IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MRS JUSTICE K.S.MUDAGAL

MISCELLANEOUS FIRST APPEAL No.5260/2013 (CPC)

BETWEEN:

1. SMT. A.R.SARVAMANGALAMMA
W/O LATE C.GURUMALLAPPA
AGED ABOUT 68 YEARS
RESIDING AT NO.10
NEW CORPORATION BUILDINGS
BINNY MILL ROAD
BENGALURU – 560 023

2. SRI G.CHANDRAMOHAN
ADVOCATE
S/O LATE C.GURUMALLAPPA
AGED ABOUT 40 YEARS
RESIDING AT NO.10
NEW CORPORATION BUILDINGS
BINNY MILL ROAD
BENGALURU - 560 023 ... APPELLANTS

(BY SRI.GIRIDHAR S.V., ADV.)

AND:

1. T.D.VARUN SAGAR
S/O T.M.DAYANAND SAGAR
AGED ABOUT 9 YEARS
MINOR AND REPRESENTED BY
HIS FATHER AND
NATURAL GUARDIAN
SRI.T.M.DAYANAND SAGAR
RESIDING AT NO.921
O.P.S. ROAD, CHICKPET
TUMKUR – 572 130

2. SRI T.M.DAYANAND SAGAR
S/O LATE T.A. MURUGGAPPA
AGED ABOUT 51 YEARS
RESIDING AT NO.921
O.P.S. ROAD, CHICKPET
TUMKUR – 572 130

3. SMT. H.R.VINUTHA SAGAR
W/O T.M.DAYANAND SAGAR
AGED ABOUT 37 YEARS
RESIDING AT NO.921
O.P.S. ROAD, CHICKPET
TUMKUR-572 130 ... RESPONDENTS

(BY RAVISHANKAR PATIL, ADV. FOR R2 & R3;
R1 IS MINOR REPRESENTED BY R2)

THIS MFA IS FILED UNDER ORDER 43 RULE 1(A) OF CPC, AGAINST THE ORDER DATED 06.06.2013 PASSED IN O.S.NO.8250/2012 ON THE FILE OF THE 25TH ADDITIONAL CITY CIVIL JUDGE (CCH-23), BENGALURU, ORDERING TO RETURN THE PLAINT THAT THE LOWER COURT HAS NO JURISDICTION TO ENTERTAIN THE SUIT.

THIS APPEAL COMING ON FOR FINAL HEARING THIS DAY, THE COURT THROUGH VIDEO CONFERENCE DELIVERED THE FOLLOWING:

JUDGMENT

Aggrieved by the order of the Trial Court returning the plaint for presentation before the proper Court, the plaintiffs have preferred this appeal.

2. Appellant Nos.1 and 2 are the wife and son of one C.Gurumallappa. C.Gurumallappa was the son of Chikkaputtappa and Siddalingamma.

Chikkaputtappa's wife Siddalingamma died when Gurumallappa was minor. Chikkaputtappa married G.S.Sarvamangalamma as second wife.

3. Appellants claimed that the properties bearing corporation Nos.63 to 66 situated at Tank Road, Cottonpet Bengaluru were purchased by Chikkaputtappa in an auction sale held in Execution Petition No.646/1929-30 for satisfaction of the judgment and decree in O.S.No.279/1929-30. The appellants further claimed that Chikkaputtappa settled the property on his minor son Gurumallappa under the settlement deed dated 08.01.1934 with a condition that Gurumallappa shall pay Rs.10/- per month and an annuity of Rs.12/- to his step mother G.S.Sarvamangalamma during her life time and shall not sell the property during her life time. Thus, he was the absolute owner of the property.

4. Gurumallappa died on 18.11.1982. His step mother G.S.Sarvamangalamma died on

10.11.2009. The appellants claimed that on the death of Gurumallappa they being his class I heirs became the absolute owners of the property as such they sold those properties to one R.K. Associates under the registered sale deed dated 06.04.2006.

5. G.S.Sarvamangalamma the step mother of Gurumallappa filed O.S.No.2401/2008 before the City Civil Court, Bengaluru against the appellants and the purchasers of the property seeking declaration of her title and for cancellation of the sale deed. On the death of G.S.Sarvamangalamma on 10.11.2009, respondent No.1 represented by respondent No.2 as his minor guardian sought to come on record in O.S.No.2401/2008 as her legal representative claiming that G.S.Sarvamangalamma has adopted him under the adoption deed dated 19.01.2005. The appellants contested the application denying the adoption of respondent No.1. After contest, the said application was allowed treating

respondent No.1 as the legal representative/adopted son of Sarvamangalamma for the limited purpose of prosecuting the said suit.

6. Thereafter, the appellants filed O.S.No.8250/2012 before the XXV Additional City Civil Judge, Bengaluru seeking the following reliefs:

(a) ***To declare that Adoption executed on 19/11/2005, registered as at Document No.TMK-4-0031-2005-06, stored in CD No.TMKD 67 dated 19.11.2005 Book IV, office of Sub Registrar, Tumkur*** in relation to the adoption of Defendant 1 G.S.Sarvamangalamma as ***null and void ab-inito*** and not binding on the Plaintiffs or the Schedule Property;

(b) For an order as to the costs of present suit; and

(c) Pass such other order/s as this Hon'ble Court deems fit to grant in the circumstances of the case, in the interest of justice and equity.

