



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 8TH DAY OF JANUARY, 2024

PRESENT

THE HON'BLE MR JUSTICE ASHOK S. KINAGI

AND

THE HON'BLE MR JUSTICE RAJESH RAI K

REGULAR FIRST APPEAL NO. 100079 OF 2017 (PAR/POS)

BETWEEN:

SHANTILKUMARSWAMY R. SUBRAMANYA,
AGE: 33 YEARS, OCC: BUSINESS,
R/O: RAMANAKOPPA, GANESH HOTEL,
TQ: KUNDAGOL, DIST: DHARWAD-581113.

...APPELLANT

(BY SRI. MAHESH WODEYAR, ADVOCATE)

AND:

1. RENAVVA @ LAKSHMI
W/O. SHANKAR BANDIWADDAR,
AGE: 33 YEARS, OCC: HOUSEHOLD WORK,
R/O: CHALAMATTI, TQ: KALAGHATGI-581204.
2. TIPPAVVA @ SHARADHA
W/O. RAMAPPA JAKARI,
AGE: 31 YEARS, OCC: HOUSEHOLD WORK,
R/O: ADARAGUNCHII, TQ: HUBBALLI-580023.
3. LAKSHMAVVA
W/O. DEVAPPA BANDIWADDAR,
AGE: 29 YEARS, OCC: HOUSEHOLD WORK,
R/O: CHALAMATTI, TQ: KALAGHATGI-581204.
4. SARASWATI
W/O. RAMAPPA MUTTALLI,
AGE: 25 YEARS, OCC: HOUSEHOLD WORK,
R/O: MUNDAGOD, TQ: MUNDAGOD-581349.





5. MUTTANNA RAMAPPA WADDAR
AGE: 27 YEARS, OCC: STUDENT,
R/O: VARUR, TQ: HUBBALLI-581207.
6. MANJAWWA
D/O. RAMAPPA WADDAR,
AGE: 23 YEARS, OCC: HOUSEHOLD WORK,
R/O: VARUR, TQ: HUBBALLI-581207.
7. NAGARATNA
D/O. RAMAPPA WADDAR,
AGE: 22 YEARS, OCC: HOUSEHOLD WORK,
R/O: VARUR, TQ: HUBBALLI-581207.
8. NAGAPPA
S/O. YALLAPPA WADDARR,
AGE: 27 YEARS, OCC: COOLIE,
R/O: VARUR, TQ: HUBBALLI-581207.
9. MANJUNATH YALLAPPA WADDAR
AGE: 25 YEARS, OCC: COOLIE,
R/O: VARUR, TQ: HUBBALLI-581207.
10. HANUMANTAPPA YALLAPPA WADDAR
AGE: 23 YEARS, OCC: COOLIE,
R/O: VARUR, TQ: HUBBALLI-581207.
11. SUSHEELA
W/O. LAKSHAMAN BANDIWADDAR,
AGE: 22 YEARS, OCC: HOUSEHOLD WORK,
R/O: RAMADURGA, TQ: RAMADURGA-591123.
12. SHIVAPPA SANNARAMAPPA WADDAR
AGE: 27 YEARS, OCC: COOLIE,
R/O: RAMADURGA, TQ: RAMADURGA-591123.
13. ANAND SANNARAMAPPA WADDAR
AGE: 23 YEARS, OCC: COOLIE,
R/O: RAMADURGA, TQ: RAMADURGA-591123.
14. RENAVVA
D/O. SANNARAMAPPA WADDAR,
AGE: 23 YEARS, OCC: HOUSEHOLD WORK,
R/O: RAMADURGA, TQ: RAMADURGA-591123.



