

IN THE HIGH COURT OF KARNATAKA  
KALABURAGI BENCH

DATED THIS THE 11<sup>TH</sup> DAY OF JANUARY, 2019

**PRESENT**

**THE HON'BLE MR.JUSTICE B.VEERAPPA**

**AND**

**THE HON'BLE MR.JUSTICE P.G.M.PATIL**

**RFA No.6032/2012**

**Between:**

Assistant Executive Engineer  
District Planning Office  
Yaramaras Camp  
Tq. & Dist. Raichur

... Appellant

(By Smt. Neeva M. Chimkod, Advocate)

**And:**

1. Yellamma W/o Narasappa  
Age: 46 years, Occ: Agriculture  
& Household  
R/o Deodurga, Tq. Deodurga  
Dist. Raichur
2. Mallikarjun S/o Narasappa  
Age: 26 years, Occ: Agriculture  
& Household  
R/o Deodurga, Tq. Deodurga  
Dist. Raichur

3. Shantamma W/o Ningappa  
Age: 38 years, Occ: Agriculture  
& Household  
R/o Deodurga, Tq. Deodurga  
Dist. Raichur
4. Earanna S/o Ramanna Maligaddi  
Age: 35 years, Occ: Agriculture  
R/o Deodurga, Tq. Deodurga  
Dist. Raichur
5. D.C. Raichur  
D.C. Office, Raichur  
Dist. Raichur
6. Siddamma W/o Monappa  
Age: 45 years, Occ: Agriculture  
& Household  
R/o Deodurga, Tq. Deodurga  
Dist. Raichur
7. Narasingamma W/o Rangappa  
Age: 42 years, Occ: Agriculture  
& Household  
R/o Deodurga, Tq. Deodurga  
Dist. Raichur

... Respondents

(By Sri Ravindra Reddy, Advocate for R2;  
Smt. Arati Patil, HCGP for R5;  
v/o dated 25.09.2014 in RFA No.6027/2012  
notice to R1, R3, R4, R6 & R7 are held sufficient)

This Regular First Appeal is filed under Section 96 r/w  
Order XLI Rule 1 & 2 of CPC praying to call for records and  
allow the appeal and set aside the judgment and decree  
dated 07.04.2012 passed in O.S.No.13/2011 by the  
Additional Senior Civil and J.M.F.C.-I at Raichur.

This appeal coming on for Hearing this day, **B.VEERAPPA, J.**, delivered the following:

### **JUDGMENT**

The fifth defendant has filed this appeal against the judgment and decree dated 07.04.2012 made in O.S.No.13/2011 by the Additional Senior Civil Judge and JMFC-I, Raichur, decreeing the suit of the plaintiffs in part declaring plaintiff Nos.1 and 2 are entitled to 6/25<sup>th</sup> share each in the suit schedule properties and also declared that the sale deed bearing No.1043/2005-06 dated 29.12.2005 and sale deed bearing No.1253/2009-10 dated 02.07.2009 are not binding on the share of plaintiff Nos.1 and 2. It is also declared that the sale deed bearing No.863/2003-04 dated 08.07.2003 is binding on the plaintiffs.

2. The parties are referred to as per their rankings before the trial Court.

**I. Facts of the case:**

3. Respondent Nos.6 and 7 herein who are the plaintiffs before the trial Court filed suit in O.S.No.13/2011 for partition and separate possession in respect of the suit schedule properties (a, b, c, d and e) morefully described in the schedule to the plaint contending that one Narasappa was the propositor/ common ancestor of plaintiffs and defendant Nos.1 to 3. He had two wives namely Shivamma and Yallamma. Shivamma is the first wife of Narasappa and Yallamma is the second wife of said Narasappa. Plaintiff Nos.1 and 2 and defendant No.3 are the children of Narasappa through his first wife i.e., Shivamma. Defendant No.2 is the son of Narasappa through his second wife i.e., Yallamma. Said Narasappa died about 12 years back leaving behind the above said two wives and children. Shivamma first wife of Narasappa died in the month of December 2010.

