

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

DATED THIS THE 28TH DAY OF OCTOBER 2014

BEFORE

THE HON'BLE MR.JUSTICE H.G.RAMESH

Regular First Appeal No.4180/2012

Between:

1. Sri. M. Honnurappa,
S/o. late M.Thimmappa @ Thimmanna,
Aged about 48 years,
Occ: Agriculturist,
2. Smt. Sunkamma,
D/o. late M.Thimmappa @ Thimmanna,
Aged about 45 years,
Occ: Agriculturist,
3. Sri. M. Erappa,
S/o. late M.Thimmappa @ Thimmanna,
Aged about 46 years,
Occ: Agriculturist,
4. Sri. Sanna Honnurappa,
S/o. late M.Thimmappa @ Thimmanna,
Aged about 35 years,
Occ: Agriculturist,
5. Sri. Urukundappa,
S/o. late M.Thimmappa @ Thimmanna,
Aged about 39 years,
Occ: Agriculturist,

All are R/o. Moka village,
Bellary Taluk & District-583104.

...Appellants

(By Sri. S.P.Kulkarni, Advocate)
(Appellant No.1 deleted vide court order dated 28.10.2013)

A n d :

1. Sri. Majjige Sunkanna,
S/o Sri. M.Thimmappa @ Thimmanna,
Aged about 37 years,
Occ: Agriculturist,
R/o. Moka village, Bellary Taluk,
Bellary District.
2. M. Honnurappa,
S/o. late M.Thimmappa,
48 years, Agriculturist,
R/o Moka village,
Bellary Tq. & Dist.-583104. ...Respondents

(By Sri. Gode Nagaraja, Advocate for R1
Smt. V.Vidya, Advocate for R2)

(Cause-title amended vide Court order dated 11.03.2014)

This appeal is filed under Section 96 read with Order 41 Rule 1 of CPC against the judgment and decree dated 17.09.2011 passed in O.S.No.29/2004 on the file of the First Addl. Senior Civil Judge at Bellary, partly decreeing the suit filed for partition.

This appeal coming on for admission this day, the Court delivered the following:

JUDGMENT**H.G.RAMESH, J. (Oral):**

1. This first appeal is by defendant Nos.3 to 6 and is directed against the judgment and the preliminary decree of the Trial Court dated 17.09.2011 passed in the suit in

O.S.No.29/2004 granting 1/7th share in the suit schedule "A to D" properties.

2. I have heard the learned counsel appearing for the parties and perused the judgment of the Trial Court. The suit was filed by the first respondent-plaintiff for partition of the suit properties. Defendant No.1, who is stated to have died on 19.12.2011, was the father of the parties i.e. plaintiff and defendant Nos.2 to 6.

3. Learned counsel appearing for the appellants submitted that the suit properties are the self-acquired properties of the deceased father-defendant No.1 and hence, the Trial Court should not have decreed the suit by granting 1/7th share to the plaintiff. He also submitted that there was a family arrangement and some properties were given to the plaintiff pursuant to the said arrangement and hence, the plaintiff is not entitled for any share in suit properties.

4. The contention that the properties are the self-acquired properties of defendant No.1-father is rejected

by the Trial Court on a detailed consideration of the evidence on record. It is relevant to refer to the following reasoning of the Trial Court:

“ 16) Defendant No.1 as DW 1 has stated in his cross examination that

“ನಾವು 6 ಮಂದಿ ಸಹೋದರರು ಇದ್ದೇವೆ. 6 ಜನ ಸಹೋದರರಲ್ಲಿ ಮೂರು ಜನ ಮರಣ ಹೊಂದಿದ್ದಾರೆ. ನಾವು ಮೂರು ಜನ ಜೀವಂತವಾಗಿದ್ದೇವೆ. ಅಂಜನಪ್ಪ ಅನ್ನುವರು ನಾಲ್ಕು ಸಹೋದರರಲ್ಲಿ ಹಿರಿಯವ. ಅವರು ಮರಣ ಹೊಂದಿದ್ದಾರೆ. ನನ್ನ ತಂದೆ ಮರಣ ಹೊಂದಿದ ನಂತರ ಅಂಜನಪ್ಪನವರೇ ನಮ್ಮ ಕುಟುಂಬದ ವ್ಯವಹಾರವನ್ನು ನೋಡಿಕೊಳ್ಳುತ್ತಿದ್ದರು ಅಂದರೆ ನಿಜ. ನಮ್ಮ ತಂದೆಯ ಕಾಲದಿಂದಲೂ ನಮ್ಮ ಕುಟುಂಬಕ್ಕೆ ಒಕ್ಕಲುತನವನ್ನು ಹೊರತುಪಡಿಸಿ ಬೇರೆ ಉದ್ಯೋಗ ಅಥವಾ ವ್ಯಾಪಾರ ಇರಲಿಲ್ಲ. ನನ್ನ ಹಾಗೂ ಉಳಿದ ಸಹೋದರರ ನಡುವೆ ಪಾಲು ವಿಭಾಗವಾಗಿದ್ದು ವಿಭಾಗದಲ್ಲಿ ಒಬ್ಬೊಬ್ಬರಿಗೆ ತಲಾ 26 ಎಕರೆ ಜಿಲ್ಲೆ ಜಮೀನು ಬಂದಿದೆ.”

