plaintiff was the only daughter to her parents, Devrajegowda (first defendant) was residing with the parents of the first plaintiff (ಮನೆ ಅಳಿಯ). Thus, first defendant shifted his family to Majjigepura. First defendant did not possess any properties and he was depending on the properties held by his wife and father-in-law Basavegowda for his livelihood.

8. Basavegowda had gifted the suit property in favour of plaintiff No.1 under the gift deed dated 06.08.1950.

9. However, by issuing the necessary notification Government acquired the property that was gifted by Basavegowda in favour of plaintiff No.1 for the project of



Hemavathi Reservoir and Rs.21,502/- was received as the compensation.

10. First plaintiff and first defendant thus purchased the suit properties out of the compensation amount. But, the property was registered in the name of first defendant on 01.05.1975.

11. Second defendant, being the bachelor of Arts, was with his father and assisting in agricultural operations of his father-first defendant. He said to have created a palupatti and took four acres of land and got mutated the revenue entries.

12. First defendant when he was in advanced age, suffered lot of health issues and he was mentally unsound.

13. Taking advantage of the said physical and mental status of first defendant, second defendant clandestinely, got executed a gift deed in his favour in respect of suit property, assailing as self acquired property of defendant No.1 and therefore, plaintiffs have sought declaration that the gift deed executed by defendant No.1 in favour of defendant No.2 is null and void.



14. Pursuant to suit summons, defendants entered their appearance. First defendant died during pendency of the suit and suit stood abated.

15. It is the second defendant who contested the suit by filing detailed written statement contending that suit properties are the self-acquired properties of first defendant. Therefore, he had every competence to execute the gift deed in his favour and sought for dismissal of the suit.

16. Learned Trial Judge, after raising necessary issues, recorded the evidence of the parties and heard the arguments of the parties and decreed the suit of the plaintiffs in part.

17. The operative portion of the Trial Court judgment reads as under:

"The suit of the plaintiffs is partly decreed against the defendant No.2 with cost and declared the gift deed executed by the first defendant in favour of the second defendant is void in law and not binding on the plaintiffs and also permanently restrained the second defendant from claiming lawful ownership over item Nos. 1 and 2 of the suit properties and suit against item No.3 is dismissed."



18. Being aggrieved by the same, it is the second defendant who filed an appeal before the First Appellate Court in R.A.No.34/2014.

19. Learned Judge in the First Appellate Court, after securing the records, heard the arguments of the parties in detail and on re-appreciation of the material on record, dismissed the appeal filed by the second defendant.

20. Being further aggrieved by the same, second defendant has preferred the present second appeal on the following grounds and substantial questions of law:

- *That, errors apparent on the face of the record of the court below as much as the way in which evidence is recorded and issues are framed is against to the material available on record and also true facts of the case, as much as same is also opposed to law,*
- *The plaintiff No.2. who is the daughter-in-law of the plaintiff No.1 examined as PW-1. As on the date of gift deed dtd.06.08.1950 and sale deed dtd 01.05.1975 the PW-1 has not borne as much as she has not married with the son of plaintiff No.1. Therefore, the evidence of PW-1 ought to have been discarded by the court below as the evidence of PW-1 is having no sanity in the eye of law. It is pleaded by the plaintiff No.1 that, there was a gift deed made by her mother in her favour on 06.08.1950 and also averted that, there was a sale deed*



registered in the name of defendant No.1 on 01.05.1975. But, plaintiff No.1 not entered the witness box and deposed the same. Therefore, the plaintiff No.2 having no knowledge of the said event which has taken place earlier to her birth having no capacity in any manner to depose the said fact on behalf of plaintiff No.1.