15. LAKSHMAN YANKAPPA WADDAR
AGE: 18 YEARS, OCC: STUDENT,
R/O: RAMADURGA, TQ: RAMADURGA-591123.
16. RAMESH YANKAPPA WADDAR
AGE: 16 YEARS, OCC: STUDENT,

MINOR GAURDIAN R/BY HIS NATURAL
MOTHER RESPONDENT NO.17,
RENAVVA W/O. YANKAPPA WADDAR,
AGE: 43 YEARS, OCC: HOUSEHOLD WORK,
R/O: RAMADURGA, TQ: RAMADURGA-591123.
17. RENAVVA
W/O. YANKAPPA WADDAR,
AGE: 43 YEARS, OCC: HOUSEHOLD WORK,
R/O: RAMADURGA, TQ: RAMADURGA-591123.
18. RAMAPPA HANAMANTAPPA WADDAR
AGE: 57 YEARS, OCC: COOLIE,
R/O: VARUR, TQ: HUBBALLI-580020.
19. YALLAVVA
W/O. RAMAPPA WADDAR,
AGE: 53 YEARS, OCC: HOUSEHOLD WORK,
R/O: VARUR, TQ: HUBBALLI-580020.
20. YALLAPPA HANAMANTAPPA WADDAR
AGE: 53 YEARS, OCC: COOLIE,
R/O: VARUR, TQ: HUBBALLI-581207.
21. BANGAREVVA
W/O. YALLAPPA WADDAR,
AGE: 49 YEARS, OCC: HOUSEHOLD WORK,
R/O: VARUR, TQ: HUBBALLI-581207.
22. SANNARAMAPPA HANAMANTAPPA WADDAR
AGE: 51 YEARS, OCC: COOLIE,
R/O: VARUR, TQ: HUBBALLI-581207.
23. SHANTAVVA
W/O. SANNARAMAPPA WADDAR,
AGE: 47 YEARS, OCC: HOUSEHOLD WORK,



R/O: VARUR, TQ: HUBBALLI-581207.

24. YANKAPPA HANAMANTAPPA WADDAR
DEAD BY HIS LRs.,
RESPONDENT NOS. 15 TO 17
ARE ALREADY ON RECORD.
25. HANUMAVVA
W/O. IRAPPA BANDIWADDAR,
AGE: 59 YEARS, OCC: HOUSEHOLD WORK,
R/O: KUBIHAL, TQ: KUNDAGOL-580020.
26. S.R.AJEEJ AHAMAD
AGE: 58 YEARS, OCC: BUSINESS,
R/O: MYSURU ROAD, NEAR SAGAR HOTEL,
SHIVAMOGGA-577201.
27. BASAPPA DEVENDRAPPA GABANNAVAR
AGE: 63 YEARS, OCC: AGRICULTURE,
R/O: VARUR, TQ: HUBBALLI-580020.

...RESPONDENTS

(BY SRI. MALLIKARJUNSWAMY B. HIREMATH, ADVOCATE FOR
R8 TO R14, R16, R17 (R16 R/BY R17);
SRI.C.S.SHETTAR, ADVOCATE FOR R1 TO R7, R25;
SRI.GURURAJ B.KUMBAR, ADVOCATE FOR R27;
NOTICE TO R15, R18, R22, R23 ARE SERVED;
R15 TO R17 ARE THE LRs OF DECEASED R24;
NOTICE TO R19 TO R21, R26 ARE HELD SUFFICIENT)

THIS RFA IS FILED UNDER SEC.96 OF CPC., AGAINST THE
JUDGMENT AND DECREE DATED 08.12.2016 PASSED IN
O.S.NO.158/2014 ON THE FILE OF THE III ADDITIONAL SENIOR
CIVIL JUDGE, HUBBALLI, PARTLY DECREEING THE SUIT FILED
FOR PARTITION AND SEPARATE POSSESSION.

THIS RFA COMING ON FOR HEARING, THIS DAY, **ASHOK S.**
KINAGI, J., DELIVERED THE FOLLOWING:



JUDGMENT

This appeal is filed challenging the judgment and preliminary decree dated 08.12.2016 passed in O.S.No.158/2014 by the III Additional Senior Civil Judge, Hubballi.

2. For the sake of convenience, parties are referred to as per their ranking before the trial court.

3. Appellant is defendant No.9, respondent Nos.1 to 17 are the plaintiffs and respondent Nos.18 to 27 are the defendants.

