



CNR: KAHC010517572019

NC: 2026:KHC:41815
RSA No. 93 of 2020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 93 OF 2020 (PAR)

BETWEEN:

1. SRI THIMMASHETTY
S/O LATE GIRISHETTY
AGED ABOUT 72 YEARS
R/A BHEEMANABEEDU VILLAGE
KASABA HOBLI
GUNDLUPET TALUK
CHAMARAJANAGAR DISTRICT - 571 111

SINCE DEAD BY LRS

- 1A. SMT. PUTTASIDDAMMA
AGED ABOUT 65 YEARS
W/O. LATE THIMMASHETTY
- 1B. SMT. GOPAMMA
AGED ABOUT 45 YEARS
D/O. LATE THIMMASHETTY
- 1C. SMT. NAGAMMA
AGED ABOUT 43 YEARS
D/O. LATE THIMMASHETTY
- 1D. SRI. GIRISHETTY
AGED ABOUT 42 YEARS
S/O. LATE THIMMASHETTY

Digitally
signed by
ANNAPURNA
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Location:
High Court of
Karnataka



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- 1E. SRI. GOVINDASHETTY
AGED ABOUT 41 YEARS
S/O. LATE THIMMASHETTY

ALL ARE RESIDING AT
BHEEMANABEEDU VILLAGE
KASABA HOBLI, GUNDLUPET TALUK
CHAMRAJANAGAR DISTRICT - 571 111.

...APPELLANTS

(BY SRI. C.A. AJITH, ADVOCATE FOR A1 (A TO E))

AND:

1. SRI GOPASHETTY
S/O LATE GIRISHETTY
AGED ABOUT 67 YEARS
2. SMT THIMMAMMA
D/O LATE GIRISHETTY
AGED ABOUT 65 YEARS
DEAD BY LRS
- 2A. SMT. GOPAMMA
AGED ABOUT 45 YEARS
D/O. LATE THIMMAMMA
RESIDING AT BHEEMANABEEDU VILLAGE
KASABA HOBLI, GUNDLUPET TALUK
CHAMARAJANAGAR DISTRICT - 571 111
3. SRI SIDDASHETTY
S/O LATE SUBBAMMA
AGED ABOUT 50 YEARS

SRI ERASHETTY S/O LATE SUBBAMMA
DEAD BY LRS



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4. SMT CHANDRI
D/O LATE ERASHETTY
W/O SIDDASHETTY
AGED ABOUT 30 YEARS

5. SRI MALLU
S/O LATE ERASHETTY
AGED ABOUT 28 YEARS

6. SMT MAHADEVAMMA
D/O LATE ERASHETTY
AGED ABOUT 25 YEARS

RESPONDENTS NO.4 TO 6 ARE
R/O BHEEMANABEEDU VILLAGE
KASABA HOBLI, GUNDLUPET TALUK
CHAMARAJANAGAR DISTRICT - 571 111

SMT MAHADEVAMMA D/O LATE SUBBAMMA
W/O MAHADEVASHETTY DEAD BY LRS

7. SRI RAJU
S/O MAHADEVASHETTY
AGED ABOUT 35 YEARS

8. SRI MAHESH
S/O MAHADEVASHETTY
AGED ABOUT 32 YEARS

RESPONDENTS NO.7 AND 8 ARE
R/O BHEEMANABEEDU VILLAGE
KASABA HOBLI, GUNDLUPET TALUK
CHAMARAJANAGAR DISTRICT - 571 111

...RESPONDENTS

(R1, R(A), R3, R4, R5 TO R8 - SERVED)



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THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 01.03.2019 PASSED IN RA NO.197/2017 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFJC., AT GUNDLUPET PARTLY ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 11.07.2017 PASSED IN OS NO.53/2007 ON THE FILE OF THE PRINCIPAL CIVIL JUDGE AND JMFC., GUNDLUPET.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

1. Heard Sri. C.A. Ajith, learned counsel for the appellants. This Court did not deem fit to issue notice to the respondents.

2. First defendant in O.S. No.53/2007 is the appellants challenging the decreeing of the suit confirmed in the first appeal in R.A.No.197/2017 in respect of the following properties (hereinafter referred to as 'Suit properties' for short).



