

IN THE HIGH COURT OF KARNATAKA, BANGALORE
DATED THIS THE 27TH DAY OF October 2003

BEFORE

THE HON'BLE MR.JUSTICE CHANDRASHEKARAIHAH

WRIT PETITION No:21292 OF 2000

BETWEEN

- 1 PYRE JAN
aged 35 Years
- 2 IRSHAD
AGE:30 YEARS
- 3 ZAHEER SAB
AGE:28 YRS

(All are sons of late Mohammed Shamsuddin sab,
and R/O MUSLIM STREET
P.W.D ROAD, CHANNAGIRI TOWN
DAVANAGERE) ... PETITIONER(S)

(By Sri: MYLARAIHAH ASSOCIATES)

AND :

- 1 STATE OF KARNATAKA
REP. BY THE CHIEF SECRETARY,
VIDHANA SOUDHA
BANGALORE
- 2 THE DEPUTY COMMISSIONER
DAVANAGERE DISTRICT
DAVANAGERE
- 3 THE ASSISTANT COMMISSIONER
SHIMOGA SUB DIVISION
SHIMOGA
- 4 THE TAHSILDAR
CHANNAGIRI TALUK
DAVANAGERE

5 MAHESWARAPPA
S/O MAHADEVAPPA
MAJOR
R/O AJJIHALLY VILLAGE
KASABA HOBLY
CHANNAGIRI TALUK, DAVANAGERE

6 SHABABUL HASSAN
S/O MOHIDDIN SAB, MAJOR
R/O SECOND CROSS, TANK MOHALLA
SHIMOGA TOWN ... RESPONDENT(S)

(Smt :Suman Hegde, HCGP. FOR R1 TO R4
Sri.S.S.Hosur for R5; R6 served)

THIS W.P. FILED PRAYING TO QUASH THE ORDER DT.
11.4.2000 PASSED BY THE DEPUTY COMMISSIONER,
DAVANAGERE DIST. VIDE ANNEX.P.

This petition coming on for hearing this day, the
Court made the following:-

WP:21292/2000

O R D E R

27-10-2003

The petitioners are the sons of late Mohammed Shamsuddin. Land measuring 2 acres 20 guntas in survey No.old.56/10 and New No.202) of Dondraghatta village, Kasba hobli, Channagiri taluk, was granted in favour of late Mohammed Shamsuddin on 24-4-1960. Thereafter there was a partition among the members of the family of Md. Shamsuddin. In the said partition the said property was allotted to his brother under the deed of partition dated 18-4-1975. Thereafter the brother of late Md.Shamsuddin sold the said land in favour of respondent-5 under a registered sale deed dated 29-10-93. After this sale, Md.Shamsuddin filed a suit OS No:157/1994 for cancellation of the partition deed dated 18-4-1975. In the same year on the basis of the compromise petition filed the suit has been decreed on 16-9-94 cancelling the registered partition deed entered into among the members of the family of late Md.Shamsuddin and others. On the basis of the sale deed mutation was effected in favour of the 5th respondent. This was challenged by Md.Shamsuddin in appeal before the Asst. Commissioner. The Asst. Commissioner by an order

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dated 4-2-1997 allowed the appeal cancelling the mutation made in favour of the 5th respondent. As against this order, 5th respondent preferred an appeal to the Deputy Commissioner. The Deputy Commissioner by an order dated 11-4-2000 allowed the appeal and set aside the order of the Asst. Commissioner confirming mutation effected in favour of the 5th respondent. This order is under challenge by the L.Rs. of Md. Shamshuddin in this petition.

2) Sri. Mylaramiah learned counsel submits that since the land was granted in favour of Md. Shamshuddin who is the father of the petitioners cannot be the subject matter of partition and therefore on the basis of the registered ^{partnership} ~~partnership~~ deed the brother of Md. Shamshuddin does not derive any right, title or interest [✓] so as to sell the same in favour of the 5th respondent and therefore there cannot be any mutation in favour of the 5th respondent. The partition is of the year 1975 and the sale by the brother of Md. Shamshuddin in favour of the 5th respondent is under registered sale deed dated 29-10-1993. It is not the case of the petitioner that he has not subscribed his

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signature to the partition deed. The case of the petitioner as seen from the averments in the plaint is that he has signed the partition deed without knowing the contents believing the version of defendants 1 to 3 in the said suit. If that is so, Md. Shamshuddin could have filed the suit much earlier immediately after the registered partition deed. The suit filed by Md. Shamshuddin is of the year 1994 i.e., after the sale of the land by his brother in favour of the 5th respondent. From this it is seen the petitioner and his brother who sold the land in favour of the 5th respondent colluding each other had filed the suit for cancellation of the partition deed and got the said suit decreed by compromise in the very same year. When once there is registered partition deed under which this property was allotted to the vendor of the 5th respondent and if the vendor of the 5th respondent sold the same in favour of the 5th respondent under the registered sale deed, necessarily mutation should have been in the name of the purchaser since, the decree obtained by compromise is not binding on the 5th respondent as he is not a party to the suit. In the said view of the matter, the Deputy commissioner

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is right in allowing the appeal by setting aside the order of the Asst. Commissioner.

3). Accordingly, writ petition is dismissed.

Sd/-
Judge

Hsf/*