NC: 2024:KHC-D:18427
RFA No. 100587 of 2019
C/W RFA No. 100586 of 2019

IN THE HIGH COURT OF KARNATAKA,

DHARWAD BENCH

DATED THIS THE 18TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

REGULAR FIRST APPEAL NO. 100587 OF 2019

C/W

REGULAR FIRST APPEAL NO. 100586 OF 2019

IN RFA NO.100587/2019

BETWEEN:

MAHADEV BHIMAPPA CHIKKANNAVAR,
AGE : 56 YEARS,
OCC : AGRICULTURE,
R/O : MAMADAPUR,
TQ : GOKAK,
DIST.BELAGAVI – 591218.

...APPELLANT

(BY SRI. A. R. PATIL, ADVOCATE)

AND:

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

1. MAKTUMSAB RAJESAB RAJEKHAN,
   AGE : 58 YEARS,
   OCC : AGRICULTURE COOLIE,
   R/O : MAMADAPUR,
   TQ : GOKAK,
   NOW AT
   H.NO.455, MAIN ROAD,
   CHOUTHANI, BHATKAL
   DIST : UTTARA KANNADA
   581354

2. MABUSAB @ IMAMSAB RAJESAB RAJEKHAN
   AGE : 51 YEARS,
   OCC : AGRICULTURE COOLIE,
   R/O : MAMADAPUR,

TQ : GOKAK,
NOW AT H.NO.202,
RUKMINI NAGAR,
BELAGAVI – 590002.

3. MADARSAB KHADARSAB RAJEKHAN
AGE : 54 YEARS,
OCC : HOUSEHOLD,
R/O : SATTIFERI,
R/O : SATTIGERI
TQ : SAUNDATTI,
BELAGAVI-591129.

…RESPONDENTS

(BY SRI. LAXMAN T. MANTAGANI, ADVOCATE FOR R1 AND R2;
SRI. S.G. KADADAKATTI, ADVOCATE FOR R3)

THIS RFA IS FILED UNDER SEC. 96 OF CPC., PRAYING TO CALL FOR RECORDS AND SET ASIDE THE JUDGMENT AND DECREE DATED 12.09.2019, PASSED BY THE I ADDL. SENIOR CIVIL JUDGE, GOKAK, IN O.S.NO.231/2016 BY ALLOWING THIS APPEAL, IN THE ENDS OF JUSTICE AND EQUITY.

IN RFA NO.100586/2019

BETWEEN:

MADARSAB KHADARSAB RAJEKHAN,
AGE : 54 YEARS,
OCC : HOUSEHOLD,
R/O : SATTIGERI,
TQ : SATTIGERI.
PIN CODE - 591129.

…APPELLANT

(BY SRI. S. G. KADADAKATTI, ADVOCATE)

AND:

1. MAKTUMSAB RAJESAB RAJEKHAN,
   AGE : 58 YEARS,
   OCC : AGRICULTURE COOLIE,
   R/O : MAMADAPUR,
   TQ : GOKAK,
   NOW AT
   H.NO.455, MAIN ROAD,
   CHOUTHANI, BHATKAL,
   DIST : UTTARA KANNADA-581354.

2. MABUSAB @ IMAMSAB RAJESAB RAJEKHAN,
   AGE : 51 YEARS,
   OCC : AGRICULTURE COOLIE,
   R/O : MAMADAPUR,
   TQ : GOKAK,
   NOW AT H.NO.202,
   RUKMINI NAGAR,
   BELAGAVI – 590002.

3. MAHADEV BHIMAPPA CHIKKANNAVAR
   AGE : 56 YEARS,
   OCC : AGRICULTURE,
   R/O : MAMADAPUR,
   TQ : GOKAK,
   BELAGAVI – 591218.

…RESPONDENTS

(BY SRI. LAXMAN T. MANTAGANI, ADVOCATE FOR R1 AND R2;
SRI. A. R. PATIL, ADVOCATE FOR R3)

THIS RFA IS FILED UNDER SEC. 96 OF CPC., PRAYING TO CALL FOR RECORDS AND SET ASIDE THE JUDGMENT AND DECREE DATED 12.09.2019, PASSED BY THE I ADDL. SENIOR CIVIL JUDGE, GOKAK, IN O.S.NO.231/2016 BY ALLOWING THIS APPEAL, IN THE ENDS OF JUSTICE AND EQUITY.

