



CNR: KAHC010508462015

NC: 2026:KHC:39811
RSA No. 249 of 2015

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 249 OF 2015 (PAR)

BETWEEN:

SMT THIMMAVVA
W/O BHEEMAI AH
MAJOR
R/OF KUNTAMMANATHOTA
GUBBI ROAD, B H ROAD
TUMKUR – 572 216

...APPELLANT

(BY SRI. H V MANJUNATHA, A RAMANJANAPPA, ADVOCATES)

AND:

KUMARA
S/O SETTAPPA (DEAD)
BY LEGAL REPRESENTATIVES

1. SMT HANUMAKKA
W/O LATE KUMARA
MAJOR
2. SRI MARUTHI
S/O LATE KUMARA
3. SRI DEVARAJA
S/O LATE KUMARA

R2 AND R3 ARE MINORS REPRESENTED BY
NATURAL GUARDIAN MOTHER (R.1)

Digitally
signed by
SHILPABAI S
Location:
HIGH
COURT OF
KARNATAKA



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R/O GUBBI HOSAHALLI
GUBBI TALUK
TUMKUR DISTRICT – 572 216

...RESPONDENTS

(BY SRI. PATEL D KARE GOWDA., ADVOCATE FOR R1 TO R3
(R2 & R3 ARE MINORS, REP. BY R1)
SRI. V B SIDDARAMAIAH, ADVOCATE FOR R1 TO R3 (NOC
VK FILED))

THIS RSA IS FILED U/S. 100 R/W ORDER XLII OF CPC.,
AGAINST THE JUDGMENT AND DECREE DATED 21.07.2014
PASSED IN RA NO. 158/2008 ON THE FILE OF II ADDL. SENIOR
CIVIL JUDGE, JMFC, TUMAKURU, DISMISSING THE APPEAL
AND CONFIRMING THE JUDGMENT AND DECREE DATED
20.09.2008 PASSED IN OS NO. 259/1995 ON THE FILE OF THE
II ADDL. CIVIL JUDGE (JR.DN.) JMFC TUMAKURU.

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

CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI

ORAL JUDGMENT

This regular second appeal is filed by the appellant
challenging the judgment and decree dated 21.07.2014
passed in RA No. 158 of 2008 by the Court of learned II
Addl. Senior Civil Judge and JMFC, Tumkur (**'First
Appellate Court'** for short) confirming the judgment and
preliminary decree dated 20.09.2008 passed in



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OS No. 259 of 1995 by the Court of learned II Addl. Civil Judge and JMFC, Tumkur (***Trial Court*** for short).

2. For the sake of convenience, parties are referred to based on their rankings before the Trial Court. Appellant was defendant No.2 and respondents are the legal representatives of the plaintiff before the Trial Court.

3. Brief facts leading rise to the filing of this appeal are as follows:

3.1. The plaintiff filed a suit for partition and separate possession. It is the case of the plaintiff that, defendant No.1 is the manager of the joint family and as such, all the written records stand in the name of defendant No.1. It is contended that, defendant No.1 was committing acts of waste in respect of the suit schedule property properties and trying to alienate the suit schedule property to defeat the rights of the plaintiff. The plaintiff and defendant No.1 are the members of a Hindu undivided family and no partition was effected. The plaintiff



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demanded for partition and separate possession, but defendant No.1 refused to effect a partition. Hence, a cause of action arose for the plaintiff to file a suit for partition. It is contended that, during the pendency of the suit, defendant No.1 sold the suit schedule property in favour of defendant No.2 and the said alienation is not for family and legal necessity. The said transaction between defendant No.1 and defendant No.2 is not binding on the plaintiff. Accordingly, prays to decree the suit.