17) The plaintiff has produced certified copy of plaint in O.S.No.161 of 2002 on the file of this court marked at Exhibit P.52, which discloses that it was a suit filed by defendant No.1 against his brother claiming equitable and fair partition. In the plaint it is stated that in para 4, 5 and 6 as under:

“4) The properties shown in the schedule-A infra were acquired by the plaintiff and by the defendants as per Regd. Sale deed about 30 years ago, **from out of the earnings of the joint family**. This contention of the plaintiff is discernible from the said sale deed which is appended hereto.

5) The plaintiff and defendant No.1 to 8 constituted a Joint Hindu Family. However, on account of differences the

plaintiff and the defendant No.1 to 8 got separated during the year 1995. This contention of the plaintiff gain ground from the very tenor of the family partition deed is annexed hereto.

6) The plaintiff further submit, he has been allotted schedule 'B' property as per partition deed. There is a palpable dichotomy vis-à-vis the description of the schedule properties in the said Family Partition deed. There is gross variation too in regard to the actual extent and measurements of the schedule properties. The plaintiff further submit that there are six houses which are having character of joint family property of plaintiff and defendant No.1 to 8. The said houses were also occupied by the parties i.e., plaintiff and defendant No.1 to 8 as per their whims and fancies. There is no proper and fair partition in respect of the said houses which are shown in the schedule 'A' property of this plaint."

18) The defendant No.1 denies filing of such a suit in his cross examination which denial appears to be false. The agricultural landed properties shown in the plaint of this suit finds place in the plaint of O.S.No.161 of 2002 i.e., Ex.P.52. Therefore, the defendant No.1 is estopped from contending that the suit schedule properties are self acquired properties. Defendant No.1 has produced 9 sale deeds marked as Exhibit D-1 to 9 to prove his contention that some of the properties are purchased in the name of Anjappa, some in the name of Thippaiah and some in the name of all brothers including defendant No.1. The recital in the said sale deeds does not help the cause of defendant No.1, who needs to prove that the sale consideration is out of their own earnings. Defendant No.1 himself has stated in his cross

examination in the beginning that after the death of their father, Anjinappa was managing the affairs of the family.

19) From the above discussion, it can be held that the plaintiff has proved that all the suit schedule properties in schedule A to D are joint family properties of plaintiffs and defendants as some of the properties were purchased from the joint family income. However, the plaintiff has failed to prove the existence of 'E' schedule properties. Hence, issue No.3 is held in the partly affirmative, consequently Issue No.2 has to be held in the Negative.

20) The plaintiff has filed this suit against six defendants who are his father, brothers and a sister. Hence suit schedule properties have to be divided into seven parts as the sister of the plaintiff is having equal share as a coparcener in view of amendment to Section 6 of the Hindu Succession Act of 1956, in the year 2005."

5. On the facts of the case, I find no legal infirmity in the finding recorded by the Trial Court that the properties are not the self-acquired properties of the father-defendant No.1 as it is based on a proper appreciation of the evidence. Further, even if there were to be any family arrangement as contended, that by itself cannot be equated to a partition.

6. Learned counsel for the appellants referred to certain documents produced along with I.A.No.1/2014.

However, he was not able to state as to how the said documents are relevant to determine the plaintiff's share in the suit properties. Hence, I.A.No.1/2014 filed for production of additional evidence is rejected.

The appeal is devoid of merit. No ground to admit the appeal and is accordingly dismissed.

**Sd/-
JUDGE**

Kms