



CNR: KAHC010383472024

NC: 2026:KHC:40722
RSA No. 1077 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO.1077 OF 2024 (PAR)

BETWEEN:

SMT SUKANYA
W/O MANJUNATHA,
AGED ABOUT 48 YEARS,
R/A NO.76/2, 10TH STREET,
JOGIPALYA, ULSOOR,
BENGALURU-560 008.

...APPELLANT

(BY SRI. VASANTH VINCENT FERNANDES FOR
SRI BHAKTAVACHALA, ADVOCATES)

AND:

1. SRI K V SUKUMAR
S/O LATE K B VENUGOPALIAH SETTY,
AGED ABOUT 67 YEARS
N R EXTENSION
CHINTAMANI-563 125.
2. SMT VIMALAMMA
W/O CHALAPATHY,
D/O LATE N PAPAIAH,
AGED ABOUT 56 YEARS,
R/A YAGUVAKOTA
MUNRUGAMALLA HOBLI,
CHINTAMANI TALUK,
CHINTAMANI- 563 146.
3. SMT MANJULA
W/O MANJUNATH,

Digitally
signed by
MALATESH
K C

Location:
HIGH
COURT OF
KARNATAKA



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D/O LATE N PAPAIAH,
AGED ABOUT 42 YEARS,
R/O BOORAGAMAKALAHALLI,
KASABA HOBLI, CHINTAMANI TALUK,
CHINTAMANI-563 125

4. SRI ASHWATHNARAYANA
S/O LATE N PAPAIAH,
AGED ABOUT 51 YEARS,
R/O OOLAVADI VILLAGE,
KASABA HOBLI, CHINTAMANI TALUK,
CHINTAMANI-563 125

...RESPONDENTS

(BY SRI H.V.SUBRAMANYA, ADVOCATE FOR C/R1)

THIS RSA IS FILED UNDER SECTION 100 OF CIVIL PROCEDURE CODE, AGAINST THE JUDGMENT AND DECREE DATED 04.04.2024 PASSED IN R.A.NO.112/2013 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC, CHINTAMANI, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 10.06.2013 PASSED IN OS NO.179/2008 ON THE FILE OF THE PRINCIPAL CIVIL JUDGE AND JMFC, CHINTAMANI.

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

Heard Sri Vasanth Vincent Fernandes, learned counsel appearing on behalf of Sri Bhaktavatsala, counsel for the appellant and Sri H.V. Subramanya, learned counsel for contesting respondent.

2. Unsuccessful plaintiff No.4 who suffered the dismissal of the suit before the First Appellate Court by reversing the decree of the suit before The Trial Court is the appellant.

3. Facts in the nutshell which are utmost necessary for disposal of the appeal are as under:

3.1. A suit for partition came to be filed before the Trial Court in O.S.No.179/2008 in respect of the following immovable property:

"Land measuring 0.35 guntas out of Sy.No.85/3 of Oolavadi village, Kasaba Hobli, Chintamani Taluk is bounded as follows:

East by : Land of Bandolla Venkataswamy,

West by : Land of Tanky Narayanappa

North by : Land of Mallakkagari Venkataswamy



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*South by : Land now purchased by Sarakari
Nowkarara Gruha Nirmana Sahakara
Sangha."*

3.2. It is contended that Nanjappa and Nanjamma had a son by name Papaiah. Plaintiffs are the children of said Papaiah. Nanjappa and Papaiah said to have sold major portion of the property for the family needs after the marriage of the first plaintiff and remaining property was also sold without there being any family necessities.

3.3. Therefore, the sale deed executed by Papaiah signed by third plaintiff Ashwathnarayana did not bind the shares of the remaining plaintiffs and thus sought for 1/5th share in the suit property.

4. Suit was contested by the defendants and defendant No.2 filed the written statement denying plaintiff averments.

5. Learned Trial Judge after recording the evidence of the parties decreed the suit granting 1/5th share.

6. Being aggrieved by the same, purchaser of the suit property namely, second defendant filed an appeal before the First Appellate Court in R.A.No.112/2013.



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7. 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 noted that third plaintiff being a party to the sale deed executed by the father of the plaintiffs and the property was alienated for the family necessity and suit is barred by limitation, dismissed the suit by allowing the appeal.

