



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL No.846 OF 2022 (PAR)

BETWEEN:

SRI GANGANNA
SINCE DEAD BY LR'S

1. SMT B S SUMANGALA
W/O LATE GANGANNA
AGED ABOUT 61 YEARS
2. SRI G RENUKAPRASAD
S/O LATE GANGANNA
AGED ABOUT 43 YEARS
3. SMT G AMBIKA
D/O LATE GANGANNA
AGED ABOUT 41 YEARS
4. SRI M G SHIVAKUMAR
S/O LATE GANGANNA
AGED ABOUT 37 YEARS
5. SMT NALINAMBIKE
D/O LATE NANJAMMA
GRAND DAUGHTER OF LATE GANGAPPA
W/O RAMAKRISHNAPPA
AGED ABOUT 46 YEARS

Digitally
signed by
MALATESH
K C

Location:
HIGH
COURT OF
KARNATAKA

APPELLANT NO.01 TO 04 ARE
RESIDING AT NO.227, 4TH WARD
ROJIPURA
DODDABALLAPURA-561203



6. SMT UMADEVI
D/O LATE NANJAMMA
GRAND DAUGHTER OF LATE GANGAPPA
AGED ABOUT 41 YEARS

APPELLANT NO.5 AND 6 ARE
R/AT KURUBARAHALLI,
KODEGEHALLI POST,
KASABA HOBLI
DODDABALLAPURA-561203

7. SMT REVAMMA
SINCE DEAD BY LRS

SMT SHAKAMBARI
D/O REVAMMA
AGED ABOUT 58 YEARS,

8. SRI NANJUNDASWAMY
S/O REVAMMA
AGED ABOUT 56 YEARS,
BOTH ARE RESIDING AT NO.119-D
14-A, BAMBOO BAZAAR
MYSURU-570 021

...APPELLANTS

(BY SRI. V.F.KUMBAR, ADVOCATE)

AND:

1. SRI NANJUNADASWAMY
S/O LATE GANGAPPA
AGED ABOUT 81 YEARS
2. SRI REVANNA
S/O LATE GANGAPPA
AGED ABOUT 69 YEARS

RESPONDENTS NO.1 AND 2 ARE
RESIDING AT MYLANAHALLI VILLAGE,
KASABA HOBLI



NELAMANGALA TALUK-562123

SRI PANCHAKSHARI
SINCE DEAD BY HIS LRS

3 SMT KAMALA
W/O LATE PANCHAKSHARI
AGED ABOUT 58 YEARS
R/AT 315/27, 6TH CROSS,
5TH MAIN, VENKATAPURA
KORAMANGALA B B M P
BENGALURU-560034

4. SMT SHIVAMMA
W/O LATE REVANNA
AGED ABOUT 59 YEARS,
R/AT MYLANAHALLI VILLAGE,
KASABA HOBLI
NELAMANGALA TALUK-562123

REPRESENTED BY HER
SPECIAL POWER OF ATTORNEY HOLDER
SRI M R RAVI
S/O REVANNA
AGED ABOUT 45 YEARS
R/AT MYLANAHALLI VILLAGE,
KASABA HOBLI
NELAMANGALA TALUK-562123

...RESPONDENTS

(BY SRI GOPALAKRISHNAMURTHY.C, ADVOCATE FOR C/R4;
R2 AND R3 ARE SERVED;
VIDE ORDER DATED 15.07.2024 NOTICE TO R-1 IS DISPENSED
WITH)

THIS RSA IS FILED UNDER SECTION 100 OF CODE OF
CIVIL PROCEDURE, AGAINST THE JUDGMENT AND DECREE
DATED 12.04.2022 PASSED IN RA.NO.85/2019 ON THE FILE OF
THE VIII ADDITIONAL DISTRICT AND SESSIONS JUDGE
BENGALURU RURAL DISTRICT, BENGALURU ALLOWING THE
APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE
DATED 15.03.2019 PASSED IN O.S.NO.188/2011 ON THE FILE
OF THE ADDL. SENIOR CIVIL JUDGE, NELAMANGALA.



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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri V.F.Kumbar, learned counsel for the appellants and Sri C.Gopalakrishnamurthy, learned counsel for the caveator/ respondent No.4(defendant No.4).