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೧. ಗುಂಡ್ಲುಪೇಟೆ ತಾಲ್ಲೂಕು, ಕಸಬಾ ಹೋಬಳಿ, ಭೀಮನಬೀಡು ಗ್ರಾಮಕ್ಕೆ ಸೇರಿದ ಸರ್ವೆ ನಂ.167/1 ವಿಸ್ತೀರ್ಣ ಒಟ್ಟು 3 ಎಕರೆ 5 ಗುಂಟೆ ರೂ.2.94 ಪೈಸೆ ಉಳ್ಳದ್ದು ಇದಕ್ಕೆ ಚಿಕ್ಕಬಂಧಿ-ಪೂರ್ವಕ್ಕೆ ಬಸವಶೆಟ್ಟಿ ರವರ ಜಮೀನು, ಪಶ್ಚಿಮಕ್ಕೆ ಮತ್ತು ದಕ್ಷಿಣಕ್ಕೆ: ನೀರು ಹರಿಯುವ ಕೊರಕಲು, ಉತ್ತರಕ್ಕೆ ಸರ್ಕಾರಿ ಓಣಿ.

೨. ಗುಂಡ್ಲುಪೇಟೆ ತಾಲ್ಲೂಕು, ಕಸಬಾ ಹೋಬಳಿ, ಭೀಮನಬೀಡು ಗ್ರಾಮಕ್ಕೆ ಸೇರಿದ ಸರ್ವೆ ನಂ.198/2 ವಿಸ್ತೀರ್ಣ ಒಟ್ಟು 2 ಎಕರೆ ರೂ.1.74 ಪೈಸೆ ಕಂದಾಯ ಉಳ್ಳದ್ದು ಇದಕ್ಕೆ ಚಿಕ್ಕಬಂಧಿ ಪೂರ್ವಕ್ಕೆ:ಸಿದ್ದಯ್ಯ ಬಿನ್ ಬೆಳ್ಳಶೆಟ್ಟಿ, ಪಶ್ಚಿಮಕ್ಕೆ: ನೀರು ಹರಿಯುವ ಹಳ್ಳ, ಉತ್ತರಕ್ಕೆ: ದಾಸಶೆಟ್ಟಿರವರ ಜಮೀನು, ದಕ್ಷಿಣಕ್ಕೆ: ಸರ್ಕಾರಿ ಓಣಿ.

೩. ಗುಂಡ್ಲುಪೇಟೆ ತಾಲ್ಲೂಕು, ಕಸಬಾ ಹೋಬಳಿ, ಭೀಮನಬೀಡು ಗ್ರಾಮಕ್ಕೆ ಸೇರಿದ ಸರ್ವೆ ನಂ.485 ವಿಸ್ತೀರ್ಣ ಒಟ್ಟು 5 ಎಕರೆ ಪೈಕಿ 2 ಎಕರೆ ಜಮೀನು ಇದಕ್ಕೆ ಚಿಕ್ಕಬಂಧಿ: ಪೂರ್ವಕ್ಕೆ: ಸರ್ಕಾರಿ ಓಣಿ, ಪಶ್ಚಿಮಕ್ಕೆ: ಬಸವಶೆಟ್ಟಿ ಹೆಂಡತಿ ವೆಂಕಟಮ್ಮನ ಜಮೀನು, ದಕ್ಷಿಣಕ್ಕೆ: ಸಿದ್ದ ಶೆಟ್ಟಿ ಜಮೀನು, ಉತ್ತರಕ್ಕೆ ಸರ್ಕಾರಿ ಓಣಿ.

3. Facts of the case which are utmost necessary for disposal of the present appeal are as under:

3.1. A suit has been filed by the plaintiff against the defendants seeking half share in the suit property by contending that Girishetty and his wife Arasamma had five children namely Chikkagopamma, Subbamma, Thimma Shetty, Thimmamma and Gopa Shetty. Chikkagopamma is



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no more and Subbamma died after the filing of the suit. Siddha Shetty, Era Shetty and Mahadevamma are the children of Subbamma. They formed the joint Hindu family.

3.2. It is contended that the suit properties are the joint family properties and is in joint possession. About six months earlier to the filing of the suit, the proceeds from the suit property was misutilized by the defendants and when the same was questioned by the plaintiffs, the same was denied by the defendants and flatly refused to grant the share which resulted in filing of the suit.

