



CNR: KAHC010331242021

NC: 2026:KHC:48192
RFA No. 1810 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE T.M.NADAF

REGULAR FIRST APPEAL NO. 1810 OF 2021 (PAR)

BETWEEN:

SRI.N.NAGESH
S/O.LATE S.H NAGARAJU,
AGED ABOUT 42 YEARS,
NO.20, 9TH 'C' MAIN,
OPP TO SRINIVASA CLINIC,
BYRAWESHWARA NAGAR,
NAGARABHAVI MAIN ROAD,
BANGALORE- 72.

...APPELLANT

(BY SMT. VISHMAYA D.A., ADVOCATE FOR
SRI. PARAMESHWARA N. HEGDE, ADVOCATE)

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AND:

1. SMT. SHIVALINGAMMA
W/O. LATE S.H NAGARAJU,
AGED ABOUT 65 YEARS,
NO.10, 3RD CROSS, CHOLUR PALYA,
PIPELINE, MAGADI ROAD,
BANGALORE-23.
2. SMT.N.MANJULA
W/O.D.V RAVI,
AGED ABOUT 46 YEARS,



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NO.95, 2ND CROSS, 2ND STAGE,
BANASHANKARI,
GANGADHARANAGAR,
SARAKKI, BANGALORE-78.

3. SMT.N.MAMATHA
W/O.GANGADARAI, AH,
AGED ABOUT 41 YEARS,
NO.1/406-2, OPP TO ASHOK LAYLAND,
SLV NAGAR,
ZUZUWADI,
HOSUR- 635126, TAMIL NADU.

...RESPONDENTS

(BY SRI. ARCHANA MURTHY, ADVOCATE)

THIS RFA IS FILED UNDER SECTION 96 R/W ORDER 41
RULE 1 OF CPC AGAINST THE JUDGMENT AND DECREE DATED
02.08.2021 PASSED IN OS No.9614/2014 ON THE FILE OF THE
VII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE,
BENGALURU, DISMISSING THE SUIT FOR PARTITION AND
SEPARATE POSSESSION.

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

CORAM: HON'BLE MR. JUSTICE T.M.NADAF



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ORAL JUDGMENT

This appeal by the plaintiff assailing the Judgment and decree dated 02.08.2021 in OS.No.9614/2014 passed by the VII Additional City Civil and Sessions Judge (CCH-19), Bengaluru¹.

Under the impugned judgment and decree, the Trial Court dismissed the suit filed by the plaintiff seeking partition and separate possession by metes and bounds.

2. Parties are referred to as per their ranking before the trial Court.

3. Facts germane to file the present appeal are as under:

3.1 The plaintiff filed the suit for the following reliefs in respect of Schedule 'A' to 'C' properties:

- a) *"Plaintiffs are entitled for partition of 1/4th share in all the suit schedule properties and putting his 1/4th share in his separate possession and enjoyment by*

¹ 'Trial Court' for short



way of preliminary decree followed by the final decree.

b) First defendant is to give proper accounts in respect of suit schedule 'A, B & C' properties by way of measne profit from the date of the suit till the share of the plaintiff is handed over to his possession.

c) Any other relief/s."

As per plaintiff:

3.2 The plaintiff is one of the children born from the wedlock of S.H.Nagaraju and defendant No.1-Shivalingamma. The genealogy stated in paragraph No.3 of the plaint is not in dispute. The plaintiff further claims that the father late S.H.Nagaraju, has been allotted joint family property under a partition between him and his sibblings. Whereunder, Sy.No.75/1A is agricultural land to an extent of 1 acre 19 guntas including mango trees situated at Madapura Village, Kasaba Hobli, Ramanagara Taluk, under registered Partition Deed dated 13.09.2001, was allotted to him.

