



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

REGULAR FIRST APPEAL NO. 744 OF 2021 (PAR)

BETWEEN:

1. B.S. INDUMATHI
D/O LATE B.R. SATYANARAYANA SETTY,
AGED ABOUT 55 YEARS
R/AT NO.116/1, 25TH A CROSS,
14TH MAIN ROAD, 3RD BLOCK,
JAYANAGAR EAST, BANGALORE-560011

...APPELLANT

(BY SRI. SATHEESH T.V., ADVOCATE)

AND:

1. SRI. B.S. KUMAR
S/O LATE B.R. SATYANARAYANA SETTY,
AGED ABOUT 62 YEARS,
R/AT NO.248, 3RD MAIN,
10TH CROSS, BANASHANKARI
2ND STAGE, PADMANABHANAGAR
BANGALORE - 560 070

2. SRI. B.S. NAGESH
S/O LATE B.R. SATYANARAYANA SETTY,
AGED ABOUT 65 YEARS,
R/AT NO.116/1, 25TH A CROSS,
14TH MAIN ROAD, 3RD BLOCK,
JAYANAGARA EAST,
BANGALORE - 560 011

...RESPONDENTS

(BY SRI. PRADEEP H.S., ADVOCATE FOR R1

SRI. RAMESH ANANTHAN, ADVOCATE FOR R2)

Digitally
signed by
THEJAS
KUMAR N
Location:
HIGH
COURT OF
KARNATAKA



THIS RFA IS FILED UNDER SEC.96 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 29.08.2020 PASSED IN OS.NO. 2897/2009 ON THE FILE OF THE XXXVIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU CITY, PARTLY DECREERING THE SUIT FOR PARTITION AND SEPARATE POSSESSION.

THIS RFA, COMING ON FOR FURTHER ARGUMENTS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

ORAL JUDGMENT

This Regular First Appeal is filed by the appellant / defendant No.2 calling in question the judgment and decree dated 29.08.2020 passed in O.S No.2897/2009 by the XXXVIII Additional City Civil and Sessions Judge, Bengaluru City (CCH-39) whereby the suit filed for partition is partly decreed granting half share each to the plaintiff and defendant No.1 but rejected the counter-claim of defendant No.2 claiming her 1/3rd share in the suit schedule property.



2. For the sake of convenience and easy reference, the parties are referred to as per their rankings before the Trial Court.
3. The plaintiff, defendants No.1 and 2 are siblings. Defendant No.1 is the elder brother of plaintiff and defendant No.2. Defendant No.2 is younger sister of plaintiff and defendant No.1.
4. It is the case of plaintiff that, the plaintiff has filed a suit for partition and separate possession claiming 60% share in the suit schedule property which was acquired through the income generated by a printing press business jointly run by the plaintiff and defendant No.1. It is the claim of the plaintiff that both plaintiff and defendant No.1 contributed funds from their joint printing press business towards purchase of the suit property and he has put more labour and effort in the business. Hence, the plaintiff claimed 60% of his share in the suit property.



According to the plaintiff, both plaintiff and defendant No.1 have worked together in the business of printing press and they have jointly purchased the suit property in the names of plaintiff and defendant No.1 and for which defendant No.2 has not made any contribution. Therefore, the plaintiff prays to decree the suit by granting a decree of partition by allotting him 60% share in the suit schedule property.

5. The defendant No.1 has filed a written statement and contended that the suit property was purchased out of the funds generated from the printing business jointly carried on by the plaintiff, defendants No.1 and 2. It is contended that, all three of them have contributed to the business as well as towards the acquisition of the suit property from the income of the joint business. Therefore, it is the case of defendant No.1 that the property be divided into three equal shares.