7. In the said suit, the appellants incorporated the properties bearing corporation

Nos.62 to 66 as the suit schedule properties. In the suit, the appellants challenged the adoption on the following grounds:

(i) Since appellant No.2 was the living step son of G.S.Sarvamangalamma, Section 11 of the Hindu Adoption and Maintenance Act, 1956 barred her from taking respondent No.1 in adoption. Therefore, the alleged adoption was invalid;

(ii) Due to old age G.S.Sarvamangalamma was not in sound state of physical and mental health. The alleged adoption deed was concocted or the outcome of fraud and undue influence.

(iii) There was no giving and taking of the child on adoption under the alleged adoption deed.

8. The appellants claimed that much before the adoption as long back as in 1934 itself, the suit properties had vested in Gurumallappa and the subsequent adoption does not divest him of the suit

properties. Consequently, the appellants as his sole legal heirs will succeed to the properties.

9. In O.S.No.8250/2012 the office raised objection as to how the suit in Bangalore Court was maintainable. The Trial Court on hearing the appellants/plaintiffs counsel, by the impugned order held that the adoption deed under challenge was executed and registered in Tumkur, the adoption set up under the said document took place in Tumkur and regarding the schedule properties, no relief was sought in the suit. Therefore, the Trial Court held that Bengaluru Court lacks jurisdiction. In other words, the Trial Court was of the opinion that the suit lies before the Tumkur Court, therefore returned the plaint for presentation before proper Court.

10. Sri.Giridhar S.V., learned counsel for the appellant relying on Section 16(d) CPC submits that under the plaint adjudication of appellants' right to or interest in the suit schedule properties was sought,

therefore, the Trial Court did have the jurisdiction to entertain the suit. He further contends that his suit was not confined to declaration of the adoption alone, but effect of such adoption on the properties vested in him which situated in Bangalore.

11. In support of his contention, he relies upon the following judgments:

(i) Harshad Chiman Lal Modi v/s DLF Universal Ltd. and another[1].

(ii) Harshad Chiman Lal Modi v/s DLF Universal Ltd. and another[2].

(iii) ***Begum Sabiha Sultan v/s Nawab Mohd. Mansur Ali Khan and Others.[3]***

12. The perusal of the copy of the plaint makes it clear that the whole challenge in the case was to the adoption and adoption deed dated 19.01.2005. Admittedly, the said document claimed to have executed in Tumkur and the adoption under the said document took place at Tumkur.

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[1] (2005) 7 SCC 791
[2] (2006) 1 SCC 364
[3] AIR 2007 SC 1636

13. In the suit under consideration, the plaintiffs had not sought the declaration of their title to the suit schedule properties. According to the appellants themselves much before filing of the suits in O.S. No.8250/2012 and O.S.No.2401/2008 on 06.04.2006 they had sold the properties. It appears for that reason they have not sought the declaration of their title to the said property.

14. Therefore, virtually the suit was to challenge the adoption. The relief that the adoption does not bind the suit schedule property was only to camouflage the true nature of the suit and only to bring the suit within the jurisdiction of the Bengaluru Court.

15. In ***Harshad Chiman Lal Modi's*** first case the suit was for specific performance of the agreement. Though the property was situated in Gurgaon of Haryana State, the agreement of sale was

admittedly executed in Delhi. Therefore, it was held that the Delhi Court has jurisdiction to try the suit.

16. The judgment in ***Harshad Chiman Lal Modi's*** (II) case arose out of the later stage proceedings, in the same case. The question there was whether the evidence recorded before the Delhi Court which had no jurisdiction can be adopted after the plaint was presented before the proper Court after the final judgment in Civil Appeal No.2726/2000. In that context, it was held that the evidence recorded by the Court before which initially the plaint was presented cannot be adopted. Therefore, both the said judgments do not advance the case of the appellants.

17. In ***Begum Sabiha Sultan's*** case though predominantly the suit was for partition, the plaintiff similar to the case on hand sought a negative declaration with regard to the Will set up by the defendants. The said Will was allegedly executed by

her ancestor through whom she claimed succession. Therefore, she claimed that the suit filed in Delhi Court was maintainable. The properties with regard to which partition was sought situated in Pataudi village, Gurgaon in Haryana State. Under such circumstances, the Hon'ble Supreme Court held that predominantly the suit was one for partition and lies before Gurgaon Court and only to bring the suit within Delhi Court's jurisdiction, the plaintiff sought negative declaration which has no jurisdiction. In fact that judgment fortifies the view taken by the Trial Court in this case.

18. In this case also the prime relief sought by the plaintiffs was for declaration of adoption deed and not declaration of title to the suit schedule properties. Obviously they have incorporated those properties in the suit and sought the consequential relief regarding those properties, only to bring the suit within jurisdiction of Bengaluru Court. That is nothing but

a clever drafting to camouflage the intention to avoid Tumkur Court. This Court is not persuaded to accept that Section 16(b) of the Civil Procedural Code applies to the suit.

There is no illegality or impropriety in the order of the Trial Court. Therefore, the appeal is dismissed.

Sd/-
JUDGE

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