



CNR: KAHC010247882007

NC: 2026:KHC:50496
RSA No. 1125 of 2007

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR SECOND APPEAL NO. 1125 OF 2007

BETWEEN:

1. RANGAPPA
S/O LATE JOOLAPPA
SINCE DEAD BY HIS LRs
- 1(A) SMT. BHAGYAMMA
AGED ABOUT 65 YEARS
D/O LATE RANGAPPA
- 1(B) JOOLAPPA
AGED ABOUT 52 YEARS
S/O LATE RANGAPPA
- 1(C) RANGADHAMA
AGED ABOUT 46 YEARS
S/O LATE RANGAPPA
- 1(D) YASHODAMMA
AGED ABOUT 44 YEARS
D/O LATE RANGAPPA
- 1(E) VISHWANATH
AGED ABOUT 42 YEARS
S/O LATE RANGAPPA
- 1(F) KUMAR
AGED ABOUT 38 YEARS
S/O LATE RANGAPPA

ALL ARE R/AT CHENENAHALLI VILLAGE
KASABA HOBLI

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GOWRIBIDANUR TALUK
CHIKKABALLAPURA DISTRICT

...APPELLANTS

(BY SRI. K.B. JAYALAKSHMI, ADVOCATE FOR A1(A TO F))

AND:

1. SRI C.V. LAKSHMIPATHI
S/O LATE VENKATESHAPPA
MAJOR IN AGE
R/AT CHENENAHALLI VILLAGE
KASABA HOBLI, GOWRIBIDANUR TALUK
KOLAR DISTRICT.

...RESPONDENT

(BY SRI. L. SRINIVASA BABU, ADVOCATE)

THIS IS RSA FILED U/S. 100 OF CPC AGAINST THE JUDGEMENT & DECREE DATED 10.2.2007 PASSED IN R.A.NO.156/2004 ON THE FILE OF THE CIVIL JUDGE (SR.DN.) & JMFC, CHICKBALLAPUR, DISMISSING THE APPEAL AND CONFIRMING THE JUDGEMENT AND DECREE DATED 6.10.2004 PASSED IN OS.NO. 87/2002 ON THE FILE OF THE PRL.CIVIL JUDGE (JR.DN.) & JMFC, GOWRIBIDANUR.

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

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL JUDGMENT

The present second appeal is filed by the defendants questioning the concurrent findings of the Courts below.

2. Facts leading to the case are as under:

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The plaintiff – C.V. Lakshmipathi instituted O.S.No.87/2002 seeking declaration of his title and consequential relief of permanent injunction in respect of the suit schedule properties. The plaintiff traced his title to his father Venkateshappa, who, according to the plaintiff, was taken in fosterage by Venkataswamappa and his wife Lakkamma. Insofar as Item No.1 is concerned, the plaintiff asserted that Venkataswamappa had acquired the property under a registered sale deed dated 18.07.1949 and thereafter bequeathed the same under a registered Will dated 27.06.1978 in favour of the plaintiff's father. In respect of Item Nos.2 and 3, the plaintiff contended that the said properties belonged absolutely to Muddurangappa, who had gifted the same in favour of Lakkamma under a registered gift deed dated 19.09.1978. Since Venkateshappa was taken in fosterage by Venkataswamappa and Lakkamma, the plaintiff claimed that the properties thereafter devolved upon his father and, consequently, upon the plaintiff.

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3. The defendants contested the suit. Insofar as Item No.1 is concerned, the Courts below, on appreciation of the evidence on record, have concurrently held that Venkataswamappa had acquired the property under a registered sale deed dated 18.07.1949 after partition of the ancestral properties between himself and his brothers in the year 1949. The Courts below have, therefore, concurrently concluded that the acquisition under the sale deed dated 18.07.1949 was subsequent to the partition and that Venkataswamappa had acquired absolute title over Item No.1. In respect of Item Nos.2 and 3, the principal defence was that the properties were ancestral properties of the defendants' family and, therefore, Muddurangappa had no right to execute a gift deed conveying the entire property. The defendants also contended that Muddurangappa had died on 19.12.1974, whereas the gift deed relied upon by the plaintiff is dated 19.09.1978, and consequently, the said gift deed was void

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and incapable of creating any right in favour of the plaintiff's predecessor-in-title.