6. The defendant No.2 has filed a written statement contending that she has also been working in the printing press business jointly carried on by the plaintiff and defendant No.1 and she was paid salary and out of the said salary she along with defendant No.1 have contributed towards the purchase of the suit schedule property. Defendant No.2 is a spinster and she did not have much responsibility on the family. Therefore, she contributed all her earnings towards purchase of the suit property. The defendant No.2 also filed a counterclaim in the suit claiming $1/3^{\text{rd}}$ share in the suit property.
7. Based on the pleadings, the Trial Court has framed the following issues:
 - "1. Whether the Plaintiff proves that he and the Defendant have jointly purchased the schedule property?
 2. Whether the Plaintiff proves that he has contributed 60% of the sale price and registration charges in purchasing the schedule property?



3. *Whether the Defendant proves that the property situated at Banashankari 8th Phase, Bangalore was purchased from the joint efforts of himself, the Plaintiff and their sister?*
4. *Whether the Plaintiff is entitled for the reliefs claimed?*

Addl. Issues framed on 17.3.2020

1. *Whether Defendant No.2 is entitled share in the suit schedule property by way of counter-claim as prayed for?*
 2. *To what decree or order?*
8. The Trial Court partly decreed the suit by granting the half share each to the plaintiff and defendant No.1 and rejected the counterclaim filed by defendant No.2. The Trial Court assigned the reasons that the defendant No.2 has not produced any evidence to show that she has contributed her income towards purchase of the suit schedule property and the documentary evidence on record prove that only plaintiff and defendant No.1 have contributed funds for the purchase of the suit property. Therefore, decreed the suit in part by



granting half equal share to plaintiff and defendant No.1 but not given any share to defendant No.2 and dismissed the counter-claim filed by defendant No.2. It is further observed that in ascertaining the counter-claim of defendant No.2, the defendant No.2 has not produced any evidence to show that she has made contribution towards the purchase the suit schedule property. Therefore, the Trial Court has declined to grant share to defendant No.2.

9. Being aggrieved by the judgment and decree insofar as not granting the share to the defendant No.2 and rejecting the counter-claim of defendant No.2, the defendant No.2 has preferred this present appeal by raising various grounds and the learned counsel for defendant No.2 has argued in consonance with the grounds urged in the appeal that the defendant No.2 is unmarried and has no family responsibilities. Therefore, defendant No.1 who is also the brother of plaintiff and defendant No.2 has stated that all three



were doing joint business in the printing press and out of the earnings derived from the printing press have made contribution to purchase the suit property. Thus, defendant No.1 has admitted that defendant No.2 has made contribution to purchase the suit property. Further, submitted that the defendant No.2 has produced tax paid receipts, salary vouchers and income tax assessment acknowledgments showing that defendant No.2 was having source of income and made contribution to purchase the suit property.

10. It is also contended that in the year 2003, the defendant No.2 has given financial assistance to the son of the plaintiff for a sum of Rs.3,00,000/-. Therefore, all these credentials prove the fact that defendant No.2 has also made contribution for purchase of the property but all this evidence is not appreciated correctly by the Trial Court and erroneously rejected the claim and counter-claim of



defendant No.2. Therefore, the learned counsel prays for appellant to allow the appeal.

11. On the other hand, learned counsel for the plaintiff/respondent No.1 submitted that defendant No.2 has not produced any evidence to show that she has made contribution to purchase the property and this is correctly considered by the Trial Court. Therefore in the absence of any evidence by defendant No.2 that she has made contribution, the Trial Court is correct in dividing the property of half share each to the plaintiff and defendant No.1. Therefore, prays to dismiss the appeal.

12. Upon hearing the learned counsel appearing on behalf of both the parties and perusing the materials available on record, the following points arise for my consideration:

i) Whether under the facts and circumstances involved in the case,



the defendant No.2 proves that she has made contribution towards purchase of the suit schedule property and she is entitled to 1/3rd share as mentioned in the counter-claim?

ii) Whether judgment and decree passed by the trial Court requires interference by this Court?