4. It is further case of the plaintiffs that said Narasappa and his brothers had partitioned the family properties among themselves. The suit schedule properties are exclusive properties belonging to the joint family of the plaintiffs and defendant Nos.1 to 3. They are the members of Hindu Undivided joint family. The suit schedule properties are the joint family properties of plaintiffs and defendant Nos.1 to 3 and they are in joint possession of the suit schedule properties. The suit schedule properties were managed by defendant No.2 with the assistance of plaintiffs and defendant Nos.1 and 3. Defendant No.2 without any absolute interest in the suit schedule properties and without plaintiffs' consent sold five acres of land in Sy.No.184/2-A to the fifth defendant (present appellant) under registered sale deed bearing No.1043/2005-06 dated 29.12.2005. After coming to know about the said alienation, plaintiffs demanded for partition. But, defendant No.2 postponed the partition of properties.

Earlier, defendant No.2 had also sold land to the fourth defendant's father i.e., Late Ramanna under a registered sale deed bearing No.863/2003-04 dated 08.07.2003 without plaintiffs' consent and behind their back. It is further case of the plaintiffs that defendant Nos.2 and 3 in collusion with each other have transferred the land standing in the name of defendant No.3 in favour of defendant No.2 vide registered sale deed bearing No.1253/2009-10 without plaintiffs' consent and behind their back. Therefore, the said transactions, sale deeds and mutation entries are not binding on the plaintiffs. Defendant Nos.2 and 3 are trying to alienate the entire suit schedule properties. Therefore, the plaintiffs demanded their share in the month of January 2011 but the defendants denied their share. Therefore, the plaintiffs have filed the suit for partition and separate possession.

**II. No written statement filed on behalf of defendant Nos.1 to 4.**

5. In response to the summons issued, defendant Nos.1 to 4 have appeared before the trial Court through their counsel and not filed written statement inspite of sufficient opportunity given. Defendant No.5 appeared through counsel and filed written statement. Defendant No.6 though served, unrepresented and was placed exparte.

**III. Written statement filed by Defendant No.5:-**

6. The fifth defendant/present appellant has filed the written statement contending that the suit filed by the plaintiffs is not maintainable either on law or on facts. The plaintiffs and defendant Nos.1 to 3 in collusion have filed the suit only to harass him. Defendant No.5 further contended that he has no knowledge about the relationship between the plaintiffs and defendant Nos.1 to 3. He has also disputed the

relationship of the parties and genealogy and further denied the averments made in the plaint that Narasappa was the common ancestor of the family and died 12 years back leaving behind two wives namely Shivamma and Yallamma. Further, defendant No.5 denied the averments made in the plaint that plaintiffs and defendant Nos.1 to 3 are the members of Hindu Undivided joint family and the suit schedule properties are the joint family properties of the plaintiffs and defendant Nos.1 to 3. He has also denied the averments that defendant No.2 without any absolute interest in the suit properties and without plaintiffs' consent sold five acres of land in favour of defendant No.5 under the registered sale deed for valuable consideration of Rs.25,50,000/- at the rate of Rs.5,10,000/- per acre. Defendant No.5 is the bonafide purchaser for valuable consideration. The revenue records are mutated in the name of defendant No.5. Defendant No.5 is in possession of 5 acres of



land. It is further contended that defendant No.5 has invested huge amount to develop and to form layout in the 5 acres of land. Public money is invested. If decree is passed in favour of the plaintiffs then the land purchased by defendant No.5 may be allotted to the share of defendant No.2 in order to protect his interest. Hence, defendant No.5 prayed for dismissal of the suit.

