



CNR: KAHC010128542024

NC: 2026:KHC:40319
RSA No. 344 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 344 OF 2024 (PAR)

BETWEEN:

1. SRI. THAMMANEGOWDA
AGED ABOUT 54 YEARS
S/O MADEGOWDA
R/AT SUNNA KALLU MUNTI
ANTHARSANTHE HOBLI
H D KOTE TALUK
MYSURU DISTRICT - 571 114
2. SWAMYGOWDA
AGED ABOUT 59 YEARS
S/O LATE MADEGOWDA
R/AT NERALE SUNNKALLUMANTI VILLGE
ANTHARSANTHE HOBLI
H D KOTE TALUK
MYSURU DISTRICT - 571 114
3. SRI SHIVANNEGOWDA
AGED ABOUT 59 YEARS
S/O LATE MADEGOWDA
R/AT NERALE VILLGE
ANTHARSANTHE HOBLI
H D KOTE TALUK
MYSURU DISTRICT - 571 114

...APPELLANTS

(BY SRI. P. NATARAJU, ADVOCATE)

Digitally
signed by
MALATESH
K C

Location:
HIGH
COURT OF
KARNATAKA



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AND:

1. SMT. THAYAMMA
AGED ABOUT 55 YEARS
W/O LATE KEMPEGOWDA
R/AT NERALE VILLAGE
SUNNA KALLUMANTI
ANTHARSANTHE HOBLI
H D KOTE TALUK
MYSURU DISTRICT - 571 114

SMT KARAGAMMA
NOW DEAD
2. SRI M SIDDAPPA
AGED ABOUT 54 YEARS
S/O MADEGOWDA
R/AT NERALE
ANTHARSANTHE HOBLI
H D KOTE TALUK
MYSURU DISTRICT - 571 114
3. SMT GEETHA
AGED ABOUT 65 YEARS
W/O A SIDDAPPA
4. SRI SHIVAKUMARA @ KUMARA
AGED ABOUT 47 YEARS
S/O A SIDDAPPA
5. MAMATHA
AGED ABOUT 43 YEARS
D/O M SIDDAPPA



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6. ASHA
AGED ABOUT 41 YEARS
D/O M SIDDAPPA

7. USHA
AGED ABOUT 37 YEARS
D/O M SIDDAPPA

RESPONDENTS NO.3 TO 7 ARE
R/AT NERALE VILLAGE
ANTHARASANTHE HOBLI
H D KOTE TALUK
MYSURU DISTRICT - 571 114

...RESPONDENTS

THIS RSA IS FILED UNDER SEC.100 OF CPC AGAINST THE JUDGMENT AND DECREE DATED 11.12.2023 PASSED IN RA NO.11/2015 ON THE FILE OF THE SENIOR CIVIL JDUGE AND JMFC, H.D.KOTE, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 03.12.2014 PASSED IN O.S. NO.284/2008 ON THE FILE OF THE CIVIL JUDGE H.D.KOTE.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA



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ORAL JUDGMENT

1. Heard Sri. P. Nataraju, learned counsel for the appellants. This court does not deem fit to issue notice to the respondents.

2. Defendant No.3 is the first appellant. The second and third appellants are the parties who have been impleaded before the First Appellate Court. They are also purchasers of the portions of the suit property.

3. Facts of the case are as under :

3.1. A suit for partition and separate possession came to be filed in respect of the following immovable properties (hereinafter referred to as the suit properties) in O.S. No.284/2008.

SCHEDULE

1. Lands situated at H.D. Kote Taluk, Antharasanthe Hobli, Nerale Grama, Sy.No.49/1, 48/1, 54/3 and 54/5, measuring to an extent of 02-29 , 01-12 and 01-24 acres, with common boundaries, bounded on :

East : Lands of Shivannegowda
West: Lands of Karigowda



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North : Govt. Oni
South: Lands of Kenchegowda & Marigowda.