2. Parties are referred to as plaintiffs and defendants as per their original ranking before the Trial Court, for the sake of convenience.

3. The present appeal is filed by plaintiff Nos.1(a), 1(b), 1(c), 1(d), who are legal representatives of plaintiff No.1- Ganganna, plaintiff Nos.3 and 4, and Smt.Shakambari and Sri Nanjundaswamy who are the legal representatives of late Revamma who was plaintiff No.5 before the Trial Court.

4. The facts of the case are as under:

4.1 A suit in O.S No.188/2011 for partition and separate possession of the following immovable properties hereinafter referred as 'suit properties' came to be filed on the file of the Additional Senior Civil Judge, Nelamangala.



- "1. The land bearing Survey No.1/15, measuring 14½ guntas, assessed at Rs.2.07.
2. The land bearing Survey No.1/18, measuring 14½ guntas, assessed at Rs.1.13.
3. The land bearing Survey No.16/2, measuring 21 guntas, assessed at Rs.0.72 paisa.
4. The land bearing Survey No.16/4, measuring 21 guntas, assessed at
5. The land bearing Survey No.38/8, measuring 1 acre assessed at Rs.
6. The land bearing Survey No.38/3, measuring 1 acre, assessed at Rs.2.51.

All the above said properties mentioned at item No.1 to 6 are situated at Mylanahalli village, Kasaba Hobli, Nelamangala Taluk, Bangalore Rural District.

7. The land bearing Survey No.33, measuring 2 acres, assessed at Rs.2.61.
8. The land bearing Survey No.35, measuring 2 acres, assessed at Rs.2.76.

The properties mentioned at item No.7 and 8 are situated at Narayana Rao Palya, Kasaba Hobli, Nelamangala Taluk, Bangalore Rural District."

4.2 The plaintiffs contended that common propositus was Sri Doddanarasappa, who had two children namely Gangappa and



Ranganna. Ranganna said to have died issueless in the year 2004 and Gangappa said to have died in the year 1947.

4.3 Gangappa had two wives namely Nanjamma and Rudramma. First defendant-Nanjundaswamy is the son of Gangappa and Nanjamma, whereas others are the children of Gangappa through second wife Rudramma. Other parties to the suit are the children and grandchildren of Gangappa and his second wife Rudramma.

4.4 Admittedly, suit properties are the properties that were succeeded to by the parties which was originally belonging to the Doddanarasappa.

5. Suit on contest came to be decreed in part and operative portion of the Trial Court judgment reads as under:

"The suit of the plaintiffs against the defendants is hereby decreed in part with cost.

It is declared that, the plaintiffs No.1(a) to 1(d) collectively, the plaintiff No.2, the defendants No.1 and 2 are entitle to 3/15th share each and the plaintiff No.5, the defendant No.3 and the plaintiff No.3 and 4 collectively are entitled to 1/15th share each over the suit properties.



The registered Will dt.08.10.1992 and the Sale Deed dt.03.04.2002 are declared as not binding to the extent of the share of the plaintiffs over the suit properties.

The division of shares declared above shall be made in final decree proceedings. The plaintiffs are also entitled to mesne profits to be worked out in final decree proceedings. The defendant No.1, 2 and 3 are at liberty to get their shares divided by paying requisite court fee.

The I.A.No.9 filed under Order 39 Rule 1 and 2 of Code of Civil Procedure, is accordingly disposed off.

Draw preliminary decree accordingly."

6. Being aggrieved by decreeing of the suit in part, defendant No.4-Shivamma alone filed an appeal in R.A.No. 85/2019 on the file of the VIII Additional District and Sessions Judge, Bengaluru Rural District, Bengaluru.

7. Learned Judge in the First Appellate Court, after securing the records, re-appreciated the material on record and noted that Ranganna i.e., second son of Doddanarasappa who died issueless has executed a Will in favour of Shivamma-fourth defendant in the suit. Shivamma/fourth defendant is the wife



of Revanna who is one of the sons of Gangappa through his second wife Rudramma.