**IV. The issues framed by the Trial Court:-**

7. Based on the aforesaid pleadings, the trial Court framed the following issues:

- i. *Whether the plaintiffs prove that plaintiffs and defendant Nos.1 to 3 constitute Hindu undivided joint family as contended in the plaint?*
- ii. *Whether the plaintiffs prove that suit schedule properties are the joint family properties of the plaintiffs and defendant Nos.1 to 3 herein?*

- iii. *Whether the plaintiffs prove that sale deed bearing No.1043/05-06 dated 29.12.2005 and sale deed bearing No.863/2003-04 and sale deed bearing No.1253/2009-10 are illegal, null and void and not binding on the plaintiffs herein?*
- iv. *Whether the plaintiffs are entitled for 5/16<sup>th</sup> share each in the suit schedule properties?*
- v. *Whether the defendant No.5 proves that defendant No.5 is the bonafide purchaser of Sy.No.184/A, measuring 5 acre vide registered sale deed bearing document No.1043/2005-06 for valuable consideration from defendant No.2 without notice?*
- vi. *Whether the plaintiffs are entitled for the reliefs claimed?*
- vii. *What order or decree?*

**V. Examination of the parties and Documents marked:-**

8. In order to prove the case of the plaintiffs, plaintiff No.1 examined herself as PW.1 and examined two witnesses as PWs.2 and 3 and marked the documents at Exs.P1 to P28. Defendant No.5 was examined as DW.1 and got marked Exs.D1 to D23. Defendant Nos.1 to 3 have not adduced any evidence and not produced any documents.

**VI. Determination made by the Trial Court:-**

9. The trial Court considering both oral and the documentary evidence on record recorded a finding that the plaintiffs and defendant Nos.1 to 3 constitute Hindu undivided joint family as contended in the plaint and they have proved that the suit schedule properties are the joint family properties of plaintiffs and defendant Nos.1 to 3. They further proved that the sale deed bearing No.1043/2005-06 dated 29.12.2005 and sale

deed bearing No.1253/2009-10 dated 02.07.2009 are illegal, null and void and not binding on the plaintiffs' share and the plaintiffs are entitled to 6/25<sup>th</sup> share each in the suit schedule properties. Further, recorded a finding that defendant No.5 has failed to prove that he is the bonafide purchaser of Sy.No.184/2-A measuring 5 acres under registered sale deed bearing No.1043/2005-06 dated 29.12.2005 for valuable consideration from defendant No.2 without notice. Accordingly, plaintiffs' suit came to be decreed in part granting 6/25<sup>th</sup> share each in the suit schedule properties declaring that the sale deed dated 29.12.2005 and sale deed dated 02.07.2009 are not binding on the share of the plaintiffs and the sale deed dated 08.07.2003 executed in favour of father of defendant No.4 is binding on the plaintiffs. Hence, the present appeal is filed by the appellant/fifth defendant.

**VII. Arguments advanced by the learned counsel for the parties:-**

10. We have heard the learned counsel appearing for the parties to the lis.

11. Smt. Neeva M. Chimkod, learned counsel appearing for the appellant vehemently contended that the impugned judgment and decree passed by the learned Senior Civil Judge granting 6/25<sup>th</sup> share each to the plaintiffs in the suit schedule properties and declaring sale deed dated 29.12.2005 not binding on the share of the plaintiffs is erroneous and contrary to the material on record. She would further contend that the Court below has not properly appreciated the material pleadings of the parties in the proper perspective manner thereby erroneously decreed the suit granting share of the plaintiffs. She would further contend that the learned trial Judge decreed the suit on the ground that the appellant i.e., KHB in his written statement has

not pleaded that defendant No.2 was the kartha of the joint family and sold the suit property for legal and family necessities. Though plaintiff No.1 in her cross-examination has stated that defendant No.2 is the kartha of the family, the same has not been considered by the trial Court. She would further contend that the suit filed by the plaintiffs challenging the sale deed was barred by limitation. She would further contend that PW.1 in her cross-examination has admitted that plaintiffs demanded their share in the consideration amount to defendant No.2 since from 2005 but he prolonged the matter in one or the other way. Hence, they have filed the suit for consideration amount. The same is falsely disbelieved by the Court. She would further contend that the decree passed by the trial Court granting 6/25<sup>th</sup> share to the plaintiffs is erroneous. She would further contend that the second defendant being manager of the joint family, alienation made by the manager is binding on the other members

of the joint family. Hence, she sought to allow the appeal.

