

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. \_\_\_\_\_/2025  
(@SPECIAL LEAVE PETITION (C) No.6132/2023)

T. NARASIMHA REDDY

APPELLANT(s)

VERSUS

M.P. SUBRAMANI NAIDU (SINCE DEAD) BY LRS. & ORS. RESPONDENT(s)

O R D E R

Leave granted.

Being aggrieved by the judgment dated 06.01.2023 passed in Regular Second Appeal No.1554/2012 by the High Court of Karnataka at Bengaluru, the plaintiff(s) in O.S. No.1690/2006 have preferred this appeal.

For the sake of convenience, the parties are referred to as per their status and position in the civil suit being O.S. No.1690/2006.

Briefly stated, the facts of the case as stated by the appellant/plaintiff are that the suit scheduled properties are ancestral and joint family properties. Defendant No.2, i.e., the uncle of the plaintiff, is said to have fraudulently obtained a registered release deed dated 01.07.1971 in respect of the ancestral properties from defendant Nos.1 and 3, who were the plaintiff's father and brother respectively. On the basis of the said release deed, defendant No.2 [hereinafter also referred to as "vendor"] transferred the item Nos.1 and 2 of the suit scheduled properties in favor of defendant No.4

(original respondent No.1 herein) under two sale deeds dated 31.01.1996. Being aggrieved, the plaintiff filed a civil suit being O.S. No.287/1996 before the Court of Civil Judge (Senior Division), Bangalore Rural District, seeking partition of the suit scheduled properties by metes and bounds and a declaration that the release deed dated 01.07.1971 and the two sale deeds dated 31.01.1996 as invalid and not binding. The said suit was later renumbered as O.S. No.1690/2006, from which the present proceedings originate. Defendant No.1 died during the pendency of the suit and was placed *ex-parte* in the said proceedings before the trial court.

By judgment and preliminary decree dated 10.07.2008 passed by the Court of Civil Judge (Sr. Dvn.) and J.M.F.C, Anekal in O.S. No.1690/2006, the suit filed by the plaintiff was decreed. The plaintiff was held to be entitled for partition and separate possession of his 1/3<sup>rd</sup> share out of the half share of suit scheduled properties, which means 1/6<sup>th</sup> share in the suit scheduled properties. Further the release deed and the sale deeds were held to be not binding on the plaintiff with respect to his 1/6<sup>th</sup> share in the suit scheduled properties.

Being aggrieved by the judgment dated 10.07.2008, the legal heirs of the defendant No.2 filed an appeal, being R.A. No.175/2008 before the District Court, Bangalore Rural District. Defendant Nos.3 and 4 remained absent in the said appellate proceedings. During the pendency of the appeal, the plaintiff and the legal heirs of defendant No.2 entered into a

compromise. The learned Principal District and Sessions Judge, Bangalore Rural District, Bangalore, by his order dated 27.10.2009, accepted the compromise memo and directed that a decree may be drawn in terms of the compromise and the judgment and decree dated 10.07.2008 of the Civil Judge be modified accordingly.

The plaintiff thereafter filed a petition being FDP No.8/2010 before the Court of Civil Judge (Sr. Dvn.) and J.M.F.C, Anekal, praying for the appointment of a commissioner to partition the suit scheduled properties and allot the respective shares to the parties in terms of the decree dated 10.07.2008. The defendants were all proceeded ex-parte in these final decree proceedings. The Court of Civil Judge (Sr. Dvn.) and J.M.F.C, Anekal allowed the appointment of a Court Commissioner and on the basis of the report prepared by the Court Commissioner, a final decree for partition was passed by the said Court on 28.03.2011 in FDP No.8/2010 under Order XX Rule 18, read with Section 54, of the Code of Civil Procedure, 1908.

