



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

DATED THIS THE 11TH DAY OF NOVEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE M.G.S.KAMAL

REGULAR SECOND APPEAL NO. 200104 OF 2021

(DEC/INJ)

C/W

REGULAR SECOND APPEAL NO. 200107 OF 2021

(DEC/INJ)

IN RSA.NO.200104/2021:

BETWEEN:

SIDDALINGAREDDY S/O SHIVAPADAPPA,
AGED ABOUT 40 YEARS, OCC: AGRICULTURE,
R/O H.NO. 88, DONDAMBALI VILLAGE,
TQ. DEODURGA, DIST. RAICHUR.

...APPELLANT

(BY SRI SANJEEVKUMAR C. PATIL, ADVOCATE)

AND:

SHARNAMMA W/O AMATHEPPA,
AGED ABOUT 75 YEARS, OCC: HOUSEHOLD,
R/O. DONDAMBALI VILLAGE,
TQ. DEODURGA, DIST. RAICHUR-584111.

...RESPONDENT

(BY SRI BIRADAR VIRANAGOUDA, ADVOCATE)





NC: 2024:KHC-K:8319
RSA No. 200104 of 2021
C/W RSA No. 200107 of 2021

THIS RSA IS FILED UNDER SECTION 100 OF THE CPC, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 05.09.2019 PASSED BY THE 1ST ADDITIONAL DISTRICT JUDGE RAICHUR AT RAICHUR, IN RA NO.66/2018, AND THE JUDGMENT AND DECREE DATED 27.9.2018, PASSED BY THE SENIOR CIVIL JUDGE AND JMFC DEODURGA, IN OS.NO.214/2016, BY ALLOWING THIS APPEAL AND DISMISS THE SUIT OF THE PLAINTIFF.

IN RSA.NO. 200107/2021:

BETWEEN:

SIDDALINGAREDDY S/O SHIVAPADAPPA,
AGED ABOUT 40 YEARS, OCC: AGRICULTURE,
R/O H.NO.88, DONDAMBALI VILLAGE,
TQ. DEODURGA, DIST. RAICHUR.

...APPELLANT

(BY SRI SANJEEVKUMAR C. PATIL, ADVOCATE)

AND:

SHARNAMMA W/O AMATHEPPA,
AGED ABOUT 75 YEARS, OCC: HOUSEHOLD,
R/O. DONDAMABALI VILLAGE, TQ. DEODURGA,
DIST. RAICHUR-584111.

...RESPONDENT

(BY SRI D.P. AMBEKAR, ADVOCATE)

THIS RSA IS FILED UNDER SECTION 100 OF THE CPC, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 05.09.2019 PASSED BY THE 1ST ADDITIONAL DISTRICT JUDGE RAICHUR AT RAICHUR, IN RA.NO.66/2018, AND THE JUDGMENT AND DECREE DATED 27.09.2018, PASSED BY THE SENIOR CIVIL JUDGE



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AND JMFC DEODURGA, IN OS.NO.214/2016, BY ALLOWING THIS APPEAL AND ALLOW THE COUNTER CLAIM OF THE DEFENDANT.

THESE APPEALS, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE M.G.S.KAMAL

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE M.G.S.KAMAL)

The appeal in RSA No.200104/2021 is filed by the defendant aggrieved by the judgment and decree dated 27.09.2018 passed in OS No.214/2016 on the file on Senior Civil Judge and JMFC, Devadurga (hereinafter referred to as 'the Trial Court' for short) which decreed the suit of the plaintiff declaring her to be the absolute owner of the suit schedule property and granting consequential relief of permanent injunction against the defendant, which the judgment and decree is confirmed by the judgment and order dated 05.09.2019 passed in RA No.66/2018 on the file of First Additional District and Sessions Judge, Raichur.



2. RSA No.200170/2021 is by the very same defendant, aggrieved by the judgment and decree dated 27.09.2018 passed in OS No.214/2016 on the file of the Civil Judge and JMFC (hereinafter referred to as 'the Trial Court' for short) by which the Trial Court while decreeing the suit of the plaintiff, had not passed any order on the counter claim of the defendant and against the judgment and decree dated 05.09.2019 passed in RA No.66/2018 by which the First Appellate Court had dismiss the counter claim of the defendant with costs.

3. Brief facts of the case is that;

The subject matter of the suit is property in survey No.62 measuring 8 acres 26 guntas of dry land, situated at Hunur Village, Devadurga Taluk, Raichur District. The case of the plaintiff is that her husband had purchased the suit property in terms of a registered deed of sale dated 17.04.1976 and passed away intestate, leaving behind the plaintiff as his legal heir. That upon the demise of her husband she had made an application for mutation of her



name in the revenue records, which was objected to by the defendant before the revenue authority. Since there was denial and obstruction by the defendant, plaintiff constrained to file the suit for relief of declaration and injunction.