12. Per contra, Sri Ravindra Reddy, learned counsel appearing for respondent No.2 who is the vendor of the appellant has supported the case of the appellant. Respondent Nos.1, 3, 4, 6 and 7 are served and unrepresented and service of notice to them is held sufficient.

**VIII. The point for determination in the appeal:-**

13. In view of the rival contentions urged by the learned counsel appearing for the parties, the only point that arises for consideration in the present appeal is:

*“Whether the appellant/fifth defendant has made out any case to interfere with the impugned judgment and decree passed by the trial Court granting 6/25<sup>th</sup> share to the plaintiffs in the suit schedule properties declaring the sale deed bearing*

*No.1043/2005-06 dated 29.12.2005 and sale deed bearing No.1253/2009-10 dated 02.07.2009 are not binding on the plaintiffs share in the facts and circumstances of the case?”*

**IX. Consideration:-**

14. We have given our thoughtful consideration to the arguments advanced by the learned counsel appearing for the parties and perused the entire (original records) material on record carefully.

15. It is the specific case of the plaintiffs that plaintiffs and defendant Nos.1 to 3 are the members of joint family. The common ancestor of plaintiffs and defendant Nos.1 to 3 was one Narasappa who had two wives namely, Shviamma and Yallamma and plaintiffs and defendant No.2 and 3 are children of two wives of Narasappa. It was further case of the plaintiffs that the suit schedule properties are the joint family properties of plaintiffs and defendant Nos.1 to 3 and they are in



joint possession. The suit schedule properties were managed by defendant No.2 with the assistance of plaintiffs and defendant Nos.1 and 3. Defendant No.2 alone does not have any absolute interest in the suit schedule properties and without the consent of the plaintiffs, he has sold 5 acres of land in favour of the fifth defendant/present appellant under a registered sale deed dated 29.12.2005. The same is not binding on them. Defendant Nos.1 to 4 though appeared through their counsel, have not filed written statement. Sixth defendant served and unrepresented and was placed exparte. The fifth defendant alone filed written statement and denied the relationship between the parties i.e., plaintiffs and defendant Nos.1 to 3 and genealogy. He has further denied the contention of the plaintiffs that defendant No.2 without any absolute right and interest in the suit schedule properties without consent of the plaintiffs sold five acres of land in favour of him. He has further contended that he is the

bonafide purchaser for valuable consideration and the land purchased by him may be allotted to the share of defendant No.2 in order to protect his interest. The trial Court considering the entire material on record has come to the conclusion that the plaintiffs proved that the plaintiffs and defendant Nos.1 to 3 are members of the joint family and there was no partition and the plaintiffs are entitled to their share in the suit schedule properties. Defendant No.5 has not proved that he is the bonafide purchaser and alienation made by defendant No.2 in his favour is binding on the plaintiffs. The trial Court further held that joint family status as contended in the plaint is proved and decreed the suit as stated supra.

16. The material on record clearly depicts that it is not the case of defendant No.5/present appellant that 5 acres of land alienated by defendant No.2 in his favour is the self occupied property of defendant No.2.

It is an admitted fact that defendant No.5 has not pleaded in the written statement that defendant No.2 was kartha of the family and for legal necessities of the family, defendant No.2 sold the property in his favour. No oral and documentary evidence adduced by defendant No.5 in this regard. Though there was no pleading, learned counsel for the fifth defendant at the time of arguments has contended that alienation made by the manager is binding on the plaintiffs. Defendant No.5 who has been examined as DW.1 has admitted in categorical terms that plaintiffs have not put their signature on Ex.D1-sale deed. Admittedly, plaintiffs are not signatory to the sale deed and they are co-parceners of the hindu undivided joint family. Defendant No.2 is the step brother of the plaintiffs therefore, consent of the plaintiffs is necessary before alienation of property by defendant No.2 in favour of defendant No.5. No evidence is placed either before the trial Court or before

this Court that plaintiffs had given consent to sell the suit land in favour of defendant No.5.