4. The trial Court, on the basis of the rival pleadings, framed appropriate issues and permitted the parties to lead evidence. The plaintiff, in support of his claim, produced the Will and examined the attesting witnesses thereto. The plaintiff also produced the registered gift deed dated 19.09.1978, which came to be marked as Ex.P15. In rebuttal, the defendants relied upon Ex.D1, stated to be a death certificate issued by the jurisdictional Tahsildar, to establish that Muddurangappa had died on 19.12.1974. The plaintiff disputed the authenticity and genuineness of the said document and, since the defendants had placed reliance upon the death certificate, sought to secure a certified copy of the same from the jurisdictional authority. The jurisdictional Tahsildar, who had issued Ex.P17, issued a certificate/endorsement stating that the death certificate

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relied upon by the defendants was not available in the original records. The plaintiff's counsel produced the said certificate before the trial Court along with a memo.

5. Taking note of the aforesaid circumstances and the documentary evidence placed on record, the trial Court held that the plaintiff had established his title to the suit schedule properties on the basis of the testamentary disposition in respect of Item No.1 and the registered gift deed in respect of Item Nos.2 and 3. The defendants failed to substantiate their contention that Muddurangappa had died in the year 1974 or that the properties covered under the gift deed were ancestral properties in which Muddurangappa had no absolute right or authority to execute the gift deed. Accordingly, the trial Court decreed the suit.

6. Aggrieved by the judgment and decree of the trial Court, the defendants preferred R.A.No.156/2004. The appellate Court, being the final fact-finding Court,

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independently re-appreciated the oral and documentary evidence available on record and concurred with the findings recorded by the trial Court. The appellate Court also noticed that an application filed by the plaintiff seeking production of the original records/documents from the concerned authority had not been disposed of by the trial Court. However, upon examining the material available on record, the appellate Court concluded that, even in the absence of such additional material, the defendants had failed to establish their defence either as to the alleged death of Muddurangappa in the year 1974 or as to the ancestral character of Item Nos.2 and 3. The appeal was accordingly dismissed. These concurrent findings are assailed in the present second appeal.

7. The principal question which arises for consideration is whether the defendants have succeeded in dislodging the plaintiff's title to the suit schedule properties. The plaintiff's claim in respect of Item No.1 is

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founded upon the registered sale deed dated 18.07.1949 and the subsequent registered Will dated 27.06.1978 executed by Venkataswamappa. In respect of Item Nos.2 and 3, the plaintiff relies upon the registered gift deed dated 19.09.1978 executed by Muddurangappa in favour of Lakkamma.

9. This Court vide order dated 23.07.2010 has admitted the appeal on the following substantial questions of law:

"(i). Whether the Courts below were justified in holding the date of death of Muddurangappa as 8.7.1984 when Ex.P16 and Ex.P.17 are not proved in accordance with the law?

(ii). Whether the appreciation of evidence by the Courts below is perverse?"

10. Heard the learned counsel appearing for the appellants/defendants and the learned counsel appearing



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for the respondent/plaintiff. Perused the records of the Courts below.

Finding on substantial questions of law (i) and (ii)

11. The first substantial question of law essentially concerns the rival claims regarding the date of death of Muddurangappa. The defendants relied upon Ex.D1, which according to them was the death certificate issued by the jurisdictional Tahsildar and which recorded the date of death of Muddurangappa as 19.12.1974. The plaintiff, on the other hand, asserted a different date of death and disputed the genuineness and evidentiary value of Ex.D1. Since the defendants themselves placed reliance upon Ex.D1, the plaintiff sought to secure the corresponding original/certified record from the jurisdictional authority. Significantly, the jurisdictional Tahsildar subsequently issued an endorsement/certificate stating that the document relied upon by the defendants was not available in the original records.

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12. The said circumstance assumes considerable significance. The defendants, having relied upon Ex.D1 to establish that Muddurangappa had died on 19.12.1974, were required to establish the authenticity and evidentiary foundation of the said document, particularly when its genuineness was specifically disputed by the plaintiff. The subsequent endorsement issued by the jurisdictional Tahsildar regarding non-availability of the document in the official records materially undermines the evidentiary value of Ex.D1. The trial Court, therefore, was justified in not placing reliance upon Ex.D1 in the absence of satisfactory evidence establishing its authenticity.

13. The grievance of the appellants that Ex.P16 and Ex.P17 were not proved in accordance with law does not, in the facts of the present case, advance their defence. The burden was upon the defendants to establish their specific plea that Muddurangappa had died on 19.12.1974 and, consequently, could not have executed the gift deed



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dated 19.09.1978. Apart from Ex.D1, which itself was seriously impeached by the material subsequently produced from the office of the jurisdictional Tahsildar, no cogent and independent evidence was placed by the defendants to establish the alleged date of death. The Courts below, therefore, cannot be said to have committed an error of law in declining to accept the defendants' plea.

