

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15<sup>TH</sup> DAY OF FEBRUARY, 2022

BEFORE

THE HON'BLE MR.JUSTICE N.S.SANJAY GOWDA

**R.S.A. No.178 OF 2022 (DEC/PAR)**

**BETWEEN:**

SRI. SHANTHAMALLESHAPPA B.N.,  
S/O LATE B.C.NAGAPPA,  
AGED ABOUT 59 YEARS,  
R/AT D.No.143/G. 12<sup>TH</sup> MAIN,  
13<sup>TH</sup> CROSS, SARASWATHIPURAM,  
MYSURU – 570 009.  
PRESENTLY RESIDING AT  
D.No.795, 12<sup>TH</sup> MAIN,  
14<sup>TH</sup> CROSS, SARASWATHIPURAM,  
MYSURU – 570 009.

**... APPELLANT**

(BY SRI. C.A.AJITH, ADVOCATE)

**AND:**

1. SRI. B.N.MANJUNATHASWAMY,  
S/O LATE B.C.NAGAPPA,  
AGED ABOUT 55 YEARS,  
R/AT BADANAGUPPE VILLAGE,  
KASABA HOBLI,  
CHAMARAJANAGAR TALUK – 571 313.  
CHAMARAJANAGAR DISTRICT.
2. SRI. SHIVAKUMARSWAMY,  
S/O LATE K.V.GURUSIDDAPPA,  
AGED ABOUT 74 YEARS,  
R/AT KAMARAVADI VILLAGE,  
SANTHEMARAHALLI HOBLI,  
CHAMARAJANAGAR TALUK – 571 316

CHAMARAJANAGAR DISTRICT.

3. THE LAND ACQUISITION OFFICER,  
KARNATAKA INDUSTRIAL AREA,  
DEVELOPMENT BOARD(KIADB),  
KRS ROAD, MYSURU - 570 016.

**... RESPONDENTS**

THIS APPEAL IS FILED UNDER SECTION 100 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 12.11.2021 PASSED IN RA.No.29/2019 ON THE FILE OF THE SENIOR CIVIL JUDGE AND CJM, CHAMARAJANAGARA, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 09.01.2019 PASSED IN OS.No.218/2013 ON THE FILE OF THE PRINCIPAL CIVIL JUDGE, CHAMARAJANAGARA.

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

**JUDGMENT**

1. This is a second appeal by the plaintiff who has failed to obtain a decree of partition at the hands of both the Trial Court and as well as the Appellate Court.
2. It is an undisputed fact that the plaintiff and defendant No.1 are brothers. It is also not in dispute that after the death of their father Sri.B.C.Nagappa, the family properties were divided under the registered partition deed dated 20.06.2002, which was entered into amongst the plaintiff, defendant No.1 and his mother—

Maramma. It is the further case of the plaintiff that subsequently in the year 2012, he came to know that defendant No.1 had actually purchased a property on 11.04.1996 in his name, though the sale consideration for the said purchase was out of the joint family income and his father had financed the said purchase.

3. It was alleged that defendant No.1 had illegally sold the said property to defendant No.2 in the year 1999 and this was not disclosed at the time of the partition and subsequently, on becoming aware of this sale transaction in O.S. No.35 of 2008, which had been filed by defendant No.1 seeking for partition of their mother—Maramma's share, the plaintiff became aware of the acquisition and hence, was seeking for partition.

4. Defendant No.1 entered appearance, but did not contest the suit.

5. Defendant No.2, the purchaser, resisted the suit contending that the property had been sold to him under

a registered sale deed dated 17.05.1999 and he was put in possession of the same and ever since, he was in lawful possession and enjoyment of the suit property. It was alleged that there were several disputes pending between the plaintiff and defendant No.1 before the various courts and in order to wreak vengeance against defendant No.1, the present suit had been filed.

6. The Trial Court in consideration of the evidence adduced before it, came to the conclusion that the plaintiff had failed to prove that the suit property was the joint family property of the plaintiff and defendant No.1. It held that the suit was barred by limitation and the plaintiff was not entitled for half a share in the suit property and it accordingly dismissed the suit.

7. Being aggrieved, the plaintiff preferred an appeal. The Appellate Court on re-appreciation of the entire evidence on record, found no reason to disagree with the findings recorded by the Trial Court. The Appellate Court noticed that the plaintiff himself had admitted that in the

partition of the year 2002, not only the joint family properties but also the self-acquired properties were subjected to partition and this established that the plaintiff was aware of the property purchased by defendant No.2 and since the same was not included in the partition, it was obvious that the said property was the separate property of defendant No.1. The Appellate Court accordingly confirmed the findings recorded by the Trial Court and dismissed the appeal.

8. The learned counsel for the appellant contended that the plaintiff became aware of the sale only in the year 2012 and he has taken immediate steps to file a suit for partition and the statement before the Court could not be construed as an admission that he was aware of the sale. He also submitted that he had made an application seeking permission of the Appellate Court to adduce the evidence of the vendor of the suit property and also to produce records and that had been wrongly refused.