Being aggrieved by the order dated 27.10.2009, by which the appellate court had accepted the compromise and directed the modification of the judgment and decree dated 10.07.2008, defendant No.4 (respondent No.1 herein) preferred a regular second appeal being RSA No.1554/2012 before the High Court of Karnataka at Bengaluru. The High Court, *vide* impugned judgment dated 06.01.2023, partly allowed the second appeal filed by the defendant No.4 and thereby set aside the judgment and

decree dated 27.10.2009 passed by the First Appellate Court, i.e., the Principal District and Sessions Judge, Bangalore Rural District, Bangalore in R.A. No.175/2008. The matter was remanded by the High Court to the First Appellate Court to reconsider the appeal and the compromise memo dated 27.10.2009 in accordance with law and after giving an opportunity to defendant No.4 to submit their say on the said compromise memo.

It is this judgment of the High Court which has been assailed by the appellant/plaintiff before this Court in the present appeal.

We have heard learned counsel for the respective parties.

Learned counsel for the appellant/plaintiff submitted that the said suit was decided by a judgment and decree dated 10.07.2008 granting 1/3<sup>rd</sup> share out of half share in the suit scheduled properties, which means 1/6<sup>th</sup> share in the suit scheduled properties, to the plaintiff and the partition and separate possession was to take place by metes and bounds. In the said suit, the original respondent No.1 herein was defendant No.4 and as against the said respondent, issue No.6 was framed which related to the issue as to whether the said respondent was a bonafide purchaser of the two items of the suit scheduled properties and the trial court held that the defendant No.4/original respondent No.1 herein neither entered the witness box and depose before the Court for supporting his contention, nor did he choose to cross-examine PW-1. Consequently, issue No.6 was answered in the negative. That as

against the said judgment and decree dated 10.07.2008, the vendor of the respondent No.1 herein has preferred R.A. No.175/2008 on the file of the District Judge, Bangalore Rural District, Bangalore (First Appellate Court). The said appeal was disposed of by way of a compromise entered into between the second appellant therein and the first respondent therein, i.e., the legal heir of the vendor-defendant No.2 and the plaintiff respectively. Consequently, in respect of the suit schedule item Nos.1 and 2 being agricultural lands, the defendant No.2 gave up their rights, titles and interests, and the plaintiff who is the appellant herein gave up his right, title and interest insofar as suit schedule item No.3 is concerned. Consequently, on the basis of the joint memo filed on 27.10.2009, R.A. No.175/2008 was disposed of by way of a settlement.

Being aggrieved by the said settlement arrived at between the parties, defendant No.4 (who is also the respondent No.1 herein) preferred Regular Second Appeal No.1554/2012 and the High Court by the impugned order has set aside the said settlement and remanded the matter to the First Appellate Court to consider the appeal and the joint memo 27.10.2009 in accordance with law.

Learned counsel for the appellant submitted that the impugned order is not just and proper for the reason that the settlement has been acted upon and the parties to the settlement have been given possession of their respective portions of the suit scheduled properties in the final decree

proceedings. Secondly, the respondents herein did not assail the judgment and decree of the trial court and in fact the defendant No.4 neither cross-examined the plaintiffs nor let in any independent evidence. Consequently, the respondent No.1 herein (defendant No.4) was not a necessary party for the settlement arrived at in R.A No.175/2008. Further the vendor of the respondent No.1 herein has relinquished his right, title and interest in the suit scheduled item Nos.1 and 2. In the circumstances, the High Court was not right in remanding the matter at the instance of the respondent No.1 herein in the second appeal by the impugned judgment.

Learned counsel therefore submitted that the impugned judgment may be set aside and consequently, the judgment and decree (compromise decree) passed in R.A. No.175/2008 dated 27.10.2009 may be given effect to.

*Per contra*, learned counsel for respondent No.1 submitted that there is no merit in this appeal and that the High Court has rightly perceived the fact that respondent No.1 herein was not made a party to the settlement/compromise arrived at between the parties in R.A. No.175/2008; that the said respondent herein had in fact purchased the suit scheduled item Nos.1 and 2 from his vendor. The vendor could not have thereafter relinquished his right, title and interest in the said items and thereby settled the matter in R.A. No.175/2008. He, therefore, submitted that the impugned judgment has only set aside the compromise, remanded the matter to the First Appellate Court for reconsideration of the appeal as well as

the joint memo dated 27.10.2009 and that the said judgment is just and proper for the sole reason that the respondent herein was not made a party to the settlement. He, therefore, submitted that there is no merit in this appeal.