3.3 The plaintiff further claims that the father of the plaintiff late S.H.Nagaraju, on 15.12.2006 disposed of the



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above said property under registered power of attorney by receiving full sale consideration amount and out of the said sale consideration, the plaintiff father purchased a residential property in Sy.No.24/2014 to an extent of 0-1.1 guntas of Kumbalagudu Village, morefully described as schedule 'A' property. He further claims that the father of the plaintiff acquired residential property bearing No.10 situated at 3rd cross, Pipe line, Vijayanagara, Bengaluru, morefully stated as schedule 'B' property. So also he acquired another residential property stated in Schedule 'C', bearing property bearing No.31/12-1 situated at Cholurpalya, Magadi road, Bengaluru-23. The properties were purchased out of the sale consideration of the property fallen to his share.

3.4 The plaintiff further claims that the property in 'A' schedule was purchased out of the sale consideration of land bearing Sy.No.75/1A allotted to his share under the partition deed dated 13.09.2001, but in the name of



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defendant. During his lifetime, Sri.S.H.Nagaraju, constructed two residential houses in schedule 'A' property. In both 'B' and 'C' schedule property, there is a ground, first and second floor construction. The constructions on 'B' and 'C' properties comprising of 10 tenements of residential houses and fetching monthly income to the tune of Rs.35,000/- p.m.

3.5 The plaintiff further claims that Sri.H.S.Nagaraju, passed away on 26.11.2013 intestate, leaving behind the plaintiff and defendants as his legal heirs. It is their further claim that during the lifetime of his father S.H.Nagaraju, he was taking care of the family of plaintiff and defendants and after his death, defendant No.1-mother is maintaining the joint family consisting of plaintiff and defendants. Subsequent to death of the father, when the plaintiff demanded share in the property, the same was denied by defendant No.1. Accordingly, the present suit is in OS.No.9614/2014 filed seeking 1/4th



share in all the suit schedule properties and for separate possession also for mesne profits.

3.6 Upon notice, the defendant Nos.1 and 2 appeared and defendant No.1 filed written statement and defendant No.2 adopted the same. However, defendant No.3 though served remained absent and placed exparte.

3.7 Defendant No.1 while denying the contents stated in the plaint, admitted the relationship, inter alia stated that the properties at schedule A, B and C were purchased prior to the partition in the year 2001. It is the specific case of defendant No.1 that the 'A' schedule property was purchased by her with the help of her father. No sale consideration as contented by the plaintiff was paid by her husband H.S.Nagaraju. It is her specific contention that Sri.H.S.Nagaraju during his lifetime, on 18.05.2011, executed a registered Will whereunder the life interest created in favour of defendant No.1 and subsequent to her time the property should devolve on



their children. In that view of the matter, the contention of the plaintiff that his father H.S.Nagaraju died intestate is denied.

3.8 In the Will, Schedule 'C' property is given to defendant No.1 and after her lifetime, it goes entirely to plaintiff and so far as 'B' schedule property is concerned it is also given to defendant No.1 creating life interest and after her demise 'B' schedule property in its entirety goes to daughters i.e., defendant Nos.2 and 3. In that view of the matter, the suit itself is not sustainable and is liable to be rejected.

3.9 The trial Court, upon completion of pleadings framed following issues:

1. *"Whether the plaintiff proves that suit schedule properties are the joint family properties of plaintiff and defendants?"*
2. *Whether the plaintiff proves that suit 'A' schedule property was purchased in the name of 1st defendant out of joint family funds?*
3. *Whether the plaintiff proves that suit B and C schedule properties was purchased out of joint family funds?*
4. *Whether the 1st defendant proves that suit A schedule property is her self acquired property?*



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5. *Whether the defendants prove that Late S.H.Nagaraju had executed a Registered Will dtd:18.5.2011?*
6. *Whether the plaintiff proves that he is entitled for mesne profit?*
7. *Whether the plaintiff proves that he is entitled for 1/4th share in the suit schedule properties?*
8. *Whether the plaintiff proves that he is entitled for the relief of partition and separate possession of suit schedule properties?*
9. *What order or decree?"*

3.10 The plaintiff in order to prove his case examined himself as PW1 and produced in all 16 documents and marked them as Ex.P1 to Ex.P16. The defendants neither examined any witnesses nor produced any document.