3.2. Defendant No.1 filed a written statement contending that, the plaintiff and defendant No.1 are not the members of a Hindu undivided family and the suit schedule property is not an ancestral and joint family property. The suit schedule property is the self acquired property of defendant No.1. The plaintiff and defendant No.1 are not in joint possession and enjoyment of the suit schedule property. He admits that, defendant Nos.1 and 2 have entered into an agreement of sale dated 25.11.1994. The plaintiff did not comply with the terms and conditions



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of the sale agreement. Defendant No.2 filed a suit in OS No. 284 of 1995 for the relief of specific performance of the contract against the plaintiff and defendant No.1. Defendant No.1 filed an additional written statement disputing the relationship of the legal representatives with the original plaintiff and defendant No.1.

3.3. Defendant No.2 was impleaded during the pendency of the suit and she had filed a written statement contending that, she had purchased the property from the plaintiff and defendant No.1. She contended that, the plaintiff and defendant No.1 had jointly executed a sale agreement dated 25.11.1994 agreeing to sell the suit schedule property for consideration of ₹45,000/- and accordingly, defendant No.2 paid part of the consideration amount of ₹10,000/- towards earnest money. The plaintiff and defendant No.1 did not perform their part of contract. Hence, defendant No.2 filed a suit against the present plaintiff and defendant No.1 for specific performance of the contract in OS No. 284 of 1995. Subsequently, a sale



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deed came to be executed on 08.02.2001. The plaintiff has no right over the suit schedule property. Hence, prayed to dismiss the suit against defendant No.2.

3.4. The Trial Court, based on the rival pleadings of the parties, framed the following issues and additional issues:

"ISSUES

1. *Whether the plaintiff proves that the suit schedule properties are the ancestral and joint family properties of the plaintiff and the defendant and the defendant is the manager of the joint family?*
2. *Whether the plaintiff proves that defendant has illegally attempted to alienate the suit schedule properties so as to defeat the rights of the plaintiff over the suit schedule properties?*
3. *Whether the plaintiff proves that, he is entitled to half share in the suit schedule properties?*
4. *Whether the defendant proves that, there is no cause of action and the suit is not maintainable in law and facts and liable to be dismissed in limine?*
5. *What order or decree, the parties are entitled?*

Note:- Issue No.4 is treated as preliminary issue.



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ADDL. ISSUES

1. *Whether the defendant-2 proves that the suit schedule properties are the self acquired properties of the first defendant?*
2. *Whether the defendant-2 proves that she has purchased the properties from first defendant for valuable consideration?*
3. *What order or decree?"*

3.5. The plaintiff died during the pendency of the suit and his legal representatives were brought on record. To substantiate the case of the plaintiff, the plaintiff's wife [plaintiff No.1(a)] was examined as PW1, one witness was examined as PW2 and marked eight documents as Exs.P1 to P8. In rebuttal, defendant No.1 was examined as DW1, defendant No.2 was examined as DW2 and marked seventeen documents as Exs.D1 to D17.

3.6. The Trial Court, after recording the evidence, hearing both sides and assessing the verbal and documentary evidence, answered issue Nos.1 to 3 and additional issue No.2 in the affirmative, issue No.4 and



additional issue No.1 in the negative, issue No.5 and additional issue No.3 as per the final order. The suit of the plaintiff was decreed vide judgment dated 20.09.2008 declaring that the plaintiffs were entitled for half share in respect of the suit schedule property. Defendant No.1 was directed to put the plaintiffs in separate possession and enjoyment to an extent of half share in respect of the suit schedule property.

3.7. The defendants, aggrieved by the judgment and preliminary decree passed by the Trial Court in OS No. 259 of 1995, preferred an appeal before the First Appellate Court in RA No. 158 of 2008.

3.8. The First Appellate Court, after hearing the learned counsel for the parties, framed the following points for consideration:

- "1) *Whether the trial Court is justified in holding that the suit property is ancestral property of plaintiff?*
- 2) *Whether interference by this Court is required in the impugned judgment and decree?*



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3) *What order?"*

3.9. The First Appellate Court, after re-appreciating the entire evidence on record, answered point No.1 in the affirmative, point No.2 in the negative and point No.3 as per the final order. The regular appeal was dismissed vide judgment dated 21.07.2014 and the judgment and preliminary decree passed in OS No. 259 of 1995 was confirmed.