8. First Appellate Court upheld the Will executed by Ranganna during his lifetime. Therefore allowed the appeal and modified the decree by denying the shares to the plaintiffs in item Nos.2, 4, 5, 7 and 8 of the suit properties.

9. Being aggrieved by the said judgment of the First Appellate Court dated 12.04.2022 passed in R.A.No.85/2019, plaintiff Nos.1(a)(b)(c)(d), plaintiff Nos.3, 4 and legal representatives of deceased Revamma who is plaintiff No.5 have filed the present appeal.

10. At the time of admitting the appeal, co-ordinate Bench of this Court has framed the following substantial questions of law:

(i) Whether the finding recorded by both the Courts below that item Nos.2, 4 and 5 are the undivided properties of the plaintiff and defendant is just and proper?

(ii) Whether the finding recorded by the Courts below with regard to item Nos.7 and 8 requires to be interfered with in this appeal?



11. Learned counsel for the appellants reiterating the grounds urged in the appeal memorandum would contend that since the relationship among the parties is admitted and Ranganna having died issue less in the year 2004, had no right, title or interest to bequeath item Nos.7 and 8 of the suit properties by way of Will dated 08.10.1992 in favour of the defendant No.4- Shivamma who is the wife of Revanna, who is the second son of Gangappa through his second wife Rudramma.

12. He would further contend that in the absence of any independent right possessed by Ranganna, (Son of Doddanarasappa and brother of Gangappa), in respect of item Nos.7 and 8, acquisition of any property during the existence of joint family is to be treated as joint family property.

13. Therefore, Trial Court rightly granted share to the plaintiffs in all properties. Learned Judge in the First Appellate Court while re-appreciating the same evidence and same material evidence, committed error in holding that Will dated 08.10.1992 executed by Ranganna in favour of defendant no. 4 has been established and, modifying the decree of the Trial



Court has resulted in miscarriage of justice and sought for allowing the appeal.

14. Sri Kumbar would also contend that insofar as item Nos.2, 4 and 5 are concerned, the reasoning assigned by the learned Judge in the First Appellate Court, while carrying out the discussion on point Nos.3 and 4 has committed an error in holding that plaintiffs have no share in respect of item Nos.2, 4 and 5 of the suit properties and, sought for setting aside the judgment of the First Appellate Court by allowing the Second Appeal and answering the substantial questions of law in favour of the appellants.

15. *Per contra*, Sri C.Gopalakrishnamurthy, learned counsel for the caveator/respondent No.4(defendant No.4) supports the judgment of the First Appellate Court.

16. He would further contend that Ranganna had the independent income. He acquired Item Nos.7 and 8 which has been established by placing cogent material evidence on record which the learned Trial Judge had ignored.



17. Learned Judge in the First Appellate Court rightly appreciated the material on record by assigning proper reasons and also noting the fact that Will is proved as is required under the provisions of Indian Evidence Act and Indian Succession Act. Therefore, rightly modified the decree passed by the Trial Court in excluding share of the plaintiffs in respect of Item Nos.7 and 8 of the plaint schedule properties.

18. He would further contend that insofar as item Nos.2, 4 and 5 are concerned, revenue records would make it clear that in respect of those properties, share had already been granted to the plaintiffs and other defendants. What has been mentioned in the plaint is, the property numbers after the properties were mutated in respect of other sharers by giving a sub number. Therefore, learned Judge in the First Appellate Court rightly modified the decree while answering point Nos.3 and 4. Therefore sought for dismissal of the appeal by answering the substantial questions of law against the appellants.

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



20. On such perusal of the material on record, there is no dispute as to the relationship among the parties, so also nature of properties. Insofar as Item Nos.7 and 8 are concerned, except making an omnibus statement that all the properties are joint family properties, there is no other material placed on record by the plaintiffs.

21. In other words, initial burden has not been discharged by the plaintiffs to establish that item Nos.7 and 8 are also joint family properties and that Ranganna had no exclusive right to bequeath the said properties in favour of the defendant No.4.

22. In the absence of sufficient proof placed by the plaintiffs, being the propounder of Will dated 08.10.1992 marked as Exhibit D-4, on behalf of the defendants, sufficient material evidence is placed on record not only to prove the Will, but also to place on record the grant certificate as well as the sale deed as to how Ranganna got the property at item Nos.7 and 8.