3.4. Pursuant to the suit summons, defendants entered appearance and filed written statement.

3.5. It is contented in the written statement that item No.1 of the suit properties was purchased when plaintiffs and defendants were minors. It is purchased out of the joint earnings. Sale deed got executed on



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15.03.1954 in the name of Smt. Arasamma being the guardian of the minors. Therefore, in respect of Item No.1 of the suit properties, plaintiff has got 1 acre 05 guntas and 2-00 acres of on the Eastern side of the same property has fallen to the share of the defendant and 0-08 guntas of land has been lost for the irrigation facility.

3.6. It is further contented that since there was a partition earlier with regard to item No.1 of the suit property and Item Nos.2 and 3 were acquired subsequent to said partition in the presence of the Panchayathars, suit is to be dismissed.

3.7. Based on the rival contentions, learned Trial Judge raised necessary issues and after recording the evidence, heard the arguments of the parties and decreed the suit of the plaintiff granting half share in the Item No.1 of the suit properties. In respect of Item Nos.2 and 3, plaintiff was held entitled to 15/36th shares.



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3.8. Plaintiff was satisfied with the decree that has been passed in the suit. It is the defendant No.1 who challenged the validity of the decree by filing an appeal before the First Appellate Court in RA No.197/2017.

3.9. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties in detail and on re-appreciation of the material on record, dismissed the appeal of the defendant No.1, *inter alia* holding in paragraphs No.20 to 24 as under :

20.On perusal of the judgment passed in OS no. 53/1996, item no. 2 and 3 properties are not at all involved. Apart from that, the defendant no1 not at all submitted that, when the defendants have filed the written statement. However, the suit was filed in the year 1996, even considering the said year, the defendant no. 1 and 2 were in possession enjoyment of the properties prior 1986. The land tribunal and granted the item no. 2 property infavour of the defendant no. 1 in year 1979. Therefore, considering the written statement filed by the present plaintiff and defendant no.1 still in the year 1986 they were in joint possession. In other words at the time of granting the item no. 2 property the defendant no. 1 and



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plaintiff were in joint possession of the property. The learned counsel for appellant argued that, as per the promissory estoppel the defendant no. 1 is not entitled to file a suit for partition. But here in this case the item no. 2 and 3 properties are not involved in OS 53/1996. Therefore, the learned counsel for appellant argument in respect of promissory estoppel is not tenable.

21. The learned counsel for the appellant Sri. EMK by relying on the judgment reported in ILR 1995 KAR 577 H.N. (B) argued that, Source of acquisition from original joint family property, existence of joint family and continuance of such status until properties acquires to be established.

22.No doubt it is burden is lies on the plaintiff to prove that, the suit properties are joint family properties. As per the aforesaid discussion and as per the admission of the present defendant no.1 in the written statement filed in O.S. 53/1996 till 1986, the present plaintiff and defendant no.1 were in joint possession enjoyment of the properties. The plaintiff and defendant no. 1 are not at all furnished single piece of documentary evidence to show that prior to 1979, the suit properties were divided. On perusal of the hon'ble trail court judgment, hon'ble trail court discussed the said fact and held that if the property granted to the any elder member of the family, the property is granted on the behalf of the family members itself. As per the above discussion there was no division in between the plaintiff and defendant no. 1 prior to 1979.



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Hence, as per the observation made in para no. 16 of the judgment of trail court and as per aforesaid discussion this court opines that, item no. 2 property is the joint family property of the plaintiff and defendants.

23. In respect of item no.3 property, the plaintiff in the plaint pleaded as 2 acre of land in sy no.485. On perusal of the MR no. 7/1996-97, 2 acres land stands in the name of the defendant no1 still 1996-97. Thereafter the 1 acre land transferred to plaintiff and 1 acre land transferred to Govindashetty S/o Thimmashetty i.e. appellant's son. The Hon'ble trail court in para no. 17 discussed the oral and documentary evidence held that, the plaintiff proved that, item no.3 property is a joint family property.

24.As per the above discussion, in view of the judgment and decree passed in OS no. 53/1996 the present suit plaintiff is entitled for 1.5 acres of land towards western side and the defendant no. 1 entitled for 2 acres of land in the eastern side of item no1 property. In respect of item no. 2 and 3 property the plaintiff and defendant no.1 are the coparceners. As per the notional partition, the plaintiff and defendant no. 1 each entitled for 5/12th share. Defendant no. 2 entitled for 1/12th share. Defendant no. 3 to 5 are being the legal heirs of late Subbamma together entitled for 1/12th share in the item no. 2 and 3 properties. The Hon'ble trail court in para no. 25 of the judgment allotted share properly in respect of item no. 2 and 3 property.