Having considered the arguments advanced by the respective counsel at the Bar, we find that impugned judgment of the High Court is not in accordance with law and in fact goes against the interest of the appellant/plaintiff for the reasons that the High Court has lost sight of the fact that on issue No.6, the contesting respondent No.1 herein had not discharged his burden of proving the case. Apart from filing the written statement in the suit, respondent No.1 herein neither cross-examined the plaintiff's witnesses nor let in independent evidence. The finding on issue No.6 was against respondent No.1 herein. There was no challenge to the said finding by way of filing of an appeal, and in fact the learned counsel for the said respondent is quick to point out that in fact an appeal was filed by the said respondent(s) but having regard to the fact that the said respondent(s) was also prosecuting Regular Second Appeal No.1554/2012 before the High Court and in fact succeeded before the High Court, the filing of the First Regular Appeal by the respondent(s) was wholly unnecessary. We do not accept the said contention for the reason that the finding against the said respondent No.1 before the Trial Court has remained unchallenged even till today. The said respondent (represented by his legal heirs) ought to have prosecuted their first appeal and taken it to its logical

conclusion insofar as the finding given on issue No.6 is concerned. The said finding has attained finality in the absence of a challenge to the same by way of a regular appeal. Consequently, the said respondent No.1 was not a necessary party to the compromise entered into by the other parties in R.A. No.178/2008, as being a respondent in the said appeal, he or his legal representatives could not have got the judgment and decree of the trial court set aside.

In light of the fact that the trial court's findings on issue No.6 having attained finality, the parties to R.A. No.175/2008 who entered into a compromise/settlement in the said first appeal need not have also involved respondent No.1 herein for the said compromise.

In the circumstances, we find that it was unnecessary for the High Court to remand the matter to the First Appellate Court for the purpose of reconsidering the R.A. No.175/2008 and the joint memo dated 27.10.2009. Consequently, we set aside the said judgment dated 06.01.2023 passed by the High Court.

However, we find that in the event respondent No.1 herein has any enforceable right as against his vendor, he is at liberty to enforce such rights in accordance with law.

It is needless to observe that the compromise arrived at between the parties and the disposal of R.A. No.175/2008 on the basis of the joint memo dated 27.10.2009 shall now be given effect to, if not already been given effect to fully.



**This appeal is allowed in the aforesaid terms.**

**The parties to bear their respective costs.**

**Pending application(s), if any, shall stand disposed of.**

**....., J.  
(B.V. NAGARATHNA)**

**....., J  
(SATISH CHANDRA SHARMA)**

**NEW DELHI;  
JANUARY 08, 2025**

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 6132/2023  
[Arising out of impugned final judgment and order dated 06-01-2023  
in RSA No. 1554/2012 passed by the High Court of Karnataka at  
Bengaluru]

T. NARASIMHA REDDY

Petitioner(s)

VERSUS

M.P. SUBRAMANI NAIDU SINCE DEAD BY LRS. & ORS.

Respondent(s)

Date : 08-01-2025 This petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA

HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA

For Petitioner(s) Mr. Rohan Dewan, Adv.  
Mr. Balaji Srinivasan, AOR

For Respondent(s) Mr. B. Ramesh, Adv.  
Mr. Vinodh Kanna B., AOR  
Mr. V Purushothaman Reddy, Adv.  
Mr. Pradeep Kumar Kar, Adv.

Ms. Srishti Govil, AOR  
Mr. Pranav Jain, Adv.  
Mr. Tanish Manuja, Adv.  
Mr. Divyanshu Agarwal, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed  
of.

(RADHA SHARMA)

ASTT. REGISTRAR-cum-PS

(Signed order is placed on the file)

(DIVYA BABBAR)

COURT MASTER (NSH)