- *The court below has held that, the purchase of the land in the name of the defendant No.1 is a 'benami' transaction that the sale consideration amount was paid by the plaintiff No.1 as she has earned money by way of compensation as the land gifted by her mother was acquired for the 'Hemavathi Reservoir Project'. It is pertinent to state that, the 'benami' transactions (Prohibition) Act, 1988 come into effect/force 19.05.1988. In the said act retrospective effect of any provision is given. Therefore, transaction held earlier to 19.05.1988 cannot be held or declare by the court of law as it is a 'benami' transaction. Therefore, the judgment and decree passed by the trial court and affirmed by the appellate court is liable to be set aside as both courts have utterly failed to interpret the provisions of the statute and its effective date without application of judicial mind.*
- *It is the case of the plaintiff No.1 that, suit schedule properties are purchased in the name of defendant No.1 but, consideration amount was paid by her as she had received compensation amount paid by the SLO. Consequently, it is the definite case of the plaintiff No.1 that, the defendant No.1 is having no legal right to gift*



the suit schedule properties in favour of defendant No.2. The trail court in its impugned judgment has observed that, the defendant No.2 has not examined any attesting witnesses to the gift deed. Therefore, the trail court has held that the defendant No.2 has failed to prove the gift deed executed in his favour on 30.10.2010. Accordingly, the trail court has wrongly decided the issue No.5.

- *While assigning the reason to deal with issue No.6 the trail court has wrongly interpreted the evidence of DW-1. The DW-1, who is the appellant herein has specifically deposed that, his father namely the defendant No.1 had no properties in Majjigepura Village. The suit schedule properties are situated at Malanahalli Village of Arkalgud taluk. The Majjigepura Village is of parents house of plaintiff No.1. Hence, the DW-1 has rightly stated the fact. But, the trail court has misunderstood the name of the village and concluded that, the properties purchased by the defendant No.1 is not of self acquired properties of him. Besides being so, as on the date of purchase of the land by his father, the defendant No.2 was a minor son of defendant No.1. Hence, whether the statement of DW1 in respect of self earnings of his father in the year 1975 cannot be held by the trail court that, the defendant No. 1 was having no self earning as on the date of purchase of land by him. As stated above, the appellant is unaware of the acts, source and events of his late father in the year 1975 as at that period the appellant was a minor child. Therefore, the finding recorded by the trail court is illegal.*



- *The court below ought to have dismissed the suit of the plaintiffs for the simple reason that, it is the definite case of the plaintiff No.1 that, the suit schedule properties are purchased in the name of defendant No.1 on 01.05.1975 by paying the sale consideration amount from compensation amount received by her in the year 1950 and hence she questioned the gift deed made by the defendant No.1 in favour of defendant No.2 on 30.01.2010. Since, the plaintiff No.1 has questioned the gift deed of the year 2010 but, after lapse of 35 years from the date of purchase of the suit schedule properties by her husband viz. defendant No.1. There is no statement made in this connection by the plaintiffs in the body of the plaint or in the evidence. By considering this aspect of the matter, the court below ought to have dismiss the suit.*
- *The plaintiffs were pleaded that, the suit schedule properties are joint family properties of them. It is not in dispute that, the defendant No.1 had purchased the suit schedule properties in individual capacity. Unless until the plaintiffs proves that, nucleus from the joint family is paid / made while purchasing of the property it cannot be said that, the properties in question are joint family properties. Under the provisions of the Hindu Law there is a distinction between constitution of joint family and joint family properties. In the instant case the plaintiffs have completely failed to establish that, the suit schedule properties are joint family properties. The gift deed marked as Ex.P7 is having no assistance for the plaintiffs to prove that, the purchase of land made by*



defendant No.1 is considered to be joint family properties.

- *The court below ought to have dismiss the suit of the plaintiffs solely on the ground that, they have not sought the relief of declaration declaring that the defendant No.1 is not the absolute owner of the suit schedule properties and the sale transaction held on 01.05.1975 is a 'benami' transaction. Unless, without seeking the said relief of declaration, the plaintiffs cannot maintain their suit only seeking the relief of declaration in respect of gift deed is concerned.*
- *The issue No.1, 2 and 3 framed by the trail court is improper and same was not framed basing on the main prayer sought by the plaintiffs. By framing the issues in a wrong manner, the court below has recorded the evidence and proceeded to pass impugned judgment and decree.*
- *Further, the court below in its impugned judgment at Page No.12 at Paragraph No.15 has held that, the defendant No.2 has not examining in witnesses to prove that, his father namely defendant No.1 was having source of income to purchase the suit schedule properties in the year 1975. As stated earlier the appellant herein was minor as on the date of purchase made by his father. That too there is no interconnection between Majjigepura Village and Malanahalli Village. There is no law as such that a person who reside in a place must possess the land in his residential area only. Therefore, finding given by the trail court in an adverse*



interest of the appellant herein is baseless, incorrect and prejudicial.