4. Plaintiffs filed a suit for partition and separate possession in respect of the suit schedule properties. It is the case of the plaintiffs that original propositus was one Yallappa. He had a wife by name, Fakkiravva. They had two sons by name, Yallappa and Hanumantappa. Hanumantappa had six children, namely, defendant Nos.1, 3, 5, 7 and 8 and daughter Renavva who is dead. The Ramappa defendant No.1 had a wife by name Yallavva



i.e., defendant No.2. Defendant No.3 has a daughter by name Bangarevva i.e., defendant No.4. Defendant No.5 has a daughter by name Shantavva i.e., defendant No.6. Defendant No.7 Yankappa had a daughter by name Renavva i.e., plaintiff No.17. Plaintiff Nos.1 to 7 are the children of defendant Nos.1 and 2. Plaintiff Nos. 8 to 11 are the children of defendant Nos.3 and 4, plaintiff Nos.12 to 14 are the children of defendant Nos.5 and 6 and defendant Nos.15 and 16 are the children of plaintiff No.17. It is the case of the plaintiffs that suit schedule properties are the joint family properties of plaintiff No.1 and defendant Nos.1 to 8 and they are the members of Hindu undivided family and there is no partition effected between the plaintiffs and defendant Nos.1 to 8. Plaintiffs demanded for partition and separate possession, but the defendants refused to effect partition. Hence, cause of action arose for the plaintiffs to file the suit for partition and separate possession.



5. Defendant No.1 filed written statement contending that Sl.No.1 of A-schedule and B-schedule properties are the joint family properties, but the properties in Sl.No.2 of the A-schedule is not the ancestral property. It is contended that said property was granted to defendant Nos.1, 3, 5 and 7 under the provisions of the Karnataka Land Reforms Act. In the said land either plaintiffs or defendant No.8 have no right and prayed to dismiss the suit.

6. Defendant Nos.3, 5 and 7 have filed the memo adopting the written statement of defendant No.1. Defendant No.8 filed consent written statement and contended that she is having 1/6th share in the suit properties. Defendant No.9 being the purchaser has filed written statement contending that the suit is barred by limitation. He further contended that he is the absolute owner of the land bearing Sy.No.138/1A/2 measuring 1 acre and 30 guntas. Defendant No.9 after verifying the relevant documents purchased the suit property. The said



land was purchased under registered sale deed dated 10.03.2003. It is contended that neither the plaintiffs nor defendant Nos.1 to 8 have right, title and interest over the said land. It is contended that defendant No.9 is the bonafide purchaser for value without notice. He submits that defendant Nos.1, 3, 5 and 7 have sold the property for their legal and family necessity. Hence, prayed to dismiss the suit.

7. Defendant Nos.10 and 11 in their written statement taken up the contention that defendant Nos.1, 3, 5 and 7 have sold Sl.No.2 of the schedule property to defendant No.10 for valuable consideration under registered sale deed dated 03.07.1993 and he is the bonafide purchaser. Hence, prayed to dismiss the suit.

8. The trial court on the basis of the pleading of the parties framed following issues:

ISSUES

- 1) Whether plaintiffs prove that schedule properties are the joint family properties of the plaintiffs and



defendant No.1 to 8 and they are having the share in the schedule properties?

- 2) Whether plaintiffs prove that the sale deed in respect of A and B schedule properties executed by defendants No.1, 3, 5 and 7 in favour of defendants No.5 and 10 are not binding on the share of the plaintiffs in the schedule property?
- 3) Whether the defendant No.8 proves that she is having 1/6th share in the schedule property?
- 4) Whether plaintiffs are entitled for the reliefs claimed in the suit?
- 5) What order or decree?

ADDITIONAL ISSUES

- 1) Whether the defendants No.9 proves that he is the bonafide purchase of 'A' schedule property for valid consideration?
- 2) Whether the defendant No.9 proves that court fee paid is insufficient in respect relief on A schedule property?
- 3) Whether defendant No.10 proves that defendants No.1, 3, 5 and 7 are the owners of 'B' schedule property and by virtue of the sale deed dated 3-7-1993 executed by them, defendant No.10 became the owner of that suit property?
- 4) Whether the suit in respect of Sl.No.1 of A and Sl.No.2 of B-schedule property is barred by limitation?
- 5) Whether defendant Nos.1, 3, 5 and 7 proves that the land bearing Sy.No.102 measuring 4 acres is a tenanted land, hence plaintiffs and defendant No.8 have no share in the said property?



