**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

DATED THIS THE 17TH DAY OF DECEMBER, 2024

**BEFORE
THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE**

REGULAR FIRST APPEAL NO.100329 OF 2023 (PAR/POS-)

BETWEEN:

1. SHRI. TULASIGERAPPA
   S/O. RAMRADDI SHIVARADDI,
   AGE. 62 YEARS,
   OCC. AGRICULTURE,
   R/O. ARSHINAGODI,
   TQ. NARAGUND,
   DIST. GADAG – 582207.

2. SHRI. SOMARADDI
   S/O. RAMRADDI SHIVARADDI,
   AGE. 59 YEARS,
   OCC. AGRICULTURE,
   R/O ARSHINAGODI,
   TQ. NARAGUND,
   DIST. GADAG – 582207.

...APPELLANTS

Digitally signed by ASHPAK KASHIMSA MALAGALADINNI
Location: HIGH COURT OF KARNATAKA

(BY SRI. B. V. SOMAPUR, SRI. N.B. SOMAPUR,
SRI. C.B. SHAKUNAVALI AND
SMT. RANJITA ALAGUNDI, ADVOCATES)

AND:

1. SMT. MALLAVVA
   W/O. RAMARADDI SHIVARADDI,
   AGE. 77 YEARS,
   OCC. HOUSEWORK,
   R/O. ARSHINAGODI,
   TQ. NARAGUND,
   DIST. GADAG – 582207.

2. SMT. PADMAVVA
D/O. RAMARADDI SHIVARADDI,
AGE. 57 YEARS,
OCC. HOUSEWORK,
R/O. ARSHINAGODI,
TQ. NARAGUND,
DIST. GADAG – 582207.

3. SMT. SHAKUNTALA @ SHEKAVVA,
W/O. SOMANGOUDA KENCHANGOUDAR,
AGE. 52 YEARS,
OCC. HOUSE WORK,
R/O. VASANA,
TQ. NARAGUND,
DIST. GADAG – 582206.

4. SMT. RINDAVVA
W/O. VASAPPA HEBASUR,
AGE. 47 YEARS,
OCC. HOUSEHOLD,
R/O. KURTHKOTI,
TQ AND DIST. GADAG-582205.

…RESPONDENTS

(BY SRI. S.S. BAWAKHAN, ADVOCATE)

THIS RFA FILED UNDER SECTION 96 READ WITH ORDER 41 RULE 1 OF CPC., PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT AND DECREE PASSED BY THE LEARNED ADDL. SENIOR CIVIL JUDGE, GADAG IN O.S.NO.104/2021, DATED 08.12.2022 AND REMAND THE MATTER TO THE TRIAL COURT WITH DIRECTION TO GIVE PROPER AND SUFFICIENT OPPORTUNITY TO THE APPELLANTS/DEFENDANTS NO.1 AND 2 AND TO FILE THEIR WRITTEN STATEMENT AND LEAD THEIR ORDER AND DOCUMENTARY EVIDENCE AND COST OF THIS APPEAL BE GRANTED TO THE APPELLANTS.

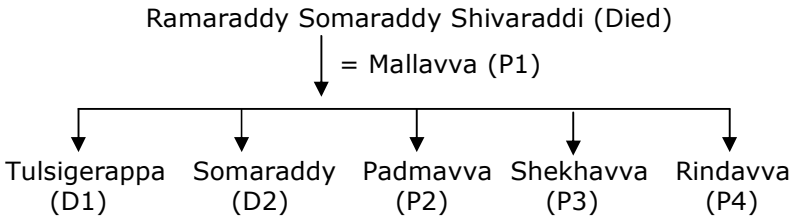
THIS APPEAL COMING ON FOR ADMISSION THIS DAY, THE COURT DELIVERED THE FOLLOWING:

CORAM: THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

ORAL JUDGMENT

Heard the learned counsel appearing for the appellants and respondents.

2. This appeal is against a decree for partition. Each of the plaintiffs claimed 1/6th share in the suit schedule properties and same is granted. The admitted genealogy is as under:



3. One Ramaraddy Somaraddy Shivaraddi was the propositus. His wife is Mallavva, who is plaintiff No.1. Ramaraddy Somaraddy Shivaraddi and Mallavva have three daughters and two are sons. Three daughters and the mother filed a suit against two sons of Ramaraddy Somaraddy Shivaraddi.