THESE APPEALS COMING ON FOR FINAL HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:

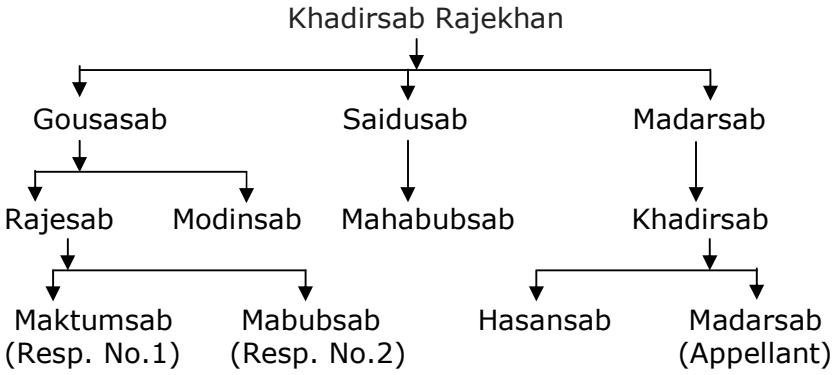
CORAM: THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

ORAL JUDGMENT

1. This appeal is directed against the decree granting half share to the plaintiffs in the suit property and also a declaration that the registered sale deed dated 18.05.2007 executed by defendant No.1 in favor of defendant No.2 is not binding on the plaintiffs.

2. RFA No.100587/2019 is by defendant No.2 and RFA 100586/2019 is by defendant No.1 who sold the property to defendant No.2. Both defendants, in these two appeals, have raised a common contention. In addition, appellant No.2/defendant No.2 has raised a contention that he is a *bona fide* purchaser of the property for valuable consideration.

3. The genealogy furnished in the appeal memo is as under:



4. Brief facts, as narrated in the plaint, can be summarized as follows:

4.1. According to the plaintiffs, Gousasab, Saidusab, and Madarsab were three brothers. Gousasab had two sons, namely Rajesab and Modinsab. It is further stated that plaintiffs, Maktumsab and Mabubsab alias Imamsab are the sons of Rajesab. Nothing is mentioned about the children of Modinsab, son of Gousasab. Saidusab has a son by name Mahabubsab. Again nothing is pleaded in the plaint as to who are the children of Mahabubsab. The third brother Madarsab, had a son by name

Khadirsab and the said Khadirsab had two sons, by name Hasanasab and Madarsab. It is not pleaded as to whether sons are survived by any heirs.

4.2. Modinsab, Mahabubsab and Hasanasab referred to above are no more. Admittedly, the original three brothers, Gousasab, Saidusab, and Madarsab, are also no more. The father of the plaintiffs, Rajesab, is also no more, and so also the father of defendant No.1, Khadirsab.

4.3. The suit is filed on the premise that the property bearing Survey No.639/B/2 measuring 2 acres 1 gunta originally jointly belonged to Khadirsab, Modinsab and his brother Rajesab. Accordingly, an entry is certified in the year 1972 and ME No.6951B of Madhapur village, Gokak Taluk reflected ½ share in favor of Khadirsab, Madarsab, both sons of Rajesab, in respect of Survey No.304/1 and 639/A1/BB2,

and remaining ½ share in the same properties was recorded in the name of Maktumsab and Mabubsab, both sons of Rajesab and Masabi.

4.4. *It is relevant to note that **Rejesab,** who is son of Gousasab is the husband of Masabi (as found in M.E.No.6951B). According to the appellants, said **Rajesab** is different from **Rajesab,** the son of Madarsab.*

4.5. The plaintiffs' contend that, pursuant to the aforementioned entry, which was certified when the plaintiffs were minors, their names continued in the property records until 2006. In the year 2006, without there being a valid transfer of property in the name of defendant No.1 based on the concocted partition/relinquishment deed dated 28.11.2006, the plaintiffs' names were deleted from the property records and M.E.No.135/2006-2007. Later, a sale deed was

executed on 18.05.2007 by the defendant No.1 in favor of defendant No.2 based on the illegal M.E.No.135/2006-2007. Based on the sale deed, M.E.No.250/2006-2007 was certified in the name of the defendant No.2.

4.6. It is contended that the plaintiff's signature in the alleged partition/ relinquishment is forged. Thus the suit for declaration and partition, contending that the sale deed dated 18.05.2007 is not binding on the plaintiffs, who claimed half share in the suit properties.