4. The defendant along with the written statement had also made a counter claim seeking declaration that he and his family members were entitled to the share in the suit schedule property to the extent of 4 acres 13 guntas and also to an extent of 07 guntas of another property in survey No.5/1 and 5/2 of Dondambali Village. It is the contention of the defendant that his father Shivapadappa and the husband of the plaintiff Amatheppa had jointly purchased the suit schedule property as well as another land in survey No.5/1 and 5/2 under the registered deeds of sale. That the husband of the plaintiff and the father of the defendant had entered into an unregistered deed of partition dated 20.09.1996 in terms of which 4 acres 13 guntas of land forming part of the suit



schedule property and another extent of 07 guntas of land in survey No.5/1 and 5/2 was allotted to the share of father of the defendant. That the father of the defendant Shivapadappa passed away about 15 years back, leaving behind his wife Anusuyamma and three sons namely Basavarajappa, Nagareddy and Sidlingareddy the defendant. The Defendant and his family members are joint owners and possessors of the suit schedule property held by their father, as such the counter claim.

5. Based on the pleading the Trial Court framed the following issues:

- 1. Whether the plaintiff proves that, in the year 2006 as per registered partition deed documents no. 2366 dt, 23-11-2006 as such the Suit schedule property falling to the share of plaintiff and she is the owner and possessor of the Suit schedule property?*
- 2. Whether the plaintiff proves that defendant is interfering his peaceful possession over the Suit schedule property?*
- 3. Whether the defendant proves that he is entitled counter claim as prayed in the written statement?*
- 4. Whether the defendant proves that suit of the plaintiff is barred by law limitation?*



5. *Whether the plaintiff entitled declaration relief injucation as prayed for?*
6. *Whether the plaintiff entitled permanent injunction as prayed?*
7. *Whether the plaintiff entitled relief as prayed for?*
8. *What order or what decree?*

6. The plaintiff examined herself as PW1 and exhibited 13 documents marked as per Ex.P1 to P13. Defendant examined himself as DW1 and examined 4 other witnesses as DW2 to DW5 and exhibited 13 documents marked as per Ex.D1 to D13.

7. The Trial Court on appreciation of the evidence, answered issues No.1, 2 and 5, 6 and 7 in the affirmative and issues No.3 and 4 in the negative and gave specific finding that the counter claim of the defendant was barred by time, though no specific order in the operative portion was made and consequently, decreed the suit of the plaintiff as sought for.

8. Aggrieved by the same the defendant filed an appeal in RA No.66/2018 challenging the decree as well as



declining of his relief in the counter claim. Considering the grounds urged in the memorandum of appeal the First Appellate Court frame the following points for his consideration:

- 1. Whether the defendant prove that his father and husband of plaintiff jointly purchased the suit land?*
- 2. Whether the execution of Ex.D-1 by the husband of plaintiff is proved? If so, Ex.D-1 conveyed or transferred or assigned any sort of right, title or interest in favour of the father of defendant?*
- 3. Whether the counter-claim of defendant is barred by limitation?*
- 4. Whether the impugned judgment of trial court is required to be set-aside on the ground that there is no order on counter-claim in the operative portion of the judgment?*
- 5. Whether the impugned judgment and decree of the trial court calls for interference by this court?*
- 6. What order?*
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- 9. On re-appreciation of the evidence the First Appellate Court answered points No.1, 2, 4 and 5 in the*



negative and point No.3 in the affirmative. Consequently, dismiss the appeal as well as the counter claim made by the defendant. Aggrieved with the same, the defendant is before this Court in the aforesaid two appeals.

10. Learned counsel for the appellant reiterating the grounds urged in the memorandum appeal submitted that, admittedly father of defendant Shivapadappa had affixed his signature as a witness to the deed of sale dated 17.04.1976, produced at Ex.P1 along with one Honnappagouda, who was examined as DW3. He further submits that the said purchase was made upon the joint contribution made by the husband of the plaintiff and the father of the defendant to avoid the consequences of law relating to ceiling limits and only as a convenience between the father of defendant and the husband of the plaintiff. That in furtherance to said understanding a partition was entered into on 20.09.1996 as per Ex.D1. Thus he submits that the Trial Court and the First Appellate Court have not appreciated these facts,



circumstance and the evidence of the matter. He further submits that the Trial Court and the First Appellate Court have disbelieved the case of the defendant and have erroneously relied upon the contention of the plaintiff of the suit schedule property having been left out from Ex.P7, a partition dated 23.11.2006 as it was the self acquired property of the husband of plaintiff, when in fact, the said property was excluded not because it was the self acquired property of husband of the plaintiff, but there was a partition entered into between the husband of the plaintiff and the father of the defendant as per Ex.D1.