- *Further, the finding of the trial court at paragraph No. 16 page No.13 of the impugned judgment that, the defendant No.2 has not examining any attesting witness to the gift deed is also baseless. For the simple reason it is not the case of the plaintiffs that, gift deed was executed by defendant No.1 in favour of defendant No.2 under undue influence, threat, coercion or by any other means. It is the specific case of them that, the gifted properties are owned and held by him in 'benami' as the contribution for purchase of land was made by the plaintiff No.1 alone. Hence, the finding of the trial court is basing on surmises and conjecture.*
- *It is pertinent to state that, the trial court has decreed the suit in respect of suit schedule item No.1 & 2 only but rejected the suit in respect of item No.3. But, the plaintiffs have aggrieved of rejection of their prayer in respect of item No.3 have not preferred cross appeal in the appeal preferred by the appellant herein before the learned IInd Addl. District & Sessions Court at Hassan in R.A.No.34/2014 or preferred a separate appeal. Looking into the conduct of the plaintiffs the appellate court ought to have allow the appeal of the appellant herein, by holding non preferring of an appeal by the plaintiffs before it is to show that, suit schedule properties are not the joint family properties.*
- *The appellant herein filed I.A.No.5 U/o.41 Rule 21 of CPC for production of documents before the appellate court. The appellate court while passing the judgment*



and decree has not passed an order on I.A.No.5. Keeping pending of IA.No.5 deciding of appeal on merit is illegal and unsustainable and same is opposed to law laid down by the Hon'ble Supreme Court of India.

- *The appellate court in its impugned judgment at paragraph No.8 in page No.7 has held that, the plaintiff No.1 ought to have steps into the witness box to establish the fact of 'benami' transaction stated to be held in the year 1975 and also held that, the PW-1 who is the plaintiff No.2 has married with the son of the plaintiff No.1 recently and probably she was not at all borne in the year 1975 and also held that, it cannot possible to accept the evidence of PW-2 as she does not know anything about the transaction. But, by holding and observing so dismiss the appeal of appellant. Hence, safely it can be said that, the appellate court has lost the track of the case and without application of the mind has passed the impugned judgment.*
- *The appellate court while passing the impugned judgment has also held that, the 'WILL' dtd.20.11.2010 executed by defendant No.1 in favour of defendant No.2 is also not binding upon the plaintiffs share in the suit schedule properties. There is no prayer sought by the plaintiffs in respect of execution of 'WILL' is concerned. The appellate court while passing the judgment and decree has exceeded its jurisdiction and thereby not only committed illegality but also caused injustice to the appellant.*
- *As per law laid down by Hon'ble Supreme Court of India, reported in AIR1996 Supreme Court Page No.238 in the*



matter of R.Rajagopal Reddy V/s P.Chandrasekharan, 2005 (4) KCCR 2670 in the matter of G.Mahalingappa V/s G.M.Savita, AIR 2000 Supreme Court Page No.589 C.Ganga Charan V/s C. Narayana, AIR 1989 Supreme Court 1247 Mithilesh Kumari & another V/s Prem Behari Khare and 2007 (1) KCCR 159 in the matter of Muralidhar Deshpande & another V/s Hanumantaraao the Hon'ble Apex Court of India as well as this Hon'ble Court has interpreted the benami transactions act in length and held that, the said act is having no retrospective effect and only having prospective effect. By applying the ratio laid down by superior court of law the court below ought to have dismiss the suit of the plaintiffs and consequently the appellate court ought to have allow the appeal.

