



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

**DATED THIS THE 23<sup>RD</sup> DAY OF JANUARY, 2024**

**BEFORE**

**THE HON'BLE MR JUSTICE R.NATARAJ**

**REGULAR SECOND APPEAL NO.100798/2022(PAR/POS)**

**BETWEEN:**

SMT. SHOBHA @ BALAWWA  
W/O. BASAVARAJ NAVI,  
AGE: 37 YEARS,  
OCC: HOUSEHOLD AND AGRIL.,  
R/O.KHANAGAON VILLAGE,  
TQ: GOKAK, DIST: BELAGAVI – 591 344.

...APPELLANT

(BY SRI VITTHAL S. TELI, ADVOCATE)

**AND:**

1. SRI MALLAPPA  
S/O. BALAPPA NAVI @ NAVALIGER,  
AGE: 70 YEARS,  
OCC: AGRIL.,  
R/O: MARADI SHIVAPUR,  
TQ: GOKAK, DIST: BELAGAVI – 591 231.

2. SMT. NEELAWWA  
S/O. MALLAPPA NAVI @ NAVALIGER,  
AGE: 65 YEARS,  
OCC: HOUSEHOLD  
R/O: MARADI SHIVAPUR  
TQ: GOKAK, DIST: BELAGAVI – 591 231.

3. SRI BASAPPA  
S/O. MALLAPPA NAVI @ NAVILIGER,  
AGE: 40 YEARS,  
OCC: HOUSEHOLD  
R/O: MARADI SHIVAPUR





TQ: GOKAK, DIST: BELAGAVI – 591 231.

4. SRI SIDAPPA  
S/O. MAHADEVAPPA NAVALGI,  
AGE: 43 YEARS,  
OCC: AGRIL.,  
R/O: NABAPUR,  
TQ: GOKAK,  
DIST: BELAGAVI-591344

...RESPONDENTS

THIS REGULAR SECOND APEPAL IS FILED UNDER SECTION 100 READ WITH XLII RULE 1 OF CPC, 1908, AGAINST THE JUDGMENT AND DECREE DATED 21.09.2020 PASSED IN R.A.NO.594/2019 ON THE FILE OF THE XII ADDITIONAL DISTRICT AND SESSIONS JUDGE, BELAGAVI, SITTING AT GOKAK, PARTLY ALLOWING THE APPEAL AND MODIFYING THE JUDGMENT AND DECREE DATED 12.04.2019, PASSED IN O.S. NO.267/2018 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE, GOKAK, DISMISSING THE SUIT FILED FOR PARTITION AND DECLARATION.

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



**JUDGMENT**

The plaintiff in O.S.No.267/2018 on the file of the Principal Senior Civil Judge, Gokak (henceforth referred to as 'Trial Court') has filed this Regular Second Appeal challenging the judgment and decree dated 21.09.2020 passed by the XII Additional District and Sessions Judge, Belagavi, sitting at Gokak (henceforth referred to as 'First Appellate Court') in R.A.No.594/2019 by which, it allowed the appeal and decreed the suit in part in respect of the land bearing Sy.No.595/2A and dismissed the suit in respect of the land bearing Sy.No.657/5.

2. The plaintiff filed a suit for partition against her father, mother and brothers in respect of the land bearing Sy.Nos.657/5 and 595/2A of Khanagoan and Mamdapur village, Gokak Taluk, respectively.

3. The defendant Nos.3 and 4 contested the suit and claimed that they had entered into a partition deed dated 09.09.2003 not only in respect of the land bearing Sy.No.629/38/2 but also in respect of Sy.No.595/2A and therefore, the plaintiff was not entitled to claim any share as a coparcener in view of proviso to Section 6 of the Hindu Succession (Amendment) Act, 2005.



4. The Trial Court therefore, framed a preliminary issue, whether the suit was maintainable in view of the partition dated 09.09.2003. The Trial Court held that in view of the judgment of the Hon'ble Apex Court in the case of ***Prakash and others vs. Phulavati and others [2016 (2) SCC 36]***, the benefit of the Hindu Succession (Amendment) Act, 2005 is applicable only in case where the property was neither alienated nor encumbered or partitioned prior to 20.12.2004. Consequently, it held that the suit is not maintainable in view of the proviso to Section 6 of the Hindu Succession (Amendment) Act, 2005.

5. Being aggrieved by the said judgment and decree, the plaintiff filed R.A.No.594/2019. The First Appellate Court held that the suit was not only in respect of the land bearing Sy.No.595/2A but also in respect of the land bearing Sy.No.657/5. It held that the land bearing Sy.No.657/5 was possessed by the great grandmother of the plaintiff and that upon her death, her grandmother namely Gangavva (mother of defendant No.1) inherited the estate absolutely and upon her death, it devolved upon her six sons including defendant No.1. It noticed that a compromise was entered into in



O.S.No.14/2016 between the six sons referred above in terms of which, the land bearing Sy.No.657/5 fell to the share of defendant No.1. The first appellate court thus and held that it was his absolute and separate property, where the plaintiff had no undivided interest and therefore, it held that the dismissal of the suit in respect of the land bearing Sy.No.657/5 was justified. However, in so far as the land bearing Sy.No.595/2A is concerned, it held that the Hon'ble Apex Court had revisited its judgment in the case of **Prakash and others**, supra, in the case of **Vineeta Sharma vs. Rakesh Sharma and others [AIR 2020 SC 3717]** and held that the plaintiff is entitled to an undivided share in the land bearing Sy.No.595/2A and hence, allowed the appeal in part and declared that the plaintiff is entitled to 1/4<sup>th</sup> share in the land bearing Sy.No.595/2A.

6. Being aggrieved by the same, the plaintiff has filed this Regular Second Appeal.

7. The learned counsel for the plaintiff contended that the land bearing Sy.No.657/5 was also a property belonging to the joint family and therefore, the plaintiff was entitled for a share in the said property and the First Appellate Court



committed an error in denying the relief to the plaintiff in respect of the said property.

8. However, a perusal of the judgment of the First Appellate Court indicates that the land bearing Sy.No.657/5 was not a property derived by the defendant No.1 from his male ancestors but was a property that he inherited from his maternal side. Therefore, there is no question of the plaintiff asserting her share in respect of the suit land during the lifetime of defendant No.1. In that view of the matter, the First Appellate Court was justified in dismissing the suit in so far as the land bearing Sy.No.657/5 and decreeing the suit in part in so far as the land in Sy.No.595/2A. There is no error committed by the First Appellate Court in decreeing the suit in part warranting interference by this Court. No substantial question of law arises for consideration in this appeal.

Hence, the appeal lacks merit and is ***dismissed***.

**SD/-  
JUDGE**

PMR  
List No.: 1 Sl No.: 59  
CT-ASC