14. There is yet another aspect which requires consideration. The plaintiff's title to Item Nos.2 and 3 is founded upon the registered gift deed dated 19.09.1978. The defendants, in order to defeat the said document, principally contended that the properties were ancestral properties and that Muddurangappa had no authority to gift the same. However, except making such an assertion in the written statement, the defendants have not produced any cogent documentary or oral evidence to establish the ancestral character of Item Nos.2 and 3.

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15. It is well settled that a coparcener cannot ordinarily make a gift of coparcenary property in derogation of the rights of the other coparceners, and a purported gift in such circumstances is liable to be held void. This principle has also been recognised by the Division Bench of this Court in ***Babu Mother Savavva Navalgund & Others v. Gopinath***¹. However, the application of the said principle necessarily depends upon the foundational fact that the property in question is coparcenary or ancestral property and that the person executing the gift had no exclusive or transferable interest therein.

16. In the present case, the defendants have failed to establish that foundational fact. There is no satisfactory evidence on record to demonstrate that Item Nos.2 and 3 were ancestral properties descending from the original propositus Rangappa, the father of Muddurangappa and

¹ AIR 2000 KAR 27



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his brothers. On the contrary, the recitals in the gift deed itself indicate the existence of defined shares and refer to other persons, including Yallappa, the grandfather of the plaintiff, as co-owner. Therefore, the mere use of the expression "ancestral property" by the defendants, without establishing the source of title and the nature of the interest held by Muddurangappa, cannot result in the registered gift deed being rendered void.

17. The defendants were required to establish that Muddurangappa had no exclusive or transferable interest in Item Nos.2 and 3. No such evidence has been forthcoming. In the absence of proof regarding the ancestral or coparcenary character of the properties, the contention that Muddurangappa had no locus or authority to execute the registered gift deed dated 19.09.1978 cannot be accepted.

18. The fact that the gift deed itself refers to the share of Muddurangappa and also discloses the existence



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of other co-owners is of considerable significance. Such recital cannot, by itself, establish that the property continued to retain the character of coparcenary property. At the highest, it indicates that Muddurangappa was asserting and conveying the interest/share held by him. The defendants, who sought to invalidate the transaction on the ground of its being a gift of ancestral/coparcenary property, were therefore required to establish the precise nature of Muddurangappa's title. Having failed to discharge that burden, their defence cannot be accepted.

19. Further, the registered gift deed dated 19.09.1978 has not been challenged by the defendants in an appropriate proceeding. No independent action appears to have been instituted seeking cancellation of the said registered instrument on the ground that Muddurangappa had no title or authority to execute the same. The rights flowing from the registered instrument have, therefore, remained unquestioned for a considerable period. This

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circumstance also assumes significance while examining the belated attempt of the defendants to dispute the validity of the gift deed in the present proceedings.

20. The appellate Court has also noticed that the trial Court had not passed a specific order on the application filed by the plaintiff for securing the original documents from the concerned authority. However, the appellate Court, upon independently considering the material already available on record, found that the defendants had failed to establish the foundational facts necessary to defeat the plaintiff's claim. Merely because the trial Court had not separately disposed of the application does not, in the facts of the present case, render the ultimate findings perverse, particularly when the appellate Court itself re-appreciated the evidence and arrived at an independent conclusion.

21. The scope of interference in a second appeal is confined to substantial questions of law. Both the trial



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Court and the first appellate Court have concurrently appreciated the oral and documentary evidence. The findings regarding the acquisition of Item No.1 by Venkataswamappa under the registered sale deed dated 18.07.1949, the testamentary disposition under the registered Will dated 27.06.1978, and the validity of the registered gift deed dated 19.09.1978 in respect of Item Nos.2 and 3 are findings based on appreciation of evidence. No perversity, illegality or misapplication of any settled principle of law is demonstrated warranting interference under Section 100 of the Code of Civil Procedure,1908.

22. On a cumulative consideration of the material on record, this Court is of the view that the defendants have failed to establish that Muddurangappa had died on 19.12.1974 or that Item Nos.2 and 3 were ancestral/coparcenary properties in which he had no right or authority to execute the registered gift deed dated



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19.09.1978. The findings recorded by the Courts below are based on proper appreciation of the evidence and do not suffer from perversity. Accordingly, the substantial question of law No.(i) is answered in the affirmative and substantial question of law No.(ii) is answered in the negative.

Consequently, the second appeal stands ***dismissed***. The judgment and decree passed by the Courts below are affirmed.

In view of the dismissal of the appeal, pending interlocutory applications, if any, do not survive for consideration and stand disposed of accordingly.

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(SACHIN SHANKAR MAGADUM)
JUDGE

ALB
List No.: 3 Sl No.: 2