6) Whether the defendant No.11 proves that he is the bonafide purchaser of item No.2 of B-schedule for valid consideration?

9. The plaintiffs in order to prove their case, plaintiff No.4 examined herself as P.W.1 and got marked 9 documents as Exs.P1 to P9. Plaintiffs also examined one witness as P.W.2. On behalf of the defendants, defendant Nos.9 and 8 were examined themselves as D.Ws.1 and 2 and examined one witness as D.W.3 and got marked 3 documents as Exs.D1 to D3. The trial court on assessment of oral and documentary evidence answered issue No.1 in the affirmative, issue Nos.2 to 4 partly in the affirmative, additional issue Nos.1 to 6 in the negative and issue No.5 as per the final order. The suit of the plaintiffs and the claim of defendant No.8 is decreed in part. It is ordered and decreed that plaintiff Nos.1 to 7 are having 1/9th share each in 6/25th share, defendant No.4 and plaintiff Nos.8 to 11 are having 1/6th share each in 6/25th share. Plaintiff Nos.12 to 14 are having 1/5th share each in 6/25th share, in the land bearing Sy.No.101/2 and the house property



bearing No.129/B i.e., in Sl.No.2 of A-schedule and Sl.No.1 of B-schedule, by metes and bounds. Plaintiff No.5 is having $\frac{1}{2}$ share in 6/25th , plaintiff Nos.8 to 10 are having 1/4th share each in 6/25th, plaintiff Nos.12 and 13 are having 1/3rd share each in the land bearing Sy.No.138/1A/2 and property bearing Sy.No.129/3 i.e., Sl.No.1 of A-schedule and Sl.No.2 of B-schedule. Defendant No.8 is having 1/25th share in the schedule properties. It is ordered that, sale deeds dated 10.03.2003 and 03.07.1993 executed by defendant Nos.1, 3, 5 and 7 are not binding on the share of plaintiff Nos.5, 8 to 10, plaintiff Nos.12 and 13 and defendant No.2 in the proportion sold there under. It is further ordered that, endeavour shall be made to allot the properties purchased by defendant Nos.9 and 10 to the share of defendant Nos.1, 3, 5 and 7 and thereby to protect their interest.

10. Defendant No.9 aggrieved by the judgment and preliminary decree awarding a share in land bearing Sy.No.138/1A/2 has filed this appeal.



11. Heard the learned counsel for defendant No.9 and learned counsel for the plaintiffs.

12. Learned counsel for defendant No.9 submits that defendant Nos.1, 3, 5 and 7 have sold the land bearing Sy.No.138/1A/2 under registered sale deed dated 10.03.2003. He submits that by virtue of Section 6 of the Hindu Succession Amendment Act, 2005, any alienation taken place before 20.12.2004 is saved. He submits that the trial court committed an error in holding that sale deed dated 10.03.2003 is not binding on the share of the plaintiffs. In order to buttress his arguments, he placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Vineeta Sharma v. Rakesh Sharma and others*** reported in **(2020) 9 SCC 1**. Hence, on these grounds he prays to allow the appeal.

13. Per contra, learned counsel for the plaintiffs supports the impugned judgment and submits that sale deed executed by defendant Nos.1, 3, 5 and 7 in favour of defendant No.9 is not for family and legal necessity and



the sale deed executed by them is not binding on the plaintiffs. Hence, on these grounds, he prays to dismiss the appeal.

14. Perused the records and considered the submission of the learned counsel for the parties. The points that arise for our consideration are:

- 1) Whether the trial court committed an error in granting share in respect of land bearing Sy.No.138/1A/2 whereby the said land was sold by defendant Nos.1, 3, 5 and 7 in favour of defendant No.9 under registered sale deed dated 10.03.2003 without considering the proviso to Sub-Section(1) of Section 6 of the Hindu Succession Amendment Act, 2005?
- 2) What order or decree?