11. He further submits if, the contention of the plaintiff that the said property was left out since it was self acquired property is to be accepted, Ex.P7 also otherwise included some of the self acquired property of the husband of the plaintiff. He submitted that these facts and circumstances would justify the claim of the defendant of his father being the joint owner of suit schedule property and another non suited property. He submitted non-



consideration of this material evidence has resulted in perversity of the judgments passed by the Trial Court and the First Appellate Court giving raise to substantial question of law for consideration.

12. *Per contra* learned counsel appearing for the plaintiff justifying the judgment and decree passed by the Trial Court and confirmed by the First Appellate Court submits that the very plea set up by the defendant of there being a partition between the husband of the plaintiff and father of the defendant as per Ex.D1 is untenable as the said document had come up for the first time, when the plaintiff had made an application for mutation of her name for the revenue authorities. He submits that, if at all such a document had been entered into as per Ex.D1 on 20.09.1996, there is no reason or whisper in the written-statement as to why no action in this regard was taken by the father of the defendant during his lifetime who stated to have passed away 15 years prior to the date of suit.



13. He further submits in any event the said document is inadmissible as it, seeks to confer the title in respect to the immovable property in favor of a person who is stranger to the family, not having any pre existing right. Therefore, he submits that the Trial Court and the First Appellate Court were justified in decreeing the suit of the plaintiff and dismissing the counter claim and seeks for dismissal of the appeal.

14. Heard and perused the records.

15. As taken note of the Trial Court and the First Appellate Court and even as evident from the pleading of the parties, the husband of the plaintiff Amethappa purchasing the suit schedule property in terms of the deed of sale dated 17.04.1976 as per Ex.P1 is not in dispute. It is also not in dispute that the father of the defendant was one of the witnesses to the said deed of sale.

16. The husband of the plaintiff during his lifetime had entered into deed of partition as per Ex.P7 dated



23.11.2006, in terms of which certain family properties had been partitioned. However, the suit schedule property was not subject matter of the said deed of partition. The contention of the plaintiff is that since the said property was the self acquired property it of the plaintiff, she became owner by virtue of inheritance upon the demise of her husband. Contention of the defendant, on the other hand, is that since the said property was jointly purchased by the husband of the plaintiff and the father of the defendant for the reasons of avoiding the rigor of law on ceiling limits, the said property was kept out with an understanding of same to be divided between the father of the defendant and the husband of the plaintiff. It is in furtherance to this plea defendant relies upon Ex.D1, dated 20.09.1996, which is an unregistered document. The whole issue therefore revolves around the said document.

17. The Trial Court and the First Appellate Court have apart from appreciating the factual aspect of the



matter, have also adverted to the legal position. In that the Trial Court and the First Appellate Court have found that a document of this nature between two strangers not being members of a family could not create any right, title and interest in the immovable property, subject matters of the said document, without same having been executed and registered in a manner known to law.

18. There is no contra material produced by the defendant in justification of his counter claim either with regard to any other document having been entered into or any evidence with regard to the possession having been given. On the other-hand, it is categorically admitted that the possession of the property remained with the husband of the plaintiff. As rightly contended by the learned counsel for the respondent, nothing on record to indicate that Ex.D1 had been acted upon during the life time either of the husband of the plaintiff or of the father of the defendant. Suit schedule property is purchased under sale deed Ex.P1 as 17.04.1976. The document of Ex.D1 is



purportedly of the year 1996. Interestingly, defendant does not even give the precise date of death of his father except stating that he passed away 15 years ago. No explanation for non production of the Ex.D1 anywhere until objecting for mutation of name of the plaintiff in the revenue records in the year 2011-2012 in RRT No.13/2011-12. Plaintiff filed suit on 25.8.2016. Counter claim is made on 23.01.2017, based on the unregistered document, source of pronouncement of said document is also unknown to the defendant.

19. In view of the aforesaid factual aspect of matter, which have been rightly taken note of by the Trial Court and the First Appellate Court, this Court do not see any irregularity or illegality in both the Courts coming to the conclusion that defendant not having established any right in furtherance to his counter claim and plaintiff having established her right over the property through inheritance, conferring her the reliefs as sought for.



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20. In view of the above, no substantial question of law would arise for consideration. Accordingly, both the appeals are dismissed.

Sd/-
(M.G.S.KAMAL)
JUDGE

KBM
List No.: 1 Sl No.: 20
CT:PK