23. In the Will itself, there is a specific mention that Ranganna was not married and in order to avoid future dispute he is executing the Will in favour of the defendant No.4.



Ranganna has also mentioned as to the title in respect of item Nos.7 and 8 of the suit properties and how he got the right over those properties to bequeath.

24. It is also specifically mentioned that since Ranganna is unmarried and his nephew Revanna is being reared by him as his son, and said Revanna is also discharging the required obligations as that of a son to Ranganna, and also taking note of the fact that the day to day requirements of Ranganna is being met by wife of said Revanna, namely Shivamma-4th defendant, Ranganna has executed the Will in favour of Shivamma who is the wife of Revanna.

25. Admittedly, the Will has been registered. Witnesses have attested the Will in the presence of the executor. Further, Shivakumar who is son of the attesting witness, viz., late Madaiah is examined as DW-3, who has identified the signature of his father Madaiah in the Will. Admittedly, Shivakumar has been examined because the attesting witness Madaiah was no more.



26. Likewise, Basappa is examined as DW-2, who has stated that Ranganna used to carry out the quarry work and eke out his livelihood and had purchased suit item Nos.7 and 8.

27. Rajashekhar is examined as DW-4 who has filed an affidavit supporting the case of defendant No.4, who again identified the signature of Shivanna, yet another attesting witness to the Will.

28. Thus, the propounder of the Will namely defendant No.4, has discharged necessary burden in proving the Will in the absence of the attesting witnesses who were no more at the time of proving the Will marked at Exhibit D-4 which was questioned before the Court of law.

29. Since Exhibit D-4 is a registered Will and the same was questioned before the Court long after its registration, the Trial Court was required to take into consideration the probative value of the registered document and the oral evidence of the children of attesting witnesses.

30. Furthermore, as already pointed out, since the plaintiffs have not placed any material on record to substantiate that



Ranganna did not had any independent income and he acquired item Nos.7 and 8 of the suit properties out of the joint family income, the learned Judge in the First Appellate Court by re-appreciating the very same material evidence on record, excluding the share to the plaintiffs in Item Nos.7 and 8 is thus just and proper.

31. Insofar as Item Nos.2, 4 and 5 are concerned, 4th defendant was successful in establishing before the First Appellate Court that item Nos.2, 4 and 5 are given the sub numbers after mutation in respect of the revenue entries as all the sharers got share in the suit property. And only on the ground that sub numbers have been given, no new right has been carved out to the plaintiffs to claim for partition in those items of the properties, especially in the absence of any other material placed on record.

32. It is not in dispute that plaintiffs and other sharers have got the share in the very same survey number of item Nos.2, 4 and 5 with different sub numbers. Therefore, error committed by the learned Trial Judge in granting the share in respect of item Nos.2, 4, 5, 7 and 8 is rectified by the learned Judge in



the First Appellate Court not only by assigning proper and cogent reasons, but also by re-appreciating the very same material evidence on record and on perusal of the documentary evidence placed on record by the parties.

33. No doubt, Sri Kumbar tried to impress upon the Court about the death of the common propositus and Ganganna.

34. Taking note of the age of the parties mentioned in the cause title, such an argument would not hold water further.

35. As such, the first substantial question of law that item Nos.2, 4 and 5 are undivided properties is concerned, cannot be answered in favour of the plaintiffs inasmuch as, in the very same survey number the plaintiffs and other sharers have also got share and what has been mentioned in item Nos.2, 4 and 5 is only a sub number of the very same land after the mutation has taken place.

36. Insofar as the second substantial question of law is concerned, material evidence would substantiate that item Nos.7 and 8 are the individual properties of Ranganna and therefore Ranganna had every power to bequeath the same in



favour of the fourth defendant who is none other than the wife of second son of Gangappa through his second wife Rudramma.

37. Accordingly, both the substantial questions of law are answered against the appellants.

38. Consequently, the following:

ORDER

- (i) Appeal ***dismissed***.
- (ii) No order as to costs

Sd/-
(V SRISHANANDA)
JUDGE

kcm
List No.: 1 Sl No.: 80