8. Being aggrieved by the same, plaintiffs have filed the present appeal before this Court on the following grounds and substantial questions of law:

- *The first Appellate Court has culled out the evidence of the PW1 to the effect that the property in Sy. No.350/1 was sold by the father and grandfather of the PW1 for a family necessity. This fact cannot be disputed, whereas the suit schedule mentioned property was not so sold.*
- *The first appellate court has come to the conclusion that the suit is barred by limitation since it has considered the same to be covered by Article 59 of The Limitation Act, 1961 and has erroneously held that it is not covered by Article 110.*
- *Both courts held that the Defendant No.2 Respondent No.1 has not proved that the sale in his favour was for any family necessity of the Plaintiffs; yet the first appellate court has not dismissed his appeal.*



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- *The first Appellate Court did not give sufficient opportunity of hearing to the Appellant herein whose Counsel had passed away during the pendency of the Appeal. Consequentially, all her rights to take any other remedial action, if necessary, were curtailed.*

SUBSTANTIAL QUESTIONS OF LAW

1. *"Whether the first Appellate Court was justified in holding that the suit was bad for partial partition when the self acquired properties bought by the appellant's father and brother could not be included in the suit, the father being still alive when it was filed ?*
2. *Whether first Appellate Court was justified in holding that the suit was barred by limitation by holding that Article 59 and not Article 110 of The Limitation Act, 1961, applied to the suit ?*
3. *Whether the first Appellate, having noticed, as did the trial Court, that the suit Schedule mentioned property was not sold for any family necessity was justified in not dismissing the appeal?"*

9. Pursuant to the substantial questions of law raised in the appeal memorandum, Sri Fernandes reiterating the grounds urged in the appeal memorandum would contend that the first alienation is not challenged by the plaintiffs as it was for the family necessity and subsequent alienation denying the



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share to the plaintiffs has resulted in miscarriage of justice which has not been considered by the learned Judge in the First Appellate Court and sought for admitting the appeal.

10. Per contra, Sri H.V.Subramanya, learned counsel for the caveator/contesting respondent supports the judgment of the First Appellate Court.

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

12. On such perusal of the material on record, it is noticed that property earlier belonged to Nanjappa. Nanjappa had a wife by name Nanjamma and only son by name Papaiah. Papaiah is the father of the plaintiffs.

13. Papaiah and Nanjappa together sold major portion of the ancestral property at the time of marriage of second daughter of the Papaiah namely, Manjula. It was for the family necessity. Therefore that alienation was not challenged by the plaintiffs.

14. It is the specific contention of the plaintiffs that subsequent alienations are bad in law as Papaiah and third plaintiff Ashwathnarayana being a signatory to the sale deed



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could not have bound the shares of remaining plaintiffs as they had the independent rights in those properties and they were majors at the time of subsequent alienations. Thus second defendant could not have purchased the property binding the shares of plaintiffs at least plaintiff No.1, 2 and 4 and therefore, sale in favour of the second defendant is bad in law.

15. Learned Judge in the First Appellate Court on re-appreciation of the material on record noted that subsequent alienation is made in the year 2003 and that too for the family necessity.

16. Insofar as the property of the mother is concerned, plaintiffs are entitled to seek their share by filing a separate suit as the mother of the plaintiffs gets the property from her parental side and therefore it becomes the absolute property of the mother.

17. In fact, PW1 is none other than the first plaintiff, has specifically admitted that after the alienation of the property the parties are living in Oolavadi village and that house belongs to the mother as she got the same from her father.



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18. In other words, to claim the share in the ancestral property that is of the father of the plaintiffs, no property was left behind.

19. Subsequent alienation though not proved as per the family necessity by second defendant, plaintiffs have failed to make out that they have a share in those properties.

20. Taking note of these aspects of the matter, this Court does not find any merits in any one of the substantial questions of law raised in the appeal memorandum for further consideration.

21. Accordingly, the following:

ORDER

- (i) Admission is declined.
- (ii) Appeal is dismissed.
- (iii) However, dismissal of the appeal shall not preclude the plaintiffs claiming their share in the properties left behind by their mother.

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

MR
List No.: 1 SI No.: 68