3.11 The trial Court after hearing the plaintiff, dismissed the suit, holding that the plaintiff has failed to prove that the suit schedule properties were purchased out of sale consideration received in respect of Sy.No.75/1A, the property allotted to the share of S.H.Nagaraju, under the registered partnership deed on 13.09.2001. The trial Court further held that the properties A, B and C to the schedule were purchased prior to the partition deed. 'A'



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schedule property purchased by defendant No.1 and 'B' and 'C' by deceased H.S.Nagaraju. Since the plaintiff has failed to prove that the sale proceeds of the joint family property invested in purchasing of the properties not established in accordance with law, dismissed the suit. It is this judgment and decree passed by the Trial Court is called in question in this appeal.

3.12 The trial Court at paragraph No.12 of its judgment reasoned its order for answering Issue Nos.1, 2 and 3 in 'negative' against the plaintiff, which reads as under:

"12. Further, Ex.P14 is the sale deed dtd:13.2.1976 in favour of S.H.Nagaraju by R.Gangabyraiah reflecting that property was purchased by S.H Nagaraju, this is pertaining to schedule 'C' of the suit property and Ex.P7 to P9 - khatha certificate, khata extract and property tax receipt standing in the name of S.H Nagaraju, father of plaintiff and Defendant Nos.2 and 3, husband of Defendant No.1. Ex.P10 and P11-encumbrance certificates reflecting the 'C' schedule of suit property. To be noted that Schedule B and C properties were also purchased on 11.5.1987 and 13.2.1976 respectively, much prior to the sale of joint family property Ex.P12- sale deed dtd 20.4.2009. Hence, Schedule B and C properties are neither the joint family properties nor were purchased from joint family funds. No document has been put-forth by the plaintiff as to the schedule properties that they are the joint family



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properties and were acquired by joint family funds. Further, In his cross-examination PW.1 has admitted that, his father was working in Ragi Machine and was getting rental income from the houses he had constructed. Moreover the recitals of the Ex.P1 – sale deed dtd:6.1.2007, Ex.P13 is the sale deed dtd: 11.5.1987 and Ex.P14 is the sale deed dtd: 13.2.1976 are clear as to their acquisition. Hence, considering the above facts and applying the principles of the authority referred supra, it is concluded that plaintiff has failed to establish that the suit schedule properties are the joint family properties and 'A' schedule property was acquired in the name of Defendant No.1 out of joint family funds and also that Schedule B & C schedule properties were acquired out of joint family funds. Hence, for the above reasons, I answered issue Nos.1, 2 and 3 in the negative."

4. Heard Ms.Vismaya D.A, learned counsel appearing for Sri.Parameshwar N.Hegde, learned counsel for the appellant and Smt.Archana Murthy, learned counsel appearing for the respondents.

5. Ms.Vismaya D.A, with all vehemence submits that defendant No.1 in the written statement has clearly admitted that the property at Schedule 'B' and 'C' were purchased by H.S.Nagraju. However, Schedule 'A' was purchased by her. The defendants have not led any evidence to discredit the case of the plaintiff before the



trial Court. Though they have taken shelter under the Will, they have not led any evidence nor produced any document to corroborate and support the contentions stated in the written statement. The trial Court failed to consider the fact that though the plaintiff has failed to prove, even for the sake of arguments, that the properties at schedule A to C, purchased out of the sale proceeds of joint family property allotted to the share of plaintiff by H.S.Nagraju in the year 2001, but the fact remains that the properties were purchased by H.S.Nagaraju. Though the 'A' schedule property is in the name of defendant No.1 but the sale proceeds paid by late H.S.Nagaraju and since both Schedule 'B' and 'C' purchased by him and he having died intestate, the plaintiff is entitled for a share under Section 8 of the Hindu Succession Act, 1956. The trial Court has failed to consider that the plaintiff is entitled for 1/4th share and accordingly, sought to allow the appeal.