9. The plaintiff during the course of his cross-examination has deposed as follows:

“1ನೇ ಪ್ರತಿವಾದಿ ಮತ್ತು ನಾನು ನನ್ನ ತಂದೆ ತಾಯಿಗೆ ಮಕ್ಕಳು ಎಂದರೆ ಸರಿ. ನನ್ನ ಕೆಲಸ ಮೇರೆಗೆ ನಾನು ಬೇರೆ ಬೇರೆ ಕಡೆ ವಾಸ ಮಾಡುತ್ತಿದ್ದೇನೆ. ಹಬ್ಬ ಇರುವ ಸಮಯದಲ್ಲಿ ನನ್ನ ಊರಿಗೆ ಬರುತ್ತಿದ್ದೆ. ನಾನು ಊರಿಗೆ ಬರುವ ಸಮಯದಲ್ಲಿ ನನ್ನ ವ್ಯವಹಾರಗಳನ್ನು ನೋಡಿಕೊಳ್ಳುತ್ತಿದ್ದೇನೆ ಎಂದರೆ ಸರಿ. ಸಾಕ್ಷಿ ಮುಂದುವರೆದು ನನ್ನ ವ್ಯವಹಾರಗಳನ್ನು ಗಮನಿಸುತ್ತೇನೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ.”

“ನಾನು ಬಂದು ಹೋಗುವ ಸಮಯದಲ್ಲಿ ನಮ್ಮ ಮನೆಯ ಎಲ್ಲಾ ವ್ಯವಹಾರಗಳ ಬಗ್ಗೆ ನನಗೆ ಮಾಹಿತಿ ಇತ್ತು ಎಂದರೆ ಸರಿ.”

“ನಮ್ಮ ಕುಟುಂಬದ ಆಸ್ತಿಗಳನ್ನು ನಾನು, 1ನೇ ಪ್ರತಿವಾದಿ ಮತ್ತು ನನ್ನ ತಾಯಿ ನೋಂದಣೆ ವಿಭಾಗಪತ್ರದ ಮೂಲಕ ವಿಭಾಗವನ್ನು ಮಾಡಿಕೊಂಡಿದ್ದೇವೆ ಎಂದರೆ ಸರಿ. ಎಲ್ಲಾ ಕುಟುಂಬದ ಆಸ್ತಿಗಳನ್ನು ಸೇರಿಸಿ ವಿಭಾಗ ಮಾಡಿಕೊಂಡಿದ್ದೇವೆ ಎಂದರೆ ಸರಿ. ನಮ್ಮ ಸ್ವಂತ ಆಸ್ತಿಗಳನ್ನು ಸೇರಿಸಿ ನಾನು 1ನೇ ಪ್ರತಿವಾದಿ ನನ್ನ ತಾಯಿ ಸೇರಿ ವಿಭಾಗವನ್ನು ಮಾಡಿಕೊಂಡಿರುತ್ತೇವೆ.”

10. The above deposition leaves no manner of doubt that the plaintiff was aware of the happenings in his family and also the enjoyment of the family properties. The fact that the plaintiff admitted that all the properties, including the self-acquired properties, were

subjected to partition in the year 2002 clearly goes to establish that the plaintiff had taken his share in the properties that he was entitled to. The fact that the suit schedule property was excluded from the partition would indicate that the said property was a separate property of defendant No.1. The view taken by both the Courts that the suit property belonged to defendant No.1 exclusively and he was entitled to alienate the property cannot be found fault with.

11. The argument of the learned counsel that the Appellate Court had erred in rejecting the application for production of additional evidence cannot be accepted. The learned counsel made available a copy of the application seeking for production of the additional evidence. In the said application, it has been stated as follows:

"5. I state that, recently, I have learnt that, at the time of the purchased the schedule property, my father was maintained some records which are along with the list of documents. I further state

that, the vendors of the said sale deed dated: 11.04.1996 and they are very much necessary to examine as witnesses in this appeal, without their evidence the Hon'ble court has not appropriate conclusion of this appeal. Hence, there is no other alternative, I have filed this annexed application for my evidence."

12. In my view, the reason afforded by the appellant seeking for permission to adduce additional evidence would not be sufficient to entitle him to produce the additional evidence. Admittedly, the appellant was aware of the fact that he was required to prove that the funds for the acquisition of the suit property emanated from his father and despite being aware of this requirement, if he had failed to secure the required evidence, he cannot be permitted, at the appellate stage, to seek for permission to adduce additional evidence of matters which were within his knowledge and he could have easily produced. The decision of the Appellate Court in rejecting the said application for production of additional evidence cannot therefore be found fault with.



13. I find no substantial question of law arising for consideration in this second appeal and the same is accordingly ***dismissed***.

RK  
CT:SN

**Sd/-  
JUDGE**