4. Defendant No.2, aggrieved by the impugned judgments, decree and preliminary decree passed by the Courts below, filed this regular second appeal.

5. Heard the arguments of learned counsel for defendant No.2 and learned counsel for the plaintiffs.

6. Learned counsel for defendant No.2 submits that, defendant No.2 had purchased the suit schedule property from the plaintiff and defendant No.1. He submits that, the plaintiff and defendant No.1 have jointly executed the sale agreement in favour of defendant No.2



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on 25.11.1994 and they agreed to sell the suit schedule property for consideration of ₹45,000/- and an amount of ₹10,000/- was towards the earnest money. The plaintiff and defendant No.1 did not comply with the terms and conditions of the sale agreement dated 25.11.1994. Defendant No.2 filed a suit in OS No. 284 of 1995 for the relief of specific performance of the contract. Subsequently, a sale deed dated 08.02.2001 was executed by defendant No.1 in favour of defendant No.2. The plaintiff was well aware about the sale transaction between the plaintiff, defendant No.1 and defendant No.2. The plaintiff filed the present suit in 1995. The plaintiff is estopped to file a suit for partition and separate possession in respect of the suit schedule property. He further submits that, it is settled law that there is a presumption in regard to the joint family and there is no presumption in regard to the joint family property. He submits that, both the Courts below have decreed the suit on the ground that the suit schedule property is an



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ancestral property of the plaintiff and defendant No.1. He submits that, even assuming for the sake of argument but not admitting that the suit schedule property was the ancestral property, the plaintiff and defendant No.1 have agreed to sell the suit schedule property by executing a sale agreement. The said aspect was not considered by the Courts below and committed an error in passing the impugned judgments. He submits that, the impugned judgment passed by the Courts below is in contrary to the mandate laid down by the Hon'ble Apex Court in the case of ***Makhan Singh (Dead) by LRs Vs. Kulwant Singh***¹. Hence, on these grounds, he prays to allow the appeal.

7. *Per contra*, learned counsel for the plaintiffs submits that, defendant No.1 was the manager of the suit schedule property. He was in possession of the suit schedule property as a tenant on behalf of all the members of the family. Hence, the suit schedule property

¹ (2007) 10 SCC 602



is the ancestral property of the plaintiff and defendant No.1. He submits that, defendant No.1 alone has no right, title or interest over the suit schedule property to sell it in favour of defendant No.2. He submits that, defendant No.2 had not acquired any right, title or interest under the registered sale deed executed by defendant No.1 in favour of defendant No.2. Hence, both the Courts below were justified in passing the impugned judgments. Hence, on these grounds, he prays to dismiss the appeal.

8. Perused the records and considered the submissions of the learned counsel for the parties.

9. This Court, vide order dated 31.07.2024, admitted the appeal to consider the following substantial question of law:

"Whether both the Courts have committed an error in holding that the suit schedule property is the ancestral and joint family property of the plaintiff and defendant No.1, wherein defendant No.1 had purchased the suit schedule property under Ex.D1 ignoring the well established principles of law that there is a presumption



*in regard to the joint family but there is no presumption
in regard to the joint family property?"*

Reg. Substantial Question of Law:

10. It is the case of the plaintiff that, the plaintiff and defendant No.1 are the members of Hindu joint family and the suit schedule property was originally rented land and defendant No.1 was cultivating the suit schedule property on behalf of the entire family. The suit schedule property is an ancestral property. Defendant No.1 sold the suit schedule property in favour of defendant No.2 and there was no family and legal necessity. The said sale made in favour of defendant No.2 is not binding on the share of the plaintiff.