4.7. Defendant No.1 filed written statement justifying the sale transaction as well as the partition/relinquishment between the plaintiffs and defendant No.1. Defendant No.1 also contended that, the plaintiffs and one Madarsab had given up their shares to defendant No.1 as per the partition/relinquishment dated 28.11.2006 and they contend that the entry is

certified after due notice to the plaintiffs, and thus, defendant No.1 acquired absolute ownership and sold the property to defendant No.2.

4.8. Thus, defendant No.1 prayed for the dismissal of the suit and also contended that the suit is time-barred.

4.9. Defendant No.2 also filed a separate written statement. In addition to taking a defence similar to that raised by defendant No.1, the defendant No.2 raised the contention that he is a *bona fide* purchaser of the suit property for valuable consideration received by defendant No.1. It is also his contention that the plaintiffs and their ancestors had given up their rights to the property by receiving consideration from defendant No.1 and prayed for the dismissal of the suit.

4.10. The Trial Court held that the plaintiffs are having half share. The Trial Court held that the defence based on the previous partition/relinquishment dated 28.11.2006 is not established. The Trial Court also held that defendant No.2 is not a *bona fide* purchaser and concluded that the sale deed dated 18.05.2007 is not binding on the plaintiffs.

4.11. Aggrieved by the aforementioned judgment and decree, both defendants have filed the aforementioned appeals.

5. Learned counsel appearing for defendant No.1/appellant would contend that, in the year 2006, the plaintiffs relinquished their share as evidenced in Ex.P20. The plaintiffs signed the document on 28.11.2006 by putting their thumb impressions. Thereafter, they gave statements before the concerned revenue officers subsequent to the notice issued by the Tahasildar and they have not objected

to the certification of the mutation entry. Consequently, M.E.No.135/2006-2007 was certified on 30.11.2006, and defendant No.1 acquired ownership of the property and thereafter sold the property to the defendant No.2 under the registered sale deed dated 18.05.2007. Thus, it is his contention that the plaintiffs had no title over the property pursuant to the partition/relinquishment of 2006.

6. It is also urged that the suit for declaration is time-barred as the property was sold in the year 2007, and the suit was filed in the year 2016. Thus he would urge that the appeal be allowed and suit be dismissed.

7. Learned counsel appearing for defendant No.2/appellant would contend that the defendant No.2 is the absolute owner of the property by virtue of the registered sale deed dated 18.05.2007. When he purchased the property, the property was

standing in the name of defendant No.1. He had verified the property records and in M.E.No.135/2006-07, based on the partition of 2006, the name of defendant No.1 was appearing in the property records, based on the partition of 2006, wherein the plaintiffs had given up their claim. Thus, he would contend that the plaintiffs have no locus to question the sale deed. It is also his contention that the revenue records revealed the name of defendant No.1 as owners of the property and he is the bona fide purchaser for value from defendant No.1. He would also contend that the Trial Court had an obligation to frame an issue relating to the limitation given the mandate of Section 3 of the Limitation Act and the Trial Court ought to have given a finding on the plea of limitation raised by defendant No.1 and without deciding the said question, the Trial Court could not have decreed the suit. Thus, the suit ought to have been dismissed.

8. Sri. Laxman Mantagani, learned counsel appearing for the plaintiffs/respondents contended that the 1972 partition is admitted and not disputed by anyone. The said partition is produced and marked at Ex.P1. Defendant No.1 not having questioned the said partition of 1972 and having allowed the plaintiffs to enjoy the property as per the partition of 1972, without there being a registered document, cannot contend that in the year 2006 there was one more partition/relinquishment between the plaintiffs and defendant No.1.

9. Sri. Mantagani would contend that no share is given to the plaintiffs in the alleged partition of 2006. He would also contend that the plaintiffs are illiterates and taking advantage of the situation, a document is created and styled as partition/relinquishment deed and the same is marked as Ex.P20 and the said document does not confer any title in favour of the defendant No.1. It is also his contention that the

defendant No.1 could not have sold the property to defendant No.2 without the consent and knowledge of the plaintiffs, who had ½ share and thus, would urge that the Trial Court has rightly decreed the suit as the plaintiffs' half share is not extinguished.