13. The relationship between the plaintiff, defendants No.1 and 2 is not in dispute. Defendant No. 1 is the elder brother, the plaintiff is his younger brother, and Defendant No. 2 is their sister. It is the case of the plaintiff that defendants No. 1 and 2 were jointly carrying on the printing press business and that the suit schedule property was purchased out of the income derived from the said business. However, it is the case of defendant No. 2 that she had also joined hands with her brothers, namely, the plaintiff and defendant No. 1, for the development and prosperity of the printing press business and that the



suit schedule property was purchased out of the income derived from the said joint family business.

14. At this stage, the evidence of D.W.1 has to be considered. The D.W.1 is none other than elder brother of plaintiff and defendant No.2. The defendant No.1 has deposed that said property was purchased out of the funds generated from the joint family printing press business of plaintiff, himself and defendant No.2. Therefore, the property has to be divided equally of three shares by metes and bounds. On the contrary, the plaintiff has admitted that defendant No.1 has also made contribution for purchase of the property but denied the contribution of defendant No.2.
15. Upon considering the evidence of these two brothers, one brother is saying that her sister-defendant No.2 has also contributed her income for purchase of the property. The defendant No.2 also produced salary



bills as per Exs.D5 to D8 to show that she was working in the printing press and accordingly she was being paid salary from the said business which was being carried on both defendant No.1 and 2. It is not disputed that the defendant No.2 is a spinster and is having not much responsibility to maintain the family. Further, defendant No.2 has produced income-tax returns as per Exs.D15 to D25 which show that she was income tax assessee during the assessment years 1995-96 to 2005-2006. Therefore, the defendant No.2 has proved that she also has an independent income.

16. Further, in order to show her financial capacity, defendant No.2 has produced the letter Ex.D12 that in the year 2015, the defendant No.2 has given financial assistance to one B. Akash Kumar who is none other than the son of plaintiff. Therefore, it is proved that the defendant No.2 is also having financial capacity and at one point of time the



defendant No.2 has given financial assistance to the son of the plaintiff.

17. Upon considering the entire oral and documentary evidence on record and applying the principle of preponderance of probabilities, it has been proved that the defendant No.2 had sufficient and independent source of income. The above salary slip vouchers shows that the defendant No.2 was working in the printing press and was receiving remuneration for her services. The evidence of defendants No.1 and 2 further discloses that the suit property was purchased out of the funds generated from the joint business carried on by the plaintiff and defendants No.1 and 2. Therefore, when the entire evidence is appreciated and considered in its proper perspective by applying the principle of preponderance of probabilities, it stands established that defendant No.2 has also contributed towards the purchase of the suit property. Therefore, in this regard, the Trial



Court has failed to properly appreciate the evidence and materials on record and arrived at an erroneous finding by granting only a half share each to the plaintiff and defendant No. 1. As discussed above, it is established that defendant No. 2 also contributed towards the purchase of the suit property. Hence, the counterclaim filed by the defendant No.2 also deserves to be decreed. Accordingly, I answer point No.(i) and (ii) in the ***Affirmative***. Therefore, plaintiff, defendants No.1 and 2 are each entitled to an equal $1/3^{\text{rd}}$ share in the suit property. Accordingly, the appeal is liable to be allowed and suit filed by the plaintiff is decreed in part and the counter claim made by defendant No.2 is also liable to be decreed.

18. Hence, I proceed to pass the following:

ORDER

- i) The Regular First Appeal is allowed.



- ii) The judgment and decree dated 29.08.2020 passed in O.S No.2897/2009 by the XXXVIII Additional City Civil and Sessions Judge, Bengaluru City (CCH-39) is hereby modified to hold that the plaintiff, defendant No.1 and 2 are each entitled to an equal $1/3^{\text{rd}}$ share in the suit property.
- iii) The suit filed by the plaintiff is decreed in part and the counter claim filed by the defendant No.2 is decreed.
- iv) No order as to costs.
- v) Draw decree accordingly.

Sd/-
(HANCHATE SANJEEVKUMAR)
JUDGE