6. Per contra, Madam Archana, with all vehemence submits that, though the defendants have not led any



evidence, the trial Court at paragraph No.12, has held that the plaintiff who has approached the Court for the relief has failed to substantiate his claim and accordingly, dismissed the suit.

7. Madam Archana, further submits that the plaintiff has not produced any document to prove that the sale proceeds so far as schedule 'A' property was paid by H.S.Nagaraj. In that view of the matter, the plaintiff is not entitled for any share in schedule 'A' property. So far as 'B' and 'C' schedule property are concerned, in view of the Will, wherein the life interest created in favour of defendant No.1 and after her time, 'C' schedule property shall go in its entirety to the plaintiff and 'B' schedule property shall go to the daughters, and the same is better interest of plaintiff. In these circumstances, there is no scope to interfere with the well-considered and well-reasoned judgment passed by the trial Court and sought to dismiss the appeal. However Madam Archana, is not in



serious dispute with the proposition of law enumerated under Section 8 of the Hindu Succession Act, 1956.

8. Having considered the rival submissions, this Court has perused entire appeal papers as well as trial Court record.

9. Though the plaintiff has failed to prove his contention with respect to the sale proceeds of family property were invested for the purchase of the schedule 'A' to 'C' property. However, the fact remains that the defendants equally failed to prove the Will. Though the Will created some right in favour of plaintiff, that alone cannot be the basis to consider that the Will executed by deceased H.S. Nagaraju is proved. The Will required to be proved in terms of provisions of Indian Succession Act, 1925, read with the provisions of the Indian Evidence Act. The defendants having taken shelter under the Will, failed to prove the Will in accordance with law.



10. So far as the contention of defendant No.1, in respect of 'A' schedule property, the plaintiff has failed to prove, that the sale consideration in respect of 'A' Schedule property though purchased in the name of defendant No.1, in its entirety paid by H.S.Nagaraju. In that view of the matter, the plaintiff is not entitled for any share in the property purchased by defendant No.1, during her life time, as the property is her self-acquired property and a Stridhan property, on which only defendant No.1, and non else, has got exclusive right, title, interest and possession.

11. So far as schedule 'B' and 'C' property, this Court finds some force in the argument of Miss.Vismaya D.A, though the Court has considered that the plaintiff has failed to prove the sale proceeds of the Joint Family property bearing Sy.No.75/1A are invested in the purchase of 'B' and 'C' properties. In view of admission in written statement, the properties at 'B' and 'C' purchased by H.S.Nagaraju and the fact remains that the father of the



plaintiff and defendant Nos.2 and 3 died in the year 2013. Though the contention of Will is taken as stated above, the same has not been proved. In that view of the matter, the Court has to hold that H.S.Nagaraju died intestate. In that view of the matter, the plaintiff and defendants being the sole legal representatives of H.S.Nagaraj are entitled for the property in equal share under Section 8 of the Hindu Succession Act, 1956. Only in 'B' and 'C' properties, this has been missed by the trial Court, while considering the case of the plaintiff. In that view of the matter, the appeal succeeds to the extent of Schedule 'B' and 'C' property.

12. Accordingly, this Court proceeds to pass the following:

ORDER

- I. Appeal is ***allowed in part.***
- II. The judgment and decree dated 02.08.2021 in OS.No.9614/2014 passed by the VII Additional City Civil and Sessions Judge (CCH-19),



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Bengaluru, is modified and accordingly suit is decreed in part, in respect of 'B' and 'C' property, holding that the plaintiff is entitled for 1/4th share in each of the property along with the defendants. So far as mesne profits claimed by the plaintiff is concerned, the same shall be worked out in FDP proceedings.

III. Registry is directed to draw a preliminary decree accordingly.

IV. In the facts and circumstances of the case, considering the relationship between the parties, there is no order as to the Costs.

Sd/-
(T.M.NADAF)
JUDGE

PK
List No.: 1 Sl No.: 40