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4. Being further aggrieved by the same, it is defendant No.1 who filed the present appeal on the following grounds and substantial questions of law:

GROUND:

- *The impugned Judgment and Decree of the Courts below are contrary to the law and not sustainable either at law or on points of facts. The same is illegal and liable to be set aside.*
- *The Courts below have not properly appreciated the evidence and material on record and the contention of the appellant. The impugned judgments are opposed to weight of evidence and probabilities of the case.*
- *The court below seriously erred in holding that the suit schedule items 2 and 3 are joint family properties and available for partition. The said finding is opposed to the oral and documentary evidence. As per Ex.D.4, is the judgment passed by the Civil Judge of Gundlupet in OS No.53/1996, wherein the plaintiff has admitted that he and the appellant herein have divided the suit Item No.1 property long back and after dividing the same there are no joint family properties. Under the facts and circumstances of the case the contention of the plaintiff that the family of the parties continues to be joint in*



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respect of the suit schedule properties cannot be accepted.

- *The courts below failed to note that the suit item No.2 and 3 are the self-acquired property of the appellant and they have not ancestral properties. In respect of Item No.2 property, i.e., Sy.No.198/2 the appellant has filed declaration in Form No.7 for grant of occupancy rights and on 09.04.1979 the occupancy certificate granted in favour of the appellant. The Item No.3 property i.e., Sy.No.485 is the self-acquired property of the appellant. Therefore the courts below seriously erred in decreeing the suit in respect of suit schedule Item No.2 and 3 properties.*
- *The appreciation of evidence and material on record by the courts below while holding that Suit Schedule Item No.2 and 3 properties are the joint family properties is highly perverse and erroneous. The various documentary evidence coupled with oral evidence placed by the appellant herein proves that the suit schedule Item No.2 and 3 properties are his self-acquired properties.*
- *The Defendant No.5 Smt.Mahadevamma is died on 17.02.2015 i.e., during the pendency of the suit in trial court and the defendant No.4 Sri. Erashetty died on 07.02.2019 i.e., during the pendency of the appeal in 1st Appellate Court. The Legal Heirs of the respective deceased were not brought to the record. Therefore the*



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impugned judgment of the lower appellate court is liable to be set aside.

SUBSTANTIAL QUESTION OF LAW

a) Whether the courts below have justified in decreeing the suit of the plaintiff, that as per Ex.D.4, the judgment passed by the Civil Judge of Gundlupet in OS No.53/1996, wherein the plaintiff has admitted that they have divided the suit Item No.1 property long back and there are no joint family properties at that time?

b) Whether the Courts below are justified in holding that the suit schedule properties Item No.2 and 3 are joint family properties, when the evidence and material on record does not support the said view?

c) Whether the appreciation of oral and documentary evidence by the courts below is perverse and erroneous and the findings are given ignoring material evidence on record?

5. Sri. C.A. Ajith, learned counsel for the appellants reiterating the grounds urged in the appeal memorandum would contend that when there was a partition in respect of item No.1 of the suit properties and



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Item Nos.2 and 3 are acquired subsequently by the defendant, the Trial Court ignoring the same and granting the decree in the Item Nod.2 and 3 of the properties has also resulted in miscarriage of justice and sought for admitting the appeal on the aforesaid substantial questions of law.

6. In the light of the arguments put-forth on behalf of the appellants, this Court perused the material on record meticulously including the Trial Court records.

7. The defence taken by defendant No.1 that Item No.1 of the suit properties was acquired when they were minors is established. Therefore grant of half share in the suit Item No.1 is can not be faulted.

8. However, with regard to the Item Nos.2 and 3 of the suit properties are concerned, the defendant has taken the responsibility of proving that those properties were acquired after the partition.



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9. To prove the partition and Item Nos.2 and 3 of the suit properties were acquired subsequent to the partition, there is no material evidence on record as is held by Trial Court as well as the First Appellate Court.

10. Thus, when two Courts have recorded a factual finding , having regard to the scope of Section 100 of the Code of Civil Procedure, this Court does not find any reasons to admit the appeal on the aforesaid substantial questions of law for further consideration.

11. Consequently, following appeal :

ORDER

- (i) Admission declined.
- (ii) Regular Second Appeal is ***dismissed***.

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

SNC
List No.: 1 Sl No.: 461