10. As far as contention relating to limitation, it is urged that the plaintiffs had no knowledge of the mutation, which is certified in the year 2006 and the mutation based on the registered sale deed to which plaintiffs are not party. It is only when the defendants started interfering with the plaintiffs' possession, the plaintiffs came to know about the mutations and the suit is in time and the main relief being partition, the limitation is 12 years from the date of ouster the suit is in time.

11. The court considered the contentions raised at the Bar and perused the records. The following points arise for consideration:

i. Whether the appellants establish the validity of the partition dated 28.11.2006?

ii. Whether the appellant in RFA No.100586/2019 establishes that he is the bona fide purchaser for value?

iii. *Whether the appellants establish that the suit is time-barred?*

iv. Whether the plaintiffs/respondents establish that they have got half share in the suit properties?

v. Whether the suit is in time?

12. During the course of hearing, learned counsel appearing for the appellants submitted a fresh genealogy. According to the appellants, the plaintiffs are not the persons representing the branch of Gousasab. It is stated that defendant No.1 had a brother by name Rajesab and said Rajesab had two sons by name Maktumsab and Mabubsab. It is their contention that said Maktumsab and Mabubsab (Not

the plaintiffs) have relinquished the property in favour of defendant No.1. It is urged that the present plaintiffs though have the same names as Maktumsab and Mabubsab are not the children of Rajesab, S/o.Gousasab.

13. Learned counsel appearing for the respondents would contend that the plea based on the genealogy furnished before this Court is not pleaded in the written statement.

14. The relevant question is whether the plaintiffs are children of Rajesab, S/o.Gousasab as mentioned in M.E.No.6951B. In the said entry, it is also mentioned that the mother of Maktumsab and Mabubsab is Masabi. If the plaintiffs are children of Masubi, then the plaintiffs will have share in the property as per M.E.No.6951B. However, there is no specific evidence as to whether the plaintiffs are children of Masabi.

15. *On going through the cross-examination, it is noticed that at one place, defendant No.1 has admitted the relationship pleaded by the plaintiff. At another place, PW-1 in the cross examination has indicated that Khadirsab's brother Rajesab has two sons by name Maktumsab and Mabubsab*. This is the controversy that is required to be resolved in this case. The said controversy can be resolved, if it is established that the plaintiffs are children of Masabi W/o.Rajesab. The evidence in this regard is not forthcoming from the records. Under these circumstances, this Court is of the view that an issue is to be framed in this behalf and accordingly, the following issues are framed:

i. Whether the plaintiffs establish that they are children of Rajesab S/o.Gousasab and Masabi W/o.Rajesab?

ii. Whether the defendants establish that Khadirsab's brother Rajesab had two

sons by name Maktumsab and Mabubsab and those two persons have relinquished their right over the suit property?

16. Since the defendants have furnished a fresh genealogy before this Court, defendants are permitted to file additional written statement relating to genealogy furnished before this Court.

17. The plaintiffs are permitted to file rejoinder to the additional written statement and if any other issues would arise based on those additional pleadings, same shall be framed and parties shall be permitted to lead evidence on the issues framed by this Court as well as any other additional issues to be framed by the trial Court based on additional pleadings. Thereafter, the Court has to pass decree in accordance with law.

18. As far as limitation is concerned if it is found that the plaintiffs are not the persons named in M.E. No. 6951 B then they will have no right in the property and the suit is not maintainable. If they are found to be the same persons named in the said mutation, then the suit for declaration and partition would be in time as the relief of declaration is the main relief. That apart, even according to the appellants, as per contention raised before this court based on the geneology which they have submitted, the persons who relinquished the properties are not the plaintiffs but some other persons. Thus, if the relationship is proved by the plaintiffs then the suit will be in time.

19. It is made clear that nothing is expressed on the merits of the matter except the question of limitation as indicated above.

20. Hence, the following:

ORDER

i. Both appeals are ***allowed-in-part.***

ii. The impugned judgment and decree dated 12.09.2019 in O.S.No.231/2016 on the file of I Additional Senior Civil Judge, Gokak are set aside.

iii. The suit of the plaintiffs is remitted to the trial Court for fresh consideration as indicated above.

iv. The parties shall appear before the trial Court on 28.01.2025, without any further notice from the Trial Court.

v. The genealogy furnished in this appeal before this Court shall be sent to the Trial Court along with records for reference.

vi. No order as to cost.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

GAB, RKM
CT:ANB
List No.: 1 Sl No.: 37