17. It is also not in dispute that defendant No.5 being responsible officer of the State Government should hold enquiry before purchasing the property. Absolutely, no evidence is produced by him to show that he has made proper enquiry before purchase of the land. It is well settled that buyer must beware before taking any steps to purchase the property. When plaintiffs and defendant Nos.1 to 3 are the members of the joint family and when they are in joint possession of the suit schedule properties, alienation made by defendant No.2 in favour of defendant No.5 without consent of other members of the family is not binding on the plaintiffs and other members of the joint family. Admittedly, vendor of the present appellant/defendant No.5 has not filed any written statement and not

examined the witnesses to prove that alienation was made for the benefit of the joint family.

18. The learned counsel for the appellant tried to persuade this Court contending that plaintiffs in paragraph 7 of the plaint have pleaded that after knowing the fact, they asked for partition of the suit schedule properties and share in the amount earned by sale of land by defendant No.2, but defendant No.2 has not effected partition and has not given share in the amount.

19. It is not the case of defendant No.5/appellant that defendant No.2 in fact given share amount to the plaintiffs. It is not his case that five acres of land sold by defendant No.2 in his favour was a self occupied property of defendant No.2. Defendant No.5/appellant has not produced any evidence before the trial Court to show that plaintiffs and defendant Nos.1 to 3 are not in joint status. In the absence of the same, the contentions

of the plaintiffs that plaintiffs and defendant Nos.1 to 3 constitute Hindu undivided joint family and that the suit schedule properties are the joint family properties have to be accepted.

20. It is not the case of defendant No.5 either in the pleadings or in the evidence or in the document (sale deed) produced before the Court that recitals of the document at Ex.D1 depicts that alienation made by defendant No.2 is on behalf of the joint family. Therefore, alienation made by one of the members of the joint family is not binding on the other members of the family. Therefore, contention of the learned counsel for the appellant cannot be accepted and the same is devoid of merits.

21. Though defendant No.5 in the written statement pleaded that defendant No.5 has invested huge amount to develop and to form layout in the five acres of land, except producing layout map, copy of the

estimate statement and photographs no other documents are produced to show that in the said land the layout is already formed and already distributed the sites. In fact, defendant No.5 pleaded in the written statement that the said five acres of land may be allotted to share of defendant No.2 in order to protect his interest. Defendant No.5 has not filed any counter-claim as contemplated under Order VIII Rule 6A of CPC and not taken any defence as it is self occupied property of defendant No.2.

22. On perusal of the photographs, it would indicate some construction having been taken place. We do not know whether the same is the suit property or not.

**X. Conclusion:-**

23. After re-assessing the entire material on record i.e., both oral and documentary evidence, we are

of the considered view that defendant No.5/appellant has not made out any ground to interfere with the impugned judgment and decree passed by the trial Court in exercise of the appellate jurisdiction under the provisions of Section 96 of the Code of Civil Procedure. Accordingly, we answer the point framed in the present appeal in the negative holding that the appellant has not made out any case to interfere with the impugned judgment and decree of the trial Court in granting 6/25<sup>th</sup> share each to the plaintiffs in the suit schedule properties and declaring that the sale deed bearing No.1043/2005-06 dated 29.12.2005 and sale deed bearing No.1253/2009-10 dated 02.07.2009 are not binding on the plaintiffs share.

24. It is relevant to state at this stage that though vendor (defendant No.2) of the appellant also filed RFA No.6027/2012 before this Court against the impugned judgment and decree of the trial Court,



admittedly, the said appeal came to be dismissed for default as long back as on 03.11.2014. The same has reached finality.

25. For the reasons stated above, the appeal is dismissed. No order as to costs.

However, it is open to the appellant to work out his vendor's (defendant No.2) share in the final decree proceedings in accordance with law.

Ordered accordingly.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

NB\*  
Ct: RRJ