- *The appellate court by considering the averments made in the affidavit accompanied with I.A.No.5 ought to have allow the IA and permitted the appellant to produce the additional documents to establish that, the defendant No.1 who is the father of him was possessing the land as in the year 1975 and also having independent source of income. By applying the law laid down by Hon'ble Supreme Court reported in 2016 SAR (Civil) 821 in the matter of Union of India V/s K.V.Laxman & others. The appellate court ought to have allowed I.A.No.5. Non-allowing of I.A.No.5 and not passing an order on it by the appellate court is an error committed in law and on facts of the case.*



"SUBSTANTIAL QUESTIONS OF LAW

- (i) *Whether the both courts below are justify in holding that, sale deed dtd.01.05.1975 is a 'benami' transaction by giving retrospective effect of the benami transactions (Prohibition) Act, 1988 (effective date 19.05.1988)?*
- (ii) *Whether, the 1st appellate court justify in passing the judgment and decree but not passing order on I.A.No.5?*
- (iii) *Whether the 1st appellate court justify in declaring that the 'WILL' executed on 20.11.2010 is not binding upon the plaintiffs, even though the plaintiffs are not sought any relief in respect of said 'WILL' is concerned?*
- (iv) *Whether the 1st appellate court justified in decreeing the suit of the plaintiffs in full, though dismissing of the suit by the trail court inso far as suit item No.3 is concerned and no appeal or cross appeal been preferred by the plaintiffs before it?*
- (v) *Whether, the trail court is justify in granting the relief of declaration in respect of gift deed, though no relief is sought by the plaintiffs in respect of seeking declaration of ownership over the suit schedule properties?"*

21. Sri Rajendra S, learned counsel for the appellant reiterating the grounds urged in the appeal memorandum would contend that both the Courts have committed grave



error in holding that the gift deed is null and void for want of proof of the gift and also on the ground that the first defendant had no competency to execute the gift deed in favour of the second defendant.

22. He would further emphasize that admittedly the suit property was purchased by the first defendant through a registered sale deed dated 01.05.1975. As such, it is the first defendant who had absolute powers to deal with the suit property and he having executed the Will in favour of the second defendant, Trial Court ought not to have decreed the suit and First Appellate Court ought not to have mechanically upheld the same and sought for admitting the appeal on the aforesaid substantial questions of law.

23. Per contra, Sri Yaswanth Nethaji, learned counsel for the respondent opposes the appeal grounds and supports the impugned judgment and sought for dismissal of the appeal.

24. Having heard the arguments of both sides, this Court perused the material on record meticulously.

25. On such perusal of the material on record, admittedly first defendant after his marriage with the first plaintiff, shifted his residence from his native place to



Majjigepura i.e., his father-in-law's place. In other words, he started living with the parents of the first plaintiff.

26. Admittedly, first defendant did not possess any independent property or income whatsoever. He was looking after the properties of his father-in-law, namely Basavegowda. In fact, Basavegowda out of the love and affection had executed a gift deed in favour of first plaintiff who was her only daughter on 06.08.1950 in respect of a property owned by him.

27. However, for the project of Hemavathi Reservoir said property was acquired by the Government and granted the compensation in a sum of Rs.21,502/-. Utilising that amount, suit property is purchased is the specific contention of the plaintiffs.

28. However, it is also contended by the plaintiffs that the property was registered in the name of first defendant who did not possess any income whatsoever to purchase the suit property.

29. Be it what it may. First defendant started enjoying the property and cultivating the land. Records would depict that second defendant being the son born to the first plaintiff and



first defendant was assisting first defendant in the agricultural operations.

30. Another son born to the first plaintiff and first defendant namely, Devappa died and Devappa's children were also reared by the first plaintiff.

31. Taking note of these aspects of the matter, the Trial Judge noted that the gift deed that is placed on record was not proved in accordance with law in the absence of examining the attesting witnesses.

32. Pertinently, in the gift deed, age of the first defendant is not mentioned which is a significant factor. Plaintiffs have contended that first defendant was mentally not fit to execute any document and he was also physically not well when the alleged gift deed has come into being which was allegedly executed by first defendant in favour of second defendant.

33. On facts, two Courts have concurrently held that the second defendant failed to prove the gift in accordance with law and first defendant had no competence to execute the gift deed in favour of the second defendant.



34. Thus, having regard to the scope of Section 100 of Code of Civil Procedure, this Court does not find any merit in any one of the substantial questions of law referred to supra to admit the appeal for further consideration.

35. Accordingly, the following:

ORDER

- (i) Admission is ***declined***.
- (ii) Appeal is ***dismissed***.

**Sd/-
(V SRISHANANDA)
JUDGE**

MR
List No.: 1 Sl No.: 30