11. The plaintiff, to substantiate his case, examined himself as PW1 and reiterated the plaint averments in the examination-in-chief and produced the documents Exs.P1 and P2 are the RTC extracts, which clearly disclose that, defendant No.1's name is appearing in column No.9 in



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respect of the lands bearing Sy.No.11/3, measuring 5 acres 8 guntas, and Sy.No.13 measuring 35 guntas; Ex.P3 is the endorsement of issued by the Revenue Authorities.

12. Defendant No.1 got executed a registered sale deed from the landlords. To substantiate his defence, defendant No.1 examined himself as DW1 and he had deposed that the suit schedule properties are the self-acquired properties. The defendants have produced the registered sale deed dated 05.07.1975, which clearly discloses that the suit schedule property was purchased by defendant No.1 and also produced the revenue records, which disclose that, based on the registered sale deed dated 05.07.1975, defendant No.1's name was entered in the revenue records. The plaintiff had cross-examined defendant No.1 at length, however, nothing had been elicited from the mouth of defendant No.1. Defendant No.2 examined himself as DW2 and he had deposed that, he has verified the records and found that the suit schedule properties are the self-acquired properties of defendant



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No.1. He had deposed that, the plaintiff and defendant No.1 jointly agreed to sell the suit schedule property and executed a sale agreement in favour of defendant No.2 on 25.11.1994 and delivered the possession of the suit schedule property in favour of defendant No.2. During the pendency of the present suit, defendant No.1 executed a registered sale deed in favour of defendant No.2. Defendant No.2 was impleaded after the execution of the registered sale deed. The said sale was for family and legal necessity. To prove their defence, the defendants have produced the documents marked as Exs.D1 to D17. Ex.D1 is the registered sale deed dated 05.07.1975; Exs.D2 to D5 are the certified documents of *pahani*; Exs.D6 to D17 are the RTC extracts.

13. From the perusal of the entire evidence on record, it is clear that, the suit schedule property was purchased by defendant No.1 under a registered sale deed dated 05.07.1975. The plaintiff and defendant No.1 jointly agreed to sell the suit schedule property in favour of



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defendant No.2 and executed a sale agreement. The said fact was admitted by PW1 during the course of cross-examination regarding execution of an agreement of sale in favour of defendant No.2 agreeing to sell the suit schedule property for consideration of ₹45,000/- and paid ₹10,000/- as an advance consideration amount. The plaintiff suppressed the said fact regarding the execution of sale agreement in favour of defendant No.2. The plaintiff has not produced any records to show that the family was possessing a sufficient nucleus for sale of the suit schedule property in the name of defendant No.2.

14. It is settled law that, there is no presumption of a property being a joint family property only on the account of existence of a Hindu joint family. The one who asserts, has to prove that the property is a joint family property. If, however, the person so asserting proves that there was a nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the



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person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available. Admittedly in the instant case, the plaintiff has not placed any material on record to show that the family was possessing a sufficient nucleus at the time of purchasing the suit schedule property in the name of defendant No.1. From the perusal of the records, it clearly disclose that, defendant No.1 had purchased the suit schedule property, he was the absolute owner of the suit schedule property and the plaintiff and defendant No.1 jointly agreed to sell the suit schedule property.

15. During the pendency of the suit, defendant No.1 sold the suit schedule property in favour of defendant No.2 under a registered sale deed. All these aspects were not considered by the Courts below and committed an error in passing the impugned judgment. The impugned judgment passed by the Courts below are arbitrary and



are in contrary to the judgment passed by the Hon'ble Apex Court in the case of ***Makhan Singh*** (supra).

16. In view of the above discussion, I answer substantial question of law in the affirmative. Accordingly, I proceed to pass the following:

ORDER

- i. The regular second appeal is ***allowed***;
- ii. The impugned judgments, decree and preliminary decree passed by the Courts below are hereby ***set aside***;
- iii. Consequently, the suit of the plaintiff is ***dismissed***;
- iv. No order as to the costs;
- v. Pending IA(s) in this appeal, if any, shall stand disposed of.

Sd/-
(ASHOK S.KINAGI)
JUDGE