15. Point No.1: It is the case of the plaintiffs that one Yallappa was the original propositus. He had two sons by name Yallappa and Hanumantappa. Yallappa died on



02.09.1977 and Hanumantappa died on 29.02.1992 leaving behind plaintiffs and defendants as legal heirs. Suit schedule properties are the ancestral properties of the plaintiffs and defendants. There is no partition effected between the plaintiffs and defendants. Defendant Nos.1, 3, 5 and 7 have no right to execute the registered sale deed in favour of defendant No.9. It is contended that plaintiffs and defendant Nos.1 to 8 are the members of Hindu undivided joint family and there is no partition. Hence, plaintiffs filed the suit. The plaintiffs in order to substantiate their case, plaintiff No.4 was examined as P.W.1. She has reiterated the plaint averments in her examination-in-chief. In order to prove that suit schedule properties are the ancestral properties of plaintiffs and defendant Nos.1 to 8, produced the documents. Ex.P1 is the RTC extract of the suit property bearing Sy.No.138/1A2, Exs.P2 and 3 are the tax assessment extracts, Exs.P4 and P5 are the certified copies of the D-entry extract, Exs.P6 and 7 are the certified copies of the sale deeds papers., Ex.P8 is the Minutes (Taravu) of Varur



Gram Panchayat dated 31.12.2014 and Ex.P9 is the certificate issued by Varur Gram Panchayat. The plaintiffs also examined one witness by name Hanamanthappa H.Kubihal as P.W.2. He has deposed that plaintiffs and defendant Nos.1 to 8 are the joint family members and suit schedule properties are the ancestral properties of plaintiffs and defendant Nos.1 to 8. There is no partition effected between the plaintiffs and defendant Nos.1 to 8.

16. In rebuttal, defendant No.9 was examined as D.W.1. He has reiterated the written statement averments in his examination-in-chief and contended that defendant Nos.1, 3, 5 and 7 have sold the property bearing Sy.No.138/1A/2 under registered sale deed dated 10.03.2003. Defendant No.9 after verifying the records has purchased the property and he is the bonafide purchaser. Further, defendant No.9. Further, defendant No.9 has produced registered sale deed executed by defendant Nos.1, 3, 5 and 7 on 10.03.2003 marked as Ex.D1, which discloses that defendant Nos.1, 3, 5 and 7



have sold the said land in favour of defendant No.9 for valid consideration. Though plaintiffs being the members of Hindu undivided joint family and suit schedule properties are the joint family properties of the plaintiffs and defendant Nos.1 to 8, as per the proviso to sub-section (1) of Section 6 of the Hindu Succession Amendment Act, 2005, nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before 20.12.2004. Admittedly, in the instant case, defendant Nos.1, 3, 5 and 7 have sold the property in favour of defendant No.9 prior to 20.12.2004. The said sale transaction is saved by virtue of proviso to sub-section (1) of Section 6 of the Hindu Succession Amendment Act, 2005. As per the proviso to sub section (1) of Sec 6 of the Hindu Succession Act. As per the said proviso disposition/alienation including 'sale' which may have taken place before 20.12.2004 as per law applicable prior to the said date will remain unaffected. Hence any



transaction of sale effected thereafter will be governed by the explanation.

17. Admittedly in the instant case, the sale transaction took place 10.03.2003 and the sale transaction is unaffected by virtue of proviso to Sec.6(1) of Hindu Succession Act. The said aspect was not considered by the trial court and committed an error in granting share in respect of the land bearing Sy.No.138/1A/2. In view of the above discussion, we answer point No.1 in the affirmative. Accordingly, we proceed to pass the following:

ORDER

- i) The appeal is allowed.
- ii) The judgment and preliminary decree dated 08.12.2016 passed in O.S.No.158/2014 by the III Additional Senior Civil Judge, Hubballi in respect of land bearing Sy.No.138/1A/2 is set aside. Consequently, suit of the plaintiffs in respect of land bearing Sy.No.138/1A/2 is



dismissed and rest of the judgment is maintained.

iii) No order as to costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

MBS
Ct:vh
List No.: 1 SI No.: 10