2. Lands situated at Mysore District, H.D. Kote Taluk, Antharasanthe Hobli, Nerale Grama, Sy.No.66/2, measuring to an extent of 04-03 acres, bounded on :

East : Lands of Byregowda,
West: Lands of Kenchegowda
North : Land of Madegowda
South: Govt. Road.

3. Lands situated at Mysore District, H.D. Kote Taluk, Antharasanthe Hobli, Nerale Grama, Sy.No.56/3, measuring to an extent of 0-35 guntas, bounded on :

East : Kapila Nala,
West: Govt Road,
North : Lands of Puttaswamaygowda
South: Lands of Nagegowda.

4. House property, situated at Mysore District, H.D. Kote Taluk, Antharasanthe Hobli, Beechanahalli Grama Panchayath, Nerale Grama, Demand & Property No.245, measuring 115 X 40 feet, bounded on :

East : House of Mahadevappa,
West: House of N.C. Shivanna
North : House of Yadarajeurs
South: House of Shivannachar.

3.2. In the plaint it has been contented that plaintiff, defendants No.1 and 2 are the members of joint family. Defendant No.1 is the mother of plaintiff and defendant No.2.



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3.3. It is contended by the plaintiff that the suit properties are the ancestral property of the father of the plaintiff namely Madegowda and revenue records stood in the name of Madegowda. After the death of Madegowda, out of respect and as per the wish of defendant No.1, revenue entries were mutated in the name of the defendant No.1 who is the mother of plaintiff and defendant No.2.

3.4. It is further contented that during the lifetime of Madegowda, marriage of plaintiff took place and she has two sons and daughter.

3.5. Plaintiff, defendants No.1 and 2 are thus in joint possession of the suit property as the same was not partitioned.

3.6. It is further contented that defendant No.2 being the male member and brother of the plaintiff, started managing the suit properties and sold the property without the consent of the plaintiff.



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3.7. Defendant No.7 purchased the suit property from the defendant No.2 to the extent of 0-35 guntas of land in Sy.No.56/3 through a registered sale deed dated 23.03.2006 detrimental to the interest of the plaintiff.

3.8. When the plaintiff demanded her share in the suit properties, it was flatly refused. Therefore suit for partition came to be filed.

3.9. Pursuant to the suit summons, defendants No.1 and 2 appeared before the Court, engaged separate advocates. Defendant No.3 did not choose to appear before the Court and he was placed *ex parte*.

3.10. Defendant No.2 filed written statement accepting the relationship and nature of the properties, but denied the other allegations in the plaint.

3.11. Defendant No.2 further contended that huge amount of money was spent for the marriage of the plaintiff and therefore she is not entitled for the share.



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3.12. Defendant No.1 in her written statement admitted the relationship and death of Madegowda and nature of properties.

3.13. Based on the rival contentions, learned trial Judge raised necessary issues and also raised an issue with regard to the self-acquisition of the fourth item of the suit properties by the defendant No.2.

3.14. After recording the evidence of the parties and hearing the arguments, learned trial Judge dismissed the suit of the plaintiff.

3.15. Unsuccessful plaintiff filed an appeal before the First Appellate Court in R.A. No.11/2015.

3.16. Learned Judge in the First Appellate Court, after securing the records, heard the arguments of the parties and on re-appreciation of the material on record, decreed the suit granting half share in the suit properties



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No.1 to 3 and upheld the dismissal of the suit in respect of Item No.4 of the suit properties.

4. Being aggrieved by the same, it is the defendant No.3 and subsequently impleaded fourth and tenth respondent in the First Appellate Court have preferred the present appeal on the following grounds and substantial questions of law.