4. The defendants though engaged advocate, did not contest the suit by filing written statement. After recording plaintiffs' evidence and hearing the counsel for the parties, the suit is decreed.

5. Aggrieved by the aforementioned judgment and decree, defendants are in appeal.

6. Learned counsel appearing for the defendants would submit that during the lifetime of their father, he effected partition among his two sons and himself and his two sons were allotted properties and father also retained a property. It is his contention that item No.2 and 3 of 'A' schedule properties were allotted to the share of appellant No.1, item No.4 property is allotted to the share of appellant No.2 and item No.1 is allotted to the share of their father. It is also his contention that apart from item No.1 of 'A' schedule property, 7-Acres in the said survey number was also allotted to the father and the father sold the 7 acres and has retained 4-Acres 3-Guntas. It is his contention that well-wishers advised the plaintiffs not to

pursue the suit and the plaintiffs assured that they would not pursue the suit. Believing the plaintiffs' the defendants did not contest the suit. Later, they came to know that the suit is decreed and the plaintiffs acted contrary to their assurance. Hence, he would urge that the matter has to be remitted to the trial Court for fresh consideration to establish the plea of previous partition.

7. Sri S.S.Bawakhan, learned counsel appearing for the respondents/plaintiffs would submit that despite sufficient opportunity being given to the defendants, they have not chosen to contest the matter. He would also urge that no document is produced to support the alleged plea of previous partition and without such documents being produced before this Court, the appellants should not be permitted to seek a remand for fresh trial. Alternatively, he would submit that even if the matter is to remitted for fresh trail, then also the suit cannot be heard afresh in respect of item No.1 of 'A' schedule property as even according to the appellants, the said property is allotted to

the share of propositus Ramaraddy Somaraddy Shivaraddi and after his demise, plaintiffs would inherit the share in the property.

8. Learned counsel appearing for the appellants would submit that he has got the records to show the previous partition and same is evidenced in writing and pursuant to that mutations have been effected.

9. This Court has considered the contentions raised at the bar and perused the records.

10. Since the defendants are pleading a previous partition and it is their contention that the previous partition is recorded in public records by way of mutation entries, in the ends of justice, the Court would deem it appropriate to remand the matter on certain terms.

11. However, at the same time it is to be noticed that as rightly pointed out by Sri S.S.Bawakhan, learned counsel there cannot be a further trial in respect of item No.1 of 'A' schedule property which even according to the

appellants was allotted to the share of the propositus Ramaraddy Somaraddy Shivaraddi. Since he died intestate, the plaintiffs will acquire share in the said property along with the defendants.

12. It is stated that final decree proceeding is pending before the trial Court. Hence, the trial Court shall proceed to hear the final decree proceeding in respect of item No.1 property.

13. Learned counsel for the appellants on instructions submits that the appellants are not in possession of item No.1 of 'A' schedule property measuring 4-Acres 3-Guntas.

14. This being the position, till the conclusion of the final decree proceeding, the plaintiffs shall continue to manage and cultivate item No.1 of 'A' schedule property. Hence, the following:

ORDER

i) Appeal is allowed in part.

ii) Impugned judgment and decree dated 08.12.2022 passed in O.S.No.104/2021 by learned Additional Senior Civil Judge, Gadag are set-aside only to the extent of item Nos.2 to 4 of 'A' schedule and other 'B' schedule properties.

iii) Matter is remitted to the trial Court to consider the plea relating to item Nos.2 to 4 of 'A' schedule properties as well as other 'B' schedule properties.

iv) It is made clear that this Court has not expressed any opinion on the merits of the claim of either of the parties in respect of item Nos.2 to 4 of 'A' schedule and other 'B' schedule properties.

v) All contentions of the parties are kept open.

vi) Parties shall appear before the trial Court on 09.01.2025 without awaiting any further notice from the Court.

vii) The appellants are permitted to file written statement on the date of appearance itself and shall also pay Rs.10,000/- towards cost of this appeal to the respondents and same shall be the condition preceding to file written statement and contest the matter.

viii) It is further made clear that appellants shall co-operate for early disposal of the suit before the trial Court and trial Court shall afford opportunity to both the parties to lead evidence in respect of item Nos.2 to 4 of 'A' schedule and other

'B' schedule properties and thereafter, Court shall decide the case in accordance with law.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

AM
CT:ANB
List No.: 1 Sl No.: 25