GROUND

- *The Judgement and Decree passed by the First Appellate Court reversing the Judgement and Decree passed by the Trial Court is contrary to law, facts and evidence on record.*
- *The First Appellate Court failed to properly consider the fact that the 1 appellant has purchased the land bearing Sy. No.54/3 measuring to an extent of 29 guntas through the registered sale deed dated 06-03-2004 and the land bearing Sy. No.56/3 measuring to an extent of 35 guntas through the registered sale dated 12-01-2006 from respondent No.2 for valuable consideration and he is the bonafide purchase of the said property.*
- *The First Appellate Court failed to notice that the appellant No.2 has purchased the land bearing*



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Sy.No.49/1 measuring to an extent of 2 acres from the 2nd respondent through the registered sale deed dated 05-11-2015 for valuable consideration and he is the bonafide purchaser of the said property.

- *The First Appellate Court failed to notice that the appellant No.3 has purchased the land bearing Sy.No.49/1, measuring to an extent of 38 guntas from the 2nd respondent through the registered sale deed dated 05-11-2015 for valuable consideration and he is the bonafide purchaser of the said property.*
- *The First Appellate Court failed to notice that the 2nd respondent sold the above mentioned suit properties to the appellants for family and legal necessity and the sale deed executed by the 2nd respondent in favour of the appellants is binding on the 1st respondent.*
- *The First Appellate Court grossly erred in not allotting the suit properties purchased by the appellants to the share of the 2nd respondent.*
- *The Judgement and Decree passed by the First Appellate Court is only on assumptions and presumptions and not on the basis of proper appreciation of evidence and documents on record in it's proper perspective.*
- *The Judgement and Decree passed by the First Appellate Court is arbitrary, illegal and otherwise opposed to law, facts and probabilities of the case.*



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- *The appellants seeks leave of this Hon'ble court to urge additional grounds if any at the time of hearing.*

SUBSTANTIAL QUESTION OF LAW

1. Whether the First Appellate Court justified in reversing the Judgement and Decree passed by the Trial Court?

2. Whether the First Appellate Court committed an error in law in not noticing that the 2nd respondent has sold certain suit properties in favour of the appellants through the registered sale deeds for valuable consideration for legal and family necessity and sale deed executed by the 2nd respondent in favour of the appellants are binding on the share of the 1st respondent?

3. Whether the First Appellate Court committed an error in law in not noticing that the appellants are the bonafide purchaser of the suit properties for valuable consideration from respondent No.2 ?

5. Sri. P. Nataraju, learned counsel for the appellants reiterating the grounds urged in the appeal memorandum would contend that after dismissal of the suit, further alienations have taken place. Therefore the appellants No.2 and 3 are to be held as *bona fide*



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purchasers for value whereas defendant No.3 has purchased 0-35 guntas of the land after verifying the revenue records and their rights are to be protected by admitting the appeal on the aforesaid substantial questions of law.

6. In the light of the arguments put-forward on behalf of the appellants, this Court perused the material on record meticulously.

7. On such perusal of the material on record, since the relationship is admitted and nature of properties is also admitted, only on the ground that the plaintiff has been married by Madegowda by spending huge amount from the joint family income, right of the plaintiff could not have been denied by the trial Judge which has been set-right by the learned Judge in the First Appellate Court in the impugned judgment.

8. Admittedly, defendant No.3 did not choose to contest the suit before the Trial Court itself.



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9. Further, in respect of item No.4 of the suit properties, suit is dismissed. If any of the subsequently impleaded respondents in the First Appeal have purchased the property in the Item No.4 of the suit properties, they are protected as they are not affected by the decree.

10. Since in respect of Item No.4, there is a dismissal of the suit and plaintiff has not chosen to file any appeal it has become final.

11. Insofar as Item Nos.1 to 3 are concerned, defendant No.2 is also given half share in the suit property noting the fact that her mother is no more.

12. Therefore, subsequent purchasers including defendant No.3 are entitled to work out the equities in the half share that has been granted to the defendant No.2 in respect of Item Nos.1 to 3.

13. With that observation and reserving the right of the appellants to seek for equitable partition in the Final



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Decree Proceedings, this Court does not find merit in any one of the substantial questions of law.

14. Accordingly, following order :

ORDER

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

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

SNC
List No.: 1 Sl No.: 44